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Congressional Record

PROCEEDINGS AND DEBATES OF THE 92d CONGRESS, SECOND SESSION

SENATE—*Thursday, October 12, 1972*

The Senate met at 8:30 a.m. and was called to order by Hon. PHILIP A. HART, a Senator from the State of Michigan.

PRAYER

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

O God our Father, who has watched over this Nation from the beginning until now and has made us stewards of Thy great gifts, grant us the wisdom and the will to use what Thou hast given us for the betterment of mankind.

We thank Thee for Thy mercies which are new every morning. Let Thy blessing be upon Thy servants in this place as they offer the toil of their minds and hands in service to Thee. Encompass them with Thy spirit. Preserve them from unrelieved weariness, from taut emotions, from numbed nerves, from easy despair, and from doing less than their best. Reinforce all human strength by the greater energy of Thy spirit. Help them so to open their minds and hearts, that being assisted by divine grace, they may be instruments for bringing a measure of Thy kingdom on earth.

We pray in the Redeemer's name.

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 legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., October 12, 1972.

To the Senate:

Being temporarily absent from the Senate on official duties, I appoint Hon. PHILIP A. HART, a Senator from the State of Michigan, to perform the duties of the Chair during my absence.

JAMES O. EASTLAND,
President pro tempore.

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

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Wednesday, October 11, 1972, be dispensed with.

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

ORDER OF BUSINESS

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

WELFARE PROPOSALS COMPARED

Mr. FANNIN. Mr. President, President Nixon set his welfare policy in the second month of his administration when he said:

The blight of poverty requires priority attention. It engages our hearts and challenges our intelligence. It cannot and will not be treated lightly or indifferently, or without the most searching examination of how best to marshal the resources available to the Federal Government for combating it.

The President has put forward a program and has stood by it.

Senator MCGOVERN, in 4 years in the House of Representatives and 9 years in the Senate, has treated welfare, in fact, lightly and with apparent indifference. In all these years, he sponsored precisely three bills on the subject—and all three are still pending in their respective Senate committees. He has cosponsored 16 welfare bills, of which seven were passed. Almost two-thirds of his proposed welfare legislation was announced after he began his race for the U.S. Presidency.

As a presidential candidate, Senator MCGOVERN pronounced the heart of the McGoverntine doctrine on January 19, 1972:

I propose that every man, woman and child receive from the Federal Government an annual payment . . . At the present time a payment of almost $1,000 per person would be required.

In June 1972, Senator MCGOVERN told the New York Times:

The $1,000 per-person figure is only "one suggestion and it may have been a mistake."

But Senator MCGOVERN had also previously proposed a $6,500 welfare plan for a family of four. It is my privilege to serve on the Finance Committee. We had that bill before us. It was introduced by Senator MCGOVERN for Senator MCGOVERN, without any stipulation that anybody else was involved.

According to the CONGRESSIONAL RECORD of July 29, 1971, he said:

When I return to Washington this afternoon I am introducing H.R. 7257—demanding a minimum income of $6,500 for a family of four—the bill introduced and fought for by the Black Caucus and their supporters, a bill to provide an adequate income for every American, on the floor of the U.S. Senate.

Yet, when confronted with this proposal by the titular leader of the Democratic Party, Senator HUMPHREY, Senator MCGOVERN again reversed his position, in these words:

The organization came to me after Senator (Eugene) McCarthy left the Senate, and said there was no one that they could get to introduce the bill. I told them there was no chance to get a measure through the Senate that would require a payment of $6,500 to a family of four, but I would introduce the bill so that at least it would have a hearing. I did that . . . the proposals that I have made have nothing to do with that specific proposal of the Welfare Rights Organization.

On June 30, 1972, Senator MCGOVERN finally admitted:

I've spent more time trying to broaden my understanding of economics than any other field . . . But it is true that I find the monetary and economic issues difficult.

And he added that—

The American people want economic policies that work more than once every 4 years

In a more recent phase of his campaign, the Senator proposed a third welfare plan.

The key feature was a guaranteed annual income of $4,000 per year to a family of four. This would involve an implementation cost of approximately $14 billion. The yearly cost of operating this third scheme has yet to be determined.

The Associated Press, September 1, 1972, indicated that in many instances the specifics of MCGOVERN's program are "still to be determined" or "have not been worked out."

Under Senator MCGOVERN's third welfare proposal—$4,000 per year for a family of four—no provision is made for the "working poor." Some even say it is better to be on welfare than to go to work—and even if this is an exaggeration, it is true that there is no work requirement in the McGovern proposal.

It is impossible to estimate exactly how many additional Americans would be added to the welfare rolls. But it was estimated that for a similar plan offered last year by Senator FRED HARRIS of Oklahoma, there might have been an increase in the welfare rolls from 15

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million at present to more than 80 million in 1974:

Senator HUBERT HUMPHREY has commented:

People don't want welfare. They want jobs, J-O-B-S. They don't want all that nonsense . . . They, the McGovern camp, say two years' transition, and we'll give you unemployment compensation. That's a lot of bunk.

And President Nixon, in his radio speech from Camp David the other day, said that, and I quote:

I have refused to compromise my welfare reform program to meet the demands of those who favor higher welfare payments. I want this Nation to be as generous as possible in helping those who cannot help themselves, but I shall also be guided by this principle: I shall oppose any program which increases payments to those who do not work if it requires an increase in taxes for those who do work.

Adding up McGOVERN's complete economic package—and this is more than just welfare spending—I find it might well result in a $126 billion deficit in fiscal year 1974 if fully implemented.

How would Senator McGOVERN raise the money? Middle-income families earning $12,000 a year or more would have their taxes increased by from 46 percent to nearly 100 percent.

A husband and wife whose combined earnings totaled $18,000 would experience a 73 percent tax increase.

A single person earning $8,000 would have a 155 percent tax increase.

Mr. President, I am opposed to a program which would take more money from hard-working Americans to provide incomes for able-bodied but nonworking members of our society. That is exactly what Senator McGOVERN has suggested.

It should be called "wreck-o-nomics."

CHILD DEVELOPMENT AND DAY CARE

Mr. FANNIN. Mr. President, one program that is involved in and has been under consideration as far as the campaign between Senator McGOVERN and President Nixon is concerned, which illustrates the difference between the thinking of the two candidates, concerns child development and day care.

GEORGE McGOVERN, in a press release of July 1972, said:

When he became President in 1969, Richard Nixon called for a "national commitment to provide all American children an opportunity for a healthful and stimulating development during their first five years of life." No program was initiated by the President, the Congress initiated comprehensive child development legislation.

Senator McGOVERN also said, in a speech at Carbondale, Ill.:

We need . . . a bill that President Nixon vetoed and that is the family-related Child Development Bill that was killed by one of the worst vetoes in this administration.

I call to the attention of my colleagues that this is the bill referred to earlier that would cost $20 billion by 1974.

Once again, McGOVERN's criticism of the President's record is unwarranted and flatly erroneous. The legislation to which McGOVERN referred was the Economic Opportunity Amendments of 1971 that, contrary to McGOVERN's charges, followed by 2 years the President's own day-care proposals.

Within H.R. 1, proposed in August 1969, the President included a $750 million appropriation for day-care facilities for welfare recipients and the working poor. Also, the President actively supported and signed the Revenue Act of 1971, providing a Federal subsidy for day care to families where both parents are employed.

Furthermore, the President had several sound reasons for vetoing the day care provisions of the OEO bill, citing:

The fiscal irresponsibility of spending at minimum $2 billion—and potentially $20 billion—for a program whose effectiveness has not yet been demonstrated;

The undesirability of creating a program leading to the dissolution of the family structure and parental authority;

The possibility of a whole "new army of bureaucrats;" each community of 5,000 or more would have been able to run a program with "its own plan, its own council, and its own version of all the machinery."

Nor, as McGOVERN has suggested, has the President ignored child development in general. In 1969, the President established the Office of Child Development within HEW to deal with the "physical, social, and intellectual" growth of young children.

Headstart and its day-care programs fall under the auspices of this office, as does "Sesame Street."

Nutritional assistance and medical care for young children has been improved under President Nixon; nutrition programs have doubled—from $600 million to $1.2 billion—since 1968.

The final irony of McGOVERN's criticism of the President is that—although he had cosponsored the 1971 child care bill—he was absent on June 20, 1972, for the vote on the Headstart and comprehensive child development bill.

Mr. President, President Nixon does care, and certainly his record shows that he has done a great deal regarding child care. I am sure that as the programs go along, a great deal more will be done.

WHERE DO WE DRAW THE LINE AGAINST INCREASING TAXES?

Mr. FANNIN. Mr. President, today I also wish to address a question that will occupy much of the Senate's time for the next 4 years and is of central concern to all Americans today.

Since World War II, the American people have been faced with an almost yearly increase in the amount of money they must pay to support their local, State and Federal Governments. With these increases has come a rising tide of frustration as people sense they are paying more and more for less and less.

The question now before us is simply this: where do we draw the line against increasing taxes?

This week, I hope, those of us in this Chamber will have an opportunity to answer this question when President Nixon's proposal for a spending ceiling is brought to a vote.

And less than 4 weeks from now, the American people will have a chance to answer when they select their next President.

For the moment, I would like to direct your attention to the choice to be made on November 7, for surely this is one of the most critical decisions before our country and will guide our course of action in the Senate for many years to come.

The great English jurist, Edmund Burke, once wrote:

To tax and to please, no more than to love and be wise, is not given to men.

Nevertheless, taxes are what we pay for civilized society. They are the lifeblood of government. Politicians dislike taxes as much as taxpayers do; but we all know they are necessary. President Nixon knows they are necessary, although he dislikes them as much as any man. He, perhaps more than any other President, has had to grapple with existing laws and expenditure programs already straining Government resources. In his determination to avoid higher taxes, he is determined to fight the runaway rise in Government spending which sparked the inflation from which we are only now recovering and which would surely necessitate tax increases next year and perhaps for many years to come if allowed to go unchecked.

The ACTING PRESIDENT pro tempore. The time of the Senator from Arizona has expired.

Mr. FANNIN. I ask unanimous consent to proceed for 3 more minutes.

Mr. MANSFIELD. Mr. President, I would have to object, but will the Senator from Wyoming be recognized and yield him the time?

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Wyoming (Mr. HANSEN) is recognized.

Mr. HANSEN. Mr. President, I yield the Senator from Arizona such time as he may require.

Mr. FANNIN. President Nixon is determined to curb runaway Federal spending while his opponent is encouraging it with proposals that would necessitate additional Federal expenditures variously estimated at $85 billion to $150 billion a year.

Before we go into Senator McGOVERN's proposals as best we can, and, indeed, it is difficult to piece them together in coherent fashion and present them coherently, I would like to review briefly President Nixon's achievements on tax reform In my opinion, they have promoted economy in Government by cutting wasteful Federal spending programs led to increasing prosperity for our Nation, and at the same time made our tax system more equitable.

True to his commitments to tax reform in the 1968 campaign, the President within 90 days of his inauguration, proposed major and fundamental reform in our tax system. The factual results of that reform dispute much of the current campaign rhetoric of his opponent that the administration favors a "soak the

poor, pamper the rich" approach to taxes.

Now, what are the real facts? Simply these:

The President has achieved substantial tax reform through the Tax Reform Acts of 1969 and 1971, which have lightened the tax burden on millions of Americans;

In the 4 calendar years 1969 to 1972, 12 million low-income Americans have been dropped from the tax rolls;

Over the past 4 years, Federal taxes on individuals have dropped by $22 billion; while taxes on corporations have risen by $5 billion;

Substantial tax cuts for lower and middle income families have enabled a married couple with two children with a yearly wage income of $5,000 to pay 66 percent less Federal income tax in 1972 than it did in 1969. Similarly, a family of four earning $10,000 from wages paid 26 percent less Federal income tax last year than it did 3 years ago;

The President's firm economic policies have cut the rate of inflation in half. It was over 6 percent when he took office, and now it is down to 2.5 percent. And even while Federal taxes on individuals have been cut, their real wages, especially after taxes, have been rising rapidly—a total of 4 percent over the past 12 months, the best increase in years.

Under President Nixon, we are correcting the consequences of past errors in economic policy, both domestic and international. We are entering into a period of economic prosperity, the like of which this country has rarely seen. We can continue on that road, a road which has led us to increasing price stability, reductions in the unemployment rate, rising productivity, and rapidly rising real incomes; or we can choose another road, a road charted by Senator McGovern, which would detour this Nation into a period of inflation, more runaway Federal spending, increased taxes and economic stagnation.

I said earlier Senator McGovern's economic proposals have been estimated to require additional Government expenditures ranging from $85 billion to $150 billion a year. The lower estimate was reached in a study published on September 27 for the American Enterprise Institute, a private Washington, D.C., based research group. It charitably assumed that McGovern and his economic advisers do not mean everything they have said.

The $150 billion figure is based on our own estimates and we assume, perhaps unkindly, that the Senator and his advisers do mean everything they have said.

Incredible as these figures may seem, let us examine what they would include. The lower figure of $85 billion estimates expenditures of about $60 billion for health insurance; $15 billion for grants to States on education; almost $10 billion for expanded welfare benefits and many smaller items. The higher total takes the Senator at his word and includes full funding for all authorized Federal nondefense programs, among other items.

To offset these increased Federal expenditures, the Senator has so far proposed a $22 billion tax increase. If we are charitable, we can take the lower total and still figure that this leaves the Senator $63 billion short. There is no way to raise this $63 billion or the $128 billion balance, if we assume full funding, exclusively or even largely from the rich. What then are we to assume? We assume something the Senator has thus far failed to stress: that if this money is to be raised at all, it will have to be collected from the average American in the form of higher taxes.

I shudder to think of what these higher taxes will do to families across the Nation.

Let me illustrate the point by talking about an average family in my home State of Arizona—a family of four earning $10,000 a year.

Under current law, that family already pays approximately $1,215 a year in income taxes to local, State, and Federal sources.

If the McGovern proposals were accepted at full funding, their Federal taxes would double and their total income taxes would soar to a figure no less than $2,120.

To my way of thinking, that is a staggering and absolutely outrageous increase, and I do not think the people of my State will stand for it. It is inconceivable to me that they will support any measure increasing their income taxes from 12 percent of their total income to over 21 percent.

What we need in this country, as President Nixon has said, is not more tax increases, but tax relief.

Mr. President, our Federal Government is already asking for $250 billion of our income each year. It does not need more. What we need is tax relief.

THE TAX ISSUE

Mr. FANNIN. Mr. President, I rise today to address an issue of fundamental importance to our Nation.

As all of us know, one of the most turbulent currents in the political waters this year is the issue of taxes. The American people were taken for a long ride during the 1960's, and they are now sick and tired of higher taxes, higher prices, and little return for their money.

It is to these situations that President Nixon has responded with his tax plans—and responded quite successfully. In a normal election year a sensible opposition candidate would proceed to other issues.

But this year seems certain to be one noted for Senator McGovern's lack of sense of judgment. He has not only continued to pursue this subject but has ignored the facts which point to the wide-scale improvements underway. He has proposed the most hair-brained schemes imaginable in this area. And he has spewed the inflated rhetoric of unreason and discord over any reasonable attempt to make things better still. Not only the direction of his remarks but their hyperbole as well cloud the subject and besmear honest efforts further to improve matters.

Let me try to set things in reasonable perspective for just a moment.

When President Nixon took office this Nation had the highest rate of inflation of any major industrial nation in the world. That rate has been cut in half—and it is today the lowest rate of inflation of any major industrialized nation in the world.

What do these figures mean? Quite simply, more real earnings for every worker in America. In fact, for the first time in 6 years, workers' real earnings have risen sharply—by more than 4 percent.

In addition, the American economy is not only strong, it is growing stronger. Today the United States has one of the highest economic growth rates of any nation in the world, second only to that miraculous little country, Japan—all as the result of the hard working Americans and President Nixon's new economic policy.

What is even more impressive is the Nixon record on taxes, particularly when it is compared with the suggestions proffered by Senator McGovern.

Contrary to the inflated promising we hear from the opposition, the President has a record of solid and impressive performance to back up his promises. Under President Nixon, through the Tax Reform Acts of 1969 and 1971:

About 12 million low income Americans have been dropped from the tax rolls;

Federal taxes on individuals have been lowered by $22 billion and taxes on corporations have been raised by $5 billion;

And taxes on middle income families have been dramatically decreased as well. In fact, the average family of four earning $10,000 a year pays 26 percent less in taxes under the 1972 rate compared to the 1969 rate. For a family of four earning $5,000, the reduction is two-thirds or 66 percent.

On the basis of this record of accomplishment the President can be believed when he says that even more will be done in the years ahead. And he has already told the American people some of what must be done.

Perhaps the worst tax in this country today is the local property tax. And President Nixon has promised relief from its burden—a crushing burden which is literally bleeding dry many million Americans today. Hardest hit are older Americans who have worked all their lives and are now retired on fixed or low incomes. One million retired persons in this country earn less than $2,000 a year—and in the Northeast, for example, they pay a property tax of 33⅓ percent, or one-third, on that income. One-third. That is unconscionable. And you had better believe the President when he says that it will not be allowed to continue.

In addition, the President has made a pledge to the American people that he will not seek a tax increase if he wins a second term, but will instead keep taxes down by cutting wasteful spending from the budget. He knows full well that it is Federal spending which has the greatest affect on Federal taxes. And he has urged the Congress to help him to keep taxes down by enacting a $250 billion ceiling on Federal spending.

Clearly, there are only two ways to go. You can either control spending or in-

crease taxes. President Nixon has urged that we control spending—and the American people surely know that the only other alternative is to increase taxes. Senator McGOVERN, far from proposing a limit on spending proposes to inflate spending. And that will mean increased taxes—for everyone.

So that is the record. Under President Nixon, taxes on individuals have been lowered. Inflation has been cut. Production has expanded. And individual wage earners have experienced the first growth in real spendable income in years.

Senator McGOVERN has not only refused to face these facts, but has also proposed some very questionable alternatives which, instead of improving on this record, would destroy it—and with it the hopes of individual Americans.

In his fanciful flights to never-never land, he has denied the progress which has taken place and preached the doctrine of economic damnation for every working man and woman in America. The Senator's whimsical programs, based on distortion to begin with, would have no hope of success.

Let us look at what Senator McGOVERN has proposed. Or maybe I should say, "Let us try to discover what he has proposed."

Senator McGOVERN has proposed new Federal spending programs which will cost over $155 billion. This is a conservative estimate and does not include a price tag for his promised assistance to the working poor or subsidies for defense workers whom his budget cuts would put out of work.

The Senator has told us that he will finance these additional programs by cutting defense spending by some $32 billion and by closing tax loopholes which he claims will raise an additional $22 billion. That makes $54 billion.

Where do we get the remaining $100-odd billion—and I use the phrase "odd billion dollars" advisedly?

He would have to increase taxes. In fact, he would have to double individual tax revenues to foot the bill. That means an average family of four earning $10,000 per year which now pays $1,000 in taxes would have to pay $2,000 in taxes.

Senator McGOVERN's tax reform proposals would hit the average wage-earning family hardest. And his proposals to further increase taxes on American corporations would make them less competitive in the world at a time when President Nixon is trying to make them more competitive. This would make American products too expensive to compete in the world's markets and would most likely result in hundreds of thousands of people being put out of work.

In addition, Senator McGOVERN's call for the repeal of the investment tax credit, depreciation rules, and other corporate "tax loopholes" as he puts it, is marked with more than a few tinges of hypocrisy. He himself voted for the Revenue Act of 1971 which only last year reemphasized their value to the economy and the wage-earner.

Putting it in the simplest terms possible, the spending programs which the Senator has proposed—when added to his announced intention to eliminate wage price controls within 90 days of his election and his proposed schemes to eliminate tax breaks for corporations—would mean higher taxes, higher prices, a higher rate of inflation, and reduced earning power for the American worker.

What Senator McGOVERN is asking people to vote against is a program which is working and can be made to work even better with some added congressional cooperation. What he is asking the people to vote for is a set of schemes based upon a politically distorted view of reality—and hence of dubious potential and likely harm to every American's income.

In the face of such promises it seems little wonder that people would prefer Richard Nixon's performance and trust his promises. And it seems that the slogan "Nixon now more than ever" is appropriate in the fact of the ravenous appetite of the sheepishly clothed programs proposed by Senator McGOVERN.

I have spoken today as a U.S. Senator and have therefore focused on the effects which could be expected nationwide as a result of these issues. But I am also a representative of the people of Arizona and it is incumbent upon me to address my constituents as well.

Let us put the case in its simplest terms by discussing the family budget for a family of four, earning $10,000 a year—indeed, a very typical family.

Under current law, that family now pays $1,260 a year in income taxes to local, State, and Federal sources.

If the tax reform plans enacted earlier in this administration had not been passed, that same family would now be paying $1,580. So the net savings under the Nixon administration is some $320 a year.

But compare that savings with the tax increase that would occur if Senator McGOVERN'S budgetary proposals were adopted.

Under his programs, Federal income taxes would have to be doubled for this family so that their income taxes would rise dramatically to $2,165—an increase of no less than $905.

He is really making outrageous demands upon taxpayers, and I can assure you that they deeply resent it.

Now let us carry the argument a step farther.

Let us assume our average family also owns a $30,000 house with some $3,000 in furnishings, car, and so on—what we call intangibles.

Social security payments add another bite—some $468 in fact under 1972 laws if all of the family income is earned by the head of the household.

Now what does it all add up to?

Simply this: if the McGovern budget is adopted by the next Congress, the total taxes for a family would go sky high—all the way up to $4,557 on an income of only $10,000.

As you can see, that is close to 50 percent of the family's income just to support Government services—never mind personal services for the family like food and housing.

As everyone knows, that 50 percent bite out of personal income sure would buy a lot of shiny, new schoolbuses.

And that, Mr. President, is almost precisely what we seem to be promised by these shiny, new programs from the opposition camp.

Mr. HANSEN. Mr. President, I compliment the distinguished Senator from Arizona for his very perspective comments. I think he has rendered a great service to the country by putting into clear and accurate perspective what the facts are.

WELFARE REFORM

Mr. HANSEN. Mr. President, the members of the Senate Finance Committee worked for more than 3 years on welfare reform. Although the committee recommended a number of changes in the administration proposal, the test program approved by the Senate in H.R. 1 did include both the administration plan, the committee plan, and another plan.

And I fully agree with the President's proposals that programs for the needy, the aged and the blind would be totally financed by the Federal Government. This would provide needed financial assistance to States already overburdened with welfare costs.

The idea of the welfare program in the first place was to offer people the opportunity of becoming self-sufficient.

Most of the Finance Committee, along with the President believe able-bodied people who are physically and mentally endowed with the attributes and capabilities of taking care of themselves should take care of themselves and would if encouraged and given the opportunity. They are not physically or mentally handicapped and, therefore according to our proposal would not be eligible for aid to the aged, blind, or disabled.

I do not question the changing times, Mr. President, nor do I question the need or absolute necessity of true welfare reform, and I firmly believe the President's new economic plan will go far toward undoing the damage of the ruinous inflation he inherited from the previous administration and restore the economy to a sound basis of progress, prosperity, and job development.

Job development is the answer to the problem rather than a continued sapping of the economy by bleeding the American taxpayer to death.

The President's proposals would raise social security benefits to a level one-third higher in fiscal year 1973 than just 4 years earlier. Social security benefits would be rendered inflation-proof, and the $5.60 monthly premiums now charged under part B of medicare would be removed.

President Nixon's plan would increase the incomes of the elderly alone by $5½ billion.

President Nixon's proposal will work—because this is a realistic man who thinks things through, analyzes the situation, obtains the best possible advice before he makes his decisions. Once he makes his decisions, he is therefore able to carry them out. And look at the results. Since his new economic policy was announced here are some of the results:

The rate of increase in the cost of living, which had been cut by one-third

before the freeze, has now been cut in half.

There are 2.5 million more civilian jobs now than there were a year ago.

The unemployment rate has declined from about 6 to 5½ percent.

Our economy is growing at a rate of about 9 percent a year, the highest since 1965.

Industrial production is reaching record levels, and, for August, was 8.2 percent above that of a year ago.

Workers' real weekly spendable earnings have risen 4 percent in the last year, three times the average rate from 1960 to 1968. This is the equivalent of two weekly paychecks—everywhere in America.

By contrast, look at the leader of the McGovernites. This man characterized the new economic policy as "Insane."

Then he went on to electrify the country, or so he thought, with his own welfare plan. In 13 years as a legislator, he had sponsored only three bills on the subject—and none became law. But on January 19, 1972, he said:

I propose that every man, woman and child receive from the Federal Government an annual payment . . . At the present time a payment of almost $1,000 per person would be required.

In June 1972, Senator McGOVERN told the New York Times:

The $1,000 per-person figure is only "one suggestion and it may have been a mistake."

On June 30, 1972, Senator McGOVERN admitted:

I've spent more time trying to broaden my understanding of economics than any other field . . . But it is true that I find the monetary and economic issues difficult.

Since then, the McGovernites have come up with a new welfare proposal. They are now offering a guaranteed annual income of $4,000 per year to a family of four. This would involve an implementation cost of approximately $14 billion. The yearly cost of operating this third McGovernite scheme has yet to be determined.

There is no work requirement in whatever it is Senator McGOVERN is proposing today. And it is impossible to estimate exactly how many additional Americans would be added to the welfare rolls. But it was estimated that for a similar plan offered last year by Senator FRED HARRIS of Oklahoma there might have been an increase in the welfare rolls from 12 million at present to more than 80 million in 1974.

President Nixon has called this election "the clearest choice of the century." And nowhere is the contrast clearer than on welfare. On the one hand, we have the President's proven record. It is a record of compassionate accomplishment, based on moderate, free enterprise principles.

On the other hand, we have Senator McGOVERN's hastily drafted—and constantly changing—programs to overheat the economy, push up inflation and taxing middle-income Americans at an ever-increasing rate. Above all, he would put millions more of Americans on welfare—because he does not think there is anything wrong about it.

Sometimes, I think the new left hates our free enterprise economy, our land of opportunity, so much that they would like to put everyone on welfare, all of us.

The McGovernites' so-called income redistribution program, which began as a $1,000-a-head joke, would, according to the McGovernites' guessing game, cost an additional $27 billion a year. That would be on top of the $100 billion in additional costs for their other domestic proposals.

When prominent economists, including Ways and Means Committee Chairman WILBUR MILLS, whom he wants of all things to be his Treasury Secretary, said the welfare plan would cost between $43 to $76 billion, Senator McGOVERN did his usual trick and backed away.

But he did not back away from the idea behind the plan. He still wants to replace our American work ethic with an alien welfare ethic. That is, he still wants to increase taxes on working people to lavish tax dollars on those who do not work.

The McGovernites really want to remove the incentive among the great majority of American workers to work harder, to compete, to save, and to get ahead. They want to penalize the quest for achievement and success. They want to destroy the sense of pride of millions of our people in their hard work and their accomplishments.

I endorse President Nixon, an idealist who says:

I want this Nation to be as generous as possible in helping those who cannot help themselves, but I shall also be guided by this principle: *I shall oppose any program which increases payments to those who do not work if it requires an increase in taxes for those who do work.*

President Nixon summed up a very great deal about the future when he said in his acceptance speech at Miami Beach:

The choice in this election is between change that works and change that won't work.

Mr. President, in less than 4 weeks' time, the American people will render their judgment upon the merits of the two economic proposals now before us. They will render their judgment on their estimation of the ability of the two candidates for the office of President of the United States as regards their considered opinion on who can best keep this country of ours on the right track.

I have no doubt that it may seem easy for a politician to speak out of both sides of his mouth, to be talking all the time, to speak from a position of not knowing the facts, almost speaking, at times, from a position of ignorance and to think that he may be fooling the people of this country, but I do not believe that will happen this year. If the polls are any indication of today's sentiment stirring in this country I believe that come November 7 we will find more and more Americans will give their stamp of approval to the basic soundness of the proposals that have been put into practice by President Nixon during the past nearly 4 years.

They will give their stamp of approval to the work ethic, to the position that each individual who is able, should try first to care for himself and his family, should seek help from the Government only when he is unable to care for himself and his family; and that the essence of free enterprise is the willingness on the part of Americans to try to produce, to try to contribute, and who are willing to undertake the responsibilities which have been the hallmark of American philosophy for nearly 200 years.

I believe that they will return President Nixon to the high office he now holds for 4 more years.

ORDER OF BUSINESS

The PRESIDING OFFICER (Mr. STEVENSON). The time of the Senator from Wyoming has expired.

Under the previous order, the distinguished Senator from New Jersey (Mr. WILLIAMS) is now recognized for not to exceed 15 minutes.

ON CIVIL LIBERTIES

Mr. WILLIAMS. Mr. President, on July 4, 1776, this Nation was born out of a promise that "governments are instituted among men" to secure the inalienable rights of "life, liberty, and the pursuit of happiness."

The birth of this Nation was premised on a rebellion against the tyranny of a distant government.

In the almost 200 years which have passed since that glorious day in the history of free man, the freedoms so painfully gained have been slowly eroded.

I speak this morning as one who has a direct tie to that great American Revolution.

I had an opportunity as a youngster to sit with my grandfather and learn from him about the country as it was when he was a boy.

He was born before the Civil War.

He, as a young man, had an opportunity to sit with his grandfather and learn about the country as it was in the beginning.

His grandfather was born during the American Revolutionary War.

So in this brief span of time—a grandson, his grandfather and his grandfather—I have spanned the history of the country.

I suggest that the miracle of the American Revolution is that with the promise of liberty of the individual as the basic principle, this land has become the pinnacle of the aspirations of all people for freedom.

We aspire to be free in our homes from the unwarranted intrusions of government just as our ancestors rebelled against the instruction of King George in their humble dwellings.

We aspire to be free in our thoughts, in our associations, and in our way of life.

But, during the course of the past 4 years, we have witnessed a willingness to accelerate the erosion of those guiding principles which have been the genius of America; which have breathed life into the very spirit of individual freedom.

And this erosion has been all the more insidious because it has happened one step at a time; because it has been perpetrated by those who enjoy the unsus-

pecting trust of a great people for the highest offices of the land; and because it has been masked in the disguise of emergency.

Mr. President, if I may state at this point, it is appropriate to pay tribute to one man who has stood in this body almost as an individual barrier to the threatened onslaught; the completely dedicated gentleman from North Carolina (Mr. ERVIN).

For him, we all have the greatest respect.

His preeminence in constitutional law is nationally renowned.

And I, for one, rely heavily on his judgment.

And I, for one, believe his vigil must no longer be a lonely one.

The most serious threats to individual liberty during these past 4 years have recently been outlined by our colleague from North Carolina in a thought-provoking article I strongly recommend to all of my colleagues: "Constitutional Casualties in the War on Crime," Denver Law Journal, 1971.

He enumerates the following:

First. Preventive detention.

Second. No-knock.

Third. Postal inspections.

Fourth. Wiretapping.

Fifth. Data banks.

When examined in abstract, that is, without relation to the Constitution, a plausible argument might be made for this package.

And when each item is treated separately, their logic seems even more powerful.

But we are not dealing in abstractions, we are dealing in our fundamental individual freedoms.

And these are not individual pinpricks aimed at an invulnerable bastion, but a body blow being swung at one of mankind's most delicate creations.

We must view this assault as a whole, for that is the only way one can stand back and take an objective reading of what has happened in 4 short years.

This administration has proposed that law enforcement officers be authorized to detain persons arrested of crime with minimal regard to the likelihood that they would commit additional crimes prior to their trials.

They have proposed that law enforcement officers be permitted to break into private homes for purposes of search and seizure, without regard to tested and honored constitutional safeguards.

They have proposed that Postal Service officers be permitted to open sealed mail to individuals from abroad without even providing those individuals with notice.

They have proposed an inherent right of the Government to wiretap telephones in the interest of preserving domestic security.

And they have established national data banks in which to obtain and collate information on millions upon millions of American citizens.

I believe I understand the apprehensions of our society.

Threatening street crime seems to be ever increasing, causing great fear among the populace.

Who can fail to understand the apprehension of an elderly widow facing the prospect of a mugging each time she ventures from her public housing apartment?

As one who has been the subject of criminal attack, I can understand the fear, the desire to insure that it will never happen again, the bitterness against the assailant, and, if he is a member of an identifiable racial or ethnic minority, the prejudice which flows so easily.

I can understand the frustrations of a law enforcement officer when the suspect he has arrested is allowed to go free on bail or on his own recognizance.

But we must not let these frustrations and fears lead us into an irreversible and irrevocable surrender of that which is most dear and vital to our way of life; our own individual liberties.

In my judgment our civil liberties must be defended against all challenges, for that is what the great American Revolution was and still is all about.

This is especially true where so many viable alternatives to the administration's proposals are available.

So, for example, if we are legitimately afraid that the man who is arrested and charged with a crime may commit another crime prior to his trial; why is not our immediate answer to insure a speedy trial as guaranteed by the Bill of Rights?

Think about it for a moment.

By establishing preventive detention, all we have guaranteed is that someone, possibly not even the guilty individual, is detained in jail.

For all we know, the criminal is roaming the city streets free to perpetrate another crime.

Yet, if our alternative were a speedy trial, we would at least know that it is the criminal who is in jail.

Not only is preventive detention an outrageous infringement on our civil liberties, it is counterproductive.

Or let us examine wiretapping.

We sit back and pretend that we need not fear the prospect of an invasion of our privacy.

But the wiretrapping that we so graciously have accepted over the years in foreign affair matters and on questions of organized crime is now being turned against all of American society.

It has been used on the legislative branch of Government and the administration has tried to turn it on every American who it believes is threatening domestic security.

But how has this power been helpful to society?

I, for one, cannot think of one person, dangerous to our society, who has been placed in prison as a result of this serious invasion of our constitutional rights.

But I can recall conversations in which I have detected a sad note of fatalism about the inevitable need to be guarded in telephone conversations.

Mr. President, this is tragedy in the making.

For it is in the nature of a people caught up in the day-to-day struggle of making a living, to accept and adjust to conditions over which they believe they have no control.

The burden of pointing out what they have at stake falls on us, their elected representatives, and on the press, supposedly insulated from intimidation.

But even here, we are witnessing a concentrated and orchestrated attack by the executive branch on the legislative branch of Government and on the fourth estate.

When the administration implicitly threatens the radio and TV media with its power of licensing, when the administration threatens the press sources of information by subpena and grand jury proceedings, when the administration takes us backward 200 years by imposing the first prior restraints on newspapers which seek to publish documents embarrassing to the administration, freedom is in mortal danger.

Who suffers when we impose limitations on the freedom of the press?

Perhaps there is immediate political gain for those in a position to impose such restraints.

But certainly every community in the United States regardless of its attitude toward its local news media suffers irreparable harm from such restraints.

I can understand the frustrations of the public official who feels the barbs of what he may consider to be an unfair press.

But, can we, as a society, afford to know only what our rulers choose for us to know?

Can freedom survive a press cowed into submission?

We all know the answer to that.

No people, no matter how much liberty they have previously enjoyed, can remain free without free public debate.

Past liberties no more guarantee future liberties in the political field, than do past victories guarantee future victories on the athletic field.

And now we have the outrageous spectacle of the administration attempting to gag and punish aides of this very body for assisting U.S. Senators in publishing materials used in a legislative hearing.

The administration has argued successfully before the courts to limit the rights of this body to make known, and therefore the rights of the public to know, that information which we, as elected representatives of the people, decide is vital to the legislative process.

Most citizens of this country see these developments only in a piecemeal fashion and then only as threats to others.

After all, we say, the elected leaders will not abuse the authority we give them.

They will only use the authority to sweep crime off the streets of our cities.

I will say this is the peak of naive and wishful thinking.

The same people who run this Nation's Department of Justice in nonelection years are the people responsible for the illegal political invasion of the headquarters of the Democratic Party.

And with each passing day the newly disclosed extent of the White House pri-

vate secret war on the Democratic Party grows uglier and uglier.

And the worst part of it all is that the absolute contempt for the basic principles upon which this Nation was founded is being exhibited by a duly elected administration, rather than, as has always been feared, an extralegal army of usurpers devoted to fomenting dissensions in order to seize power.

Fraudulent telephone calls, forged letters, breaking and entering, wiretapping—is this the future of American politics?

And if it is, what an awful price we shall pay for it.

For this is neither more nor less than the politics of fear.

Do we really need to fear the foreign totalitarian or is he right here in Washington?

It is wrong, terribly wrong for this society to react to the violence and the dissension by stripping ourselves of our own liberty.

It is morally wrong for the leadership of this country to feed on our fears and worse yet to provide sustenance to an ever-widening circle of fear.

It is an immediate and present danger to all of us.

As so well stated by the senior Senator from North Carolina:

> The justification for these assaults on individual rights has been as always, the existence of a crisis . . . All that need be said about necessity as a justification for abridging liberty was said by William Pitt in a speech to the House of Commons on November 18, 1783: Necessity is the plea for every infringement of human freedom. It is the argument of tyrants. It is the creed of slaves.

Mr. President, in the last few weeks I have risen on the Senate floor to speak of my disagreements with the present Administration in areas involving jobs, worker safety, housing, urban problems, mass transit and others.

These statements involved disagreements over the use of the constitutional powers of the President.

And I fully concede to the President the powers which are rightfully his, no matter how much I disagree with his use of those powers.

But, Mr. President, today I express my disagreement over the abuse of these powers.

An abuse which, if perpetuated and expanded, will leave us only with the wreckage of a once great democracy.

This tragedy must end.

The tide must be turned.

As pointed out by the senior Senator from North Carolina in the article that I mentioned before, the alien attacks upon human freedom and individual liberty, Mr. President give us a dark day today; but as all hardship and wrong that come to the people of this country in our resilience and in our fight for our rights, this, too, will be overcome.

Mr. President, I ask unanimous consent to have printed in the RECORD the article, "Constitutional Casualties in the War on Crime."

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

CONSTITUTIONAL CASUALTIES IN THE WAR ON CRIME

(By SAM ERVIN)

INTRODUCTION

Over 100 years ago John C. Calhoun warned the Senate that "it is harder to preserve than to obtain liberty." Calhoun's warning, made in a period of great political unrest and instability in the 19th century, is especially valid today when violence is fast becoming a part of our daily life. We have been experiencing a tremendous increase in common criminality which has placed our urban citizens in a state of constant fear and insecurity. The fear of crime has affected our entire population. It has produced the widespread demand for safety, for "law and order," which has dominated our political scene in recent years and preoccupied the Congress and the Administration since 1968.

At the same time we have also been experiencing a steady deterioration of that tolerance for differing points of view which is the very fiber of a society based upon liberty. Rhetoric is fast replacing reason in political discourse. Totalitarian attitudes have infected more and more of our social and political disputes, converting opponents into mortal enemies and eliminating compromise as an acceptable solution. Whereas just a few years ago we were debating the social and philosophical validity of peaceful civil disobedience, a form of political action that numbers Gandhi, Christ, and the Hebrew Prophets among its adherents, today many groups openly advocate violence as a political instrument, and a few have begun to practice terrorism.

These are very recent developments, and they are unique in our history. Our society has experienced violence before, but it has never sanctioned it as a political instrument in a holy war against those who disagree. Nor has violence ever reached a point where large parts of our society live in a state of siege in their own homes. It is in this context that our traditions of individual freedom and civil liberties are once again being tested.

The twin evils of criminal and political violence stand as a threat to our liberty in two ways. Liberty cannot survive in anarchy. But neither can it survive if our nation's leaders and people come to feel that the only path to security lies in suspending constitutional freedoms "for the duration." As Justice Davis said in *Ex parte Milligan:* [1]

"The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances. No doctrine, involving more pernicious consequences, was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government. Such a doctrine leads directly to anarchy or despotism, but the theory of necessity on which it is based is false; for the government, within the Constitution, has all the powers granted to it, which are necessary to preserve its existence; as has been happily proved by the result of the great effort to throw off its just authority" [2]

The sorry fact is that by word and deed, many leaders of our country seem to be as ignorant of Calhoun's warning as they are of Justice Davis' truth. In an effort to deal with the crisis of violence, they have proposed a series of laws and have taken other steps which demonstrate at least a sympathy with the belief that the only way to deal with lawlessness is by sacrificing hard won but fragile pillars of individual freedom. Their approach has been largely motivated by the political dividends to be gained by stressing the dangers of lawlessness and the need for tough anti-crime moves. They have ignored the time-consuming, expensive reforms which do not produce votes but which eventually show results. The justification for these assaults on individual rights has been, as always, the existence of a crisis. In this case, it is the crisis of "law and order." All that need be said about necessity as a justification for abridging liberty was said by William Pitt in a speech to the House of Commons on November 18, 1783: "Necessity is the plea for every infringement of human freedom. It is the argument of tyrants. It is the creed of slaves."

The catalog of recent Administration efforts on behalf of law and order is a long one, and different people will cite different examples of what they think illustrates the current official insensitivity to constitutional principles. The following examples are typical of the current approach.

I. LAW AND ORDER LEGISLATION

Over the past year the Administration proposed and successfully had enacted two laws giving police the right to enter private homes by stealth or violence in the same way as common thieves and burglars in order to aid the execution of search and arrest warrants.[3] This "no-knock" search authority flies in the face of the constitutional guarantee that all Americans are to be secure against unreasonable searches. The fourth amendment is an expression of our traditional belief in privacy and security. It is symbolic of the restraints that we place upon government efficiency in the name of a higher value. "No-knock" searches destroy the security of what Faulkner called the "last vestige of privacy without which man cannot be an individual." The principle that "every man's home is his castle" is more than a slogan. It is an expression of one of the greatest longings of the human heart. The longing for a place where man can flee from the world, where he can converse freely with his family and his God, at peace, free from the fear of molestation by others or by his government. In the words of the Prophet Micah: "But they shall sit every man under his vine and his fig tree; and none shall make them afraid; for the mouth of the Lord of hosts has spoken it."

Anglo-American tradition has consistently upheld the sanctity and security of the home against recurring pleas of government necessity. As long ago as 1603, in Semayne's Case, the court laid down the rules:

"In all cases where the King . . . is party, the sheriff (if the doors be not open) may break the party's house, either to arrest him, or to do other execution of the K.'s process, if otherwise he cannot enter. But before he breaks it, he ought to signify the cause of his coming, and to make request to open doors. . . ." [4]

And when the claim was made that the excise tax on cider could not be collected unless custom's officers could enter homes without notice to search for the contraband, William Pitt said:

"The poorest man may, in his cottage, bid defiance to all the forces of the crown. It may be frail. Its roof may shake. The wind may blow through it. The storm may enter. The rain may enter. But the King of England cannot enter. All his force dares not cross the threshold of that ruined tenement."

The predilection of English customs officers to execute general writs of assistance against American colonists played a major role in the American Revolution and was one of the direct antecedents of the fourth amendment. John Adams said the controversy "breathed into this nation the breath of life. . . . Then and there the child Independence was born." [5]

The rule of prior notice enunciated in Semayne's Case has been maintained down

Footnotes at end of article.

to this day. It has long been written into federal statutory law [6] and has been incorporated in the fourth amendment.

The leading case which discusses the law of no-knock searches is Ker v. California,[7] in which the Supreme Court unanimously agreed that the fourth amendment includes the requirement of prior notice by the police of their identity and purpose before they may enter a home to execute a search or arrest. The Ker case has no Court opinion because the Justices divided on whether the facts in the case were sufficient to bring it within one of the recognized exceptions to the rule of prior notice. They were, however, in substantial agreement on the limited nature of those exceptions. Justice Brennan summarized the exceptions as follows:

"Even if probable course exists for the arrest of a person within, the Fourth Amendment is violated by an unannounced police intrusion into a private home, with or without an arrest warrant, except (1) where the persons within already know of the officers' authority and purpose, or (2) where the officer's are justified in the belief that persons within are in imminent peril of bodily harm, or (3) where those within, made aware of the presence of someone outside (because, for example, there has been a knock at the door), are then engaged in activity which justifies the officers in the belief that the escape or the destruction of evidence is being attempted." [8]

The exceptions—prior knowledge by the people in the house that officers are outside, danger to the officers or someone inside, or imminent escape or destruction of evidence—all focus attention on the moment the search is to be performed. They are dependent on prior knowledge by the inmates of the house of the presence of the police outside plus emergency or exigent circumstances not known or knowable until the police are actually present to execute the warrant. These circumstances quite naturally render advance notice both superfluous and dangerous and thus justify a no-knock entry.

The no-knock legislation makes two changes in common law. First, it lowers the degree of necessity, or the burden of justification, that is needed to uphold a no-knock entry. The constitutional standard is strict. It requires the police to have probable cause to believe that their presence is known and that an emergency situation exists. The new statutory standard speaks of "probable cause to believe that such notice is likely" to result in danger to the police or another listed exception.[9] The piling of one probability upon another lowers the standard below the "probable cause" requirement of the Constitution, and to this extent, at least, the provision is defective under the fourth amendment.

Second, and more significant, the statute empowers the judge to authorize a no-knock entry when the search warrant is issued. This means that the police officer and the judge must speculate on the possible circumstances that will exist miles away and perhaps days later when the warrant is executed. This is mere prophesy. The police can offer no more than their fears of what perhaps may take place. The judge has only the policeman's anticipation of what might occur. Neither can know whether these conditions will in fact exist. The ability to authorize entry without notice undercuts the whole theory of emergency conditions and the limited nature of the exceptions to the constitutional rule. It creates a situation where the exception devours the rule. Rather than placing a judge between the police and the door, as its proponents suggested, it serves to immunize the police from subsequent judicial scrutiny whatever the conditions actually present when the warrant is executed. The statutory authority to issue advance no-knock warrants means that the principle that police must give notice before entering is now an empty promise. No-knock repudiates a tradition of liberty more than 350 years old.

Despite the fervor with which no-knock was advanced by the Justice Department, it is by no means uniformly or enthusiastically supported by rank and file police. The outcry from some community groups that they would defend their homes with force against nighttime intruders who might be burglars as well as police produced an undercurrent of disquiet among many law enforcement officers. They do not welcome yet another irritant to the increasing community distrust that police have been meeting in recent years. Nor do they or their wives look forward to the danger that confronts policemen from armed and frightened city dwellers who already feel insecure in their homes. The limited value of no-knock was exemplified in the statement of Washington, D.C. Police Chief Jerry Wilson a few days after "no-knock" was enacted for the District; he expected that it would be used perhaps a dozen times a year. This gap between political rhetoric and practical utility characterizes much of the "anti-crime" proposals of the past 2 years. We cannot even say that the weakening of constitutional principles has been matched by any significant improvement in law enforcement, small comfort though that would be.

Preventive detention, which the Administration was also successful in having enacted in 1970, has similarly been advertised as a necessary weapon in the war against crime. Preventive detention is an authorization to judges to deny bail to defendants who are thought to pose a danger of committing additional crimes if released between arrest and eventual trial. Under most formulations, including the version proposed by the Justice Department, the detention is limited to certain classes of defendants who may be detained for a period of 60 days, by which time they supposedly will have tried.[10]

While on its face, preventive detention appears to be an effective, albeit drastic, remedy for pretrial recidivism, in reality it is neither effective nor necessary. Pretrial recidivism, which is defined as the incidence of rearrests of persons released on bail during the pretrial period, has been found to occur in about 11 percent of all cases. Eliminating or even substantially reducing this 11 percent figure does not justify resort to preventive detention even if it could be shown to be effective. Professor Hans Zeisel found that the 11 percent rearrest rate could be reduced to 4.5 percent by the simple device of trying all cases within a 60-day period, as the Administration bill assumes will be done. The addition of preventive detention for defendants charged with so-called dangerous or violent crimes would reduce that rate to 3.8 percent, or a net decrease of only 0.7 percent. This is explained in part by the fact that while the overall recidivism rate is 11 percent, this figure includes all arrests for misdemeanors and nonviolent felonies as well as for dangerous crimes. The recidivism rate for the dangerous categories is only 6 percent, and it is to this class of cases alone that the Department bill would apply.[11]

While 60-day detention would make only a limited contribution to reducing pretrial recidivism as compared with a 60-day trial rule, perhaps the greatest defect in the Administration bill is that judges are simply unable to distinguish between defendants who will commit additional crimes and those who will not. There are no reliable tests for judges to use in determining which defendants are likely to be dangerous and which are not. None of the factors recited in the legislation have been shown to have any value as a device for predicting future criminal conduct. In fact, there are no reliable predictive systems anywhere else in the criminal system. Even in parole and probation cases where judgments are based on extensive knowledge of the individual and long periods of observation, the failure rate is still high. By contrast, the judge in a detention hearing has little information to go on. This hearing takes place a few hours or days after arrest. The judge will be informed of the charge; the nature of the evidence against the defendant; some information gathered by a bail agency concerning the defendant's ties with the community, his employment, family, and the like; and perhaps some inaccurate and incomplete information about his prior record. None of this is evidence in the legal sense, and little of it can be considered highly reliable.

What this means is that the judgment made in the preventive detention hearing about the future conduct of the defendant is merely a guess, and not a very educated one. One study made in the District of Columbia demonstrates the inability of judges to predict future criminality. Two judges, known for their radically different attitudes toward pretrial release, were examined over a period of time to trace the validity of their bail decisions. Judge A, considered a lenient judge who followed the Bail Reform Act in an effort to maximize the number of defendants free during the pretrial period, released 167 defendants on personal recognizance out of a total of 226. In all, about 80 percent of the defendants appearing before him were released. About 9 percent were rearrested while on bail, or of 180. Judge B, a strict judge who quite explicitly made his bail decisions on the basis of his judgment of the dangerousness of the defendant before him, released only 49 percent, or 141 of 285. He had no more ability to predict potential recidivists than had the first judge. There were 12 subsequent arrests among those he considered not dangerous, i.e., 8 percent.[12]

There is every reason to believe that preventive detention under the new law will not work. Assuming that the 6 percent rearrest figure for dangerous defendants accurately describes the portion of defendants for whom preventive detention is justified by the statute's standards, this means that judges must be able to identify the proper six out of every 100 potential cases presented to them. This they are manifestly unable to do with any kind of accuracy. A conscientiously and carefully administered program of preventive detention will result in no measurable reduction in pretrial crime simply because the chances of detaining the right defendants are small.

On the other hadn, if preventive detention is used for wholesale denial of bail, then we can be better assured that the dangerous will be detained, along with the nondangerous and the innocent as well. If all persons subject to preventive detention were detained, this would result in an increase in detained defendants of 46 percent. Even aside from the injustice of such a program, there is still a limit to the number of people who can be detained. With the much-maligned Bail Reform Act in effect in Washington, D.C., the local jails are nonetheless severely overcrowded and trial delays are excessive. Preventive detention cannot be used against all defendants potentially subject to it simply because there is no place to put them once they are off the streets. The local District of Columbia jail has a capacity of 3,053; yet at the time that preventive detention was being enacted by Congress, it housed 3,275 inmates. More than 1,400 persons were in jail awaiting trial. Nearly half of these had been waiting over 60 days, and 10 percent had been there for over one year.

Footnotes at end of article.

The average detention was more than four months.[13]

This situation is not peculiar to Washington, D.C., detention facilities all over the country are outmoded and overcrowded, and conditions are deplorable. The recent jail riots in New York dramatically illustrate the consequences of a criminal justice system which practices preventive detention. Despite efforts of organizations like the Vera Institute which has tried to encourage bail and court reform, New York still relies heavily on money bond. It has been estimated that there are about one quarter million arrests each year, and a backlog variously estimated at between 90,000 and 345,000 cases. While not all of these cases involve defendants who have been detained awaiting trial, it is estimated that about 40 percent of the city's jail population have been detained because they are unable to raise bail. About 43 percent of these have been waiting over one year, and the average pretrial detention period is over 5 months.[14] In addition, it is estimated that there are a thousand felony defendants who have been out on bail for up to 7 years but who are as yet untried. This, plus the jail riots, is the picture of a criminal justice system which relies on preventive detention and which has neglected its problems past the breaking point. And no one claims that New York is a significantly safer city because of its widespread preventive detention practices.

Whatever marginal increase in public safety that preventive detention might offer, its cost in constitutional principles is high. First, preventive detention is constitutionally suspect under the eighth amendment provision that "excessive bail shall not be required." This provision is probably one of the most obscure in the Bill of Rights. It has never been conclusively determined whether the amendment confers an absolute right to bail in all noncapital cases or whether it merely guarantees reasonable bail in those cases for which Congress authorizes the setting of bail. One reason for this confusion—in addition of course to the extraordinary ambiguity of the constitutional phrase itself—is that federal law has by statute guaranteed the right to bail in all noncapital cases ever since the Judiciary Act of 1789.

Whether this statute is simply a legislative declaration of bail policy which has been maintained for 180 years or whether it is an elaboration of the eighth amendment which has achieved constitutional dimensions is a subject open to much dispute. The fact that the same Congress which proposed the eighth amendment also enacted the Judiciary Act strongly suggests that the amendment was intended to incorporate the statutory principle and was viewed as an implementation and elaboration of the statute, unorthodox as that may seem. The Northwest Ordinance of 1787 also formulated the right to bail as absolute in noncapital cases and is further evidence of the content of the right to bail at the time the amendment was framed. Added to this support is the fact that state constitutions written at the time explicitly define the right to bail in the terms used in the Judiciary Act. At present, the broad right appears in 40 state constitutions. Until the preventive detention controversy arose, the only exception to this view was in New York.

Because federal statutory law has always guaranteed bail in noncapital cases, the United States Supreme Court has not had much occasion to examine the question. The Court has considered the eighth amendment right to bail in only two significant cases, both decided during the 1951–52 term and argued within five weeks of each other. In one *Carlson* v. *Landon*,[15] the Court appeared to be of the view that bail was not an absolute right but was subject to legislative restriction. Yet, the same Court a few months earlier said in *Stack* v. *Boyle*,[16] that the only purpose of bail was to assure the defendant's presence at trial and that any bail imposed above the amount necessary to achieve this purpose was unconstitutionally "excessive" under the eighth amendment.[17]

This seeming contradiction disappears when the cases are examined more carefully. In particular, the *Carlson* case, which has been cited to support legislative restrictions on the right to bail such as preventive detention, must not be read out of context. Justice Reed, who wrote the Court opinion, was very careful to base his constitutional argument on the fact that this was an administrative deportation case involving aliens.

"The power to expel aliens, being essentially a power of the political branches of government, the legislative and executive, may be exercised entirely through executive officers, 'with such opportunity for judicial review of their action as Congress may see fit to authorize or permit.' This power, is of course, subject to judicial intervention under the 'paramount law of the Constitution.'

"Deportation is not a criminal proceeding and has never been held to be punishment. No jury sits. No judicial review is guaranteed by the Constitution . . .[18]

Discussing the application of the eighth amendment to these proceedings, the Justice said.

"Here we meet the argument that the Constitution requires by the Eighth Amendment . . . the same reasonable bail for alien Communists under deportation charges as it accords citizens charged with bailable criminal offenses. Obviously the cases cited by the applicants for habeas corpus fail flatly to support this argument. We have found none that do.

"The bail clause was lifted with slight changes from the English Bill of Rights Act. In England that clause has never been thought to accord a right to bail in all cases, but merely to provide that bail shall not be excessive in those cases where it is proper to grant bail. When this clause was carried over into our Bill of Rights, nothing was said that indicated any different concept. The eighth amendment has not prevented Congress from defining the classes of cases in which bail shall be allowed in this country. Thus in criminal cases bail is not compulsory where the punishment may be death. Indeed, the very language of the amendment fails to say all arrests must be bailable. We think, clearly, here that the eighth amendment does not require that bail be allowed under the circumstances of these cases.[19]

It is clear that Justice Reed was referring to the legislative power to grant or deny bail in noncriminal cases. Both Justice Black's dissent and the Justice Department's brief make this obvious.[20] Whatever one's views may be on the application of the eighth amendment to noncriminal detention, it is a mistake to read the case as sanctioning denial of bail in criminal cases with the exception of capital cases.

The forceful words of Chief Justice Vinson in the contemporaneous *Stack* v. *Boyle*[21] decision demonstrate the Court's view of the eighth amendment in criminal cases.

"From the passage of the Judiciary Act of 1789, 1 Stat. 73,91, to the present Federal Rules of Criminal Procedure, Rule 46 (a) (1), federal law has unequivocally provided that a person arrested for a noncapital offense shall be admitted to bail. This traditional right to freedom before conviction permits the unhampered preparation of a defense, and serves to prevent the infliction of punishment prior to conviction. . . . Unless this right to bail before trial is preserved, the presumption of innocence, secured only after centuries of struggle, would lose its meaning.[22]

The Court's reference to the unhampered right to prepare a defense, the prevention of punishment prior to conviction, and the presumption of innocence suggest strongly that preventive detention which denies bail altogether is a violation of the eighth amendment, no less than bail in excess of what is required to assure the defendant's presence at trial.

The final argument against an interpretation of the amendment which allows Congress to deny bail absolutely is simply that it proves too much. Such a reading would mean that the eighth amendment is subject to legislative abridgment and even repeal by the simple process of defining away the cases in which bail is permitted. That interpretation would make this provision the only constitutional guarantee which exists at legislative sufferance. In Justice Black's words, it reduces a constitutional guarantee to the level of a "pious admonition." It is difficult to believe that the First Congress proposed a Bill of Rights to secure individual liberties against governmental power and included in that document a guarantee which has no more permanence than a simple statute.

However one resolves the ambiguity of the eighth amendment, there is no question that preventive detention violates due process. The notion that citizens can be deprived of liberty because of the possibility they may commit a crime in the future strikes at the roots of our system of justice. We predicate our view of individual freedom on the idea that government may limit it only by pre-established, clearly defined, rules of behavior. No citizen can lose his freedom unless he commits acts which contravene these rules. The proof of this violation is subject to strict procedural limitations, severely limiting rules of evidence, and the imposition of a high burden of proof on the government. We have always rejected the idea that government can punish criminal predeliction in the absence of specific criminal misconduct. Preventive detention—by focusing on future, possible, but as yet uncommitted criminal behavior, i.e. "likelihood of danger to the community"—serves as a fundamental repudiation of our oldest traditions of due process. It imprisons for crimes not yet committed, nor even suspected, but only feared.

Such a theory places every citizen at the mercy of the state.

Preventive detention has been defended on the grounds that those subject to it are charged with having committed crimes and that this charge may be the basis for imprisonment. The "probable cause" found by the police in the arrest, by the prosecution in the charge, by the grand jury in the indictment, and by the judge at the preventive detention hearing itself establish guilt sufficiently to justify imprisonment. This argument challenges the fundamental principle that every individual is presumed innocent until proven guilty at trial. Advocates of preventive detention reply that this presumption is a "mere rule of evidence assigning the burden of proof to the government at the trial itself." If this is true, then much, if not all, of the protections and procedures of the criminal trial process lose their meaning. If a man is not presumed innocent and if he is probably guilty merely by reason of accusation, then the government's power to deal with him as it chooses between arrest and trial is greatly increased. If we accept mere accusation as the justification for imprisonment, we can begin to question the need for the restrictions we place upon government at the investigatory stages of the case and at the trial. These restrictive rules have meaning because we operate under the assumption that it is a free and innocent man that stands before the bar of justice.

Any system of preventive detention must resolve the question of what procedures it will employ in the preventive detention hearing. Certainly the most efficient method is to dispense with an elaborate hearing procedure and simply authorize the judge

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to deny release upon his estimate that the defendant is dangerous. This approach is, of course, patterned after the existing practice in setting bail bonds. This summary process makes the least demands on court time. However, it is clearly defective as a denial of procedural due process. On the other hand, the more procedural rights afforded the defendant in the detention hearing, the closer it approaches the complexity and formality of the trial itself.

The Administration bill did not elect a summary detention procedure. Instead it prescribes a hearing which offers the forms of procedural rights. Specifically, in order to impose preventive detention, the judge or magistrate must find (1) that the defendant before him is the person charged; (2) that the offense falls within the category of offenses for which preventive detention may be imposed; (3) that there is substantial probability that the defendant committed the charged offense; and (4) that no other bail conditions will asure the safety of the community. The defendant is permitted the assistance of an attorney, he may present evidence, and he may cross-examine prosecution witnesses. The defendant's testimony is privileged only as to the issue of guilt; it may be used for bail violation proceedings, impeachment, and perjury. Further, the rules of evidence do not apply in a preventive detention hearing.[23] Yet while such a hearing offers the forms of procedural rights, it offers no substance. Theoretically, the hearing is a dress rehearsal of the trial itself, except of course that the defendant has had no time to prepare a defense or gather witnesses; he does not have the protection of the rules of evidence; he threatens to disclose his line of defense to the prosecution if he submits opposing testimony; his testimony can be used against him for all purposes except the issue of guilt; the issue is whether he committed the offense, rather than whether he is legally guilty or will be convicted; and the government's burden of proof has been lowered from "beyond a reasonable doubt" to a "substantial probability." A defendant placed in such a proceeding has the choice of submitting quietly or of prejudicing his case irrevocably. To the extent that he contests his detention, the greater will be the weight that can be assigned to the judicial determination of "danger" and "probable guilt," and consequently the greater the prejudice and "presumption of guilt" he will have to overcome at trial. In a very practical way, the preventive detention hearing serves to shift the burden of proof to the defendant when he faces the jury.

The so-called "due process procedures" of the Administration's preventive detention law are a mockery of due process; yet, they will result in a complicated charade of form over substance and the addition of yet another procedural obstacle to the main purpose of determining guilt or innocence at trial. The Administration's preventive detention law, with its opportunities for extended procedural manuevering by the parties and the complications of appeals, delays, and judicial refinements of the ambiguous statutory language, amounts to the creation of a preliminary "trial" on the merits at the very beginning of the criminal process. It will greatly burden a court system already largely incapable of accomplishing the primary objective of a speedy trial on the merits. Preventive detention was originally offered as a panacea to reduce the crime caused in large part by the breakdown of the judicial process. In all likelihood it will aggravate this problem, deprive countless people of their rights, and yet not produce any more "law and order."

A particularly unfortunate aspect of the debate on preventive detention is that the Administration for the most part ignored arguments based on effectiveness or on unconstitutionality and relied primarily on the emotional appeal of "law and order." For much of the time that preventive detention was an issue, the Department of Justice did not submit reliable evidence of the need for this bill. No studies were offered to show that certain types of defendants or certain types of crimes could be statistically correlated to patterns of rearrests in the pretrial period. There was not even an accurate assessment of the amount of pretrial crime that existed, the causes, or an examination of alternative means to deal with it. Support for the bill consisted largely of recitations of individual cases in which defendants were continually rearrested while released on bail. Yet even most of those cases on close examination would not have been prevented by the Administration's bill.

Only after repeated demands for a scientific analysis of preventive detention did the Justice Department commission a study by the National Bureau of Standards. Significantly, this study was not authorized until August 1969, after the Department had already submitted its preventive detention bill. The study was released in April 1970, after the Department had succeeded in getting its legislation added to the District of Columbia Crime Bill. At first, the Department was tempted to suppress the study but decided simply to ignore it. The Department's reaction is understandable since the National Bureau of Standards analysis showed that many of the assumptions upon which the proposal was based could not be supported and that there was no accurate way for a judge to predict who the "dangerous" defendants would be. The Bureau of Standards study also showed that the number of rearrests between release and trial increased with the amount of trial delay. Very few rearrests were made during the first 60-day period following release.[24] This is particularly significant because the preventive detention bill authorizes detention only for the first 60-day period after which the defendant presumably is to be released in accordance with the provisions of the Bail Reform Act.[25]

Regrettably, the Department's approach to the study was emulated by the Congress when the issue came for a vote. There was little effort on the part of preventive detention advocates to join in a debate. There was not even much formal speech-making in support of the proposal. The main argument used was that this was an "anti-crime" proposal. That was all that was said and all that needed to be said. "Law and order" had become such a powerful political slogan that very little could be done to any proposal championed in its name. Almost by the day the ranks of those who would dare cite the Constitution to defeat or amend anti-crime bills had evaporated. It became almost impossible to oppose a proposition which was labeled "anti-crime." In the end, the D.C. Crime Bill, with preventive detention and no-knock, passed the House by a vote of 332 to 64 and the Senate by a vote 54 to 33.[26]

Preventive detention and no-knock are the two most objectionable provisions of the now well-known District of Columbia Crime Bill. The bill contains innumerable other changes in procedural criminal law which reflect on ignorance of or an animosity to constitutional rights and sound criminal law rarely exhibited by Congress in the past. The bill was conceived as a vehicle for reversing unfavorable interpretations of criminal procedure by the courts. It is a grab bag of prosecution briefs on esoteric questions of law. The number of times cases raising these issues will again come before the courts and the number of added convictions that will result from these legislative reversals will be few. The bill's major value is as a legislative vindication of unsuccessful prosecution interpretations of criminal procedure. Its great danger is as a model for the country of conviction-dominated criminal law.

Yet another Administration anti-crime proposal (of which there has been little notice taken in Congress or elsewhere) would give the police the authority to detain but not "arrest" citizens for the purpose of subjecting them to tests and experiments and other so-called "nontestimonial identification procedures."[27] The permitted tests include lineups, blood tests, fingerprinting, photographs, saliva samples, handwriting samples, hair samples, voiceprints, footprints, measurements, and the like. In order to perform such tests, the police officer must submit an affidavit sufficient for the judge or magistrate to find that there is probable cause to believe an offense had been committed and that there are "reasonable grounds, not amounting to probable cause to arrest, to suspect" that the person named in the affidavit committed the offense. No doubt such tests would be helpful to the police in a number of cases. Yet to authorize such a gross violation of personal dignity on the basis of a suspicion by the police which does not even amount to cause for arrest is a flagrant example of callousness to constitutional principles.

II. LAW AND ORDER IN THE EXECUTIVE BRANCH

These bills do not exhaust the series of questionable legislative proposals offered by the Administration to fight crime. Nor are these legislative proposals the only illustrations of the attitude toward constitutional rights that these troubled times have produced. No too long ago the nation's press was subjected to sharp criticism for its supposed anti-administration views. One does not have to get bagged down in a debate as to whether the first amendment gives Administration officials just as much right to speak their minds as it does the press. And we can concede that the press or some parts of it does have a bias. Still, the official attack was a clear attempt to bully the press into changing its attitudes. The Administration assaulted the very integrity of the press and called into question its right to disagree with official views. Other administrations have had a hostile press, but other administrations have been content to complain or cajole. This time the very *bona fides* of the press were put in issue.

Another Administration action directed at the press came with an effort to subpoena notes and tapes of reporters who had covered groups which the Justice Department was investigating. The problem of requiring newsmen to reveal confidential sources of information is a recurring one and is handled differently in various states. Until the Justice Department announced its new policy of dragnet subpoenas, the problem had been handled on an ad hoc, informal, and cooperative basis. Apparently, a fairly well-established spirit of accommodation had been reached which satisfied both the press and the Justice Department.

For that reason, the new tough attitude by the Department, coming as it did in an atmosphere of mutual antagonism and suspicion, raised considerable fears. The law on this question is vague and untested. The press was afraid that a first amendment claim of privilege would not be upheld by the;[28] yet the practice of subjecting newsmen to interrogation by grand juries would have the effect of cutting off their access to many sources of views. It would be especially effective in preventing the press from having access to those groups which are sensitive to official surveillance. If the press lost its access to these groups, the result would be a further isolation from the mainstream of society and encouragement of the tendencies in many of them to turn to lawlessness and violence. While violence cannot be tolerated, the doors to peaceful, legitimate

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avenues of political action should always be open. Whatever one's views on the policies advocated by these groups, the preservation of our democratic society requires that we encourage them to work within the system for the accomplishment of their ends. It also requires that the press have independent access to them so that the public can be kept informed of their activities.

Yet another recent act by the government in the name of "law and order" must be added to this recital. Not long ago it was reported that law enforcement officers, in this case Treasury agents, were visiting public libraries to check on the names of individuals who had borrowed books on explosives, guerrila war, and other so-called subversive literature. This produced a wave of protest from Congress as well as from others, and the practice was apparently stopped.

One can justify an investigation of library records to determine whether a particular suspect in a bombing case had access to literature which gave instructions on how to build a bomb. Such evidence would be just as valuable in building a case as would be evidence of the suspect's access to the physical components of a bomb. But there is no justification for a wholesale injury into the reading habits of an entire community. This is thought control. It is reminiscent of the deplorable events of the early 1950's, when the voicing of unconventional or merely disapproved views brought about official and unofficial retribution. That era was a low point in the history of political freedom in our country. The idea that government is reviewing the reading habits of the people and creating categories of what it considers "subversive" reading material is likely to result in widespread feeling that the former era is returning.

Other Administration attacks on individual liberty in the name of "law and order" induce a proposal by the Post Office that it be permitted to open sealed first-class mail from abroad without notice to the writer or the addressee. This assault on the right to exchange private thoughts without fear of government intrusion was undertaken in the interests of controlling obscenity, lottery tickets, and drugs.

In another action, the Attorney General a few months ago asserted the "inherent right" of government to wiretap phones in the interests of preserving domestic security. This authority, according to the Attorney General, is independent of any statutory authority from Congress and presumably independent of the first and fourth amendment as well.

No discussion of the "law and order" syndrome which now afflicts our country is complete without at least brief mention of the proliferation of intelligence and security data banks and the application of computers to law enforcement. Computers are rapidly being introduced into the private and government sectors, and it is a rare field of human endeavor which is immune from its benefits or blandishments. Already it is evident that computers will have an impact on our society in coming years which will equal in magnitude or even surpass the changes brought about by the automobile. The exact nature of these changes can be perceived only dimly at present. We do know the impact will be felt within a very short time span, and like other examples of progress, the computer age will be a mixed blessing. Nowhere is the debit side of the computer more evident than in the area of individual liberty and personal privacy.

The ability of computers to receive, store, analyze, and retrieve large amounts of data has naturally resulted in its increasing utilization in the large numbers of personal dossiers maintained by our government. With the advent of the computer, these information systems can now be improved, expanded in scope and depth, and utilized more easily and by more people. The computer for the first time gives the government the ability to gather and use large amounts of information on large numbers of people. The sheer bulk, inefficiency, and dispersion which characterizes old-fashioned paper files and thereby imposes some practical limits on their usefulness and their dangerousness no longer exists with the introduction of this new technology. Computers provide the potential for collating all the diverse information about citizens which is now stored in different government files and for making such information accessible on very short notice to very large numbers of people. If at present it is beyond a computer's capability to keep under daily surveillance all persons of "security interest," certainly all important personal information about them and their activities and associations can be noted, stored in a computer, retrieved upon demand, and circulated or made available to other agencies which might be interested.

The advent of the computer into government operations has served to stimulate its insatiable hunger for information. As a result the number of intelligence data gathering operations is expanding enormously. In the area of criminal law enforcement and domestic security we already have.[29]

1. An intelligence reporting system and data bank, partly computerized, established within the Army to record the peaceful political activities of ordinary American citizens and groups. Although some aspects of this political surveillance system have reportedly been stopped, it is unclear whether some or all of these functions are still performed by the Army or by the Justice Department.

2. A computerized data bank maintained by the Secret Service containing names of persons thought to be potential threats to the President. The information is gathered from a wide variety of police sources, and the Service has made a special effort to include as many persons of a "security interest" as it can to err on the side of safety. Included in this category are "gatecrashers," persons who make embarrassing" statements about government officials and those who make "anti-government" or "anti-American" statements.

3. A civil disturbance computer operation in the Justice Department containing the names of 13,000 persons and organizations involved in political activities which have developed into disorders or which have had the potential for a disorder. The name file is tied to an incident file listing 14,000 civil disturbance events.

4. A Justice Department file system, now being computerized, on organized crime containing intelligence information on some 200,000 individuals, including their habits, associations, business connections, and other information useful in controlling organized crime.

5. The computerized National Crime Information Center operated by the FBI, which contains information on wanted persons and which serves as a national center to aid in the apprehension of fugitives.

6. A Civil Service Commission card index file on 2,000,000 persons who may be ineligble for government employment on security grounds.

7. A Commission card index file of every security investigation conducted by the government since 1939. There are over 10,000,000 cards in this index.

8. A project to create a central communications center to permit the exchange of criminal law information between state computer data centers. This project SEARCH, sponsored by the LEAA, has just successsfully completed its demonstration stage.

Each of these data bank and computer systems varies greatly in its potential for harm and abuse, just as each varies greatly in the kinds of information gathered, the sources tapped, the reliability and accuracy of the information, the uses to which the system is put, and the persons who have access to them. With the notable exception of Project SEARCH which devoted considerable attention to questions of privacy, confidentiality, and security, these systems are generally lacking in controls designed to safeguard individual rights and prevent abuses. Collectively, these data banks provide the framework for a comprehensive system of record-keeping and surveillance of large numbers of American citizens.

Such a system can result in great personal injury to the innocent in the form of social ostracism, loss of employment, and of course loss of liberty. It also has the effect of discouraging legitimate political activity by those who fear that their views and acts will be recorded by government and stored for some future use. This fear is not restricted to so-called "nervous nellies." Knowledge that the government is engaged in surveillance of its citizens creates an atmosphere of fear which is inimical to freedom. It stifles political discusson and leads to a cowed and subservient population which does not dare disagree with government policy or accepted wisdom. Democracy cannot survive if the people are sullen, scared, and rebellious.

CONCLUSION

There has been much public discussion about whether the present Administration is "repressive" or whether certain of its actions amount to "repression." In some circles, talk of repression has become an epithet which is casually applied to every act or statement which is disapproved. Such casual use of the term is a disservice, for it dulls political perception and converts analysis and discussion into sloganeering. There is no clear line between freedom and repression. Freedom is a fluid, intangible condition of our society. It thrives at some periods and is beset at others. It is lost not all at a time but by degrees.

The past 2 years have not produced a repressive society. But they have resulted in an atmosphere in which freedom is on the defensive. The balance is shifting decisively toward the acceptance of harsher laws and the cutting of constitutional corners which impede this search for security. The Administration has not been sensitive to this changing atmosphere. Rather, it has nurtured, encouraged, and fostered it. It has taken a political approach to the very real dangers of crime, violence, and political unrest and has made it an intensely partisan issue. Its policy has increased public fear, intolerance, and division; it has produced a mood in the country which is extremely receptive to harsh, punitive, and draconic measures in the name of security.

This is a dangerous game. It produces a situation in which fear breeds fear and in which the government is encouraged to use its powers even more freely. Ours is not a country in which government can become a tyranny against the will of the people. But tyranny can come just as surely if the people are willing to deliver over their freedom in search for safety. It is incumbent on every citizen to resist the temptation to excuse constitutional excesses in the name of "law and order."

FOOTNOTES

[1] Wall. 2 (1866).

[2] *Id.* at 120–21.

[3] "No-knock" was proposed by the Justice Department in two bills in the 91st Congress: S. 2601, 91st Cong., enacted as District of Columbia Court Reform and Criminal Procedure Act of 1970, Pub. L. No. 91–358, § 23–591 O.C.C.E., 84 Stat. 473 (D.C. Crime Bill, July 29, 1970); and S. 3246, 91st Cong., 2nd Sess., enacted as Comprehensive Drug Abuse Prevention and Control Act of 1970, Pub. L. No. 91–513, § 509, 84 Stat. 1236 (Oct. 27, 1970). In the D.C. Crime Bill, the "no-knock" provision is authorized for any search or arrest; in the latter bill, it is limited to narcotics cases.

[4] 5 Coke 91 a, 91 b, 11 ERC 629, 77 Eng. Rep. 194, 195 (1603).

[5] A summary of the writs controversy may be found in SCHARTZ, *Rights of the Person*, 3 COMMENTARY ON THE CONSTITUTION OF THE UNITED STATES 178–80 (1968).

[6] 18 U.S.C. § 3109 (1948).

[7] 374 U.S. 23 (1963).

[8] *Id.* at 47.

[9] In their final versions, "no-knock" differs in the drug bill and in the D.C. Crime Bill. In the former, the standard is "probable cause" to believe that prior notice "will" result in the destruction of the evidence: Pub. L. No. 91–513, § 509(1)(A), 13 U.S.C.C.A.N. 5308 (Oct. 27, 1970). In the D.C. Crime Bill, the standard is "probable cause" to believe that destruction of the evidence is "likely" to occur: Pub. L. No. 91–358, § 23–591 D.C.C.E., 8 U.S.C.C.A.N. 2698 (Aug. 20, 1970).

[10] Preventive detention was introduced on behalf of the Justice Department in S. 2600, a bill which would have amended the Bail Reform Act of 1966 and which would have applied to all federal courts. It was later attached to the D.C. Crime Bill, S. 2601, and as enacted applies only to the District of Columbia. See Pub. L. No. 91–358, §§ 23–1328–32 D.C.C.E., 8 U.S.C.C.A.N. 2713–23 (Aug. 20, 1970).

[11] Estimates of pretrial recidivism vary greatly. The only scientific study of preventive detention was done by the National Bureau of Standards. The study, "Composition and Use of Criminal Court Data in Relation to Pretrial Release of Defendants," project number 4314410, report number 10181, is dated March, 1970. It is published in *Hearings on Preventive Detention Before the Subcommittee on Constitutional Rights of the Senate Judiciary Committee*, 91st Cong., 2nd Sess. 765 (1970) [hereinafter cited as *1970 Hearings*]. Professor Zeisel's analysis begins in *1970 Hearings, supra*, at 144.

[12] This study was conducted by the D.C. Bail Agency in 1968. It appears in *Hearings on Amendment to the Bail Reform Act of 1966 Before the Subcommittee on Constitutional Rights of the Senate Judiciary Committee*, 91st Cong., 1st Sess. 71 (1969).

[13] The figures are from a report of the D.C. Department of Corrections to the Constitutional Rights Subcommittee. *See 1970 Hearings, supra*, note 11, at 756.

[14] These figures were reported in various news reports at the time of the October New York City jail riots. *See* Irvin, *Rebelion in the Jails—The Alternative to Bail Reform and Speedy Trial*, 116 CONG. REC. 17720 (daily ed. Oct. 12, 1970).

[15] 342 U.S. 524 (1952).

[16] 342 U.S. 1 (1951).

[17] *Id.* at 5.

[18] 342 U.S. 524, 537 (1952).

[19] *Id.* at 544–46.

[20] *Id.* at 557.

[21] 342 U.S. 1 (1951).

[22] *Id.* at 4

[23] Pub. L. No. 91–358, § 23–1322(c)(5) D.C.C.E., 8 N.S.C.C.A.N. 2715–17 (Aug. 20, 1970).

[24] My analysis of the study was set forth in a speech entitled *Fact or Fancy; The Department of Justice Preventive Detention Study and the Department of Justice Preventive Detention Bill*, 116 CONG. REC. 7291, daily ed. May 18, 1970).

[25] There is considerable doubt as to the procedure to be followed at the conclusion of the first 60-day detention period. The statute provides that the defendant is to be treated in accordance with § 23–1321, which authorizes preventive detention under procedures set forth in succeeding sections. The Department of Justice denied that the bill permitted renewable detention orders, but did not say that the defendant had a right to be released. Pub. L. No. 91–358, § 23–1321 D.C.C.E., 8 U.S.C.C.A.N. 2713 (Aug. 20, 1970).

[26] The House vote on the conference bill took place on July 15, after 1 hour's debate. The Senate vote, on July 23, followed 5 day's debate.

[27] S. 3563, introduced Mar. 9, 1970. The bill was not reported by the Senate Judiciary Committee during the 91st Congress.

[28] Very recently a Ninth Circuit decision upheld Earl Caldwell of the *New York Times* in his refusal to comply with a subpoena to testify before a grand jury on the grounds the subpoena was an unnecesary infringement on the "public's right to know," a right it said was protected by the First Amendment. Caldwell v. U.S.L.W. 2281 (9th Cir. Nov. 17, 1970).

[29] This information is from an as yet unpublished survey of the Constitutional Rights Subcommitee into federal data banks and computers and their impact on constitutional rights.

ORDER OF BUSINESS

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

SCALPING THE FIRST AMENDMENT—PART A

Mr. MOSS. Mr. President, on three previous occasions in the last 18 months, I have arisen from the floor of the Senate to describe the administration's penchant for media censorship. I feel it incumbent upon me to describe, once again, another case of the Nixon administration's disregard for our constitutional right of freedom of the press.

Apparently NBC's Cassie Mackin incurred the displeasure of the White House in describing her impressions after 2 weeks on the campaign trail with President Nixon. White House communications czar Herb Klein and has assistantant made three calls to NBC officials to complain about the "fairness" of a broadcast Miss Mackin made during the week of September 25.

Miss Mackin's crime? She reported that the President had distorted Senator MCGOVERN's stands on the issues of defense spending, welfare, and tax reform. For example, she said:

> On tax reform, the President says McGovern is calling for "confiscation of welfare" which is not true.

The White House censor immediately picked up the phone and called NBC to protest. Later, to a Washington Post reporter, the Nixon censors commented:

> She, in effect, called the President a liar. We didn't ask that she be fired or removed from covering or reprimanded. We didn't ask anything. We just wanted to register our protest that she was inaccurate.

But according to published reports, another administration satrap has stated that a retraction was demanded by the administration and was refused by the network.

Other reports have indicated that Sander Vanocur, who has been sharply criticized from the administration for his allegedly liberal views, will not hold his job with the Public Broadcasting Service after his contract expires in December. If true, is this part of a scheme of the Nixon administration to pack the Corporation for Public Broadcasting?

The administration's concern for the first amendment apparently lies in its solicitude for the sellers of soapsuds, rather than the maintenance of journalistic integrity. Any comments emanating from regulatory agencies or social critics concerning advertising results in a predictable White House response speaking for its moneyed constituents. For example, when the Federal Trade Commission proposed to its sister agency, the Federal Comunications Commission, that it provide limited access to the broadcast media for counteradvertising, including paid and unpaid time, Nixon's Director of the Office of Telecommunications Policy readily attacked the Federal Trade Commission and its proposal. This is not the first time this Nixon office has attempted to interpret the first amendment. Apparently, the first amendment according to the Nixon way of thinking reads something like this:

> The public is entitled to access only to the best opinions money can buy. Paid advertisements must not be cluttered up with contrary facts. Soapsud spiels on television are to be protected vigorously from contradiction. Indeed they are fully entitled to be as free from criticism as the utterances of the President.

Who is this censor? The Office of Telecommunications Policy? Did the Congress create it? Does the Constitution provide for it? Then, what is its role? For whom does it speak?

The Congress, as we all know, created a Federal Communications Commission to regulate the airwaves, and we gave the President the power to appoint the Commissioners, with advice and consent. He was authorized to set budgetary priorities of the Agency. But the President has now seen fit unilaterally to preempt the intent and will of the Congress.

It is the right of all Americans, the President and journalists alike, to speak out on matters affecting the American people. But to institutionalize a "Monday morning quarterback" for a legislatively created independent regulatory agency, is to toll the death bell for all regulatory agencies.

Although the Congress, through the Commerce Committee, has prodded the FCC to act on cable television, for instance, the Office of Telecommunications Policy has preempted the FCC. Although the Federal Trade Commission has offered an interesting and positive contribution to the Federal Communications Commission concerning counteradvertising, the Office of Telecommunications Policy has issued its negative decree. The institutionalization of a Nixon censor meddling in the affairs of the independent regulatory Agency is tantamount to the destruction of our system of checks and balances.

The first amendment provides for the right to develop, shape and disseminate news and public affairs programing free of the yoke of bureaucratic harassment, free of the chilling threat of administration overview, and free of the surge toward thought control by a President exhibiting fear, suspicion, and disapproval of a free and undomesticated press.

The first amendment guards the integrity of a broadcast journalist with precisely the same fierce jealousy as it guards William F. Buckley and Nicholas Von Hoffman. Those programs which are the object of the administration's ire fall well within the boundaries of the very forms of speech which the first amendment was designed to guard.

This passion for straightjacketing the press was part of a calculated effort launched by the Vice President in Des Moines in November 1969. In an attempt to inhibit analysis and criticism of Presidential proclamations, the Vice President struck right at the core of press freedom. Mao Tse-tung in his country can command and enforce press silence. SPIRO T. AGNEW in this country cannot.

The current administration's inquisition into the journalistic process represents a bold abuse of governmental power which cannot be tolerated.

Plainly the interests of this and other administrations in avoiding criticism would have been best served by the suppression of news from Indochina, but would the overriding interest to a free society have been equally well served?

I suppose we would all have been much happier if we had not had to confront the horror, the meaninglessness of the slaughter, the perversion of our principles, the sadness for the deaths of thousands of young Americans and young and old Asians. We would have been happy, that is, until it was too late to comprehend our errors and to alter our course of conduct. Would the interests of a free society be served by that?

The administration has no right to subpena working papers of television documentaries, no right to question nor to dictate editorial decisions. It has no right to enforce the disclosure of news sources. If we cannot stand the heat generated by free press, then we cannot stand the responsibilities of a free society.

The first amendment, battered and assaulted throughout its history, has stood us well. Its message to politicians who have tampered with it remain essentially simple. Hand off.

The Vice President, communications czar Herb Klein and other learned "interpreters of the first amendment" insist that columnists and news commentators are allergic to the truth. But between the administration and Walter Cronkite, I know where I would place my money if I had to select that version of a newsstory which most closely approximates objective reporting. This administration stands four square for secrecy, whether bureaucratic or corporate, and four square against the public's right to know, whether it be the whole truth about Vietnam or the secret plotting leading up to the Watergate caper. And it stands four square for the political aspirations of a few desperate people clinging on to the coattails of a secretive President.

Our forefathers, 196 years ago, gave us these immortal words:

A prince whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free people.

Censorship, secrecy, arrogance, lust for power were actions which they denounced.

QUORUM CALL

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum, with the time taken out of the time of the Senator from Utah.

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 suggest the absence of a quorum, and ask that the time be charged against the time allotted to me under the order.

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.

ORDER OF BUSINESS

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

EQUAL EDUCATIONAL OPPORTUNITIES ACT OF 1972

Mr. ALLEN. I thank the Chair.

Mr. President, I have not engaged in a great deal of discussion of the unfinished business before the Senate, that is, H.R. 13915, other than at the time designated for the question of whether or not cloture should be invoked, feeling that it was the responsibility of those who are carrying on this filibuster to carry the burden of the discussion. But, Mr. President, that policy has prevented the proponents of the legislation from discussing the important question of the constitutionality of this legislation, and I have a number of exhibits that I would like to put into the RECORD, articles of eminent legal authorities, and testimony of witnesses during the hearing that would clearly indicate the constitutionality of each and every section of the bill. I would like to discuss that issue at this time.

At the very least, I trust that we will be able to isolate the real constitutional questions and issues.

Mr. ROBERT C. BYRD. Mr. President, the Senator may have some additional time from the order allotted to me, if he wishes.

Mr. ALLEN. I thank the Senator.

Mr. ROBERT C. BYRD. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 13 minutes remaining.

Mr. ROBERT C. BYRD. Mr. President, I yield 8 minutes of my time to the Senator from Alabama.

Mr. ALLEN. I thank the distinguished Senator from West Virginia for his kindness and his courtesy.

Mr. President, in my opinion, few, if any, bills have reached the Senate floor in this century which have had a greater potential for far-reaching political consequences than House-passed H.R. 13915, erroneously referred to as an antibusing bill, which reached the Senate on August 18, 1972.

It is not an exaggeration to say that this bill is a political time bomb. Time is of the essence. If the Senate fails to take final action before the November elections, I anticipate a political reaction which may drastically reshape the membership of this body and possibly jurisdiction of the U.S. Supreme Court.

It is unquestioned that a very substantial majority of persons from every region of the United States are opposed to forced busing of schoolchildren—yet, State and Federal courts continue to compel it. Parents and others who have responsibility for the education of our children are making noises like a nest of swarming hornets. They have a right to feel resentment. Why should they not be angered when judicial and Federal bureaucrats descend upon their communities and neighborhoods and start issuing orders and decrees which require that their children be bused all over the countryside on the basis of some half-baked, sociological theories as to what constitutes a proper basis for assignment of schoolchildren to public schools? Why should they not organize and let their complaints be heard when agents and agencies of the Federal Government usurp the inherent power and responsibility in parents for making decisions in matters that vitally affect the health, safety, welfare, and education of their children? Who does not feel resentment when agencies of the Federal Government disregard the will and wishes of parents and local school officials in the implementation of school programs which produce disruptions, hardships, and chaos in local public school systems?

Mr. President, it was suggested in the House that it would be desirable if the forced busing issue could be debated in an atmosphere free of emotionalism. I disagree. I suggest that a part of the problem is a direct result of an inability on the part of some Members of Congress, Federal judges, and Federal bureaucrats to demonstrate a compassionate concern for the plight in which parents and schoolchildren find themselves. In my judgment, we have had too much cold, impersonal, and dispassionate discussion of the problem and not enough concern for the welfare of parents and children.

It is totally unrealistic for us to believe that we can treat abuses of power in areas affecting children in the same manner that scientists might sit down and discuss dry bones of some prehistoric fossil. Neither can we duck and dodge the insistent demand for relief. It would be politically suicidal for Members of the Senate to stick their heads in the

sand and hope that the demand will disappear.

A failure on the part of agents and agencies of government to give adequate consideration to human values and the human condition has brought about current demands for redress and relief. The problem to which this proposed legislation is addressed is one of abuses and usurpations of power involving a coerced disposition of other people's children on command of the State. The need for rerelief and the demand for action transcends in importance any other question relating to this bill which we could possibly debate. An irate and aroused citizenry demand no less than an honest evaluation and action by the Senate before the November elections. Let us assume that the Senate takes no action or that it rejects the bill or waters it down with debilitating amendments—then what? The question is worth considering.

Mr. President, we will soon celebrate the 200th anniversary of the signing of the Declaration of Independence. It may be useful to refresh our memories with respect to the duty of the sovereign people as set out in the Declaration, in the face of abuses of power by agents and agencies of government. The Declaration provides in part as follows:

All Experience hath shewn, that Mankind are more disposed to suffer, while Evils are sufferable, than to right themselves by abolishing the Forms to which they are accustomed. But when a long Train of Abuses and Usurpations, pursuing invariably the same Object, evinces a Design to reduce them under absolute Despotism, it is their Right, it is their Duty, to throw off such Government, and to provide new Guards for their future Security.

Fortunately, our forefathers had the wisdom to provide political means whereby the people of future generations could curb abuses and usurpations of power without the necessity of resort to violence or revolutions. In summary, the people may seek relief in courts of law; they may seek relief from the Executive and they may turn to Congress for relief. If all of these approaches fail, the people will be compelled to resort to a constitutional amendment. Let us briefly examine each of these recourses as they relate to forced busing.

Obviously no help can be expected from Federal courts. It is relief from the usurpation of power by the Federal courts that the people are seeking.

Turning now to the possibility of help from the President, it is reasonable to expect relief from that source. The problem is national in scope and many bureaucrats under the direction of the President are also responsible for abuses complained of. There has been some initiative from the President. The bill before us is not precisely what President Nixon recommended, but it contains the basic thrust of his recommendations. Furthermore, the President can and he should curb abuses of power on the part of agents or agencies of the bureaucracy in the desegregation process. Whether the President will or will not act to correct these abuses remains to be seen. Nevertheless, it is worth noting that the Republican Party platform, which the President has embraced, expresses opposition to busing to achieve "racial balance" although it is difficult to know precisely what this last term means. "Racial balance" is a cryptic term with concealed meanings, and it has been used to gut certain laws which Congress has previously enacted and which the public thought would place curbs on excessive busing and the assignment of children to schools solely on the basis of race rather on the traditional basis of neighborhood and community schools.

Nevertheless, the U.S. Supreme Court deciphered the term "racial balance" to mean "de facto segregation" in certain situations. Thus, the use of the term "racial balance" in the Republican Party platform could be an expression used merely to indicate opposition to busing to break up de facto segregation. The people are entitled to clarification of the intended meaning as used in the Republican platform and also in our statutes.

It is ironic that some of those who were responsible for the employment of the words and phrases with hidden meanings in the Civil Rights Act of 1964 spent considerable time among members of the black community beating their breasts in pious indignation about the evils of segregation and in support of busing of other peoples children to overcome segregation.

This cynical attitude is all the more appalling when it is considered that far more segregation existed and still exists in the public schools in some of the cities and communities of their own States than existed in the Southern States. They did not tell their black constituents that they had cleverly concocted a scheme to deny blacks a statutory right to file suits to desegregate schools and to prevent the U.S. Attorney General from entering their States to bring suits to compel desegregation. Nor did they tell their black constituents that they had cleverly used this phrase to prevent the use of Federal funds for busing to desegregate schools in their States.

Consequently, I find it extremely difficut to understand how some Members of Congress can face their black constituents and admit that they were parties to laws which insured that there would be no Federal intervention or messing around with the problem of desegregation in their States. But that is another problem. In any event, I am skeptical of political party platform promises, and I am skeptical of the possibility of curbing abuses of power by Federal bureaucrats independently of an act of Congress. This brings us to a consideration of the next possibility for the people to effect a remedy by an act of Congress.

The House of Representatives is answerable to the people as a body every 2 years and is, therefore, receptive to the will of the people, as was intended by the Founding Fathers. The House has worked its will. It has sent to us a bill designed in part to curb forced busing. I am convinced that President Nixon will sign the bill if it passes the Senate. Accordingly, one cannot escape the conclusion that the U.S. Senate is the end of the line—the buck stops here from the standpoint of legislative relief.

I am inclined to believe that in the minds of the people, a vote for or against this bill will be interpreted as an indication of a willingness on the part of the Senate to attempt a legislative solution. So, from a political standpoint, votes for or against the bill will serve to identify those who either do not recognize the existence of abuses of judicial and bureaucratic powers or who else favor the dehumanizing desegregation process as currently in effect.

If the Senate fails to vote on the merits of this bill before the November elections—then the sovereign people may have no other recourse than to resort to a constitutional amendment as a source of relief. They have available the two methods of amendment provided for in article V of the Constitution. It may well be that the ultimate solution to the problems will require a constitutional amendment to deprive Federal courts of jurisdiction of all cases involving questions concerning rights of individuals as they relate to public school assignments and to the operation and management of local public schools.

I realize the difficulty of effecting a constitutional amendment. However, the people have at their disposal a power to change the composition of Congress in a way to assure the submission of such an amendment for ratification by the States. I believe it would be a grave mistake if the Senate underestimated the potential power in the people who are now demanding action by the Senate.

I have personally received thousands of expressions of sentiment on the forced busing issue in the form of letters, postal cards, telegrams, petitions, phone calls and visits by delegations from all regions of the United States.

I am convinced of the sincerity of these people. I know and I share the feeling of deep concern for the welfare of their children. I know the depth of their feeling and the intensity of their resentment, and I know that they are determined to get action. I know, too, that they have the quality of leadership and a capacity for coordinated effort that will be required to effect their will.

In my judgment, these people have a potential for forming the most numerous bloc of voters in the United States. It is a potential for amending the Constitution and it is a potential for drastically altering the composition of Congress in a manner to assure that Congress will be responsive to the will of the people.

Mr. President, members of the Senate can talk until they are blue in the face about certain aspects of the bill before us. They can debate its wisdom, its finding of fact, statements of policy, efficacy of remedies and priorities, questions of constitutionality, or any other aspect of the bill. In so doing, they will miss the point. I repeat that the issue is an abuse of power on the part of Federal judges and Federal bureaucrats. The vast majority of the people, black and white, are painfully aware that they have been made victims of a sociological experiment and that they want this ex-

periment stopped. Debate on any other issue is sound and fury that signifies nothing.

Yet, I am aware that some Senators cannot conscientiously yield to political pressure in matters that affect a profound conviction concerning a constitutional principle. In deference to these Senators, I think it is appropriate to address a few remarks to questions concerning the constitutionality of this proposal. At the very least, I trust that it will serve to isolate the real constitutional question at issue. With this object in mind, and in the interest of conserving time, I believe it will be helpful to point out certain constitutional issues which are not raised by provisions of the bill before us.

For example, there is no constitutional question involving the substantive jurisdiction of the U.S. Supreme Court or of U.S. district courts.

In other words, this is not a case of withdrawing jurisdiction from the Federal courts, as was the thrust of some legislation that has been before the U.S. Senate.

In fact, the bill specifically recognizes the jurisdiction of U.S. District Courts in desegregation cases which involve violations of the equal protection clause, which heretofore, has been the only jurisdictional basis claimed by the Supreme Court for invoking equity powers to shape remedies in school cases. In addition, the bill before us creates a new right of action based on denials of "equal educational opportunity" separate and apart from those stemming from violation of equal protection of the laws. Under provisions of the bill, U.S. District Courts are vested with jurisdiction in these cases. Furthermore, the Attorney General is empowered to intervene in such cases on behalf of plaintiffs. The point is that there is no substantive jurisdictional question raised by any of the provisions of this bill.

So that can be laid aside. This is not involved.

Neither does the bill undertake to establish a moratorium on new busing orders pending the enactment of this legislation, such as was originally proposed by President Nixon. So we can skip that issue.

I might say parenthetically, Mr. President, that the President of the United States has stated strongly and unequivocally to Members of the Senate who visited with him the day before yesterday that he strongly supports the pending bill, that he recommends that the Senate pass it without amendment, that he recommends that cloture be invoked, that he urges Senators, even though they may be opposed to the legislation, to vote to invoke cloture in order that the Senate may have an opportunity to vote up or down, to take a stand, on this most vital legislation.

Actually, Mr. President, this legislation provides a state of affairs that the presidential moratorium was to precede. In other words, the moratorium under the President's theory was to be put into effect pending the passage of the Equal Educational Opportunities Act of 1972.

So if this legislation is passed, then there would be no need for the moratorium, because this legislation would create a state of affairs that was the end result pending which the moratorium would be effective. So this takes care of both pieces of legislation recommended by the President back in March of this year. And a little later today, in the cloture argument, I shall point out that this legislation has been pending in the U.S. Senate since March 22, 1972, and before the committee, where it has not moved very far since its introduction in the Senate.

Neither is there a provision in the bill relating to the grant of stays to court orders pending disposition of appeals taken in cases where U.S. district courts have ordered new busing.

So, Mr. President, this is an entirely new approach. It is not a withdrawal of jurisdiction. It is a restriction or limitation on remedies, but it is not a withdrawal of jurisdiction. It does not provide a moratorium. It does not provide a stay. What it does is to set up guidelines binding upon every Federal court for the application of remedies that the court may use in ordering the desegregation process in the public schools under its jurisdiction and the subject of litigation before it.

Senators will recall that a "stay" is already authorized in certain cases under provisions of title VIII, section 803 of Public Law 92–318 for which most Senators voted. Unfortunately, applications for stays have been rejected by separate Supreme Court Justices in several instances in which the above law was invoked in support of the application. I do not agree with the reasoning advanced to deny the stay, but that is another question. The point is that this issue is not involved in the bill before us.

To elaborate on that somewhat, Mr. President, on June 23 of this year, I believe it was, Public Law 92–318 became effective. But on September 1 of the year, Mr. Justice Powell, to all intents and purposes, completely nullified the intended effect of that bill insofar as it sought to provide for a stay of busing orders entered in the desegregation process, because the conference committee came in with language which provided for a stay of busing orders entered for the purpose of achieving racial balance.

The Supreme Court has already ruled that they cannot order racial balance. They have said, yes, they can take it as a starter and build on that in providing for desegregation orders, but they cannot apply a strict racial balance. They say that racial imbalance means de facto segregation. So the very purpose intended to be accomplished by the legislation went for naught under that language.

That is what makes it absolutely essential that this legislation be enacted by Congress to put some reasonable limitation on the use of massive forced busing in the desegregation process, not as in the language of Public Law 92-318, which says that a stay can be applied for on orders for busing to achieve racial balance. That is something we do not even want. So that section of the law is absolutely worthless. Therefore, Congress has a duty to act in this regard.

Neither is there a question concerning the power of Congress to prevent all busing. This question was raised in the form of a proposed amendment from the floor of the House. The question was disposed of in the negative. So, that question is not before us.

All busing is not to be prevented. It is true that certain priorities are established, and steps they must take before they can get down to issuing orders, and then it is provided that busing cannot be ordered beyond the nearest or the next nearest school to the school from which the child is being transferred by bus.

Under the circumstances, only one substantive constitutional question remains to be answered. The answer to this question will dispose of other procedural questions remains to be answered. The answer to this question will dispose of other procedural questions such as the "reopener" provisions of the bill. The substantive question is raised by opponents of this bill in the form of a contention that Congress is without power under the Constitution to limit the exercise of discretionary equity powers of U.S. District Court Judges in shaping remedial decrees in school desegregation cases and, by necessary implication, in other cases involving constitutionally protected rights. If Congress has no power over remedies, obviously there would be no field of operation for reopening cases for modifications consistent with legislative guidelines and priorities. Under such circumstances, the subject of remedies would be left to the discretion of Federal judges in the exercise of their equity powers.

Let us put the constitutional question in perspective. To do so we must go back to the U.S. Supreme Court decision in Brown II. There, the Court considered the question of an appropriate mode of enforcing its ruling that State-imposed racial segregation in public schools is unconstitutional.

Mr. President, what mischief the Supreme Court of the United States could have avoided if it had decided the Brown case as it did and stuck by that ruling, because the Brown ruling in 1954 was logical, it was fair, and it correctly—in the judgment of the Senator from Alabama—construed the Constitution as requiring that the equal protection of the laws be guaranteed to all of our citizens, and that no State can deny the equal protection of the laws to any person.

In the Brown case, the Supreme Court ruled that the State may not, cannot, and must not make assignments of pupils to the public schools on the basis of race.

That is all right; that is fair; that is proper. We would not be before the Senate today if that ruling had been allowed to stand. I do not say they have overruled it. I am not stating that. But they have changed that ruling by a change of course of 180 degrees, because now they say that the State must assign on the basis of race.

Mr. President, that is one of the causes, one of the bases, of the disillusionment and dissatisfaction of the people in rulings of the Supreme Court of the United

States. That is the present ruling of the Supreme Court—the States must assign by race; whereas, originally the court ruled that the States could not assign by race.

The question of enforcement is in essence a question of remedies, and the Court left the problem of devising remedies to separate school systems to the extent that they had power to remedy the situation. However, the Court vested a supervisory and supplementary responsibility in U.S. district court judges who were directed to invoke discretionary equity powers to fashion remedies in the separate school systems to conform to constitutional requirements. Viewing the problem at this juncture, we have discretionary equity remedies but no statutory remedies. The bill before us addresses itself to the specific problem of providing statutory remedies, and that is all it does.

Mr. President, let me summarize the points which I believe will conclusively demonstrate the constitutionality of H.R. 13915.

First. Congress has the power under section 5 of the 14th amendment to enact appropriate legislation to enforce rights protected by the 14th amendment.

Second. Equity will not intervene when there is an adequate remedy at law.

Third. The remedies provided by H.R. 13915 provide adequate remedies at law.

Fourth. If the remedies are inadequate, the bill is not, for that reason alone, unconstitutional. Equity may still provide such remedies as may be necessary to protect constitutional rights.

Fifth. The test of adequacy of remedies, whether equitable or statutory, is their effectiveness in assuring that public school authorities exclude no pupil from any school, directly or indirectly, on account of race.

Sixth. The limitations on transportation provided in the bill are consistent with good conscience and commonsense and are not inconsistent with anything which has been held by the U.S. Supreme Court in regard to State-imposed segregation.

Mr. President, let me elaborate on these points. No one can seriously question the power of Congress to legislate in this area. The specific grant of power is contained in section 5 of the 14th amendment. Congress exercised that power in the enactment of the Civil Rights Act of 1964.

It is exercising that power in proposing this bill. It must be emphasized that the bill does not prescribe new or different or inconsistent remedies than heretofore imposed by courts of equity. The effect of enactment of this bill will be that the authority for imposing remedies will become statutory rather than discretionary under authority of equity powers.

In this connection, we must recall that equity will not intervene when there is an adequate remedy at law. This is a traditional principle of equity. In Swann the Court said:

> In fashioning and effectuating the decrees, the courts will be guided by equitable principles . . . (consistent with) these traditional attributes of equity power.

Of course, at the time of the Brown I and II decisions, there were no adequate remedies at law nor can there ever be statutory remedies available under circumstances where the U.S. Supreme Court overrules an earlier binding precedent, as it did in Brown I. Congress cannot anticipate such sudden and abrupt reversals of what the law of the Constitution requires. Consequently, the Supreme Court in Brown II had no other recourse but to resort to remedial powers of equity to enforce its decision. It cannot reasonably be argued that the absence of remedies at law preclude a subsequent enactment of remedies by Congress. The question is, Do the statutory remedies in H.R. 13915 provide an adequate remedy at law?

If the proposed statutory remedies are adequate, no one can seriously contend that the bill is unconstitutional.

Accordingly, the question boils down to one which can be answered only by an evaluation of the totality of proposed statutory remedies. The test of adequacy of equitable remedies is their effectiveness. The same test is applicable to statutory remedies.

A brief review of the proposed statutory remedies will demonstrate beyond reasonable doubt that they are adequate to assure the U.S. Supreme Court objectives expressed in Swann:

> Our objective in dealing with the issues presented by these cases is to see that school authorities exclude no pupil of a racial minority from any school, directly or indirectly, on account of race;

Furthermore, the Court said it could not embrace in its ruling all problems which "contribute to disproportionate racial concentration in some schools," and "there is no substantive constitutional right to any particular degree of racial balance or mixing." More specifically:

> The constitutional command to desegregate schools does not mean that every school in every community must always reflect the racial composition of the school system as a whole.
>
> In the same context:
>
> In the light of the above, it should be clear that the existence of some small number of one race or virtually one race schools within a district is not in and of itself the mark of a system that still practices segregation by law.

The Supreme Court has thus limited equitable remedies as to the objectives to be achieved by the remedies. The same limits are applicable to statutory remedies. With these Supreme Court refinements as to objectives in mind, we can test the adequacy of the proposed remedies provided by the bill before us.

The proposed remedies are set out in section 402. It must be remembered that the remedies apply only to situations where court orders and desegregation plans require transportation of students. Transportation of students presume assignments to schools. Thus, busing may be ordered in each and every one of the remedies set out in this section. When these remedies are expressed in the affirmative, transportation may be ordered in the following sequence or combinations as may be necessary to desegregate schools:

First. Transportation may be ordered to the school closest to the place of residence of the students, which offers the appropriate grade level and course of study, taking into account overcrowding and natural barriers such as mountains and rivers. This remedy is applicable in situations where under dual school systems children residing in the same neighborhood or community were assigned to separate schools solely on the basis of race. In some instances, this remedy coupled with a compliance with requirements set out in section 201 relating to unlawful practices might be adequate to meet the constitutional objective.

Second. Transportation may be ordered to the school closest to the place of residence taking into account only the factor of overcrowding. With reference to those two remedies, the Supreme Court said in Swann that:

> Where dual school systems had been operated . . . the first remedial responsibility of school authorities is to eliminate invidious racial distinctions. With respect to such matters as transportation, supporting personnel and extra curricular activities, no more than this would be necessary.

Indeed many schools have been desegregated by correcting invidious discrimination and in maintaining all schools on an equal basis as to maintenance of buildings and distribution of equipment. So, the statutory remedies and equitable remedies are quite the same in these two instances.

Third. Transportation may be ordered where it is necessary to implement the Supreme Court mandate to provide transportation to implement a request for a transfer of a student from a school in which his race is a majority to a school in which his race is a minority.

Fourth. Transportation may be ordered when it is an incident to gerrymandering attendance districts which, as the Supreme Court has said may be "bizzare" and that such attendance zones be neither compact or contiguous and may be on opposite ends of a city, or if required by clustering or pairing schools and grades, which the Supreme Court has frequently upheld as legitimate tools of desegregation.

Fifth. Transportation may be ordered as a result of closing schools or building new schools. This remedy has also been upheld as a proper exercise of equity powers of courts.

Sixth. Transportation may be ordered as a result of construction of or establishment of magnet schools. This remedy is new, to the best of my knowledge, and therefore an additional tool for desegregation.

Seventh. Transportation may be ordered if necessary to the development or implementation of "any other plan" which is educationally sound and administratively feasible. This includes a multitude of weird remedies and combinations of remedies.

Mr. President, there are several observations which should be made in reference to the proposed statutory remedies I have just mentioned. The first is that

tne hysterical clamor alleging that this is an antibusing bill is bunk, pure and simple. Secondly, each of these proposed statutory remedies, except that one which relates to construction of or the establishment of magnet schools, has been specifically approved by the U.S. Supreme Court in the Swann decision as equitable remedies which may be applied in the discretion of a U.S. district court judge.

Turning now to the question of the adequacy of these remedies, it will be noted that there are no limits placed upon the extent of transportation which may be required. The Supreme Court said by way of comment in Swann that:

No fixed or even substantially fixed guidelines can be established as to how far a *court* can go, but it must be recognized that there *are limits*. (Emphasis added.)

And with specific reference to transportation of students, the Court said:

The scope of permissible transportation of students as an implement of a remedial decree has never been defined by this court and by the very nature of the problem it cannot be defined with precision.

The statutory remedies do not define with precision the scope of permissible transportation of students. However, it does provide in section 403 that any student may not be bused to a school beyond the one "next closest to his place of residence which provides the appropriate grade level and type of education."

As previously indicated, when the statutory remedies of gerrymandering school districts; pairing schools and grades; closing schools; and constructing schools are considered, it is entirely possible that a school providing an appropriate grade level which is next closest to a students place of residence may well be located in an entirely different town or city in rural areas or in the center of a city in the case of pupils who reside in suburbs. It stands to reason that this limitation on transportation of students is not a limitation on the time and distance of travel which may be required of a sudent to reach a school which offers an appropriate grade level and type of education required by such student.

This same section imposes another limitation on transportation of students. This limitation has been recognized as valid by the U.S. Supreme Court. In short, transportation shall not be required if it poses a risk to the health of a student or constitutes a significant impingement on the educational process with respect to such student. This limitation is consistent with the findings as set out in section 3(a) (4) and (5) of this bill with respect to what constitutes excessive transportation. These findings are in substance as follows:

Fourth. Transportation is excessive if it creates serious risks to the health and safety of students; disrupts the educational process carried out with respect to such students; and impinges significantly on their educational opportunity.

With respect to finding No. 5, Congress has said:

The risks and harms created by excessive transportation are particularly great for children enrolled in the first six grades.

This last finding is based on what the U.S. Supreme Court has said with reference to the importance of considering the age of children in determining whether or not the time and distance of travel by bus transportation is excessive.

In summary, finding No. 4, is that busing is excessive when it creates a serious risk to the health and safety of students. Finding No. 5 is that the risks and harms are particularly great for children in the first six grades. This last observation does not detract from the validity of finding No. 4 which designates additional elements of excessive busing which are applicable to all ages.

In evaluating the reasonableness of findings with respect to excessive busing, it should be emphasized that if Congress does not undertake to determine what constitutes excessive busing—then this decision is left to the judgment of a single U.S. district court judge, in the exercise of his discretion. No Federal judge has the power to impose on an individual serious risk to his health and safety. It does not matter if the individual is a pupil in the first grade or the 12th grade or if an individual is a parent, employee, or whatever.

It is simply a contradiction of the meaning of the word "equity" and the history of equity jurisprudence to assert that a judge, in his discretion, may impose remedies which subject individuals to serious risks to their health and safety. Even condemned criminals are protected from such abuses of power. Why should children not have the same protection?

The same can be said with respect to the equity power of a judge to command transportation of schoolchildren if the transportation disrupts the schools and educational process. There are no powers under equity jurisdiction to do anything which violates the dictates of common sense and conscience. Court ordered transportation of schoolchildren which results in disruptions of schools and the educational process is not equity. Neither is there a power in judges to require transportation which impinges on the educational opportunities of the children involved—such orders are the antithesis of equity.

There is yet another limitation of equitable remedies which involve transportation only indirectly. This is contained in section 404, which provides in substance that Federal court judges may not, in their discretion, under authority of equity powers of their courts ignore or alter the boundary lines drawn by a State in subdividing its territory into separate school districts. In short, the courts may not disregard the boundary lines of political subdivisions of counties and cities as it did in the Richmond and Detroit cases in formulating remedies to desegregate schools. The fact that Federal court judges could ever conceive that equity powers were so broad as to vest such a decision in the discretion of a judge is an enlightening commentary on the abuses of equity powers which we have witnessed over the past two decades.

So we return to the question of adequacy of the statutory remedies provided by this bill. If we recall that a racial balance is not required; that the existence of some all-white or all-black schools is not in and of itself an indication of the existence of State-imposed segregation; and when we consider the unlawful practices set out in section 201 of this bill, there can be no reasonable question of doubt but that the statutory remedies provided are adequate to meet all constitutional standards.

It cannot be said, in reason, that schools cannot be desegregated, or that dual systems cannot be eliminated or that constitutional standards cannot be met without subjecting schoolchildren to serious risk of their health and safety. Neither can it be said, in reason, that a U.S. district court judge can, in his discretion, order transportation which constitutes a significant impingement on the educational process with respect to such student. The U.S. Supreme Court has recognized such a limitation on equity powers of U.S. district court judges. This bill concurs in that judgment.

In this connection, Congress has said with respect to the funds which are authorized to be appropriated and used in implementation of this bill:

No such funds shall be made available for transportation when the time or distance of travel is so great as to risk the health of the children or significantly impinge on the educational opportunities available at the school to which it is proposed that any such student be transported will be substantially inferior to those opportunities offered at the school to which such student would otherwise be assigned under a nondiscriminatory system of school assignments based on geographic zones established without discrimination on account of race, religion, color, or national origin.

This quotation is from title VIII, section 802(a) of Public Law 92–318. I heard no constitutional argument against this provision when the bill was before the Senate.

With respect to desegregation plans, it is provided in subsection (b):

No officer, agent, or employee of the Department of Health, Education, and Welfare (including the Office of Education) or any other Federal agency shall urge, persuade, induce, or require any local education agency to undertake transportation of any student where the time or distance of travel is so great as to risk the health of the child or significantly impinge on his or her educational process; or where the educational opportunities available at the school to which it is proposed that such student be transported will be substantially inferior to those offered at the school to which such student would otherwise be assigned under a nondiscriminatory system of school assignments based on geographic zones established without discrimination on account of race, religion, color, or national origin.

I heard no constitutional argument against this provision when the bill was before the Senate.

I think that reasonable men will agree that constitutional requirements as they relate to the desegregation process can be met without subjecting schoolchildren to risks of health and safety and without significantly impinging on the educational process.

But, for the sake of argument, let us assume that in some few isolated instances, of which I cannot conceive, the statutory remedies prove inadequate.

That does not mean that the statute is unconstitutional. It would merely mean that the remedy is inadequate and thus provide grounds for invoking an equitable remedy. So this is not a constitutional argument at all. The inadequacy of remedies at law is ground for invoking equity jurisdiction and thus equitable remedies to meet any inadequacy.

Mr. President, let us turn now to the reopener provision in section 406. Much in the way of objections has been heard to this provision. The section states:

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.

Again, it is necessary to bear in mind that decrees entered by U.S. district courts are subject to limitations imposed by longstanding principles of equity. One of those principles is that equity follows the law. If the proposed remedies as passed by the bill are adequate, and courts of equity have entered decrees which have been declared excessive by Congress, then such courts will gladly reopen cases to modify their decrees to make them consistent with the law.

From the standpoint of equity and good conscience, it would not matter if 1,000 or 10,000 cases were reopened. Simple justice demands modification of any degree which compels excessive transportation of students.

Furthermore, the right to reopen is not contingent on statutory authority. Courts of equity will always reopen cases to modify decrees consistent with changed circumstances and conditions.

Mr. President, I hate to belabor this point, but some people who should know better insist that Congress simply does not have power under the Constitution to limit the extent of busing which may be ordered by U.S. district court judges. I regret the necessity of taking up time to refute this contention but I feel it must be done.

Mr. Chief Justice Burger put his finger on the problem in Swann with reference to the Civil Rights Act of 1964. He said:

In short, there is nothing in the Act which provides us with material assistance in answering the questions of remedy for state imposed segregation in violation of Brown I.

Mr. President, this is precisely what the bill before us does. From the standpoint of the power of Congress to provide remedies, the U.S. Supreme Court noted in the case of Katzenbach versus Morgan that Congress had far greater factfinding and interest-weighing ability than the courts and observed that Congress could go so far as to disregard Supreme Court rulings, and create a right which the Court had previously held not protected under the equal protection clause of the 14th amendment. It was said in the opinion:

Correctly viewed, Section 5 (of the Amendment) is a positive grant of legislative power authorizing Congress to exercise its discretion in determining whether and *what legislation is needed to service the guarantees of the 14th Amendment.* (Emphasis added.)

It is for Congress, as the branch that made this judgment, to assess and weigh the various conflicting considerations. . . . It is not for us to review the Congressional resolution of these factors. It is enough that we be able to perceive a basis upon which the Congress might resolve the conflict as it is.

If Congress has such power involving substantive constitutional rights, what can we infer with respect to the power of Congress to provide civil remedies and penal sanctions to enforce rights under the amendment?

With further reference to civil remedies, Mr. Justice Powell has clearly indicated, in denying an application for a "stay" of a lower court order from Augusta, Ga., that if Congress had desired that stay orders be granted in cases involving State-imposed segregation "it could have used clear and explicit language appropriate to that result." This observation is a clear acknowledgment that if Congress desires to prohibit all stay orders in the desegregation process, it has the power to do so and needs only to use language appropriate to that result.

This conclusion is reinforced by the further observation by Mr. Justice Powell that in the preceding section of Public Law 92–318, Congress had, in fact, prohibited the use of Federal funds either to redress "racial imbalance," meaning de facto segregation, or to carry out any plan of desegregation. Mr. Justice Powell went on to say:

Congress intended to proscribe the use of Federal funds for transportation of students in any desegregation plan.

Of course, Mr. Justice Powell did not rule on the validity of this provision. Nor was it necessary that he do so. We know perfectly well that Congress may or may not in its own good judgment appropriate funds for purposes which may seem fit and proper. There is nothing in the constitution to compel Congress to appropriate money to implement a desegregation plan whether it be to pay for the cost of busing, building new schools, or in fact, to do anything to enforce rights which Congress may recognize as being entitled to enforcement under the 14th amendment.

Furthermore, I think that all of us will acknowledge that even the broad equity powers of U.S. District Courts cannot be stretched to include the power to compel Congress to appropriate funds for any purpose Federal courts may direct. In short, no constitutionally protected right is violated by a failure or refusal of Congress to appropriate funds to overcome State imposed segregation.

After all, the right to attend public schools at public expense is not a constitutional right. It is a right created and implemented by the States. The right to be transported to public schools is not a constitutional right but one created by the States. The Constitution requires only that State laws in this regard be operated in a manner not inconsistent with equal protection of its citizens.

It is incomprehensible to me how opponents of this bill can uphold the right of Congress to limit enforcement of constitutionally protected rights in States outside of the South, by busing or otherwise, as it did in titles IV and VI in the Civil Rights Act of 1964 and yet insist that Congress does not have the power to limit busing by establishing a priority of remedies to be applied in desegregation cases in the Southern States. It is not only a paradox but it is also cynical in the extreme because the bill before us does not pretend to prevent all busing.

In fact, it authorizes busing and provides courts of equity with many tested devices to desegregate public schools including busing. I seriously question that any court would find it necessary to exhaust the remedies provided in this bill in order to establish a unitary school system, defined by Supreme Court opinions and by this bill, as a school system in which no person is effectively excluded from any school because of his race, color, or national origin. Neither are all of the remedies needed to remove vestiges of a dual school system.

Furthermore, the bill does not pretend to protect the rights of parents to send their children to a neighborhood school. School assignments are not limited to walk-in schools. The bill merely provides that the neighborhood school is an appropriate basis for pupil assignments and shall be taken into account in the assignment of pupils by judicial decrees or otherwise. It does not prevent but rather authorizes closing neighborhood and community schools and grotesque gerrymandering of attendance districts all of which may require busing of pupils to the next nearest school.

Of course, there is an alternative to assignment of pupils on the basis of neighborhood schools. The alternative is assignment on the basis of socioeconomic status. Some Members of Congress may prefer this as a basis for assignment and may prefer the additional excessive busing that would be required to implement assignments on this basis. But this is not a constitutional question.

Returning to the constitutional issue, it seems to me that what has purposely been overlooked is that the U.S. Supreme Court has long and consistently distinguished between substantive constitutional rights protected by the Constitution and the question of remedies which is left to the discretion of Congress.

The power of Congress to prescribe and, therefore, to repeal, withdraw, and modify particular remedies available to Federal courts, particularly when they are sitting as courts of equity, has been exercised throughout the history of the Republic and has rarely been challenged.

This conclusion was stated, and is supported by a substantial number of citations, by Prof. Charles Alan Wright in testimony before the House Committee on the Judiciary in the course of hearings on proposed amendments to the Constitution relating to transportation of pupils. He also observed that in many of the cited cases, parties were asserting constitutionally protected rights. Furthermore, former Justice Harlan raised the question of whether or not "A judicial remedy for the vindication of a Federal constitutional right is placed by the Constitution itself exclusively in Congress hands."

Mr. President, I want to conclude my remarks on the substantive constitutional question with this observation. The U.S. Supreme Court will be the ultimate arbiter of the questions raised. The House has passed this bill. In the meantime, pressing unfinished business is before the Senate and unless we act now, we may be confronted with the necessity for a lame duck session of Congress.

Our problem continues to be one of demonstrating a willingness to offer a legislative solution to the problem—and before the general elections in November. My final argument to illustrate the need for legislation to curb judicial and bureaucratic abuses of power relates to some of the sociological and psychological premises underlying the massive forced busing programs which have been imposed on the people.

In this connection, there is an article in the summer, 1972, issue of the Public Interest, by Prof. David J. Armor, in the form of a research report entitled "The Evidence on Busing." Professor Armor is a noted sociologist who specializes in research methods and social projects involving evaluations of the effects of busing on black studnts. In the article Dr. Armor points out:

> Few persons . . . know of the role played by the social sciences in helping to sustain the forces behind desegregation. It would be an exaggeration to say that they are responsible for the busing dilemmas facing so many communities today, yet without the legitimacy provided by the hundreds of sociological and psychological studies, it would be hard to imagine how the changes we are witnessing could have happened so quickly. . . .
>
> And yet, the relation between social science and public policy contains a paradox in that the conditions for adequate research are often not met until a policy is in effect, while the policy itself often cannot be justified until supported by the findings of science. . . . Furthermore, this can mean that later evaluation research of a social action program may undo the very premises on which the action is based—as is the case somewhat in the Coleman Report on the effect of schools on achievement. . . .

In short, all of this forced busing madness has been a case of getting the cart before the horse. The conclusions reached after an evaluation of data on the effects of busing are extremely significant from the standpoint of policy implications. I will not attempt to explain all of the implications, but merely quote certain conclusions with the hope and expectation that Senators will read the article.

I read the following brief excerpts from the article:

> The most serious question is raised for mandatory busing (or induced integration) programs. If the justification for mandatory busing is based upon an integration policy model like the one we have tested here, then that justification has to be called into question. The data do not support the model on those counts.
>
> Although the data may fail to support mandatory busing as it is currently justified, these findings should not be used to halt voluntary busing programs.
>
> The available evidence thus indicates that busing is not an effective policy instrument for raising the achievement of black students or for increasing inter-racial harmony.
>
> Decisions must be based upon feelings of the black community as well as the white community. Many liberal educators have been so intent on selling integration to reluctant white communities that they risk the danger of ignoring the opinion of the black community.
>
> The available evidence on busing, then, seems to lead to two clear policy conclusions. One is that massive mandatory busing for purposes of improving student achievement and inter-racial harmony is not effective and should not be adopted at this time.
>
> With a more complete knowledge than we now possess of this complicated matter, we shall hopefully be in a better position to design effective public education policies that are known in advance to work to the benefit of all Americans, black and white.

Mr. President, some of the findings leading to these conclusions are as follows:

> None of the studies were able to demonstrate conclusively that integration has had an effect on academic achievement as measured by standardized tests. . . . To date there is no published report of any strictly educational reform which has been proven substantially to affect academic achievement; school integration programs are no exception.
>
> In the METO study, we found that there were no increases in educational or occupational aspiration levels for bused students. . . . On the contrary, there was a significant decline for the bused students. . . . The control panel actually increased its college aspirations over the same period.
>
> One of the central sociological hypotheses in the integration policy model is that integration should reduce racial steretoypes, increase tolerance, and generally improve race relations. Needless to say, we were quite surprised when our data failed to verify this axiom. Our surprise was increased substantially when we discovered that, in fact, the converse appears to be true.
>
> Integrated schools per se are not the real issue; if schools in the black community provided education of the same quality as those in white communities, blacks would not be so interested in busing programs. In fact, when we asked students in the METO program this question, almost 75 percent said they would prefer to attend their own community school if it were as good as the suburban school.

Mr. President, I do not want to leave the impression that these few quotations represent anything like an adequate presentation of Dr. Armor's views. In some respects, the views expressed in his article are more startling than is indicated by the quotations and I urge Senators to carefully read the article.

Professor Armor is supported in his conclusions by a massive evaluation of the Coleman report conducted at Harvard University by a host of experts including Frederick Mosteller, Daniel P. Moynihan, Christopher S. Jencks, Thomas F. Pettigrew, James S. Coleman, and Professor Armor, to name a few of the 80 scholars who participated. The papers deriving from the study have been published in a book entitled "On Equality of Educational Opportunity," by Mosteller and Moynihan, published by Random House, Inc., in March 1972. Many informative articles and editorials have since been published on various aspects of the study. I have yet to find one which rejects Professor Armor's conclusions.

One of the participants in the study, scholar-journalist Christopher Jencks, has recommended a vast socialistic overhaul of our economic institutions as the only way to get equality. The Washington Evening Star-News editorialized on this and related views of Professor Jencks in an editorial of Friday, September 22, 1972, entitled "Inequality and Schools."

There is nothing particularly novel in the recommended economic approach to socialistic equality. It is a basic premise of Marxist socialism. What is novel, is that this Socialist goal can be implemented by Federal courts under existing concepts of equity powers in Federal courts and with powers of punishment for failure to abide by court decrees in class action suits. If Congress cannot limit remedies imposed by Federal courts in equity cases, then Congress will have legitimized the the concept of unlimited discretionary power in the Federal judiciary. We will have returned to the Dark Ages in man's continuing struggle against the enslaving effects of royal prerogative now confronting us in the guise of unlimited discretionary powers in Federal judges.

Mr. President, I want to sum up by saying that our public school systems are in an undesirable state of confusion. This confusion is a direct result of abuses of power by the Federal judiciary and Federal bureaucrats undertaking to implement a sociological hypothesis which has since been abandoned. In the process of testing hypothesis and theories, the courts and Federal bureaucrats have used our schools and our schoolchildren as guinea pigs—white and black alike, and the people resent it. The dehumanizing effects of the mechanized and computerized approaches used in these experiments should give every thinking person cause for profound concern.

The U.S. Supreme Court, in its second Brown decision, observed with particular reference to remedies that, traditionally, equity has been characterized by a practical flexibility in shaping its remedies and by a facility for adjusting and recognizing public and private needs. Who would ever have then imagined that equity powers of Federal courts would be stretched to encompass a power in the State to conduct sociological and psychological experiments involving millions of parents and schoolchildren in the United States?

If we were to read the Court literally, the language would imply that it is within the power of Federal courts, sitting in equity, to determine and enforce in the discretion of the judge, a superior claim of the State to control the lives of individuals in our society. In short, it would establish the premise of socialism plus means of achieving it by use of the coercive power of Federal court judges in class actions affecting the lives of literally tens of millions of people.

When we consider also that U.S. district courts have used their discretionary power to issue mandatory injunctions to compel local public officials and individuals to obey under threats of trial for contempt of court and the imposition of confiscatory fines and imprisonment without benefit of trial by jury, we can begin to understand the scope of the usurpation and abuse of judicial powers. We can begin to under-

stand also how far U.S. district courts have departed from the specific caveats on the exercise of equity powers imposed by the Supreme Court in Brown II, where the Court said: "In fashioning and effectuating the decrees, the courts will be guided by equitable principles," and "the exercise of traditional attributes of equity power."

U.S. district courts have not been inhibited by traditional principles of equity. Neither have the courts been inhibited by fundamental considerations respecting the separation of powers and constitutional structure and allocation of powers in our government. Neither has the U.S. Supreme Court seen fit to inhibit U.S. district court judges in their abuses and excesses in the exercise of traditional attributes of equity power.

This is the nature of the evil which must be remedied. I confess that the bill does not provide adequate relief. Neither am I sure that the bill will pass, but I am sure that the American people have had their fill of judges and bureaucrats ordering them to load their children on buses with no more regard for their feelings and welfare than if they were chattels. I am equally certain that a substantial majority of the people of the United States are demanding that this bill be voted up or down and disposed of on its merits before the elections in November.

Mr. President, I had intended to ask unanimous consent that certain exhibits be printed in the RECORD. They are quite voluminous, and I merely am going to give the bibliography, for the purpose of enabling any person researching the question to refer to these matters.

Exhibit 1: The hearings before Subcommittee No. 5 of the Committee on the Judiciary, House of Representatives, 92d Congress, 2d Session, serial No. 32, part 3, printed for the use of the Committee on the Judiciary.

Exhibit 2: A publication entitled "The Public Interest," No. 28, summer 1972.

Exhibit 3: An editorial published in the Washington Evening Star on Friday, September 22, 1972, entitled "Inequality and Schools."

Exhibit 4: The Supreme Court decision of Mr. Justice Powell, No. A–250, Drummond against Acree, decided September 1, 1972.

Exhibit 5: A pamphlet entitled "Constitutionality of the President's Busing Proposals," Robert H. Bork, American Enterprise Institute for Policy Research.

MESSAGES FROM THE PRESIDENT

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

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer (Mr. STEVENSON) laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

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

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, until 10 a.m.

COMMITTEE MEETINGS DURING SENATE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Committee on Labor and Public Welfare and the Committee on Foreign Relations be authorized to meet during the session of the Senate today.

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

THE CALENDAR

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Nos. 1226, 1227, 1228, and 1229, which have been cleared on both sides.

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

WORLD WAR I PENSION ACT OF 1972

The Senate proceeded to consider the bill (S. 3070) to amend chapter 15 of title 38, United States Code, to provide for the payment of pensions to World War I veterans and their widows, subject to $3,000 and $4,200 annual income limitations; to provide for such veterans a certain priority in entitlement to hospitalization and medical care; and for other purposes, which had been reported from the Committee on Veterans' Affairs with an amendment, to strike out all after the enacting clause and insert:

That this Act may be cited as the "World War I Pension Act of 1972".

SEC. 2. That (a) chapter 15 of title 38, United States Code, is amended by adding after section 507 a new section as follows:

"§ 508. Special provisions relating to veterans of World War I and to widows and children of veterans of World War I

"(a) The amount of pension to which any veteran of World War I is entitled under section 521 (b) or (c) of this title and the amount of pension to which any widow of a veteran of World War I is entitled under section 541 of this title shall be increased by 10 per centum.

"(b) The monthly rate payable to any veteran of World War I under section 521(d) for regular aid and attendance shall be increased by $15.

"(c) The monthly rate payable to any veteran of World War I under section 521 (e) shall be increased by $6.

"(d) The monthly rate to which any child or children of a veteran of World War I is entitled under section 542 of this title shall be increased by $8 in the case of one child and by $1 for each additional child."

(b) The table of sections at the beginning of chapter 15 of title 38, United States Code, is amended by adding immediately below

"507. Disappearance."

the following:

"508. Special provisions relating to veterans of World War I and to widows and children of veterans of World War I.".

SEC. 3. This Act shall take effect on January 1, 1973.

Mr. THURMOND. Mr. President, we owe a great debt to our World War I veterans. They are now few in number and up in age, and most of them are living on a fixed income. With the rising cost of living, it has been hard for them to maintain their accustomed standard of living.

Consequently, I sponsored S. 3070 to provide a 10-percent increase in monthly pensions.

This bill, S. 3070, will provide increased annual income limitations equal to that provided in S. 4006, and will amend title 38, U.S.C., by adding a new section which will provide to a World War 1 veteran and his widow, an increase in monthly pension benefit by 10 percent.

The veterans of World War I faced many problems and insurmountable odds when they returned to these shores following their service. Many veterans did not have the privilege of going back to their former place of employment or even finding employment in those troubled times. There were no laws regarding preference for the veteran in any field. If they could not find employment, many were forced to sell apples on the street. To add to their chagrin, they lived through the depressions which often wiped out any small savings or business they had.

Many veterans of World War I were not covered by social security benefits effective January 1, 1937, or if they were covered, the wages at that time did not provide benefits commensurate with those of today's standards. Today, they are unfortunately too old to be hired in the job market or able to supplement their meager income with salaries or wages. So, increased income limitations are not always beneficial to these older veterans.

Mr. President, due to the rising cost of living and increased need for medication, they need greater monthly benefits to enable them to keep body and soul together. This generation of American citizens is too proud to go on welfare or accept public charity; however, they are very appreciative of the pension they receive from this great Nation, and look forward to this pension to grant them additional benefits so they may live their remaining days with dignity.

In many instances it has been stated that the veterans of World War I were never afforded the benefits comparable to those provided to veterans since that time. It is also known that pension benefits have always been paid according to need, but many of these older veterans believe they were entitled to additional benefits comparable to those provided veterans of later wars. Taking all evidence into consideration, this could be another reason for increasing benefits for this group of individuals.

Accordingly, Mr. President, I am proud to sponsor S. 3070, and I express my appreciation to the members of the Veterans' Affairs Committee who unanimously reported this bill.

Mr. President, the average age of today's World War I veteran is 77.5 years, and there are now less than 1,400,000 veterans left from that war; however, only about half of these draw pensions. We are losing them at a rate of about 6,000 per year.

Estimates based on Veterans' Administration statistics show the first full year cost of S. 3070 to be $109 million, decreasing gradually to $99.1 million at the end of 5 years.

Mr. President, I am proud to sponsor S. 3070, and hope it receives prompt and favorable attention.

The amendment was agreed to.

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

The title was amended so as to read: "A bill to amend title 38, United States Code, to provide for a special addition to the pension of veterans of World War I and to the pension of widows and children of veterans of World War I."

Mr. MANSFIELD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. PASTORE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MORATORIUM ON COAL LEASING IN MONTANA

The Senate proceeded to consider the resolution (S. Res. 377) to provide a temporary moratorium on Federal coal leasing in the State of Montana, and for other purposes.

Mr. MOSS. Mr. President, I reluctantly accept the fact that there is small likelihood of a comprehensive surface mining bill this session. As the chairman of the Interior Committee said when he filed his amendment in the nature of a substitute to S. 630 on Friday last, there are two very different bills pending before the Congress. H.R. 6482 which was passed last night by the House differs vastly from S. 630 and its various amendments. The chairman of the House Interior Committee filed separate views with regard to the House bill (H.R. 6482) in which he carefully and realistically set forth the types of problems which he sees with the legislation. I share his concern that any legislation must be broad enough to be applied across the entire sweep of the Nation.

On the Senate side, I had hoped, until the last several days, that we would be able to mark up S. 630, adding amendments which Senator JACKSON, Senator METCALF, and I had proposed in July. I have received wires from environmental groups which would support this, and I ask unanimous consent that they be included in these remarks.

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

WASHINGTON, D.C.,
August 2, 1972.

Senator FRANK MOSS,
Senate Office Building,
Washington, D.C.:

Your bill on strip mining with the proposed amendments of Senator Jackson and the Interior Committee staff would go far toward correcting the serious problems associated with surface mining. We urge you and your colleagues to press forward and to report out the bill as amended.

Very truly yours,

PETER BORRELLI,
Eastern Representative, Sierra Club,
Washington.

SAN FRANCISCO, CALIF.,
August 3, 1972.

Senator FRANK MOSS,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MOSS: Sierra Club commends you for proposing amendments to Interior Subcommittee strip-mining legislation. We support additions together with committee staff recommending contour mining ban to vastly strengthen committee print. We strongly urge quick committee adoption of package.

MICHAEL MCC. LOSKEY,
Executive Director, Sierra Club.

Mr. MOSS. Mr. President, in addition, my esteemed colleague, Senator JORDAN, ranking minority member of the subcommittee who has worked valiantly beside me for many months on this legislation has received from the administration a letter of support for S. 630, with a recommendation for several amendments which are well taken and should be considered by our committee.

Consistent with the amendments which I offered in July to S. 630 I have prepared further amendments which I am ready to offer on the floor of the Senate. However, in view of the lateness of the hour and the apparent impass which we face between the House version and the still emerging version on the Senate side, such action would appear to be a hollow gesture and would achieve nothing in this session of the Congress. Surface mining legislation appears to be doomed in this session for many reasons, not the least of which is the obvious and fundamental differences between the House and the Senate versions of the bill.

I recognize the fact that the distinguished Members of this body should not be expected to mark up and finish the work of the Interior Committee on the floor of the Senate and I also recognize the fact that there are many new concepts embodied in the chairman's amendment in the nature of a substitute which deserve careful consideration and detailed analysis—that such consideration and analysis demands further committee hearings and discussions and that we have run out of time.

State officials in Kentucky and Tennessee charged with supervising reclamation efforts in their States told me when I visited them in February of this year that they needed assistance in techniques of reclamation and particularly in Federal assistance in enforcing existing laws. It appears unlikely that this Congress will be able to do that. Westerners, on the other hand, have viewed Appalachia with dismay and plead with members of their delegations to halt pending coal operations in the West until a carefully orchestrated plan involving a thorough study of the land ownership pattern, natural resources, water and land uses and the sociological and economical impact of the proposed gargantuan mining development operations can be completed.

To that end, Senator METCALF, Senator MANSFIELD, Senator BURDICK, and I introduced a joint resolution urging the Secretary to suspend coal mining activities on Federal lands—comprising nearly 50 percent or more of the coal lands of the West—until such time as the Congress has completed action on surface mining legislation. A modified version of that resolution was reported from the Interior Committee to the Senate on October 6. This resolution states the sense of the Senate that Federal leasing be held in abeyance in Montana for a period of 1 year, or until we enact appropriate legislation to control surface mining. I earnestly urge your consideration of this measure.

The need for this resolution presses especially upon my colleagues from Montana. If the power developments proceed as planned in Montana they face a population increase during the next 15 years of another 280,000 to 912,000 and the population of the entire State was only 694,409 in the 1970 census.

The House bill does not take effect for 6 months.

Montana needs time for a study and planning of these population problems alone. The Secretary of the Interior has authority to do all that we ask him to do by this resolution. The added impetus is simply that the Senate urges him to do it. Now.

The sense of the Senate resolution declares that going slow is not enough and that withdrawal of the lands involved and suspension of activities is necessary to protect the lands until appropriate planinng and long-range studies can take place including a study of the landownership, natural resources, water and land uses, and the sociological and economical impact of the mining activity on the total community.

Mr. President, I urge adoption of this sense of the Senate resolution for a temporary moratorium on coal leasing activities in the State of Montana. I would further ask that the article from the Los Angeles newspaper entitled "Great Coal Rush—Will It Ravage Montana's Land?" which I entered in the RECORD October 5, 1972, be reprinted as part of these remarks. It is an excellent article and states the problems facing the residents of Montana most eloquently and succinctly.

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

SURFACE MINING RECLAMATION AND REGULATION

Mr. Moss. Mr. President, for over a year and a half the Committee on Interior and Insular Affairs and my subcommittee on minerals, materials, and fuels, in particular, have been wrestling with the problems of surface mining regulation.

Ten bills were introduced in the 92d Congress and the committee has now produced four committee prints representing the combined efforts of the subcommittee membership and that of the chairman. Even at this late date in the session we are still seeking the best solution to a very difficult and complicated problem and we are urgently, actively and most sincerely working toward a bill which will protect the environment and allow us to obtain the minerals necessary to the operation of our society.

The need for legislation is clearly illustrated in a newspaper story from the Los Angeles Times of September 29, using the State of Montana as the stage upon which the drama of control of surface mining is now focused. I ask unanimous consent that the story be printed in the RECORD.

There being no objection, the article was

ordered to be printed in the RECORD, as follows:

GREAT COAL RUSH: WILL IT RAVAGE MONTANA'S LAND?

(By Joan Sweeney)

SOME RANCHERS BATTLE TO SAVE RANGE BUT LAW FAVORS MINING COMPANIES

SARPY CREEK, MONT.—Thirty miles from Custer's Last Stand, rancher John T. Redding is staging one of his own to keep the isolated, unpredictable land he has worked for the past 56 years.

Lawyers tell him his stand is as futile as Custer's.

His land lies in the path of the great coal rush that has swept eastern Montana, a sparsely populated area where skies are breathtakingly blue and water is precious.

The region is in danger of having its relaxed, rural way of life altered drastically by coal strip mining and proposed power projects to supply electricity not only for the area but for states as far away as Missouri and Iowa.

At Sarpy Creek, Westmoreland Resources wants to strip-mine Redding's land, for the low-sulphur coal beneath it.

LAW ON ITS SIDE

And Westmoreland has Montana law on its side.

Redding, like many other ranchers and farmers in eastern Montana, owns only the surface. At Sarpy Creek, the Crow Indians hold the mineral rights and have leased 30,876 acres to Westmoreland.

Under Montana law, private mining companies can seize the surface land through condemnation if the owner will not sell.

Redding was 12 years old back in 1916 when he and his family walked miles through snow, 2 and 3 feet deep, to reach their homestead.

Through good years and bad, through deadly winters and even deadlier drought, Redding stuck it out. During the depression, he watched as his neighbors abandoned their parched land for the greener fields of Washington and Oregon, but he stayed.

WANTS TO CONTINUE

He still wants to stay, but he says Westmoreland's agents have told him to sell at its price or have his land condemned. So far he has refused.

"They said, 'If you don't take this offer, we will take you to court, condemn you and you won't have anything,'" Redding's son, John R., said bitterly.

Westmoreland does not want all of his land, but Redding said he would be left with only hilltops and no water.

Lawyers that the Reddings consulted advised them to sell. Some of their neighbors, like Merle Cox, already have.

Cox is a taciturn bachelor, seemingly emotionless, his face weathered by 23 years on his ranch. "They said if I didn't sell they'd condemn it and take it, so I went and seen a lawyer. He said they could do it. It looked like selling was the only thing I could do," Cox said.

Montana law, written before statehood when mining was the territory's only industry, gives private companies holding the mineral rights the power of eminent domain to condemn the surface lands. The 1961 Montana legislature expanded the law to include strip mining.

A company can bring action in state district court to condemn a piece of land, and the judge then appoints three commissioners to assess the damages to be paid the owner.

John W. Northey, deputy Montana attorney general, said it had never been determined by the state's Supreme Court whether the mining company must pay the value of the land or merely for damage to it.

When the U.S. government opened eastern Montana land to homesteaders, it generally retained the mineral rights. The Indians, the Burlington Northern Railroad and the state also own mineral rights to extensive tracts.

The homesteaders knew when they claimed the land that they did not own mineral rights.

"At that time, I don't think anybody ever heard of strip mining," the younger Redding said. "If there was going to be mining, it would be underground, and it didn't worry them."

A spokesman for Westmoreland headquarters in Billings declined to discuss the firm's present or future operations.

POLLUTION LAWS

Some other mining officials believe that the only reason the ranchers refuse to sell is to try to extract a higher price for their land. And it is true that, although some ranchers see strip mining as destroying their way of life, others are happy to sell.

The national energy shortage, pollution laws banning high sulfur fuels and new technology have combined to suddenly make western coal, which is low in sulfur, sodium and ash, highly attractive. Also important is its vast quantity—an estimated 1.45 trillion tons within 6,000 feet of the surface in the Fort Union formation of Eastern Montana and Wyoming and the western Dakotas alone.

Economics dictates that this coal, which lies in thick seams relatively near the surface, should be removed by the cheaper method of strip mining, which uses giant shovels that can gulp 114 cubic yards of earth with one bite.

Opponents fear the mining could trigger an environmental crisis.

DAMS PROPOSED

They say that not only would strip mining chew up land now devoted to agriculture, the area's present economic mainstay, but that proposed energy plants with their enormous needs for water could stymie other industrial and agricultural development in the semiarid area. An Environmental Defense Fund study calculates that the mean annual flow of the Yellowstone, the main river, could be reduced as much as 81% by such plants' needs. And in dry years, the river's flow is only half of its average.

To supply enough water for the plants, the Bureau of Reclamation proposed damming the Yellowstone, building as many as nine reservoirs, and constructing an extensive network of large aqueducts.

"The Yellowstone River is an exceptional trout fishery and the only major uncontrolled river in Montana," said James Posewitz of the Montana Fish and Game Department. "One of the major issues is going to be whether we dam the Yellowstone."

POWER NEEDS SEEN

The North Central Power Study, a joint project of the U.S. Bureau of Reclamation and some 35 utilities, proposed 42 mine mouth, coal-burning power plants—21 in eastern Montana, 15 in Wyoming (which would require Montana water), four in southeastern North Dakota and one small plant in both South Dakota and Colorado.

The plants would produce 53,000 megawatts of power.

Even with the coal's low sulfur content and proposed federal standards for such plants, they would still produce approximately 2.1 million tons of sulfur dioxide a year, according to the EDF study.

"This material will, in turn, yield an as yet unspecified mixture of sulfurous and sulfuric acids to be deposited downwind on farmland and communities," the study added.

It calculated the plants would produce anywhere from 94,500 to 787,500 tons of fly ash a year and as much as 1.87 million tons of nitrogen dioxide.

The prevailing wind most likely would carry the pollution eastward across the wheat fields and prairies toward the Black Hills.

"The Black Hills—they'll be black, black with soot," said Rep. George Darrow, a member of the Montana House of Representatives, the chairman of the state's Environmental Quality Council and a geologist.

Montana Power is constructing two 350-megawatt units at Colstrip, Mont., where its subsidiary, Western Energy, is strip-mining. It is using the first of the proposed mine mouth plants.

An alternative to these plants, which some consider obsolete and inefficient, is gasification plants that turn the coal into synthetic pipeline gas. Steam generators convert only 30–40% of the coal's energy into electricity while gasification has a 60% efficiency rate. Possible pollution from gasification plants includes sulfur compounds, ammonia, hydrogen cyanide and hydrogen chloride.

PLANTS PLANNED

Two gasification plants are under consideration for Dawson County, one near Hardin and another near Sarpy Creek, all in southeastern Montana.

Another possibility, given additional technology development, is multiproduct complexes that produce electricity, liquid and gas fuels and petrochemicals. Their coal and water demands would be enormous.

It is the multiproducts complexes that could touch off a population explosion. A Bureau of Reclamation memo estimated the area's population could increase during the next 15 years by another 280,000 to 912,000 persons. The population of the entire state was only 694,409 in the 1970 census.

The amount of strip mining already under way is small—primarily in the Decker Birney area and near Colstrip where both Western Energy and Peabody Coal Co. have pits—but it is expected to mushroom in the next few years.

Most of the coal is shipped out of state, sometimes a long way out. Burlington Northern recently transported 20,000 tons of coal 1,730 miles from Colstrip to a Tennessee Valley Authority plant.

State Lands Commissioner Ted Schwinden said, "This represents a continuation of what has been the traditional history of Montana—exploitation of its resources with a minimum of economic benefit to the state.

"We are left with a hole in the ground and the resource is gone forever."

Strip mining is not new to Montana. In 1923, the Northern Pacific Railroad (now Burlington Northern) began strip-mining coal for its steam locomotives at Colstrip and continued until 1958.

PLANNING URGED

South of Colstrip, the old NP spoils banks still rise like giant lumps of white dough, arid and eroded, against the blue sky. Only occasional tufts of weeds decorate them. Some fear these are a harbinger of eastern Montana's future landscape.

Rep. Darrow believes the coal development "has to be done with far more advance planning and forethought" than there has been.

"The mining could be accomplished with a minimal amount of land disruption," he said. "We don't need to open up a dozen mines simultaneously and have scattered fragmented exploitation."

Only now is some effort beginning toward finding answers and toward planning for what most regard as the inevitable.

TASK FORCE FORMED

Mrs. John Cross of Glendive told a meeting of the Economic Development Assn. of East-

ern Montana: "Events are happening so fast that few Montanans fully realize what effect the so-called coal development is going to have on their lives and on their environment. We will soon be in the position of locking the barn after the horse is stolen."

A task force of state agencies was recently formed to provide comprehensive planning that would consider social, economic and environmental factors.

The Bureau of Land Management, meanwhile, is delaying action on lease applications.

"Why lease further areas when you don't know what you are doing?" one Bureau official in Billings said.

No such concern is expressed by the Bureau of Indian Affairs, which has granted leases and options on nearly 600,000 acres of Crow and Northern Cheyenne Indian land in Eastern Montana.

M. W. Babby, Indian Affairs assistant area director in Billings, indicated he feared that unless the coal was exploited now it would become valueless when new energy sources were found.

"We are going ahead and leasing it," he said. "It is an asset, and there are indications coal will be a salable product for only a few years."

A recent General Accounting Office report noted that the BIA takes the position the Environmental Protection Act does not apply to Indian lands and environmental impact statements are not required for coal exploration and mining projects.

The report criticized both the BLM and the BIA for failing to comply with Interior Department and environmental regulations for coal leasing and reclamation.

Perhaps the biggest question is whether the land can be reclaimed at all without constant and endless care and fertilization.

Optimists point to the experiment of Richard L. Hodder of the Montana Agricultural Experiment Station, financed by Western Energy at its Colstrip mine. He is studying various combinations of contouring, surface shaping, fertilizing and vegetation.

Hodder believes strip mining and reclamation can be one continuous process. In his method, when earth is removed to get at coal, it is used to fill any adjacent hole where a vein already has been mined. The spoil banks are then contoured, fertilized and planted as part of the reclamation project.

"I think reclamation is very possible over the long haul," he said. "Certainly I have demonstrated that it is on the short haul . . . I think the potential is very great for producing more than what the area produced previous to mining."

But a rancher in the area said, "With the amount of fertilizer they are spreading on, I could grow grass on a roof."

Hodder said, "We are trying to reproduce a country similar to what is here now—not the flat-topped buttes—but less high highs rounded in such a irregular fashion that they will fit into the natural landscape."

Hodder warned that reclamation work had to start before extraction did and continue simultaneously. Core samples must be analyzed to determine whether topsoil should be stockpiled and what kind of vegetation will grow best on it.

The Burlington Northern has begun reclaiming the old NP spoil banks at Colstrip and estimates it will cost $1 million for one thousand acres—$1,000 an acre.

Montana law required that companies post bonds to guarantee reclamation. But Northey said the maximum limit is $500 an acre. This could be less than the cost of reclamation.

Mr. MOSS. Mr. President, it now appears there is little possibility of Senate action on surface mining legislation before adjournment. If the Senate does not act on the surface mining measure this year, I call upon the leadership to make the consideration of such legislation the No. 1 priority of the 93d Congress.

I pledge to you, as chairman of the Subcommittee on Minerals, Materials and Fuels that I will do all I can to report to the Senate a strong balanced measure by March 1 of next year. H.R. 6482, S. 63, and the Jackson amendment give an excellent basis upon which to begin.

Mr. MANSFIELD. Mr. President, I have listened to the remarks of the able Senator from Utah (Mr. Moss) with great interest and I recognize he is accurate in his analysis of the current situation on surface mining legislation. I hope that Congress will take the initiative in adopting strong surface mining legislation this year. I appreciate the efforts of the Senate Interior Committee in reporting the resolution which would place a temporary moratorium on coal leasing and development on public lands in Montana.

The issue of surface mining and the consequences associated with this method has created a most difficult problem in the West. Because of projected power shortages, many interests see development of these vast coal deposits as new, untapped sources of energy. This must be approached cautiously. I believe too little attention is being given to conservation of our energy sources. Commercial exploration of these coal resources in Montana, Wyoming, the Dakotas, and other neighboring States without appropriate controls can lead to ultimate disaster far exceeding anything experienced in Appalachia.

I have given considerable thought to this issue in recent months and I have come to the conclusion that the only way the interests of my State can be fully protected is to adopt an absolute moratorium on all new strip mining on Federal lands until such time as it can be demonstrated that the developers have and will use appropriate technology to achieve necessary reclamation of these mined lands for future generations. Such a moratorium is necessary in view of the inability of the Congress, the Executive, and the individual States to adopt appropriate safeguards.

I believe the various Federal agencies involved in administering the vast acreage of Federal lands in the West have been derelict in refusing to issue regulations governing surface mining. These agencies were put on notice some 2 years ago but, to date, they have offered nothing in the way of constructive programs. The Congress has addressed itself to this situation but, because of the very serious conflicts between industry and environmental interests, we have not been able to muster sufficient support. It is an issue that must be given a position of priority in the 93d Congress.

I also believe that the individual State legislatures are going to have to address themselves to this issue. In the State of Montana, large coal development companies are acquiring surface rights without concern for the individual. The landowner is forced to accept the offered price because of State laws. Private companies holding mineral rights have the power of eminent domain. A large portion of eastern Montana was settled under the Homestead Act. At the time the United States patented land to homesteaders, I am convinced that it was not contemplated that these lands would be subjected to strip mining.

We in the Congress have the responsibility of protecting the individual rights. I do not want to see the ranchers and farmers of eastern Montana forced off their land in the name of coal development which would leave the eastern part of the State an ugly eyesore to plague future generations. We sympathize with the most difficult situation facing our friends in Appalachia who live with the disastrous effects of uncontrolled strip mining. We have a responsibility to see that this part of our Nation is given all possible support in its efforts to redevelop.

Mr. President, again I wish to recommend as strongly as I can the need for a total ban on all new strip mining on Federal lands until we have a satisfactory program of reclamation. I believe that new laws governing reclamation of mined lands should not only apply to Federal leases but also to any private lands from which coal or other minerals enter interstate commerce. I am as interested in the economic development of Montana as any resident of the State but I certainly am opposed to uncontrolled destruction of the land. I might point out that the ultimate benefit from the proposed mining power generation program will not be in Montana. Power generation is designed to meet the increased demands of the urban areas far away from eastern Montana

I have discussed this issue many times with my colleague, Senator LEE METCALF, whom I know shares my concern as a major proponent of strong surface mining legislation. I want to go on record today stating that Congress will hear more on this subject from the Senators from Montana in 1973.

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

The resolution (S. Res. 377) was agreed to as follows:

Resolved, That it is the sense of the Senate that the Secretary of the Interior exercise his authority under existing law and withdraw temporarily from prospecting and exploration, lease, or other disposal subject to valid existing rights, deposits of coal owned by the United States in the State of Montana which can only be mined by surface mining methods, suspend, pending applications for coal permits and, in accordance with the provisions of the Mineral Leasing Act of 1920 (30 U.S.C. 209), suspend all coal leases for surface mine operations not in actual production, or in diligent prosecution leading toward production, for a period of one year from the effective date hereof, or until Congress enacts legislation for the control of surface mining prior to the expiration of such one year period.

Mr. MANSFIELD. Mr. President, I move to reconsider the vote by which the resolution was passed.

Mr. PASTORE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMERICAN-MEXICAN BOUNDARY TREATY ACT OF 1972

The Senate proceeded to consider the bill (H.R. 15461) 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, which had been reported from the Committee on Foreign Relations with an amendment on page 6, after line 19, strike out:

SEC. 109. For purposes of chapter 1 of the Internal Revenue Code of 1954, any property or business or interest therein, located in the same general area as the property acquired by purchase or condemnation under paragraph (2) of section 101 of this title shall be treated as property similar or related in service or use to the property so acquired.

The amendment was agreed to.

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

The bill was read the third time, and passed.

Mr. MANSFIELD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. PASTORE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

SALE OF CERTAIN RESERVED MINERAL INTERESTS

The bill (H.R. 10556) to authorize the Secretary of the Interior to sell reserved mineral interests of the United States in certain land in Georgia to Thomas A. Buiso, the record owner of the surface thereof, was considered, ordered to a third reading, read the third time, and passed.

Mr. MANSFIELD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. PASTORE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MANSFIELD. Mr. President, that concludes the call of the calendar at this time.

HOHOKAM PIMA NATIONAL MONUMENT

Mr. FANNIN. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on H.R. 8756.

The PRESIDING OFFICER laid before the Senate H.R. 8756, to provide for the establishment of the Hohokam Pima National Monument in the vicinity of the Snaketown Archaeological Site, Ariz., and for other purposes, which was read twice by its title.

Mr. FANNIN. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of the bill.

The PRESIDING OFFICER. Is there objection?

There being no objection, the Senate proceeded to consider the bill.

Mr. FANNIN. Mr. President, this matter has been cleared on both sides. On October 9, the Senate Interior Committee reported an identical bill, S. 1927, Calendar No. 1225. This bill is identical in every way to the provisions of H.R. 8756. Therefore, in order to send this measure to the White House, I move the passage of H.R. 8756.

The PRESIDING OFFICER. The question is on the third reading and passage of the bill.

The bill (H.R. 8756) was ordered to a third reading, read the third time, and passed.

Mr. FANNIN. Mr. President, I ask unanimous consent that S. 1927 be indefinitely postponed.

The PRESIDING OFFICER. Without objection, S. 1927 will be indefinitely postponed.

UNANIMOUS-CONSENT AGREEMENT ON S. 3342, A BILL TO AMEND TITLE IV OF THE CLEAN AIR ACT

Mr. ROBERT C. BYRD. Mr. President, I send to the desk a unanimous-consent request and ask unanimous consent that it be agreed to. It has been cleared on all sides.

The PRESIDING OFFICER. The unanimous-consent request will be stated.

The assistant legislative clerk read as follows:

UNANIMOUS-CONSENT AGREEMENT

Ordered, That when and if S. 3342 or its House passed counterpart H.R. 11021 is brought before the Senate, debate on the Brooke amendment shall be limited to 2 hours, and debate on any other amendment, motion, or appeal, except a motion to lay on the table, shall be limited to 1 hour, to be equally divided and controlled by the mover of any such amendment or motion and the manager of the bill; *Provided*, That in the event the manager of the bill is in favor of any such amendment or motion, the time in opposition thereto shall be controlled by the minority leader or some Senator designated by him: *Prvided further*, That no amendment that is not germane to the provisions of the said bill shall be received.

Ordered further, That on the question of the final passage of the said bill debate shall be limited to 3 hours, to be equally divided and controlled, respectively, by the majority and minority leaders: *Provided*, That the said leaders, or either of them, may, from the time under their control on the passage of the said bill, allot additional time to any Senator during the consideration of any amendment, motion, or appeal.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request? The Chair hears none, and it is so ordered.

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

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

PROGRAM REQUIREMENTS FOR ANTARCTIC RESEARCH

A letter from the Acting Director of the National Science Foundation submitting a table showing the reprograming requirements for Antarctic Research (with accompanying papers); to the Committee on Appropriations.

DISPOSAL OF SURPLUS FEDERAL PROPERTY

A letter from the Secretary of the Interior transmitting, pursuant to law, a report covering the disposal of surplus Federal real property for park and recreation purposes (with accompanying report); to the Committee on Interior and Insular Affairs.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. FANNIN (for Mr. LONG), from the Committee on Finance, with amendments:

H.R. 1467. An act to amend the Internal Revenue Code of 1954 with respect to personal exemptions in the case of American Samoans (Rept. No. 92–1290).

By Mr. McCLELLAN, from the Committee on Appropriations, with amendment:

H.R. 17034. An act making supplemental appropriations for the fiscal year ending June 30, 1973, and for other purposes (Rept. No. 92–1297).

By Mr. MAGNUSON, from the Committee on Commerce, without amendment:

H.R. 10384. An act to release certain restrictions on the acquisition of lands for recreational development and for the protection of natural resources at fish and wildlife areas administered by the Secretary of the Interior (Rept. No. 92–1291).

By Mr. FULBRIGHT, from the Committee on Foreign Relations, without amendment:

S. 4039. A bill to amend Public Law 90–553 concerning an international center for sites for chanceries for foreign embassies (Rept. No. 92–1293).

By Mr. HARRY F. BYRD, JR., from the Committee on Armed Services, with an amendment:

H.R. 14911. An act to amend titles 10 and 37, United States Code, to authorize members of the Armed Forces who are in a missing status to accumulate leave without limitation, and for other purposes (Rept. No. 92–1294).

By Mr. EAGLETON, from the Committee on the District of Columbia, without amendment:

H.R. 15965. An act to amend the District of Columbia Teachers' Salary Act of 1955 to increase salaries, to provide certain revisions in the retirement benefits of public school teachers and for other purposes (Rept. No. 92–1295).

By Mr. BENNETT, from the Committee on Finance, with amendments:

H.R. 16810. An act to provide for a temporary increase in the public debt limit and to place a limitation on expenditures and net lending for the fiscal year ending June 30, 1973 (Rept. No. 92–1292), together with minority views.

By Mr. HARRY F. BYRD, JR., from the Committee on Armed Services, without amendment:

S. 3237. A bill to authorize an additional Deputy Secretary of Defense, and for other purposes (Rept. No. 92–1296).

EXECUTIVE REPORTS OF COMMITTEES

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

By Mr. EASTLAND, from the Committee on the Judiciary:

Frank H. Freedman, of Massachusetts, to be a U.S. district judge for the district of Massachusetts;

Hernan G. Pesquera, of Puerto Rico, to be U.S. district judge for the district of Puerto Rico;

Donald D. Forsht, of Florida, to be U.S. marshal for the southern district of Florida;

Joseph L. Tauro, of Massachusetts, to be a U.S. district judge for the district of Massachusetts;

H. Emory Widener, Jr., of Virginia, to be a U.S. circuit judge, fourth circuit;

Kevin Thomas Duffy, of New York, to be U.S. district judge for the southern district of New York;

Robert J. Ward, of New York, to be a U.S. district judge for the southern district of New York; and

James C. Turk, of Virginia, to be a U.S. district judge for the western district of Virginia.

Mr. MAGNUSON. Mr. President, as in executive session, from the Committee on Commerce, I report favorably sundry nominations in the Coast Guard which have previously appeared in the CONGRESSIONAL RECORD and to save the expense of printing them on the Executive Calendar, I ask unanimous consent that they lie on the Secretary's desk for the information of Senators.

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

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

Donald M. Thomson, Jr., and sundry other officers, for promotion in the U.S. Coast Guard.

Mr. FULBRIGHT. Mr. President, as in executive session, from the Committee on Foreign Relations, I report favorably sundry nominations in the Diplomatic and Foreign Service which have previously appeared in the CONGRESSIONAL RECORD and, to save the expense of printing them on the Executive Calendar, I ask unanimous consent that they lie on the Secretary's desk for the information of Senators.

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

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

Charles S. Ahlgren, of Iowa, and sundry other persons, for promotion in the diplomatic and foreign service.

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. PERCY:

S. 4089. A bill to amend the National Housing Act to provide counseling and related services to homebuyers and to deny certain benefits to persons engaging in unethical practices in the sale of federally assisted housing. Referred to the Committee on Banking, Housing, and Urban Affairs.

By Mr. BAYH:

S. 4090. A bill to amend the Internal revenue Code to encourage the continuation of small family farms, and for other purposes. Referred to the Committee on Finance.

By Mr. MONDALE:

S. 4091. A bill for the relief of Victor DiBello. Referred to the Committee on the Judiciary.

By Mr. MONTOYA:

S. 4092. A bill to impose annual quotas on the quantity of potassium chloride or muriate of potash which may be imported into the United States. Referred to the Committee on Finance.

By Mr. MONDALE:

S. 4093. A bill to amend the Atomic Energy Act of 1954 to permit the States concurrently with the Atomic Energy Commission to regulate the emission of radioactive effluents. Referred to the Joint Committee on Atomic Energy.

By Mr. BENNETT:

S. 4094. A bill for the relief of Elsa Bibiana Paz Soldan. Referred to the Committee on the Judiciary.

By Mr. MONDALE:

S. 4095. A bill for the relief of Mrs. Sabir Dairkee; and

S. 4096. A bill for the relief of Mrs. Fay Caleb. Referred to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. PERCY:

S. 4089. A bil to amend the National Housing Act to provide counseling and related services to homebuyers and to deny certain benefits to persons engaging in unethical practices in the sale of federally assisted housing. Referred to the Committee on Banking, Housing and Urban Affairs.

ACTION ON BEHALF OF THE HOMEOWNER

Mr. PERCY. Mr. President, Federal programs for low- and moderate-income housing, particularly the so-called interest subsidy programs, continue to be, and rightly so, one of the most widely discussed and hotly debated domestic topics.

I had the privilege last April to appear before the annual convention of the National Association of Building Manufacturers to discuss our housing programs. I proposed then that the Federal Housing Administration undergo a fundamental, top-to-bottom reorganization into a consumer-oriented agency dedicated first and foremost to delivering a quality product to the homebuyer and not to protecting the financial health of the mortgage banker. Nothing short of a basic change in attitude and approach on the part of FHA, including the abandonment once and for all of what some regard as the Agency's outmoded philosophy of caveat emptor, will be sufficient to reestablish public trust and confidence in this Agency.

In my address I suggested some specific steps that FHA might take to accomplish a thoroughgoing reform. I followed this address by introducing in August a bill to strengthen provisions for compensating homeowners who unwittingly had purchased a defective or shoddily constructed home. Furthermore, I wrote to George Romney, the Secretary of the Department of Housing and Urban Development, about his authority to implement my reform proposals by Executive action.

Today I am proposing a Homeowner's Protection Act to provide the Secretary with the necessary tools to bring about a transformation in the FHA. This new authority will complement that which the Secretary feels he now possesses to act on behalf of the housing consumer. So that there will be no doubt where the Congress stands on this matter, I am also submitting a resolution urging the Secretary to make full use of existing authority.

I want to emphasize that Secretary Romney has been most candid in acknowledging the existence of and accepting responsibility for severe problems in the administration of many programs within his jurisdiction. By word and deed, the Secretary and his associates have admitted that FHA is, in the words of one unnamed aide, "a debacle where it—FHA—is needed—in the cities."

To his credit, the Secretary did not try to hide or obscure the facts. He did not suppress the now-famous HUD audit reports that pinpointed laxity in the management of the 235 and 236 programs, but rather made them public. He ordered his subordinates to cooperate fully with various grand jury investigations. And he took several significant steps to protect the homebuyer from fraud and abuse by tightening up the procedures for the issuance of FHA mortgage insurance, particularly with respect to appraisals of inner-city properties, and by making appropriate changes in the training and assignment of FHA personnel.

I welcome and applaud these efforts by the Secretary as well as his statement to me that "HUD needs to become more consumer-oriented." The Secretary has outlined for me several areas in which immediate steps may be taken on behalf of the homeowner and I want to pass this information along to my colleagues. In these cases the authority to act exists. If the commitment to the consumer is present, and if the authority to act in his behalf is available, then there is no excuse for delay in implementing basic changes in FHA's operations.

HUD area offices, the day-to-day operating area of FHA, have authority to refuse to do business with a builder, developer, real estate broker, mortgage banker, "project packager," or any other participant in the homebuying process if there is "substantial evidence" that he has acted illegally or unethically in violation of law or regulation.

They have the authority to require that all new or existing homes insured by FHA comply with all State and local codes as well as Federal standards.

HUD has the authority to impose the same standards required of HUD-acquired properties rehabilitated for resale on properties to be insured under all FHA programs. In many cases the same standards are applied.

HUD does have the authority to conduct pre- and post-purchase counseling of both homebuyers and renters. And this is being done on a limited scale through demonstration projects in a number of areas across the country.

HUD has authority to conduct post-purchase inspections of new and existing properties to aid the consumer in identifying and making repairs. It is presently using the authority only in "unusual problem cases" because of potential additional workload.

HUD does have the authority to decentralize its operations. Several new area offices equipped to provide information about available housing and related matters as well as counseling services have been established recently.

HUD has the authority and has taken steps recently to assure a long-term commitment on the part of sponsors and management agencies of 236 multifamily projects. A training program for housing managers is being developed under a nonprofit, private institution called the National Center for Housing Management.

It is reassuring to know that the authority exists for the Secretary and the FHA to take decisive action in so many areas. A question remains at this juncture, however, about how fully and how effectively the Secretary and other Department officials will use the power they

possess to change fundamentally the orientation of the FHA. My own position is clear: I urge the Secretary to use every shred of his authority now, without delay and without equivocation.

If the Secretary does move decisively on this issue, then I believe he will have the complete and enthusiastic support of all Members of the U.S. Senate. In order to demonstrate this support in the clearest possible manner, I am introducing today a resolution calling upon the Secretary to take all necessary steps and to use all existing authority to put FHA on the side of the consumer.

Some tools for accomplishing this objective are not presently available to HUD, and Congress must provide them. For one thing, HUD can do little now to require that real estate brokers disclose to prospective homebuyers full information about all properties available in a particular area and show to the consumer all those properties which he requests to see. My Homeowner's Protection Act will give the Department this authority.

In addition, my bill authorizes the Department to carry the process of decentralization to its logical conclusion by setting up neighborhood offices in areas of intense mortgage activity to provide full information, assistance, and counseling to the consumer. Some may question this action because of the additional personnel which would be required. The manpower problem may already account for HUD's reluctance to undertake a large scale in-house counseling program as well as a program of post-purchase inspection.

But are we really gaining anything by rigid economies in government when the end result of not adequately staffing the area offices, of not providing badly needed counseling services and post-purchase inspections, of not, in other words, meeting the legitimate needs of the consumer at the local level, is default, foreclosure, abandonment, and the further decay of our great cities? The answer it seems to me, is obvious.

Mr. President, I am sure my colleagues will agree that we have reached the point of diminishing returns with respect to committee investigations and staff studies. We all have a clear idea of what the problems are and the range of possible solutions.

I for one believe the programs are sound, but that FHA has taken too passive a role in implementing them, particularly with respect to properties located in the inner cities. It is not too late for FHA to assume a new posture or to accelerate the movement that has begun. I urge Secretary Romney to do what he can to achieve this objective. I urge my colleagues to join with me in providing the Secretary with the authority and the funds he may require to do the job.

By Mr. BAYH:

S. 4090. A bill to amend the Internal Revenue Code to encourage the continuation of small family farms, and for other purposes. Referred to the Committee on Finance.

FAMILY FARM INHERITANCE ACT

Mr. BAYH. Mr. President, I am pleased to introduce today for appropriate reference, the Family Farm Inheritance Act.

Agriculture is a vital segment of our economy, as every American realizes. It is still the No. 1 industry in this country, employing more Americans than any other field. Indeed, more people are employed in agriculture than in the transportation, steel, and automobile industries combined. One out of every $10 of our gross national product is directly attributable to the food industry. And the American people buy their food for a far smaller portion of their income than any other people in the world.

But while the American people have benefited from the size and efficiency of our farm industry, the individual farmer has been having a progressively harder time making ends meet. Fifty years ago there were about 32 million Americans—more than 30 percent of the entire population—living on the farm; today there are only about 9 million Americans—slightly more than 4 percent of our population—still on the farm. This number is decreasing steadily. Moreover, it is the small farmer, the family farmer, who is being forced off the farm into our already overcrowded cities. In fact, every day about 300 family farms in this country have to be abandoned by their owners because they are no longer viable.

The reasons for the demise of the family farmer are evident. While food prices in this country have gone up along with everything else, the farmer often has not shared in this increase. Food price increases have gone to retailers and middlemen, but too many farmers have seen their share of the retail food dollar remain constant, and at times, decline. At the same time, while the average American non-farm-worker labors an average of only 37 hours a week, the average farmer works 50 hours a week and earns less for his time. Farmers receive an average of only 5.4 percent return on their investment whereas there is a 10 to 12 percent return on investment in industry.

Perhaps one of the greatest problems faced by farm families is the estate tax—a tax which is uniquely burdensome for farmers because it is usually based on the exorbitant real estate value of the land rather than on its far lower farming value of profitability. Children who have spent years working the farm with their parents are suddenly confronted with a large tax when the owner of their operation dies. For a small farmer, estate taxes are particularly severe because most of his assets are generally nonliquid: his farm, his farmhouse, his livestock, his crops, and equipment comprise the bulk of his assets and they are all essential to the profitable operation of the farm. Nonfarmers, if only because their return on investment is usually greater, normally have a greater percentage of liquid assets with which they can meet estate taxes.

To illustrate the problem faced by family farmers, let us take the hypothetical case of a Mr. Jones, Jr., who is left a 300-acre farm valued at $700 an acre, plus farm equipment, crops, and farmhouse, for a total valuation of $280,000. At the prevailing tax rate, he would have to pay $56,700 in Federal estate taxes. An average small farmer, Mr. Jones makes only about $10,000 a year from his farm; the income is already stretched thin to cover new farm equipment and family expenses. Assuming that Mr. Jones does not have large savings, he would be forced to either take out a mortgage on the farm—if it is not already mortgaged—or sell part of his land in order to pay the estate tax on his father's farm. Either way, he would decrease by a considerable margin the already small profit he is able to make from the farm. Furthermore, the burden of estate taxes could very possibly be so great that Mr. Jones, Jr., might find out that he can no longer make enough money on the farm to support his family. Thus he would be forced to sell the farm and look for work elsewhere.

Unless we want to see a continuing decline in the number of family farmers, and an eventual domination of the farm industry by large corporate farms, it is essential to help small farmers meet what are now unbearably high estate taxes.

The bill I am introducing today excludes the first $200,000 in value of the family farm from the taxable estate of those farmers who have managed their own farms during their lives and have willed it to relatives who plan to carry on this tradition. All such family farms must be actively used to raise agricultural crops of livestock for profit rather than as a hobby. To be specific, in order to qualify for the exemption, the decedent must have owned the farm for at least 5 years and must have exercised substantial management and control over the farm before he died. Those who inherit must not only continue to exercise substantial management and control over the farm, but must also maintain ownership and live on the farm for at least 5 years. In the event that a farm is willed to several children, all inheritors are covered by the bill if one of them meets the residency and management qualifications set forth in the bill.

As to the problem of Mr. Jones, Jr., under this bill he would qualify for the $200,000 farm exemption in addition to the standard $60,000 exemption granted to all citizens. Thus, Mr. Jones, Jr. would pay a total of $1,300 of estate taxes on $20,000 worth of his father's $280,000 farming estate. In the event that a family farm is willed as part of a larger estate, taxes would still be paid at the regular rate on all nonfarming portions of the estate.

Mr. President, I am introducing this legislation today because I intend to seek comments from my colleagues, the Department of Treasury, and others during the congressional recess. As you know, tax reform will be considered next session. After reevaluating my proposal on the basis on all received suggestions, I plan to introduce the bill in January and seek consideration of it along with

other tax reform measures. I believe this proposal deserves serious study on the part of all Senators who are concerned about the declining interest in farming and the resulting concentration of agriculture. Unless rural living is presented as an equally sustaining and appealing career possibility for young people, this Nation will too soon be a homogeneous collection of crowded city dwellers. Mr. President, I ask unanimous consent that a copy of the bill be printed at this point in the RECORD.

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

S. 4060

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 "Family Farm Inheritance Act."

SEC. 2. Part IV of Chapter 11B of the Internal Revenue Code of 1954 (relating to deductions from the gross estate) is amended by adding at the end thereof the following new section:

"§ 2057. Interests in Family Farming Operations.

"(a) GENERAL RULE.—For purposes of the tax imposed by section 2001, the value of the taxable estate shall be determined by deducting from the value of the gross estate the lesser of (1) $200,000, and (2) the value of the decedent's interest in a family farming operation continually owned by him or his spouse during the five years prior to the date of his death and which passes or has passed to an individual or individuals related to him or his spouse.

"(b) SUBSEQUENT DISQUALIFICATION RESULTS IN DEFICIENCY.—The difference between the tax actually paid under this chapter on the transfer of the estate and the tax which would have been paid on that transfer had the interest in a family farming operation not given rise to the deduction allowed by paragraph (a) shall be a deficiency in the payment of the tax assessed under this chapter on that estate unless, for at least five years after the decedent's death—

"(1) the interest which gave rise to the deduction is retained by the individual or individuals to whom such interest passed, and

"(2) the individual or any of the individuals to whom the interest passed resides on such farm, and

"(3) such farm continues to qualify as a family farming operation.

"(c) DEATH OF SUBSEQUENT HOLDER.—In the case of the subsequent death of an individual to whom the interest in a family farming operation has passed, his successor shall be considered in his place for purposes of paragraph (b).

"(d) DEFINITIONS.—

"(1) FAMILY FARMING OPERATION.—A "family farming operation" is a farm:

"(A) actively engaged in raising agricultural crops of livestock 'for profit', within the meaning of section 183, and

"(B) over which the owner or one of the owners exercises substantial personal control and supervision.

"(2) RELATIONS.—An individual is 'related' to the decedent or his spouse if he is that person's father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister."

By Mr. MONTOYA:

S. 4092. A bill to impose annual quotas on the quantity of potassium chloride or muriate of potash which may be imported into the United States. Referred to the Committee on Finance.

IMPORT QUOTA BILL FOR POTASH

Mr. MONTOYA. Mr. President, some weeks ago I expressed to the Senate my concern over a threat to the U.S. potash industry from Canada. I indicated at that time that the Saskatchewan potash industry, which had been found guilty of dumping potash into this country in 1969, had since been restrained by the Saskatchewan government which instituted a strict program of production prorationing and price control. I also indicated that the Saskatchewan program might come under serious legal attack by one Saskatchewan producer. I am sorry to report that this has since occurred.

I am advised that opinion in Canada is divided as to whether the Saskatchewan government program will survive this legal attack. It is clear, however, that there is a very real danger that the program will be destroyed and that the independent potash producers in Saskatchewan will return to full production and to unrestrained efforts to import potash into this country at any price.

If this occurs, the result will be chaos and irreparable damage to an industry vital to the United States. Our own Tariff Commission found in 1969 that substantial injury had been done to the industry by the unrestrained sale here of Saskatchewan potash before the prorationing program was instituted.

Since that time, the capacity of the producers in Saskatchewan has increased markedly. We cannot afford to let such a blow fall again on this industry. A number of jobs would be lost, our balance of payments would suffer, and after much of our industry has been driven out of business, we could confidently expect prices to rise again since there would be no motive to offer potash at cut rate prices as there would no longer be a viable domestic industry with which the Canadians could compete. The United States would gain nothing in the long run—and valuable deposits of ore would be wasted as well as the investment of many Americans in the potash mines and facilities in New Mexico.

I am therefore, reintroducing at this time a bill to limit imports of potash to historical levels, a bill very similar to one which I introduced in 1969. Changes have been made to reflect the continued growth of imports since that time. I will submit this bill again during the next session of Congress, but I believe that it is important to introduce it now so that time will be permitted for its consideration before the next session of Congress. If the Saskatchewan program is defeated in the Canadian courts before Congress reconvenes, action will be needed very quickly in January.

Legislation such as this, which affects trade with an important trading partner, should not be necessary and would not be necessary if Canadian authorities could find a way to continue to exercise control over their own industry. By requiring controls up to this time, Canada concedes that such control is needed. But if the Canadian Government does not continue to control their potash production, the United States has no alternative but to act forthrightly to protect our domestic producers.

By Mr. MONDALE:

S. 4093. A bill to amend the Atomic Energy Act of 1954 to permit the States concurrently with the Atomic Energy Commission to regulate the emission of radioactive effluents. Referred to the Joint Committee on Atomic Energy.

Mr. MONDALE. Mr. President, I am today introducing a bill to amend the Atomic Energy Act to enable States to exercise concurrent regulatory authority with the Atomic Energy Commission over the release and disposal of radioactive wastes from atomic energy facilities.

An identical bill is being introduced in the House of Representatives by my colleague from Minnesota, Representative DONALD M. FRASER.

This proposal would empower States to impose more stringent controls over the discharge of wastes from nuclear powerplants than the regulations set by the AEC. It reflects the widely shared view of public officials of the State of Minnesota, including Gov. Wendell R. Anderson and the Minnesota Pollution Control Agency, and of officials of many other States, that State regulation of atomic energy facilities is often necessary to enable States to carry out their responsibilities for protection of the public health, safety, and the environment.

In the State of Minnesota, intense concern exists among private citizens and public officials over the release of radioactive emissions from nuclear powerplants. This concern stems from major questions as to the adequacy of the AEC's regulatory program. By law, the Atomic Energy Commission is charged with dual responsibility for the promotion and regulation of atomic energy installations. This results in a conflict of interest between these functions, permitting promotional activities to predominate over regulatory functions.

Minnesota's right to set standards over radioactive discharges—beyond the standards set by the AEC—was contested in Federal courts on the grounds that the Federal Government had preempted such regulatory authority. The Supreme Court ruled on April 3, 1972, that the Federal Government under the Atomic Energy Act does have sole authority to regulate radioactive releases from nuclear powerplants.

Last May, following the Supreme Court's decision, the Senate narrowly rejected and amendment offered by the Senator from Pennsylvania (Mr. SCHWEIKER), which I cosponsored, to enable States to enter into agreements with the Atomic Energy Commission for more stringent regulation of radioactive emissions. The Schweiker amendment provided for the discontinuance of the AEC and the assumption of State regulatory

authority for regulation of radioactive discharges into the environment.

The bill I offer today is designed to achieve the same objective as the measure I cosponsored with Senator SCHWEIKER—to give the States the right to impose more stringent controls over radioactive emissions. However, my proposal would use an alternative approach, providing for concurrent Federal and State regulatory authority. Before the Supreme Court's ruling last April, the State of Minnesota had argued that Federal law did not preclude the right of States to exercise such concurrent authority.

My bill would retain the existing regulatory program of the Atomic Energy Commission over the discharge or disposal of radioactive wastes. However, it would permit States to strengthen the Federal program through the concurrent application of more restrictive State standards.

State regulations, would be subject to the limitation that they are for protection of the public health and safety and that action permitted by the State with respect to discharge or disposal of radioactive effluent is not specifically forbidden by the Commission.

This bill would thus give full recognition to the legitimate interests and responsibilities of the States in protecting the health and safety of their citizens nuclear facilities.

I would like to point out that a number of States have shown support for this kind of State authority. The following States submitted a friend of the court brief in the Minnesota case: Illinois, Maryland, Michigan, Missouri, Pennsylvania, Vermont, Virginia, and Wisconsin. In addition, the Southern Governors Conference presented a brief on behalf of the States of Arkansas, Delaware, Mississippi, and West Virginia.

I feel very strongly that States should have the power to assure that every possible protection is afforded their citizens from the release of radioactivity, and I am hopeful of obtaining affirmative action on my bill to achieve this objective.

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

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

S. 4093

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress finds and declares that—

(1) the control by the several States of the emission of radioactive effluents from facilities regulated by the Atomic Energy Commission is compatible with the development of atomic energy and its regulation on a national scale;

(2) current law does not sufficiently enable the several States to regulate such radioactive emissions in order to protect the public and safety; and

(3) it is the intent of this Act to establish the concurrent authority of the several States to regulate such radioactive emissions, including the authority to enforce standards for such radioactive emissions, which permit lesser quantities of such emissions from such facilities than do the standards established by the Commission.

SEC. 2. Section 274 of the Atomic Energy Act of 1954 is amended—

(1) by striking out paragraph (6) of subsection a, and inserting in lieu thereof the following:

(6) to give full recognition to the legitimate interest and responsibility of each State in matters pertaining to the public health and safety.";

(2) by striking out "No agreement" in subsection c. and inserting in lieu thereof "Subject to subsection o., no agreement"; and

(3) by adding at the end thereof a new subsection as follows:

"o. Nothing in this Act shall be construed to prevent any State from regulating concurrently with the Commission and the discharge of disposal of radioactive effluents from the site of a utilization or production facility in such State, if—

"(1) the requirements or standards imposed by such State are for the protection of the public health and safety, and

"(2) action permitted or tolerated by such State with respect to the discharge or disposal of such effluents is not specifically prohibited by the Commission".

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

S. 3882

At the request of Mr. MONDALE, the Senator from California (Mr. TUNNEY), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Maryland (Mr. BEALL), and the Senator from Hawaii (Mr. INOUYE) were added as cosponsors of S. 3882, to amend the Federal Property and Administrative Services Act of 1949 to provide for the use of excess property by certain grantees.

S. 3909

At the request of Mr. MONDALE, the Senator from Hawaii (Mr. INOUYE), and the Senator from Minnesota (Mr. HUMPHREY) were added as cosponsors of S. 3909, the "Youth Programs Act of 1972."

SENATE RESOLUTION 378—SUBMISSION OF A RESOLUTION CONCERNING THE OPERATIONS OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Mr. PERCY submitted the following resolution:

S. RES. 378

Whereas the Federal Housing Administration of the Department of Housing and Urban Development administers programs designed to promote homeownership among low- and middle-income individuals and families; and

Whereas the doctrine of *caveat emptor* has too often prevailed in the operations of the Department of Housing, particularly the Federal Housing Administration; and

Whereas the hardships which many individuals and families have experienced in purchasing badly constructed, unsafe, or otherwise defective homes could have been prevented in numerous cases if the Federal Housing Administration had effectively carried out its responsibilities; and

Whereas many of the defaults, abandonments, and foreclosures occurring in some Federal homeownership programs could be prevented by a greater involvement with and concern for the home purchaser in the administration of such programs by the Department of Housing and Urban Development: Now therefore, be it

Resolved, That it is the sense of the Senate that the Department of Housing and Urban Development should be primarily concerned with the housing consumer; that the Department's movement toward an activist consumer orientation should be accelerated; that the Secretary of Housing and Urban Development should use fully the power and authority he now possesses to act on behalf of the homebuyer, the homeowner, the tenant, and all other groups of housing consumers with which the Department deals; and that the Department of Housing and Urban Development should obtain such additional personnel as may be necessary to accomplish these objectives.

TEMPORARY INCREASE IN LIMITATION ON PUBLIC DEBT—AMENDMENT

AMENDMENT NO. 1751

(Ordered to be printed and to lie on the table.)

Mr. MATHIAS (for himself, Mr. MONDALE, and Mr. JAVITS) submitted an amendment intended to be proposed by them jointly to the bill (H.R. 16810) to extend the debt limit and provide for a 1973 spending limitation of $250 billion.

AMENDMENT NO. 1753

(Ordered to be printed and to lie on the table.)

Mr. HARTKE submitted an amendment intended to be proposed by him to the bill (H.R. 16810), supra.

CERTAIN EXEMPTIONS FOR AMERICAN SAMOANS—AMENDMENT

AMENDMENT NO. 1752

(Ordered to be printed and to lie on the table.)

Mr. CHURCH. Mr. President, I submit an amendment to H.R. 1467, and ask that it be printed.

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

AMENDMENT NO. 1752

At the end of the bill insert the following new section:

SEC. . (a) section 170(e) of the Internal Revenue Code of 1954 (relating to certain contributions of ordinary income and capital gain property) is amended—

(1) by inserting after "the amount of gain" in paragraph (1)(A) "(or, in the case of a contribution described in paragraph (3), 50 percent of the amount of gain)"; and

(2) by adding at the end thereof the following new paragraph:

"(3) CERTAIN CONTRIBUTIONS OF ORDINARY INCOME PROPERTY.—For purposes of paragraph (1)(A), 50 percent of the amount of gain shall apply with respect to a contribution only if the use by the donee of the property contributed is related to the purpose or function constituting the basis for its exemption under section 501 (or, in the case of a governmental unit, to any purpose or function described in subsection (c)); and shall not, in any case, apply to—

"(A) a contribution to or for the use of a private foundation (as defined in section 509(a)), other than a private foundation described in subsection (b)(1)(E), or

"(B) a contribution by a taxpayer described in section 1221(3) of any letter, memorandum, or similar property which was written, prepared, or produced by or for an individual while he held an office under the Government of the United States or of any State or political subdivision thereof, and

wnich was related to, or arose out of, the performance of the duties of such office."

(b) The amendments made by subsection (a) shall apply to taxable years ending after the date of the enactment of this Act, but only with respect to contributions of property after such date.

Mr. CHURCH. Mr. President, this amendment has been approved by both the chairman and the ranking minority member of the Senate Finance Committee and has, I understand, the approval of the Department of the Treasury. It is a technical change in the Tax Reform Act of 1969 which will correct what my studies indicate was an inadvertent mistreatment of authors and artists under that law.

As some Members will recall, it was during the consideration of the 1969 Tax Reform Act that it came to light that some political figures, both Democratic and Republican, would reap large tax benefits by donating their public papers to libraries or universities. It was the feeling of the Congress that, inasmuch as the taxpayers had, in a sense, already paid for the making of these papers, they should not once again be asked to subsidize them, via the tax deduction route, when they were given away by a public office holder at the conclusion of his career.

In an attempt to solve that problem, Congress changed the tax law. However, in so doing, Congress swung too broad an ax. It not only eliminated the deduction allowable for the donation of public papers of public men, but eliminated the deduction, based on fair market value, which had previously been granted to authors and artists.

The result has been that acquisitions by libraries, museums, and art galleries have been seriously harmed. My amendment would partially reinstate the tax treatment given to authors and artists prior to the passage of the Tax Reform Act of 1969 for up to 50 percent of the fair market value of their works. The amendment makes it clear that this tax advantage will not be granted to public officials.

The intent of the Congress will thus be carried out, and the oversight in the original act, in part at least, will be corrected.

I would personally prefer total reinstatement of the prior law as to authors and artists, but have been advised that the Treasury Department will not support that much of a change. Due to the lateness of the session, I feel compelled to accept the half-loaf offered rather than have no loaf at all.

SURFACE MINING ACT—AMENDMENT

AMENDMENT NO. 1754

(Ordered to be printed and to lie on the table.)

Mr. HANSEN. Mr. President, I send to the desk an amendment to section 13 of H.R. 6482 and ask that it be printed following my remarks in the RECORD.

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

Mr. HANSEN. Mr. President, the most serious environmental problem at this moment which faces us in the State of Wyoming is in the city of Rock Springs, where large areas of the town, and the property situated in those areas, is shifting and buckling because it is above long-abandoned underground coal mines.

This environmental problem is especially serious because it has already had a tremendously adverse effect on the people of Rock Springs. It has damaged their homes and property, and their economic security has been threatened, because of the property damage.

We are not talking about a situation where a possible adverse environmental impact might occur some years in the future, or where esthetics might be jeopardized. We are talking about an environmental problem that already exists, that has already adversely affected the citizens, that requires immediate resolution, and that logically should be a part of any bill aimed at reclaiming mined areas.

The problem in Rock Springs, familiar to many residents of Pennsylvania and Appalachian States, because that is where it is also critical, is called subsidence. In Rock Springs, it has meant to a number of families that their homes, which they worked all their lives to buy, have crumbled and become uninhabitable as the ground beneath them continues to shift and buckle.

The Federal Government is authorized to undertake backfilling projects and to fund corrective measures to control and prevent subsidence—but only in the Appalachian area where anthracite coal is mined. The Government does not now have the authority to backfill underground mine voids which are causing subsidence and the resultant damage in Wyoming, and in a number of other States outside of Appalachia.

In Rock Springs, the Bureau of Mines did fund a project to backfill a tiny portion of the subsidence area in the heart of the city, but this project was a part of a research effort.

If it makes sense for the Government to assist the citizens of Appalachia in meeting the critical problem of subsidence—and I think it does make sense—it certainly makes sense for the Government to extend this same assistance to States outside of Appalachia.

Mr. President, I was pleased the Senate Interior Committee agreed to accept my amendment to the Senate legislation on mined land reclamation to extend the Government's authority to assist with subsidence control in all the States.

The mined land reclamation legislation passed by the House of Representatives contains no such provision, and that is why I am introducing this amendment. I believe it is justified, that it makes sense, and that it surely is in harmony with the overall goal of this legislation—to facilitate the reclamation of mined areas.

AMENDMENT NO. 1754

On page 71, line 4, add the following new subsection (i):

(i) (1) The Congress declares that voids and open and abandoned tunnels, shafts, and entryways resulting from mining constitute a hazard to the public health and safety. The Secretary, at the request of the Governor of any State, is authorized to use money from the Reclamation Fund referred to in Section 12 of this Act to fill such voids and seal such abandoned tunnels, shafts, and entryways which the Secretary determines could endanger life and property or constitute a hazard to the public health and safety.

(2) The Secretary may acquire by purchase, donation or otherwise such interest in land as he determines necessary to carry out the provisions of this section.

ADDITIONAL COSPONSORS OF AN AMENDMENT

AMENDMENT NO. 1691

At the request of Mr. JACKSON, the Senator from Alaska (Mr. GRAVEL) and the Senator from Iowa (Mr. MILLER) was added as a cosponsor of amendment No. 1691 intended to be proposed to the bill (S. 2620), the East-West Trade Relations Act of 1971.

ADDITIONAL STATEMENTS

SENATOR JOHN SHERMAN COOPER

Mr. BUCKLEY. Mr. President, I am happy to join Senators in paying tribute to our beloved colleague JOHN SHERMAN COOPER, who will be retiring shortly. It is customary on such occasions, I know, to praise our departing colleagues in the most glowing terms, to liken their contributions to the commonwealth to those of the great heroes of the Republic, to string out a long series of superlative adjectives and add the name of the particular honored gentleman at the end. There is much in such tributes that is heartfelt, but much also that is fluff and tinsel. But today, it is different. The praise will come forth, and the good works of JOHN COOPER will be extolled; but the difference will be that absolutely everyone will mean absolutely every word he says. For the truth is that no Member of this body has more friends and fewer enemies than has the distinguished senior Senator from Kentucky. To know JOHN COOPER is to be charmed by him. He has, simply by being himself, managed to weave his way into all our hearts; and come next January, all of us, to a man, are going to feel a little lonely. His sense of integrity, his unfailing courtesy, his infectious good humor, and his total congeniality are qualities that few men possess in as much abundance as JOHN SHERMAN COOPER.

The most convincing testimony to the determination of JOHN SHERMAN COOPER is the chronology of his election to the Senate. In 1946, Senator COOPER was elected to fill an unexpired term and then was defeated in 1948. So in 1952 he tried again, and once again was elected to fill an unexpired term, and subsequently, in 1954, defeated. But JOHN COOPER was quite aware of the role destined for him, and he knew full well that he belonged in the Senate of the United States. In 1956, he was again elected to fill an unexpired term, and elected in 1960 for a full term. And now, JOHN SHERMAN COOPER is retiring after completing the term of office for which he was elected in 1966.

I may say that as a member of the Committee on Public Works, I have had the opportunity to work, at the committee level, with Senator COOPER. I know

how much his rare ability to penetrate to the heart of any matter, his dedication and gentleness will be missed on that committee. Without any doubt, his impact on the shape of legislation per words spoken holds some kind of record.

The Senator from Kentucky and I have a number of things in common. We both serve on the Committee on Public Works, we both are World War II veterans, both graduates of Yale. We are both members of the bar.

I hope very much that it will be my privilege to serve in the U.S. Senate for approximately the same number of years as has the Senator from Kentucky. Though I must confess, as I started in politics a little later in life, that I would much prefer my years to be served consecutively.

And I also hope that in those years of service I will be able to contribute one-half as much to the Nation and to the Senate as has that amiable, intelligent, sensitive, and quite essentially gentle man—JOHN SHERMAN COOPER.

RECENT DEVELOPMENTS IN THE MIDDLE EAST

Mr. JACKSON. Mr. President, I would like to commend to my colleagues two timely and astute analyses of the Middle East situation by Prof. Bernard Lewis recently published in the London Times.

Professor Lewis has been professor of history of the Near and Middle East at the University of London since 1949. He is one of the world's leading authorities on the political history of the Middle Eastern area.

Professor Lewis addresses himself in these two articles to the implications of the closer relationship that has developed between the United States and Israel—in terms of Israel's defense needs and diplomatic posture—and the Russian withdrawal from Egypt. His conclusion, which I share, is that—

> The two events are not coincidental but are connected, and the second is in large measure a consequence of the first.

I ask unanimous consent that Professor Lewis' articles, "America's Superior Patronage in the Middle East" and "Dignity or Territory? Egypt is Marking Time," be included at this point in the RECORD.

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

[From the Times, London, Sept. 20, 1972]

A REVIEW OF DEVELOPMENTS IN THE ATTITUDES OF TWO SUPERPOWERS TOWARD ISRAEL AND THE ARABS—AMERICA'S SUPERIOR PATRONAGE IN THE MIDDLE EAST

(By Bernard Lewis)

(The author is a professor at the School of Oriental and African Studies, University of London.)

There have been two major developments in the Middle East in recent months. The first is the closer relationship between the United States and Israel, manifested in American willingness to meet Israel's requests for the supply of arms and to support Israeli political positions far more than ever before. The second change is the Russian withdrawal from Egypt.

Some observers have seen in this an unfortunate coincidence and have suggested that if both super powers had disengaged at the same time, peace would have become easier. This is based on a misunderstanding. The two events are not coincidental but are connected, and the second is in large measure a consequence of the first.

It has long been an article of faith, especially in the Arab countries and among many in this country, that American policy on the Palestine question is determined by the influence—financial and electoral—of the Jewish community in the United States. When the United States had little concern and no direct involvement in the affairs of the Middle East, this view was largely—though never entirely—true. Besides the pro-Zionist Jewish lobby, there was also a pro-Arab oil lobby, with associated interests. This too was politically active in Washington and elsewhere. But though they astutely managed at times to convey the impression that the pursuit of profits from Arabs was somehow more national and more patriotic than the pursuit of votes from Jews, they were never as effective as the Jewish lobby.

The direct involvement of the United States as a super power in the affairs of the Middle East has changed all this. The pro-Arab and pro-Israel lobbies are still active—the latter obstreperously so in the present election. But neither can now really determine United States policy, which is based on a calculation of United States interests in the area and in the world as a whole. When President Eisenhower found it necessary in 1956 to take firm action against Israel, he did so—even in an election year.

Conversely when Richard Nixon judged it necessary to support Israel he too did so, though he had not enjoyed and is unlikely to gain any substantial measure of Jewish support. His lack of concern with this aspect of United States domestic politics is shown by his virtual suppression of what had become, by convention, the Jewish seat on the Supreme Court of the United States. If President Nixon were as much concerned about gaining Jewish votes as some have suggested, he would surely have given more attention to this and some other sensitive points.

Nevertheless President Nixon has gone very much further than such notoriously pro-Israel presidents as Truman and Johnson in his support for Israel, and in his willingness to risk the displeasure of Arab governments for this reason. One must ask why.

There have for some time been broadly two views of the significance of Israel for the American policy in the Middle East. According to one of these Israel is America's greatest handicap—a burden which she must bear for domestic political reasons, and which holds her back in her dealings with the Arabs, giving a perpetual advantage to adversaries not so impeded. That is one version. According to the other Israel is not a handicap but an asset—one reliable ally in an area where all is shifting and uncertain. According to this view, the friendship of Arab states is a will-of-the-wisp—difficult to gain, impossible to retain, and of dubious value while one has it. A strong and self-reliant ally in the Middle Eastern area is thus a useful source of strength, not a weakness. Supporters of this view have been heard to remark that they wish that America had a few more Israels in other parts of the world, for example in Western Europe and in South East Asia. Of late it is the latter view which appears to have prevailed in the councils of the White House. America has given strong support to Israel in almost every significant respect, and has been prepared to defy both the Russians and the Arabs in this matter.

American closeness to Israel has also been accompanied, and indeed preceded, by a certain severity toward Arab countries. America has remained unmoved by Egyptian threats and blandishments alike and has indicated her lack of interest in such devices as the Jarring mission of four-power talks. A consequence of this attitude, surprising only to ideologues, is an improvement in relations between the United States and Arab countries. Existing friendships have not suffered, and new relationships are beginning even with such countries as the Sudan and Algeria. In such situations it is better not to court, but to create a situation in which one is courted.

Both the Russians and the Arabs have drawn their own somewhat different inferences from this American posture. The Russians, in accordance with their usual practice, push at points of weakness and draw back from points of strength. Once convinced that America is firm in her commitment to Israel, the Russians have carefully refrained from provoking a situation of confrontation, or from allowing the Egyptians to do so—even from giving the Egyptians the possibility of doing so. The Egyptians for their part have also drawn their inference—that the Israelis have a good patron, while they themselves have a bad one. Israel's patron is trustworthy and reliable, and provides what the protegé wants; Egypt's patron on the other hand has failed her in almost every respect, and has left her significantly worse off than she was before, militarily, politically, strategically and economically. It is hardly surprising that in these circumstances with the growing and by now overwhelming unpopularity which the Russians have gained for themselves inside Egypt—that President Sadat should have thought it necessary at last to take steps against them.

To close observers of the Middle Eastern scene there have been signs for some time of an impending breach. On the one hand there were the occasional hints of discord between Cairo and Moscow, carefully concealed in the esoteric language used in communiqués from both capitals; on the other there were the periodic rumours, usually leaked from Soviet sources, of a possible rapprochement between the Soviet Union and Israel and even of a resumption of diplomatic relations, not with a full exchange of embassies but through representation in the embassies of the protecting powers.

Now the breach has become open, and President Sadat has told the Russians to go. Moreover, to general astonishment, they actually appear to be going. At first it was thought that the Russians would leave only from those points in which they were helping in the defence of Egypt against Israel, while retaining their own naval and air bases required for the maintenance of their position in the Mediterranean. From the start this seemed unlikely. One can hardly imagine that President Sadat or any other Egyptian leader would have chosen a form of expulsion whereby the Russians would have left Egypt in all those capacities where Russia was serving Egypt but remained in all those capacities where Egypt was serving Russia.

President Sadat was no doubt fully aware of this distinction. Russia retains powerful weapons against Egypt, through the immense debts—estimated at £5,000m—owed by Egypt to Russia and through the ability to withhold or continue the supply of spare parts and replacements. But a debt of this kind, as the late President Nasser once aptly remarked, gives the debtor a hold on the creditor, more than the reverse. Egypt also enjoys some leverage through the port facilities which she is offering to the Russian fleet, but can reduce or suspend at will.

Why the Egyptians have taken this action against Russia is not difficult to see. Disillusionment with Russian support, unfavourable comparisons between the value of American and Russian patronage, and above all the proceedings of the Russians in Egypt, brought matters to a point where President Sadat either had to dismiss them or to give way to a government that would. His actions had the appearance of a measure of despera-

tion rather than a carefully planned move, but they seem to have been effective for the time being in heading off his domestic political opposition.

A more crucial question is what the Russians are going to do about it. Clearly the withdrawal of their forces from Egypt represents a serious setback for them—both for the interests of the Soviet Union in the world, and for the interests of the ruling group within the Soviet Union. Both of these will be adversely affected by what can only be seen, internationally and domestically, as a defeat—and moreover a defeat following on an immense effort and expenditure already deeply resented among Soviet citizens.

What however could the Russians do in Egypt? Their preferred course would no doubt have been to engineer the overthrow of Sadat and his replacement by another Egyptian faction more amendable to Russian needs. It might have been possible for them to find Egyptian politicians or officers—even avowedly anti-Russian ones—willing to play this game. But there were several insuperable obstacles. For one they had lost the element of surprise necessary for such a coup. For another anti-Russian feeling in Egypt had become so strong that it is doubtful whether any pro-Soviet faction coming to power in this way would have been able to maintain itself.

The second possibility, what one might call the Prague gambit, is clearly excluded. While it might just have been technically possible for the Russians, using the air and sea facilities which they at that moment enjoyed in Egypt to land the necessary armed forces to impose their will to do so would have been politically unthinkable. What remains is the method of political and economic pressure, and we may no doubt expect to see the application of this during the coming weeks and months.

A major aspect of the problem is the decreasing importance of Egypt to Russia. That importance has by no means disappeared, and the loss of Egyptian bases will be a serious blow. But the Russians have long since ceased to regard Nato as their main adversary, and know perfectly well that no danger threatens them from the Western side. It is now not with the West but with China that Russian planners are principally concerned, and the nature of their interest in the Middle East has changed accordingly. Russian interest is moving from the western or Mediterranean part of the Middle East, to the eastern part of the Middle East, that which leads to eastern and southern Arabia, to the Persian Gulf and Indian Ocean, and above all to the Indian sub-continent, which seems likely in the immediate future to be the main arena of Russo-Chinese rivalry.

It is in this context that we may view the recent but rapid establishment of Russian influence in Iraq. From the Russian point of view Iraq offers many advantages. It lies directly on the southern frontiers of Turkey and Iran, and thus offers a useful means of pressure on two Cento powers allied to the West. It adjoins Syria, Jordan, and the Arabian peninsula, and thus provides an entry to all these countries, which could be exploited in a number of ways. In contrast, Iraq has no common frontier with Israel, and the Russians can therefore establish themselves there without running the risk of direct involvement in the Arab-Israel problem, except of course at the harmless Iraqi verbal level.

Internally too Iraq appears to offer certain advantages as compared with Egypt. Egypt is a centrally administered, well-governed country, with a strong sense of national and patriotic identity, and a largely homogeneous population. Iraq on the other hand is a comparatively modern creation, loosely and often indirectly administered, with an insecure regime, and with a heterogeneous population of Arabs and Kurds, Sunnis and Shia, townsmen and tribesmen as well as other smaller groups. Such a country would appear to offer obvious advantages for the Russian method of infiltration and penetration. A further advantage that Iraq offers is that it has a far smaller population and far greater resources than Egypt, and is therefore less likely to become a crippling financial liability. Most important of all, Iraq opens a route to the Persian Gulf and Indian Ocean, the importance of which becomes ever greater in Russian planning.

[From the Times, London, Sept. 21, 1972]

DIGNITY OR TERRITORY? EGYPT IS MARKING TIME

(By Bernard Lewis)

(*The author is a professor at the School of Oriental and African Studies.*)

The withdrawal of the Russians from Egypt and the shift of Russian interest to the eastern half of the Middle East obviously brings important changes to the situation in the Arab-Israel conflict, and may well affect the prospects of a settlement. The principal issue is now, clearly and unmistakably, that between Israel and Egypt.

The situation on the West Bank has settled down. The Palestinian organizations, despite terrorism abroad, are politically insignificant at home, and their present desperation springs not from the lack but from the fear of a solution. A *modus vivendi* has developed between Israel, the occupied territories and the kingdom of Jordan which may with the passage of time evolve into some new political order. This is more likely to happen spontaneously and by natural evolution, rather than by deliberate planning or preparation, and would be the more effective and successful for that reason.

Betwen Israel and Egypt there remains the question of Sinai, and of the continued Israeli occupation of the peninsula.

The withdrawal of the Russians has undoubtedly weakened Egypt's military position *vis-a-vis* Israel. This is however less important than might at first sight appear. Clearly, the Israelis have no intention of crossing the canal and attacking the Delta—to do so would be military and political lunacy. Equally, the Egyptians, were in no position to attempt a serious armed crossing of the canal eastwards, even while the Russians were still there. And so in both respects the real situation is not much changed. The departure of the Russians does however remove one of Israel's main fears, and should therefore make it easier for the Israeli Government to agree to some accommodation. General Dayan has already indicated as much.

Despite his war-like talk, President Sadat knows perfectly well that his only hope of getting the Israelis away from the canal is by negotiation, and that his only hope of achieving this, short of dealing directly with Israel, is through some form of American mediation, persuasion, or pressure in Jerusalem. Pressure on Israel and financial aid to Egypt are indeed the two trump cards which America has to play in Cairo. It is however extremely unlikely that the Americans would be willing to waste their two trump cards on a leader as unstable and insecure as President Sadat, especially when associated with Colonel Gaddafi, nor that the Israelis would be willing to trust an Arab leader who was a proud and self-declared collaborator of the Nazis during the war, and who is one of the very few major Arab figures (there are many minor ones) whose public utterances sometimes echo the tones of European-style racial anti-semitism. A successor government in Egypt, however, might find both the Americans and the Israelis more amenable.

One point on which the Israelis are unlikely to give way is that of direct negotiation—or at the very least close proximity talks. The importance of this to Israelis is not fully appreciated in the Western world. After conflicts it is customary to reach a settlement by direct negotiation between the parties, of which India and Pakistan have provided the most recent example. The steadfast Arab refusal to negotiate with Israel goes back to prewar times, when the Arab Higher Committee in mandatory Palestine always refused to enter into direct discussions with Palestinian Jewish bodies or the Jewish Agency.

The refusal of direct negotiation has always meant and still means a refusal to recognize the existence of Israel—and as long as the dispute is about the existence of Israel rather than its extent, Israelis will obviously be adamant on retaining maximum security borders. To Western observers, Arab talk—lessened of late but by no means ended—of destroying Israel sounds like rhetorical hot air. To the ruling generation of Israelis, still dominated by the memory of a vast, sustained and almost successful attempt at the physical extermination of the Jewish people in Europe, such threats cannot be taken lightly. Such Israeli fears are recalled by the role which at various times Nazi émigrés have played in the new Egypt. They have not forgotten, for example, the kitbag edition of *Mein Kampf*, in Arabic translation, found in the possession of captured Egyptian officers in 1956. They are revived by the utter ruthlessness displayed by some of the Commando organizations.

If however the Egyptians are to relinquish their objection to direct or almost direct negotiation, the Israelis must be prepared to offer something substantial in return. Here, from recent reports, there seem to be broadly two possibilities. That the Israelis would be willing to withdraw from part—probably the greater part—of Sinai seems certain. It is however equally certain that they would refuse to withdraw from Sharm al-Shaykh, which they regard as vital to the safety of Elat, their only outlet to the Red Sea and the East.

As the Israelis see it, Sharm al-Shaykh is a desolate outpost, of no value whatsoever to the Egyptians except to threaten Israel. It should therefore be retained by Israel to prevent such a threat. As the Egyptians see it, it is sovereign Egyptian territory, and whether it is of use to them and what use if any is entirely their own affair. It is doubtful if any Egyptian government, whether President Sadat or a successor, would find it easy to agree to the formal cession of Egyptian sovereign territory to Israel. There are however other possibilities, in the form of a sale, a lease or some other diplomatic device, which could be explored. The Israelis would then withdraw from the greater part of the Sinai peninsula, retaining only Sharm al-Shaykh with the necessary strip of land giving them access to it from southern Israel. If agreement could be reached along these lines, this could form the basis of a genuine peace between the two countries and would undoubtedly be followed before long by some settlement between Israel and her eastern neighbour.

The other possibility which is being canvassed is that of an interim solution, a proposal brought up and then dropped on several previous occasions. According to this, negotiation would aim not at a final settlement but at an interim arrangement whereby the Israelis would withdraw a certain distance—that which is most commonly mentioned is 25 miles—from the east bank and allow the Egyptians to cross and resume the operation of the canal. It has also been suggested that such Egyptian forces might be lightly (but visibly) armed. The immediate advantages of such an interim solution to Egypt would be obvious, the reopening of the canal and the repopulation of the cities on the west bank being the most important.

The reopening of the canal is also an urgent Russian need, to strengthen their position in the Indian Ocean, and might win Russian support for such a plan. By calling it an interim arrangement, the humiliation of signing away sovereign Egyptian territory would be avoided, and a period of tranquility could be obtained which might in time lead to a permanent settlement.

If a government of Egypt were willing to negotiate on either of these lines, there would thus seem to be two possibilities. By the one the Egyptians would recover the greater part of Sinai but lose some face; by the second they would lose the greater part of Sinai, but would retain face. It would be interesting to see which if either of these solutions President Sadat will choose.

President Sadat himself seems unlikely to choose either. At the moment he is exploring other possibilities, none of which is likely to produce any result. His new association with Libya, or rather with the mercurial Colonel Gaddafi, will bring him substantial financial support, but at a price of continuing the conflict.

His attempts to conjure up Western Europe as a counter-weight to the Soviet Union and the United States are obviously futile. Western Europe may in the course of time once again play a major role in world politics comparable with that of the superpowers. At the moment, the states of the EEC are far too divided and uncertain in their policies, and the leading state too obviously dominated by unenlightened self-interest, to accomplish very much. Western Europe has neither the means nor the capacity nor even it would seem the desire to devise, let alone impose, a solution of the Middle Eastern problem. Nor will America do much to help President Sadat, for obvious reasons. For the moment therefore all that President Sadat can do is wait, Micawber-like.

PUERTO RICO—FREE PEOPLE IN A FREE SOCIETY

Mr. BROCK. Mr. President, the ridiculous United Nations investigation of Puerto Rico's status as a "colony" is one of the most flagrant examples of double standards and manipulation within the world peacekeeping apparatus I have witnessed. The inquiry represents an attempt to divert the U.N. from the mission of achieving a peaceful world and is unworthy of consideration by any of its committees.

The irrationality of the U.N. investigation is clearly revealed by the results of several movements for either statehood status or complete independence. In 1967 the island voted in referendum to maintain its Commonwealth status by a clear majority—favoring this status were 425,081, for statehood, 273,315, and 4,205 for independence. I would suggest that it be appropriate for the U.N. panel to call for such a referendum under their supervision in Cuba or any of the eastern European Communist-bloc nations.

The United States has for years sought to lessen world tension through its support of the United Nations. This support has been generous and freely given with no strings attached. Yet, when the U.N. allows itself to become a forum for political sparring such as with the investigation of Puerto Rico, it forces every American to reconsider whether our overgenerous share of U.N. funding is serving the interest of peace.

Mr. President, I ask unanimous consent that an editorial from the Sarasota Herald-Tribune on the subject of the U.N. and Puerto Rico be printed in the RECORD.

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

THE U.N. AND PUERTO RICO

It is amusing to hear that the United States delegation, which simultaneously was asking for a reduction in the share of U.N. costs paid by this country, was "embarrassed" by a Cuban-instigated demand for an investigation of the status of Puerto Rico.

If anything were needed to show how preposterous it is for this country to be carrying nearly one-third of the U.N.'s expense, this exhibition of ideological harassment demonstrates it.

In case anyone has forgotten, Puerto Rico is officially, by constitution and statute, a free commonwealth associated with the United States. It drafted its own constitution—similar to ours, as it turned out—in 1952, ratified it by popular vote, and saw it approved by the U.S. Congress the same year. President Harry S. Truman thereupon signed the measure.

Several times there have been movements for either statehood status or independence, and in 1967 the various sentiments were shown quite clearly by a referendum. Commonwealth status was favored by 425,081; statehood by 273,315, and independence by 4,205.

Now, at Cuba's behest, Iraq has won a 12-0 vote in the United Nations' Special Committee on Colonialism to investigate Puerto Rico's status as a "colony." (The committee has already declared, prejudicially, that the island should be independent.)

Were it not for billions of dollars invested in Puerto Rico, a free flow of American citizens (including Puerto Ricans) back and forth depending on employment opportunities, and the fact that the island commonwealth has a higher standard of living than any other Latin-American jurisdiction of whatever size or location, we suppose the United States might not object.

The 10 nations which abstained from the U.N. committee vote point out that this same question came before the General Assembly last year and was decisively dumped. Of course. But to ideologues that appears to make little difference.

Some of the nations which voted along with the sponsors of the resolution are real experts: Bulgaria and Czechoslovakia, for instance, which are both, to all extents and purposes, colonies of the Soviet Union; Russia itself, whose dead hand of colonization has fallen on all its neighbors starting far back in history with the Ukraine, Byelorussia, the Crimean Tartars, Outer Mongolia—you name it.

Then there is the People's Republic of China, which has gobbled Tibet and threatens Indian and Pakistani territory. And, strangely, India too, whose recent second-hand "conquest" of East Pakistan is still fermenting and whose grab of Goa was not that long ago and whose activities in Kashmir are at least questionable.

It's quite a list—and the one common factor among them all is a charming willingness to make trouble for the country that pays an outsize share of the U.N. bills.

As our State Department pointed out, the resolution is "an insult to the people of Puerto Rico who have chosen to live in a democracy under a constitution of their own choosing in free association with the United States."

What is utterly ironic, of course, is that Cuba should be in back of this malicious needling—Cuba, which has placed itself in colonial bondage to the Soviet Union by cha-cha communism, insane spending and incoherent totalitarianism. That functionaries of such a regime as Fidel Castro's should cast any kind of aspersions on others, let alone this particular assertion of colonialism, is almost beyond belief.

Puerto Rico's Gov. Luis Ferre hit the nail on the head when he said the U.N. should offer a declaration favoring freedom for Cuba instead of meddling in Puerto Rican affairs.

But, as with other U.N. posturings and mouthings, delegates on the Colonialism Committee would prefer to take an utterly meaningless swing at a democratic situation satisfactory to the great majority concerned than to tackle anything really significant and useful.

Thus the U.N. estranges itself once again from those who pay its bills and who try to find health or hope in it.

TELEVISION SPORTS BLACKOUT

Mr. GURNEY. Mr. President, I have just received word that WTEV television of New Bedford, Mass., has been blacked out of televising the November 6 Monday night football game involving the New England Patriots. WTEV has received a telegram from ABC informing them that they will now be blacked out, apparently because they are within the NFL's 75-mile radius, although until now they had been planning to televise the game. In fact, to date WTEV has never been blacked out of televising a Patriots home game.

Mr. President, it is not a matter for glee or gloating now that the people of Massachusetts have joined those of Florida and other States across the Nation in being deprived of the opportunity to watch their favorite teams on television due to the arbitrary and unreasonable 75-mile rule the NFL has perpetrated upon the sporting public. Rather, it is just another good reason for the Senate to act on my amendment No. 1658 to the basketball merger bill—S. 2373—to reduce the blackout area to 50 miles.

We have too long permitted the NFL to interpret the antitrust laws as it pleases, to the detriment of the millions of fans who through their patronage have made professional athletics the profitable enterprise it is today. Incredible as it sounds, the NFL would have us believe there is no blackout problem at all.

NFL Commissioner Pete Rozelle even testified in a Senate hearing that:

> The fact is that it is not a blackout issue at all. NFL home territories are no longer blacked out on television on Sunday afternoons even when the home team is playing a game at home; two or three NFL games are telecast in each home territory each Sunday afternoon.

Praise for these crumbs would be laughable were it not so palpably misleading and burlesque. I hope Mr. Rozelle will tell the people of Miami there is no blackout problem, because as their Senator I cannot. I suppose there is no reason for Miamians to have to travel nearly 200 miles to watch a Dolphins game.

Mr. President, this session is drawing to a close, but the television sports season has just gotten underway. The Nation needs the immediate relief my amendment provides, and I urge the Senate leadership to make every effort to see

that this issue is brought to a vote as quickly as possible. The time for action now.

MILWAUKEE: A DEVELOPING CITY

Mr. PROXMIRE. Mr. President, an article in this month's Nation's Business describes the efforts that Milwaukee's leaders have been making to attract new industrial development. Back in 1963, Milwaukee became the first major city in the Nation to establish a land bank. The bank's function was to buy unimproved acreage for industrial expansion.

Initially, the bank was to be used strictly for expansion by existing Milwaukee firms. Now there is a new philosophy—that of competing for new industry along with private planners of industrial parks.

The man in charge is the commissioner of city development, Kenneth Fry. His is a farsighted concept of economic development:

Our concept of economic development included not only commercial and industrial growth, but also promotion of cultural, recreational, tourist, convention, health and educational development. In other words, the attainment and continuation of a well-rounded quality of life, which also produces jobs and income. I think Milwaukee is about five to 10 years ahead of the general trend.

Other city officials, including Milwaukee's outstanding Mayor Henry Maier, feel the same way. They are working actively to convert some of the sections of land bank acreage into industrial parks and to compete actively in selling the land.

Leading Milwaukee businessmen are also involved. Robert Foote, board chairman of Universal Foods Corp. and president of the Association of Commerce, and Richard E. Vogt, chairman of KCS Industries, and participating actively in these efforts. As Foote notes:

What we're campaigning for is improving the climate for investment.

Mr. President, I ask unanimous consent that the article entitled "Milwaukee: Branching Out With the Land Bank" from the October 1972 issue of Nation's Business be printed in the RECORD.

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

THREE CITIES TURN THE CORNER—MILWAUKEE: BRANCHING OUT WITH THE LAND BANK

Milwaukee, a city of 717,000 on the western shore of Lake Michigan, is famous for its beer, Old World charm, cleanliness—and its solid citizens' thrift.

"The people here," says one long-time resident, "have deep pockets and short arms."

These days they're being asked to shorten the distance between their fingertips and their cash. It's a must, city officials say, if Milwaukee is to be a viable competitor for new industry.

The city almost a decade ago began buying unimproved acreage for a "land bank"—whose intended use was for expansion as needed by existing Milwaukee firms. Attracting newcomers was essentially left to private developers.

Now a major change in philosophy is taking place. The city's Economic Development Department is asking to be turned loose to compete for new industry with private planners of industrial parks.

City planners also want "seed money" to help embryonic firms that could share facilities in the city's older downtown buildings. Once established and growing, they would move to newer and bigger facilities.

"We hope to bring a marketing concept to government," says Kenneth Fry, commissioner of city development. "You might call it city capitalism."

Observers don't expect it will be easy for the city to change course. Says a veteran Milwaukee politician: "The people here expect a lot out of government, but with little government involvement."

Milwaukee aspires to become a growing regional center, and it has some gilt-edged assets. Among them are a highly skilled work force and a fine quality of life.

But it also has lots of competition. Chicago is only 60 miles to the south, and the aggressive Twin Cities, Minneapolis and St. Paul, are not far to the northwest.

In addition, Milwaukee is hemmed in on all sides by incorporated suburbs and is located in a state whose tax rates are among the highest in the nation.

NO ZONING?

The city fathers and businessmen recognize that their existing assets are not enough.

"Our major problem," says Mr. Fry, "is zoning restrictions."

Would he favor no zoning laws?

"I'd swap our tight zoning for no zoning in a minute," he replies.

But he knows there's little possibility of that—even though it would make his job easier. For his Economic Development Department is a conglomerate agency, handling the city's housing, urban renewal, relocation, planning, conservation and other related responsibilities—all of which zoning affects.

Mr. Fry feels that an agency such as his, handling all facets of city development, is a necessity for all major cities.

"Our concept of economic development includes not only commercial and industrial growth, but also promotion of cultural, recreational, tourist, convention, health and educational development," he says. "In other words, the attainment and continuation of a well-rounded quality of life which also produces jobs and income. I think Milwaukee is about five to 10 years ahead of the general trend."

While this may be true, he recognizes that the competition for new businesses has grown much tougher. When he organized his department in 1961, Mr. Fry estimates, there were some 200 such agencies nationwide. Now there are over 15,000.

Which prompts Mr. Fry to bring up two more problems.

"Most of these have land available to them," he says, "and most have the use of tools such as industrial revenue bonds and tax freeze powers that Milwaukee doesn't have. Milwaukee must get those tools to become more aggressive in its industrial development efforts."

MONEY FOR THE BANK

In September he asked the City Council for $1.8 million for the land bank program.

Milwaukee established the land bank, the first of any major city in the nation, in 1963. Since then the bank has bought 690.7 acres.

Of that total some 152 acres have been sold to industrial customers, most of them local, for new plants that have created some 600 jobs. For a city with a manufacturing work force of over 200,000, that's not a wallbanger performance.

In the fall of 1971, four-term Mayor Henry Maier, Mr. Fry and area business leaders were having second thoughts.

Mr. Fry organized a citizens committee to evaluate the way the city was waging its economic development campaign. This past summer the group came out with a finding and with recommendations. The finding: There had been less development than could have been expected.

Among the recommendations was one to drop the basic philosophy of maintaining industrially zoned land in the raw and of passive selling so as not to compete with private developers.

Now the group feels Milwaukee should turn some sections of the land bank acreage into fully developed industrial parks and sell aggressively against all competition.

Also, Mr. Fry wants some of that extra land bank money to go into acquisition of underused property. Inadequate structures would be torn down, and new ones built, to make the property more attractive to industry.

THE SOUTH AND THE SUBURBS

The basic purpose of the land bank, originally—to provide firms already in Milwaukee with expansion room—was in line with past experience: Large manufacturing firms had expanded in the city itself.

In the mid-60's, however, it was obvious that new plants, especially those that were labor-intensive, tended to be built in the South or overseas.

Also, the citizens committee, reviewing the situation regionally, noted that construction of freeways and lower suburban taxes gave suburbs an advantage. It said:

"The city must treat industrial development as a business enterprise in an increasingly competitive marketplace that no longer stops at state or even national boundaries."

Added one member, bluntly: "Milwaukee must decide if it is in the industrial development business or not."

One goal of a six-year economic development plan, announced by the mayor in 1968, was to make Milwaukee a "transactional center." And the central business district, considered dead in the Fifties, has been making real progress.

In the 1960–1970 period over two million square feet of net rental space were built. Today, Milwaukee sees a new landmark rising above the city—a 42-story, $50 million skyscraper for the First Wisconsin National Bank, the state's largest financial institution.

However, businessmen want more industry as well as more service firms to locate in Milwaukee, and they emphasize two factors—taxes and labor costs—as inhibitors of industrial development.

TALKING TURKEY

These days it's not unusual to see business leaders, government officials and labor bigwigs dining together in the city's famed German restaurants. The businessmen talk turkey over the liver dumpling soup.

"It's ridiculous for businessmen, government officials and labor leaders to be adversaries," says Robert Foote, chairman of Universal Foods Corp. and president of the Metropolitan Milwaukee Association of Commerce. "What we're campaigning for is improving the climate for investment."

In short, he says there is a need to put the brakes on taxes and demands for higher wages.

Though Mr. Foote isn't able to cite much progress on the wage demand front, he does note that taxes in suburban jurisdictions are rising faster than in the city.

So does Richard E. Vogt, board chairman of KCS Industries, Inc. He recently convinced the directors that the firm should stay in the city. KCS bought a site from the land bank on which to build a production facility for operations now housed in three separate downtown buildings.

Mr. Vogt spent many months evaluating the attractions of suburban industrial parks before making his decision.

"The tax differentials are becoming narrower," he says.

"I was persuaded that the advantages of suburban industrial parks have diminished and that the city itself offers a package of services and benefits not readily duplicated elsewhere."

A key factor in the decision was a desire to hold onto the skilled labor force that produces the firm's many point-of-purchase items. "We're in a highly competitive business." Mr. Vogt says. "So we didn't want to move away from our employees."

THE NEED FOR PRISON REFORM

Mr. BROOKE. Mr. President, for 2 days, the District of Columbia has been held in the grip of a prison drama which seemed to equal that at Attica a year ago.

Today, we have learned with relief and thanksgiving, that there was a difference. Attica left 41 men dead, and uncounted others scarred for life. In the District of Columbia, all of the hostages were released unharmed after rebelling inmates got what they wanted most—a hearing.

Much credit for the peaceful outcome is due to District of Columbia Corrections Commissioner Kenneth L. Hardy. Ken Hardy and I attended high school together; I have know him most of my life. And I have never known him to be other than a wise, fair, and reasonable man. These qualities, and the trust and respect they have engendered during his years of service to the District, were largely responsible for sparing this city a bloody tragedy this week.

But there is another, larger tragedy which continues every day: it is the inhuman conditions in which our prison population is held. The District of Columbia jail was built—more than 100 years ago—to house 550 men. Today it houses 1,200, or nearly twice its capacity.

The District of Columbia jail was built for adult offenders. Yet when inmates took over the notorious cellblock 1, early Wednesday morning, they required young inmates—some as young as 15 years old—to leave the premises for their own safety. So-called "hardened criminals" had achieved on their own one of the primary requisites of effective prison reform—the segregation of youth from adult offenders. As a result of the uprising yesterday, this segregation will continue under a court order.

Mr. President, I hold no brief for those who chose the path of potential destruction to achieve their ends. But before we condemn those involved, and advocate harsher measures to control them, we should realize that these actions are the product of long-contained frustrations.

In reading over the newspaper accounts of this near tragedy, I was struck by the words of one inmate spokesman, a young man with whom I happen to be acquainted. Appearing before Judge William B. Bryant at U.S. District Court late yesterday afternoon, Albert McCoy summed up succintly the essential invisibility of men in prison:

I wrote you three or four letters. I never received a reply. What can I do? You say "come properly." I tried.

Mr. President, we must listen to these men, and to those in charge of them. Kenneth Hardy and his colleagues in the Department of Corrections are coping effectively and courageously with a most difficult situation. So that all of my colleagues may understand the caliber of the man in charge of the District of Columbia Department of Corrections, I ask unanimous consent that several articles from this morning's Washington Post be printed at this point in the RECORD.

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

[From the Washington Post, Oct. 12, 1972]

JAIL REBELS FREE ALL HOSTAGES

(By Haynes Johnson)

Armed inmates at D.C. jail early this morning released unharmed 11 hostages they had held for almost 24 hours in a rebellion that had transformed the ancient city jail into an arena of intense conflict between inmates and Washington officials.

The hostages, all jail guards, were held during a day and night of negotiations, demands and threats of death and an extraordinary court session that inmates later said was a key element in their releasing the hostages and ending the revolt. The court hearing was due to resume today at 9:30 a.m. in U.S. District Court.

Until their release city officials had maintained only nine guards were being held hostage, in addition to D.C. Corrections Department head Kenneth L. Hardy who was held hostage for much of the day. Hardy was stricken ill during the court session and admitted to George Washington University Hospital.

Of the guards city officials said, "They're fine, they're all fine." One guard told reporters "They treated us nice and well."

The long ordeal ended at 12:30 a.m. today after a handwritten note from Hardy—who was a key negotiator with inmates as well as the key hostage—was read to more than 100 prisoners in the jail's smoke-filled rotunda visiting room.

The note promised "no reprisals of any kind (or) court action against any inmate."

Inmates also told reporters, admitted at the inmates' request, just prior to release of the hostages, that U.S. District Court Judge William B. Bryant's promise to send lawyers in to talk with inmates also was a factor in ending the uprising. There were about 40 attorneys still talking with inmates in the rotunda when the hostages were released.

Jail officials were searching for weapons used in the uprising early this morning and jail superintendent Anderson McGruder said at least one loaded pistol was found.

Corrections Director Hardy left the courtroom shortly after 8 p.m. looking shaken, his eyes watering. He was escorted to the lawyers' lounge on the fourth floor of the U.S. District Court building, then transported to George Washington University Hospital.

He was reported "resting comfortably" early this morning. A doctor at the hospital said Hardy had suffered chest pains suggesting an attack of angina pectoris. It was Hardy who had been in continual negotiations inside the jail with the prisoners since about 5 a.m. yesterday. Repeated threats on his life had been made, and often during the day he was brought to the jail windows with a pistol pointed at his head.

The 11 other hostages had been held all day and night in the jail's Cellblock 1, where the uprising occurred.

The cellblock housed about 180 prisoners, but only about 50 were reported to have been actively involved in the rebellion.

After the inmates seized control of the cellblock and took the 11 guards hostage, 132 other prisoners there asked to be separated and housed elsewhere in the jail. Later in the day they were removed to other locations in the jail.

There are about 1,100 inmates in the jail, housed in four main cellblocks.

The court action, before Judge William B. Bryant, followed hours of ultimatums, maneuvering and negotiations. As the day wore on the prisoners had changed their demands—and their tactics—in an attempt to take their case beyond police and prison authorities to the courts.

Acting as intermediaries were such officials as Congresswoman Shirley Chisholm (D-N.Y.); Del. Walter E. Fauntroy (D-D.C.); Marion Barry, D.C. school board president, and aides to Mayor Walter E. Washington. Another who was involved was Julian Tepper, a negotiator during the Attica prison riot situation.

Judge Bryant took a number of actions last night. He ordered wholesale segregation of juveniles from adults at the D.C. jail.

He also ordered no reprisals for the day's events and requested the public defender service to go immediately to the jail to make lawyers available to all inmates who request them. Although the order affecting juveniles appeared to have met a major demand, some of the six prisoners present at the hearing did not seem satisfied.

As William Brown, one of the inmates, said while heading for the courtroom door after the recess: "Come on marshals and corrections officers, take us back to where we belong."

Both Hardy and the prisoners addressed the judge. Hardy said the D.C. penal system is "now facing a population explosion." Among the problems he cited was the handling of juvenile offenders. He also said "there must be a massive input for the courts . . . much more sensitivity."

A prisoner, Albert McCoy, also made a special plea for juvenile offenders. "You take a 16-year-old kid and stick him in there with someone who's been in Leavenworth or Atlanta for 30 or 40 years and it ruins the kid. Then, they're in there with homosexuals."

While the D.C. jail situation was easing, other trouble broke out last night at the city's women detention center on North Capitol Street. Police were called to the center after approximately 85 of the center's 106 women inmates staged a sit-in after finishing dinner in the second-floor dining hall.

They too, presented grievances and demanded to be heard. Fights were reported and glass panels there were broken. But there were no reports of injuries.

But the main focus of the day remained on the D.C. jail where the inmates' initial demand was for immediate freedom. After hours of desperate negotiations and repeated threats, hopes were first raised for a solution when a bus carrying Hardy, six inmates, Fauntroy and several others left the jail late in the afternoon for the court.

In the words of Mrs. Chisholm, the inmates were going to court because "they want to go before a judge and actually tell him what goes on in prison."

She added:

"I expect some amelioration if the conditions are heard out."

She also said the convicts told her "they won't harm the hostages. They are not interested in hurting anyone. Once their grievances are aired, the hostages probably will be released."

Once at the court, one of the prisoners called out: "You want to search us? Search us in the courtroom." He then stripped to the skin. The other prisoners followed suit.

The plan at that time was to return the prisoners and Hardy back to the jail. Then another 20 prisoners would take the same bus ride to the court and present their demands.

For the prisoners, the court action coming as it did late in the day was a significant change in tactics. They had begun the long

ordeal at the jail by issuing an ultimatum with only two alternatives—freedom or death. They threatened repeatedly to kill Hardy if their demands were not met.

As the day progressed and the prisoner demands escalated, the nature of the negotiators also changed. From first dealing exclusively with Hardy and police officials, the prisoners were later talking with such people as Mrs. Chisholm, Marion Barry, D.C. school board president; Fauntroy, Julian Dugas, and Charles Duncan, aides of Washington's Mayor Walter E. Washington. Also present was Julian Tepper who helped negotiate the Attica prison riot.

Mayor Washington was in constant touch with the situation from his command post downtown. Although the prisoners had demanded to see him, Police Chief Jerry V. Wilson said he did not want the mayor exposed to possible violence.

Mayor Washington played a key role in arranging last night's court session that helped to defuse the tension.

The prisoners—all young men, and all blacks—seized control of Cellblock 1 in the jail sometime between 1 and 2 a.m. yesterday. One-half of their cellblock is reserved exclusively for prisoners who have been placed on what prison authorities call "deadlock"—either for violation of prison regulations or because they are considered dangerous or disruptive to other inmates.

Once in control of the cellblock, where they then held 11 prison guards, the convicts demanded to see Hardy and William L. Claiborne, a Washington Post Reporter who has written extensively about jail conditions.

Hardy and Claiborne came to the jail, talked to the prisoners, and then Claiborne was released to act as go-between. Hardy remained hostage.

Other hostages listed by officials during the day were Lt. Charles Wren, Isaac Webb, Wilbert Roberts, John Crause, Bernard Holmes, James Saunders, David Michelow, and Crawford Lowery.

Police said all but Wren appeared to have been uninjured. Wren was struck in the nose and head.

The tone of the remarks earlier in the day was consistently angry and emotional. The prisoners said repeatedly they were prepared to die. It was freedom or nothing. They stressed that their act was one of revolution. It was not a riot.

In their words, they touched on a whole litany of problems, not only in the D.C. jail but in other prisons across America. They referred to the bloody Attica uprising of September, 1971, of the deaths of the Jackson brothers, George and Jonathon, in California, of wrongs in the courts and in American society.

Their action was a new reminder that the prison problem has flared into acts of violence and disturbances throughout the nation in the past few years. These conditions in turn have led prison guards—including these at D.C. jail—to mount their own strikes and demands.

The D.C. inmates not only referred to common prison problems across the country, but specifically related their grievances to the way other jail situations here have been handled. One of their major complaints, as expressed to a number of persons who talked with them inside the jail yesterday, dealt with the settlement of a prison strike late last month at the Lorton reformatory.

Hardy had taken a major part in ending the strike. He had been quoted as thanking the prisoners there for their cooperation in the negotiations. Yesterday, some jail inmates expressed bitterness at Hardy for dealing with the Lorton convicts but, in their view, ignoring their problems.

One of the most emotional scenes of an emotional day came early in the afternoon when relatives of the inmates were taken to the jail. They stood inside the fences, in a courtyard next to the prison, and conducted a lengthy and loud conversation with the prisoners in Cellblock 1. Some women cried. Others screamed. They were there, they said, to urge a course of reason.

At that point, the prisoners were still reacting strongly. Hardy was brought to a window inside the cellblock and the prisoners shouted back their original demand—freedom.

Hardy was pulled back out of sight. One of the convicts shouted: "We're going to cut his head off if we don't get what we want. His head is coming off."

It was a day of contrasts, of autumn beauty and prison terror, of death threats and attempts at peaceful negotiations. Before the day had ended, virtually everyone in Washington from public officials to private citizens had been caught up in the minute-by-minute drama unfolding at the old D.C. jail.

The jail itself personified the contrasts. It is a massive and ugly building constructed of dull red bricks and sandstone a century ago. Surrounding it are two chain link fences topped with strands of barbed wire. It is sandwiched in between the D.C. General Hospital and the D.C. Armory, not far from the stadium where the Redskins play to cheering, capacity crowds.

But the jail is a place apart from the normal life of Washington. Until yesterday, it was removed from the general public consciousness.

Yet while the tense hours were passing at the jail there were reminders of the other sides of Washington.

Only a few blocks away from the jail yesterday, workmen were constructing the monumental platform on the east steps of the Capitol that will serve as the inaugural stand for the next President of the United States.

On Pennsylvania Avenue, halfway between the Capitol and the White House, a construction sign proclaimed the building of the J. Edgar Hoover Building. The new FBI quarters are a symbol of national law and order, just as the ancient jail represents another kind of symbol—that serious problems afflict the system of justice at a basic level in the prisons.

But it was the prison situation, not the monumental side of Washington, that attracted attention yesterday.

Earlier in the day, the crowds that lined the streets around the jail had been good natured with only an occasional undercurrent of ill will. As police contingents marched two abreast in a long column to relieve others on duty inside the fences, the crowd broke into a chant and a few jeers.

"Let's hear it from this here team no Rah-Rah-Rah."

But after standing for hours, the mood changed. As night approached, a restive group of some 150, many of them teen-agers, began milling against police ropes. Some bottles and other objects were thrown. No one was reported injured. Three young men were arrested.

The life-and-death drama at the massive, century-old jail came after a number of recent incidents that once again thrust the prison problem onto center stage in the nation's capital.

Just nine days ago, eight prisoners, including three of the most widely known criminals in Washington, escaped through an attic skylight and then fled after sliding five stories down a fire hose and climbing two chain link fences topped with barbed wire. Among those who escaped was one prisoner convicted of murder and three others indicted on murder charges.

It was the largest breakout in the history of the jail.

In the aftermath of the escape, three guards were relieved of duty and a U.S. grand jury and special team of federal and District investigators began a priority investigation. Those prisoners are still at large.

The jail break followed an emotional and bitter five-day strike last month by the 1,800 inmates of the Lorton reformatory, Washington's correctional facility located in suburban Fairfax County.

Lorton prisoners ended their strike only three days before the D.C. jail escape. They won concessions on about two-dozen grievances and then gave top corrections officials a standing ovation.

The concessions focused principally on such things as improved food service, more medical care, reforms in visiting procedures, notification and representation in disciplinary action cases.

Earlier this year the conditions at the D.C. jail were the subject of an emotional and controversial report by the American Civil Liberties Union. The ACLU report charged that the jail is a "filthy example of man's inhumanity to man." It also spoke of brutality by guards, insanitary living conditions, lack of proper medical care, overcrowding, idleness and infestation by rats and roaches.

But none of these events contained all the elements of yesterday's open rebellion at the jail.

What the prisoners repeatedly called their revolution began between 1 and 2 o'clock in the morning when the 11 corrections officers were seized in Cellblock 1. How the prisoners seized control, and how they obtained at least one gun they have employed throughout the long ordeal, is not clear. Only the inmates and the hostages knew that.

The first indication of trouble came about 3 a.m. when prisoners passed a note through a peephole in a steel door leading to their cellblock. The peephole, measuring about four inches by four inches, normally is covered with glass. The prisoners smashed the glass and passed out a note demanding to see Hardy and Post reporter Claiborne.

There was a lapse of about an hour before Claiborne was contacted at his home in Northwest Washington. At about 4:30 a.m. a police squad car picked up the reporter and sped him to the jail where he met Hardy.

Hardy showed him the note. "Are you willing to talk with them?" he asked Claiborne. The reported said yes. They walked through a large rotunda that serves as a visiting room and approached the steel door to Cellblock 1. Dimly, through the peephole, they saw a group of faces surrounding Lt. Wren.

The prisoners were holding a snubnosed revolver, either of .32 or .38 caliber, on Wren. From time to time, as they talked, they pointed the pistol at both Hardy and Claiborne.

Hardy asked the prisoners to come into the rotunda and discuss the situation. They refused. "You're coming in; we're not coming out," one of them shouted.

Then the prisoners demanded that policemen clustered in the background be removed. They left. Again, Hardy and Claiborne conferred briefly. They agreed to enter the cellblock and talk to the prisoners.

Claiborne entered first. He climbed over what was left of the barricade—and was then pulled forward through the narrow opening of the door by a group of prisoners.

He was immediately thrust against a wall and frisked for weapons. Then he was led by about 20 or 30 prisoners down a long, dim corridor past a series of cells toward a table at the end. The atmosphere inside the cellblock was oppressive; the single bulbs covered by wire mesh at intervals in the ceiling gave off little light. In the early hours before dawn, the cellblock was cold and dank. A strong smell of urine permeated the entire cellblock, which consists of five tiers of cells, each tier with 17 cells and each cell housing two men.

For several minutes Claiborne was alone with the most vocal of the prisoners. One

of the most vociferous gave him a long, emotional lecture on the situation and the stakes involved.

"This is a revolutionary act, man," he was told. "This is an act of rebellion against the system. This is an act for respect and for us to be treated like men, not like animals in a cage. This is a positive action."

Another prisoner interrupted to refer to other prison incidents elsewhere:

"We remember what happened to George Jackson. We remember what happened to Jonathan Jackson, his brother."

Others spoke about the tragedy at Attica prison a year ago in New York, where more than 40 prisoners and hostages were killed. "We remember what happened at Attica after the negotiations," one prisoner said.

The shootings there followed all kinds of promises, he was told. Someone else called out:

"We want the mayor, we want (Police Chief Jerry V.) Wilson, we want the Attorney General."

Lorton was also referred to repeatedly—and also, by implication, so was the jail break of only a few days ago. "You read in the papers about the niggers escaping," one convict said, "but you don't know why."

While this tense dialogue was taking place, Hardy was being taken into the cellblock. He is a larger man than Claiborne. It took the prisoners more time to pull him in.

Before Hardy arrived, the prisoners again mentioned Lorton. One of them had an editorial from The Washington Star-News referring to the Lorton negotiations and settlement. He threw the editorial on the table and, pounding on it with his fist, shouted: "Why didn't Hardy think of us when he negotiated with Lorton? This is still his plantation."

When Hardy finally was escorted down the same long corridor, he was told to sit in a chair. Lt. Wren, his nose bloody, his head cut, sat on the table. Again, the revolver was waved back and forth at the men

The convicts addressed themselves to Hardy, "We will accept only one alternative," one man said. "That we will die here or we will have our freedom, because death is being given out every day in the courts."

Another voice cut through the din: "We're tired, man. We're tired of fighting. We only have one alternative—to die here on the sidewalk."

Continually, they struck the same theme: this was not a riot. This was a revolution.

They also expressed another common thought: they were prepared to die, they were entirely fatalistic.

"I have accepted death," one prisoner said. "They're going to kill me when they open that door."

Then they issued their first demands:

Remove all police from the jail.

Permit the prisoners to leave four at a time.

(One convict disagreed. "You tell them that we're coming out six at a time," he said.)

It was 5:45 a.m. Claiborne left the cellblock after what was probably the longest 35 minutes of his life. It was still dark outside. Hardy and the other hostages remained in the cellblock.

Claiborne said it was impossible to determine who the inmate leader was, if indeed there was one. Neither was it possible then to say how many prisoners the group spoke for, what their ultimate goal was, nor what kind of solutions eventually would be acceptable.

As dawn broke, crowds of curious citizens, attracted as always by morbid fascination over a real life-and-death story, began to gather slowly on the streets around the jail. Police had cordoned off the intersections to keep them back. The blocks surrounding the jail had been transformed into an armed camp of police cruisers and men carrying rifles, tear-gas canisters, pistols and nightsticks.

The situation settled into a stalemate. Officials came and went. There were more conferences between the prisoners and the officials, more conversations between Claiborne standing outside the cellblock windows and the convicts inside, more uncertainty about what, if anything, to do.

Delegations of prisoners from Lorton and relatives of the hostages were brought to jail. From time to time, the prisoners would appear at the cellblock windows to shout down at those gathered below.

Occasionally, they brought Hardy with them, still covered by the pistol. Once, he was seen with what appeared to be a crudely fashioned knife held close to him.

One of the more dramatic moments came about noon when Hardy was again brought to the window. The prison official called out: "I don't want bloodshed. There are people here with a lot of problems. They have treated me decently. I don't want any CDU (police civil disturbance unit) action. I don't want that kind of action. I don't want bloodshed. This is not a criminal action. This is a revolution. This is real."

Hardy was then yanked back from the window. One of the prisoners shouted, "We're going to cut his head off if we don't get what we want. His head is coming off. You'd better believe that."

Shortly after that, a blood-spattered white shirt, said by officials to belong to Lt. Wren, was dropped out of a cellblock window. It fluttered slowly to the ground.

(NOTE.—Contributing to today's articles on the D.C. jail incident were Donald P. Baker, William L. Claiborne, B. D. Colen, Martha Hamilton, Jon Katz, Claudia Levy, Grayson Mitchell, Peter Osnos, Margaret Pala, Paul Ramirez, Ken Ringle, Kirk Scharfenberg, J. Y. Smith, Ron Taylor, Paul W. Valentine, Ed Walsh, and Toby J. A. Wolff.)

THEY LED ME INTO A HALL, SAYING "DON'T HURT HIM"

(NOTE.—William L. Claiborne is a Washington Post staff writer assigned to cover corrections in the District of Columbia. When inmates took hostages at D.C. jail early yesterday, they asked that two people come inside: the head of the corrections department and Claiborne. This is Claiborne's account of his nine-hour experience as go-between.)

The telephone rang loudly in my home at 4:15 a.m. and the message from Kenneth L. Hardy, corrections director, was frightening. The inmates at D.C. jail had a gun and were holding guards hostage.

Hardy himself called a moment later. His voice was heavy.

"Mr. Claiborne, they have taken Cellblock 1 and they are holding nine of my men as hostages. They want to talk to you. Can you come down here?"

I said it would take 10 or 15 minutes to drive there and I would come. He said: "Mr. Claiborne, we only have 10 minutes. I'll send someone."

I hurriedly dressed and told my wife and daughter where I was going. A police scout car arrived at my home in 10 minutes and took me, at high speed, with lights and sirens going, to the D.C. jail. We almost got lost once, and ended up going the wrong way around Robert F. Kennedy Stadium.

I walked into a darkened office. Hardy and two other top corrections officials were sitting there, drinking coffee and talking. Hardy handed me a piece of yellow legal paper with a message from the inmates: "We want to negotiate with Hardy and Claiborne."

Hardy said an unknown number of inmates had seized nine hostages at approximately 2 a.m. He asked whether I wanted to go in and talk with them. "OK," I said. We walked to a steel door off the visitors' rotunda that rises to the full four-story height of the jail. We then entered a small alcove and the steel door shut behind us. There we faced another steel door with a small peephole, through which we could see a number of inmates. One held a snubnosed revolver to a guard's head. The glass in the peephole had been broken and we could see their faces clearly.

One of the inmates said through the peephole, "Mr. Claiborne, we want you to understand one thing very clearly. This is not a riot, it's a revolution, you understand?" I said I understood. But I'm not sure I did. My impression was that he meant by a revolution something more serious—a fight to death, perhaps.

Hardy and I talked with the inmates in an effort to get them to come into the alcove or send several representatives into the rotunda to negotiate.

"We're not coming out this door, you're coming in," was the response.

The inmates could see a large number of metropolitan policemen in the rotunda, some with shotguns and one with a pepper fog (type of tear gas) machine.

Hardy ordered the police to leave, then turned to me and said, "Do you want to go in?"

"I'll go in," I said.

The inner steel door was heavily barricaded with tables, chairs, fire extinguishers and other equipment and the inmates removed enough of the barricade to allow the door to be opened about a foot. One of the inmates pointed at me and said, "All right, you first."

I squeezed through the door and climbed up on top of the barricade. An inmate grabbed me by the wrist and pulled me in while several encouraged me, saying, "You can make it, man, come on, you can make it."

They led me up into a dimly lighted hallway. Several inmates were shouting at other inmates, saying, "Don't hurt him, man, don't hurt him. If you hurt anybody, don't hurt him. We need him." There were about 30 inmates in the corridor.

Several faced me up against a wall, frisked me, and led me down a dark corridor about 50 feet.

Hardy had more trouble getting through the door because he's larger than I am and while they struggled to help him into the cellblock and over the barricade, one inmate told me to take out paper and pencil. He gave me a lecture on revolution.

I noticed that my notebook was one I had hurriedly snatched from a desk at home, and that my 7-year-old daughter had block-printed "W.L.C.," my initials, address and telephone number.

I thought an inmate standing at my side noticed the writing on the cover of the notebook, but I also thought that he didn't understand the meaning it had to me at that moment. I was scared.

He said, "This is a revolutionary act, man, this is an act of rebellion against the system. This is an act for respect, and for us to be treated as men and not as animals in animal-like cages."

It seemed to take five minutes to squeeze Hardy through the door. During that time the inmate continued to talk. "We remember what happened to George Jackson. We remember what happened to Jonathan Jackson, his brother. We remember Mark Clark and Fred Hampton. We remember what happened at Attica after the negotiations."

The inmate doing most of the talking at that moment was extremely agitated and said the 1970 D.C. court reorganization, was an "act of genocide." He said the inmates believed they had only one alternative: "That we will die or we will have our freedom because death is being given out every day in the courts."

While the inmates were still helping Hardy through the door one of them slammed a newspaper editorial on a table and began

hitting it with his fists. The editorial dealt with reforms instituted at the Lorton reformatory that were negotiated by inmates and Hardy and other corrections officials.

Why didn't Hardy think of us when he negotiated with Lorton This is still his plantation," the inmate, a tall man in his middle twenties demanded. He kept slamming his fist on the table.

Inmates shouted several references to Attica, one say, "We feel totally that fear has gripped us because of Attica."

Another said, "We only have one alternative. To die here or on the sidewalk out front."

"This is it, it's all over," he said.

At that point they brought Hardy down the corridor and seated him at a table alongside Lt. Charles Wren.

Wren, a guard, had apparently been beaten. There was blood on his nose and head. Seated opposite him were two inmates, while still another stood by the table, alternately waving a gun at Hardy and me, or pointing it at Lt. Wren.

Once, the inmate holding the gun placed it on the table next to Hardy, but another prisoner quickly picked it up and again held it to Wren's head.

Over and over again the inmates emphasized that this was a revolution. The inmate doing most of the talking said, "I done accepted death, they're going to kill me when they open the doors."

Hardy tried repeatedly to begin negotiations on conditions at the jail. But the inmates—for the first time—said they were not interested in negotiating. They had only one demand: freedom. It was a one-way conversation. They were talking at us, and they didn't seem to expect any response.

Almost as an aside, several inmates did complain then of brutality, poor sanitary conditions in the dining hall, poor food and other things. But it was only to lead up to their single demand. "We want the area cleared," one said, "we want to go out four at a time."

One said to me, "You tell them that we're coming out six at a time."

Hardy and I had entered the cellblock about 5:10 a.m. About 5:45 a.m., they said, "OK, you go out there and tell them what we want. We're keeping Hardy."

Hardy sat at the table with his arms folded, staring straight ahead. I hadn't expected this, I doubt that he had. One inmate took me by the arm and started leading me down the hall.

I turned back once to look at Hardy. Leaving him there, I felt then and now, was the hardest thing I've ever had to do. He was still looking straight ahead as I squeezed through the door.

Hardy's decision to go into Cellblock 1 had been made quickly, with a snubnose revolver pointing through the peephole at both of us. There was no discussion over terms, such as whether he would be released or how long he would talk with the inmates.

There wasn't much time for him to think about being held a hostage himself. He simply asked me if I was willing to go into the cellblock with him and I said I was. But I knew the inmates had a specific use for me, and that was to convey to the authorities their demand for freedom and the terms under which they would leave the jail. And they needed me to tell their side of the story to the public.

Hardy could have had no such understanding. But we hadn't discussed the prospect of his being kept hostage.

Throughout my 35 minutes inside the cellblock the prisoners desperately tried to convince me of their singlemindness of purpose—not to negotiate for better conditions inside the jail. but simply to negotiate the method in which they were to leave the jail.

But the announcement that they planned to keep Hardy as a hostage took both Hardy and me by surprise. It was made almost casually, and I couldn't tell whether they had planned it in advance.

The next seven hours I acted as a go-between for the inmates and the jail administration. Our talks were conducted through a window overlooking a courtyard and facing 19th Street SE.

Shortly after I left the cellblock the inmates yelled out the window that they wanted the police to come to the window.

Insp. Theodore Zanders, who was in charge until Police Chief Jerry V. Wilson arrived, told me, "I think the corrections people ought to talk to them, not us."

Zanders said through a bullhorn that he could hear the inmates from behind a fence 30 yards away and that he wasn't going to the window. Hardy then appeared at the window and said, "I'm asking you to come up to the window. I'm ordering you to come up to the window."

The police refused.

About 6:20 a.m., Hardy telephoned to the rotunda from the cellblock and pleaded with the police to remove their cars from 19th Street.

Zanders told me he was reluctant to move the cars because he didn't know what the inmates' next demand would be. But he moved some.

The next hour Hardy came to the window repeatedly, pleading that police remove the cars and turn out the lights that were shining on the cellblock windows. His voice quavering, he said, "Turn those damn lights out. This is Hardy. Turn those lights off. Now move that thing out of the way," he said referring to a police truck parked on 19th Street.

No one moved the trucks immediately and Hardy continued to plead through the window, begging the police to leave the area.

At one point he shouted, "Go home. Go on, get that damn truck out. Come on, clear the area. Move it. Get away from this jail. Come on, move that detail out of there. I've got a gun against my head, please move it," he pleaded.

At 7 a.m. the prisoners began yelling out the windows that they wanted to see me again. When I got to the window one of them shouted, "We got Mr. Hardy and nine guards. We want this whole area cleared. Don't plan any mother . . . tricks on us." They also told me to tell prison authorities they wanted Mayor Walter E. Washington there in 15 minutes.

At 7:15, inside the rotunda, a Capt. Robinson received a telephone call from inside the cellblock. It was Hardy pleading for someone to bring the mayor. About that time, Chief Wilson arrived.

At 7:30 a.m. Charles M. Rodgers, deputy corrections director, talked with the mayor on the telephone. Marion Barry, D.C. school board president, also acting as a go-between, talked to the mayor and then said, "The mayor wants them to work through Rodgers and them."

At 8:15 a.m. Barry and I went to the window again briefly, and the inmates demanded that we bring the mayor there. They also wanted a doctor inside the cellblock to treat an inmate who had cut his arm and demanded that the police be removed from the area immediately.

As soon as we returned to the rotunda, Chief Wilson said, "OK, they're moving."

"The trouble is," Wilson told me, "they got a gun. I don't want the mayor shot. If you or I get shot, that's OK, but it wouldn't do to get the mayor shot."

The first time I went to the window, an inmate pointed the gun at me. But as I returned for subsequent talks the gun did not appear.

I went to the window several more times and finally at 8:30 a.m., the inmates shouted to me their single demand—freedom.

"We don't want nothin' but the sidewalk. What do you think we want, better food? Bull . . . We want the sidewalk, man."

"We're dead now, we're better dying out there than in here. We don't give a —. There's nothing you can do but let us out of here. Go tell them that. There's nothing you can do but let us out of here. What is better than freedom, man, you tell me. What's better than freedom?" the inmates told Barry and myself.

One inmate said, "This is a death play or a freedom play. Tell them to kill us."

Another shouted, "We ain't bitches, man. We don't mind dying for the—cause".

And another: "When this is all over and the other brothers come along, make it better for them. . . . That's all we are asking for is to die out on the sidewalk. They can kill us right there."

Over and over again the inmates complained from the window about the negotiations at Lorton two weeks ago, saying at one point, "Mr. Hardy negotiated for the brothers at Lorton, how about us? You read in the paper about niggers escaping, but you don't know why. We have come to the conclusion that we're going to die."

At noon the inmates again came to the window and shouted for me to come talk to them. One of them said that Hardy was about to make a statement from the window to the effect that there would be no reprisals or action taken against the inmates in the cellblock.

Hardy came to the window and pleaded for police to leave the area. He said, "I don't want any bloodshed. We got people here with lots of problems. They have treated me decently," he said. "I don't want any CDU (the police civil disturbance unit) in here. I don't want that kind of action. I don't want bloodshed."

He was drawn and appeared nervous but not injured. An inmate held what I thought was a knife to his head and shouted, "His head is coming off, you better believe that."

Other inmates pulled Hardy away from the window and one of them threw out a white shirt saying that it belonged to the injured guard, Lt. Wren. The front was covered with bloodstains. The inmates then shouted out the window, "Get them out of the rotunda," referring to the police. "You better get those ———— out of the rotunda now."

There were only a few policemen in the rotunda and they left.

As early as noon, the inmates were asking me if I was "playing tricks" on them. They demanded to know why I hadn't brought the mayor to the window.

Later in the afternoon, it became obvious that my effectiveness as a go-between was lessening. They didn't seem to need me anymore, particularly after the arrival of Julian Tepped—who negotiated at Attica prison—and Rep. Shirley Chisholm.

Later as I was about to return to the office to write my story, I heard that a pool of reporters was being formed to go back into the jail's recreation yard, outside Cellblock 1, to talk to young inmates who wanted no part of the uprising and were allowed to leave the cellblock.

I wanted to make sure that The Post had a reporter in that pool and I broke through police lines to try to reach "Hunk" Anderson, a corrections department official.

A big policeman grabbed me by the shoulders and pushed me to the curb, swearing at me and telling me to get back with the rest of the reporters. I told him I had been inside the cellblock since 4 in the morning, but he said, "I don't care who the hell you are, get behind that line." And he pushed me again.

I yelled and finally got Anderson's attention and he came and talked to me and we got a Post reporter in the pool. After that, I went back to the office.

YOUNG PRISONERS TELL OF RATS, ROACHES IN D.C. JAIL

(By Donald P. Baker and Grayson Mitchell)

The young prisoners were the first to leave cellblock where the hostages were being held. The older men insisted that they go, because they were not part of the protest.

There were 19 of them, and as the afternoon wore on, 113 older prisoners who did not wish to protest also left the cellblock, leaving about 50 inmates behind.

As the young men walked into the recreation yard between the front of D.C. Jail and the chain link and barbed-wire fence along the sidewalk, Petey Greene saw them and began to cry. With tears streaming down his face, the ex-convict and ex-dope addict who now helps other ex-convicts and dope addicts, said:

"You've got a bunch of babies here."

For about 20 minutes they talked to a group of reporters who had been allowed inside the fence. One of them, who said he was John Ferguson, 17, said:

"We don't even belong here."

He was referring he said, to the fact that younger prisoners were being kept with older prisoners.

Across the street from the jail fence was a crowd. Many claimed to be relatives of prisoners. Police allowed some of them to go up to the fence and call to prisoners in the windows above. By midafternoon, however, police confined them to the sidewalk across the street, and there were occasional pushing and shoving matches between members of the crowd and police as the afternoon wore on.

As Greene, one of those chosen to negotiate with the prisoners in Cellblock 1 who were holding D.C. Corrections Director Kenneth L. Hardy and 11 guards, stood with tears rolling down his lean face, the young prisoners talked to a group of newsmen who had been permitted inside the fence.

Clarence Moore, 19, said he was in jail awaiting trial on a burglary charge.

"I came over here with (VD), and didn't get treated for a month," he said. "The food is bad. There are roaches crawling in it."

A prisoner named Johnson who said he was 17, said: "The rats are jumping all over our heads in there, and the roaches race all over."

Johnson said he was suffering from a skin rash when he was sent to the jail about three weeks ago, and that he had never been treated for it. He removed his shirt to show reporters scars on his chest and what appeared to be a rash.

After the young prisoners were removed from Cellblock 1, other prisoners began to leave. By late afternoon, 132 inmates had left the block and only 53 remained, according to School Board President Marion Barry, another negotiator.

Barry and Charles Rodgers, deputy commissioner of corrections, held a curb-side conversation with the crowd across the street from the jail. A voice from the crowd said:

"When will we get to see the prisoners?"

"The families will not get in there today," Rodgers replied.

Earlier, in response to appeals broadcast through the news media, a few relatives of prisoners began to gather at Eastern High School.

William J. Saunders, the principal of Eastern, told a reporter he had not received permission from the school board to allow the relatives to use the school auditorium.

In any case, reporters at the school counted only seven persons who appeared to have responded to the appeal. Three young men who said they were friends of the prisoner-negotiators told the seven not to talk to the press, and escorted them to a station wagon driven by D.C. corrections officials.

They were driven to the jail where corrections officials said they would be allowed to communicate with prisoners by shouting through the windows. It could not be learned whether any had actually been admitted to the jail.

From the crowd across the street, meanwhile, other voices called other questions: Who are the 50 prisoners? Are they armed? Have the prisoners received meals?

"We don't know who they are," Barry said in answer to one question. "We'll go back and ask if they'll tell us, 'cause their families are here."

None of the 132 men who voluntarily left the cellblock was armed, Rodgers said. Barry added that "we're not sure" about the remaining 50.

As for Kenneth Hardy, Barry said: "Mr. Hardy is free to roam around. He's making calls. The prisoners want us to support him. They want community support, because they said, he's the best they've ever had."

At about 5 p.m., a bus carrying Hardy, six prisoner-negotiators and officials left the jail so the prisoners could tell their complaints to a judge.

The crowd across the street, which numbered about 200, surged against the rope along the sidewalk and the line of policemen.

As the bus drew away, people in the crowd shouted, "Remember Attica!" and other slogans. They waved their arms in the clenched-fist black power salute.

From the bus, some prisoners shouted back and waved their fists. The crowd shouted, "Right on!"

SIX IMPLORE JUDGE TO END FAULTS AT JAIL

(By Ronald Taylor and B D. Colen)

Six prisoners bused from D.C. jail appeared before U.S. District Judge William B. Bryant in an extraordinary session last night to tell him about the conditioning of their incarceration.

One of their principal spokesmen was Kenneth L. Hardy, director of the D.C. department of corrections. Hardy was one of 12 hostages the prisoners, and some 30 to 40 fellow inmates who did not accompany them to the courthouse, had held for more than 15 hours before the extraordinary courtroom hearing began at 6:30 p.m.

At 9:30 p.m. Judge Bryant recessed the hearing. By that time, he had already ordered the segregation of younger inmates from older ones at the jail. Also, by that time, Hardy had become ill and was taken to a hospital.

Hardy, who spoke in a voice that was almost inaudible, first testified that the city's penal system was "now facing a population explosion." He said he wished it were possible to insure that young suspects being tried under the Youth Corrections Act spent no more than 24 hours in the jail.

Then the prisoners began to argue their own cases.

The first to speak was Albert McCoy, who earlier received a 5-to-15-year sentence from Bryant upon his conviction for manslaughter.

"You take a 16-year-old kid and stick him in there with someone who's been in Leavenworth, or Atlanta for 30 or 40 years . . . and it ruins the kid," McCoy said. He added: "Then, they're in there with the homosexuals . . ."

"We want some help. That's what we're screaming for. Maybe it's too late for me . . . I got a little brother, I don't want him to go through there (D.C. jail). But who's going to help him? I'm screaming for help."

Judge Bryant replied by explaining that the only thing he could do was consider matters that fall within the scope of a civil suit on jail conditions over which he has presided, and in which he ordered various conditions at the jail changed in favor of the prisoners as a group.

"Whatever (individual) grievances you have can only be brought effectively before the court, and properly before the court, by a lawyer," Bryant said.

McCoy replied: "I wrote you three or four letters. I never received a reply. What can I do? You say come properly. I tried."

Bryant assured McCoy that he would see to it that "a lawyer talks to you tonight."

But in speaking to McCoy and to prisoners who pleaded their personal cases later, the judge made it clear that he could act only on issues that fall within the range of the civil suit, and not on their personal grievances.

In McCoy's case, he pointed out that he had sentenced him more than two years ago. He said that, as a matter of law, a judge loses control over a prisoner's sentence 120 days after the sentence is handed down.

Hardy was represented at the hearing by Julian Tepper, an attorney who was a negotiator in the Attica prison tragedy in New York.

Asked by a reporter when the trouble at D.C. jail began, Tepper replied:

"It started 200 years ago. What the public doesn't understand is that the inmates are in control anyway. Any power over them they give by consent. The people just don't understand it . . .

"You cannot make that place humane," he said of the jail.

Negotiations over the hearing before Bryant dragged into the late afternoon. The Court proceeding was set as a result of the intervention of Tepper and the rest of the negotiating team, acting as go-betweens for the protesting prisoners and the city administration.

Charles Duncan and Julian Dugas, longtime confidants of Mayor Walter E. Washington, entered the jail shortly after noon. Only Duncan was seen again after the bus that conveyed the prisoners and Hardy and other officials to the court had left.

The shadows were lengthening and the autumn sunshine giving way to chill when the crowd of some 500 onlookers across 19th Street from the D.C. jail saw the first sign of a break in the siege.

It was the green prison bus, its windows barred, rolling out the sliding door in the prison parking lot, carrying six prisoners toward U.S. District Court, along with Corrections Director Hardy and several newsmen.

Among the newsmen was a pool of black reporters allowed by the rebelling inmates to enter the jail yard for a time during abortive negotiations inside and then to ride with the six prisoners in the bus to court.

The crowd, many of them friends or relatives of those inside the gates, raised a cheer as the bus rolled by. It was 4:15 p.m.

A police motorcycle escort led the way downtown and the bus unloaded its passengers at the John Marshall Place entrance to the court.

There the prisoners, flanked by guards, marshals and reporters, and trailing a small army of photographers, television sound technicians and cameramen, made their way through the hall and up the elevators to the sixth-floor courtroom.

They entered the main doors, followed by lawyers, relatives, legal secretaries and reporters and sat down at one of two tables perpendicular to the judge's bench. Across from them, at the other table, sat their guards.

At about 5:15 p.m., after some discussion, the guards and attorneys started to walk the prisoners through a door beside the judge's bench, apparently to search them.

The group stepped halfway into the hall beyond the bench and then returned to the courtroom.

"You want to search us?" said one prisoner. "Search us in the courtroom. Search us in the courtroom," he said again, and proceeded to strip to the skin.

The other prisoners followed suit, as some women in the courtroom averted their eyes and others among the spectators crowded forward to see what was happening.

"This is the way they do it at the jail," said one of the prisoners. "This is the way they do it at the jail. This is the way they do it at the jail. This is a shakedown."

The marshals and guards watched as the prisoners stripped but did not approach them. Then the prisoners put their clothes back on and everybody sat down to wait some more.

One of the six guards accompanying the prisoners told a reporter in the courtroom that they, too, wished to give testimony about their problems at the jail—including pay, hours and including off-duty hours.

He said they had a list of demands signed by 80 guards calling for an immediate pay raise, retirement at the end of 20 years' service, improvement in jail security, and authority to carry guns around the clock, including off-duty hours.

The guard, who did not give his name, said that if these demands were not met the jail guards, following release of those now held hostage, would walk off the job. "The inmates can keep the jail," he said.

HARDY CONTINUES TO BE INVOLVED

(By J. Y. Smith)

It was by choice that Kenneth L. Hardy became a hostage yesterday of the prisoners whose custody is his main responsibility.

It was a choice that in some ways typifies Hardy's career since he became director of the D.C. corrections department in 1967. He has worked to try to rehabilitate prisoners through the use of community-based halfway houses, and he has repeatedly stressed programs that were meant to help former prisoners become full-fledged members of society.

Just last month, he negotiated for four days to end a strike by the 1,800 inmates of the Lorton reformatory, the city's correctional facility in suburban Fairfax County. He had risked community criticism by agreeing to negotiate freely with the assembled prisoners in an open forum in the Lorton prison yard, without being forced into the meeting by the threat of violence.

The climax of that work-stoppage came when Doolum Johnson, a leading inmate negotiator, told Hardy:

"Because you have established your credibility with us, we do not feel the need for continuing the strike."

Obviously moved, Hardy replied to Johnson and the assembled crowd of prisoners: "Men of Lorton, I want to thank you."

The talks, which centered on such issues as better food and medical and dental care and lights in the visitors parking lot, had showed "how a segment of the community which has been rejected has not lost their manhood . . . and their ability to be gentlemen," he said.

Hardy continued: "I know my career is on the line right now. There are those who want me to leave this job . . . I do not run from a fight. I want change . . . and I will stay and try to bring about that change."

Given these convictions and coming fresh from his Lorton success, the 54-year-old Hardy's decision to join the nine guards being held by the prisoners who took over Cellblock 1 at D.C. jail yesterday is at least partly understandable.

According to William L. Claiborne, a Washington Post staff writer who accompanied Hardy yesterday and who was himself held by the inmates for a time, Hardy made the decision on the spur of the moment.

But at the time, he knew the prisoners were holding the guards, and he knew the prisoners were armed.

While Hardy was willing to talk to prisoners face-to-face under tense circumstances, he has also often said there were some men whom the prison system could not rehabilitate.

Speaking about a recent proposal for a $65 million expansion of the Lorton complex, Hardy said: "I have to be pragmatic as director of the department. The (criminal) population is becoming more and more sophisticated in terms of crime. So I don't need anyone to tell me to tear down the walls and build no new prisons."

Hardy has frequently come under criticism from persons who thought some of his rehabilitative programs, particularly the community-based halfway houses, were too permissive.

Others attacked him for running a system that allegedly tolerated needlessly repressive policies. The American Civil Liberties Union won a court order earlier this year under which prisoners received more privileges.

Winston Moore, the head of the jail system in Cook County, Ill., and a long time friend of Hardy, said in a telephone interview that he thought the ACLU suit had resulted in Hardy and other officials losing control over the D.C. jail.

"He got caught in the class action," Moore said. "At this point he lost command of his institution. That is what happens when the courts and the do-gooders interfere."

Hardy has spent his entire professional career in the corrections field in the District of Columbia. He was born here, and graduated from Armstrong High School and Howard University. He did post-graduate work at Howard, Boston, American and George Washington Universities.

During World War II, he served four years in the Army, rising to the rank of captain. In 1948, he went to work as a parole officer with the D.C. parole board. In 1955, he joined the department of corrections.

At that time, the department was headed by the late Donald Clemmer, who is credited with undertaking major reforms within the system to eliminate racism and other indignities to which prisoners were customarily subjected.

Hardy has frequently expressed his admiration for Clemmer and his desire to continue reforms along the lines charted by him.

When he has time, Hardy likes to relax by painting. He and his wife, Anna, are also interested in tropical fish, and they maintain an aquarium in their home. The couple have two sons by a former marriage of Mrs. Hardy.

Mrs. Hardy said yesterday her husband has had little time in recent years for his hobbies. In fact, she said, she met him "in jail," because she is a parole examiner herself.

"He lives his job not eight hours a day but 24 hours a day—this is the Ken Hardy I know," she said. "He is a dedicated man, and I have known this for a long time. I have learned to live with his work as well as with the man."

MRS. HARDY TELLS HUSBAND: "BE COOL"

(By Margaret Pala and Jon Katz)

"I've often wondered when it would happen," Anna Hardy said. "I've learned to live with the work as well as the man."

Mrs. Hardy, a former D.C. corrections department official herself, remembered that when her husband, Corrections Director Kenneth L. Hardy, walked out of their Southwest Washington home shortly before 3 a.m. yesterday, she told him to "be cool."

She said it wasn't an expression she often uses, but it seemed fitting then. To Mrs. Hardy and her husband, it was just another early morning phone call about some difficulty in the prison system.

Mrs. Hardy didn't find out that this one was quite different until Alan Avery, a D.C. government official, called her at 6 a.m. to ask what had happened to her husband. When she said she didn't know, Avery called back 15 minutes later to tell her Hardy and 11 others were being held hostage by prisoners at the D.C. jail.

"I have faith," said Mrs. Hardy yesterday afternoon at home after more than 12 hours of waiting. "I have faith that there will be someone within that situation who will show him the kind of humanity he has shown in his work."

Mrs. Hardy, who is now a D.C. parole board examiner, said it was also a time "for us to show our humanity not only to this man (her husband) but also for the families of the hostages and the prisoners."

Mrs. Hardy tried to maintain a normal routine in the townhouse on 6th Street SW. She sent her son, Jake, to classes at Coolidge High School, where he is a senior, and she appeared outwardly calm.

The only signs that something unusual was happening were the neighbors who came to sympathize and help, and the incessant phone calls, from the press, from friends, from Mayor Walter E. Washington, and from corrections department officials who wanted to know if her husband was all right, since she was the only person Hardy was allowed to contact.

It wasn't until 3:45 p.m. that a phone call eased the tension. It was from her husband, saying "things are looking up," that he was unharmed but still being held hostage.

Within minutes, Deputy Mayor Graham Watt called to say the situation was improving, and that Hardy had agreed to help the prisoners speed up their lengthy court proceedings.

"I have accepted as a sad fact of life that in his role Kenneth becomes the goat for the entire system," said Mrs. Hardy. "They've needed money for expansion for a long time, and maybe now they'll listen," she said.

Shortly after noon, Jake returned home, and Mrs. Hardy's other son, Sgt. David Roach, called from a North Carolina Air Force base. Both are Mrs. Hardy's sons by a previous marriage.

Across the city, another wife was listening to the radio and trying to learn through the excitement and confusion if her husband was all right.

Josephine Wren, wife of another hostage, corrections officer Lt. Charles Wren, said her husband had left as usual for work on the midnight to 8 a.m. shift.

Mrs. Wren, who lives with her husband on Minnesota Avenue NE, said a cousin called at 8:30 a.m. and said he was listening to the radio and heard Charles had been taken hostage and injured.

"I turned on the television and they were saying my husband had been taken hostage and that he was hurt," she said.

Mrs. Wren said that throughout the day, no one from the jail, the police or the city government called to tell her that her husband was actually a prisoner.

"Then I started getting phone calls. I've been so nervous," she said shortly after 4 p.m. "I've got to do something. Nobody will tell me what's happening."

Mrs. Wren said her husband has been a corrections officer for 18 years and has loved the work. He loves any job he has.

"I never minded his working there until this thing with the eight escapees two weeks ago. Then I started to get nervous," she said.

She said Wren was promoted to lieutenant two months ago, and is 55 years old.

"I just hope when this thing is over that he gives it up," she said. "I can't see getting all choked up by a group of hoodlums."

Families of other hostages rushed to the jail, but were held back by police cordons.

BUSING—LEADERSHIP CONFERENCE ON CIVIL RIGHTS

Mr. JAVITS. Mr. President, nearly 3,000 black elected officials, clergymen, and community leaders have told Roy Wilkins, executive director of the NAACP and Vernon Jordan, executive director of the National Urban League, that they

support bus transportation to achieve quality integrated education. Last spring, Wilkins and Jordan, in an effort to test black sentiment on busing, solicited the views of a sampling of black elected officials, clergymen, and community leaders. About 500 black elected officials from 36 States and the District of Columbia, 600 clergymen from 38 States and the District of Columbia and 1,900 community leaders from 44 States and the District of Columbia signed the following statement:

I want quality integrated education for all children and I support bus transportation as one of the ways to achieve it.

More recently, at the PUSH Exposition held in Chicago last month, nearly 1,800 persons signed petitions which stated their support of busing when necessary to achieve quality integrated education.

This expression of black sentiment far outweighs the much touted polls that opponents of busing have tried to take comfort in. For example, the March 1972 Louis Harris survey which shows that only 52 percent of Blacks favor busing was based on a survey of only 160 blacks who were asked "Would you favor busing or oppose busing schoolchildren to achieve racial balance?" But "racial balance" is not the issue; desegregating illegally segregated schools is. Similarly, a February 1972 Gallup poll showed that 45 percent of blacks favor busing, 40 percent oppose it, and 15 percent have nc opinion. This poll, however, was based on a survey of only 48 black persons and asked the question: "Do you favor or oppose compulsory busing of some children so that school desegregation can be achieved?"

Mr. President, I ask unanimous consent that the announcement of this action by the Leadership Conference on Civil Rights be printed in the RECORD.

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

ANNOUNCEMENT BY LEADERSHIP CONFERENCE ON CIVIL RIGHTS

The Conference announced today (October 10) that pro-busing statements had been signed by three thousand black elected officials, clergymen and community leaders. They supported bus transportation as one of the ways to achieve quality education for all children.

The statements were adressed to LCCR Chairman Roy Wilkins, Executive Director of the NAACP, and Vernon Jordan, Executive Director of the Urban League. Included are the signatures of 500 black officials in 36 states and the District of Columbia, 600 clergymen in 38 states and the District of Columbia, plus 1,900 community leaders across the country.

CHILD NUTRITION PROGRAM FUNDING NEEDS

Mr. HUMPHREY. Mr. President, on September 13 the Congress approved H.R. 14896, a bill to expand and strengthen the school lunch and child nutrition programs.

This bill passed both Houses of Congress unanimously. The vote in the House was 372 to 0 and a unanimous-voice vote in the Senate.

In passing this bill, we did make certain clear and unequivocal commitments. We promised to provide funds over the amounts already appropriated for this fiscal year in order to:

First. Increase the general level of support for all lunches served to children from 6 to 8 cents.

Second. Increase the number of needy children eligible for free and reduced price lunches by raising the income standards for free lunches to 125 percent of the poverty income guidelines and the standard for reduced price lunches to 150 percent of the poverty guidelines.

Third. Permit any school to participate in the school breakfast program, thus removing all the restrictions that had been previously placed on a school's eligibility to take part in this very important program.

Fourth. Make it possible for schools in low-income areas to buy the necessary equipment in order to initiate a food service program. In this case, we increased the appropriations authorization for this fiscal year from $15 to $40 million.

I fervently hope and trust that these will not be empty promises. The money needed to provide increased general support for the program, service of free and reduced-price lunches to the needy children, and the expansion of the breakfast program must be provided early in the next session of Congress. However, the funds needed to purchase equipment are needed now, as soon as possible, so that we no longer deny lunches to needy children in some 4,000 schools who have no access to a lunch at school. It takes time to plan and establish a food service program. Hungry children are waiting. It is time that we acted.

I have already commented with respect to one provision of H.R. 14896 which was adopted by the conferees. This provision relates to the specific authorization made by the Congress so that any sort of competitive food service could be operated in the school lunchroom in direct competition to the school lunch program.

By law and legislative intent and policy, we have sought to make the school lunch program available to all children on an equal and nondiscriminatory basis. Needy children receiving a free lunch may not be identified in any way from their classmates.

But now, however, we seem to be encouraging two lunch programs in every school. One of these programs will be offering a complete nutritious lunch. The second will be offering whatever variety of food items the child desires to purchase. The needy child will be able to participate in the first program, because the Federal Government will subsidize his participation. In the second he cannot participate because he has no money. This, in no uncertain terms is discriminatory.

I think that here we are violating nationally established principles and policies. The next Congress must take a close and careful look at this situation we have created and take whatever corrective measures that are necessary.

In conclusion, I call upon the administration as well as the Congress to faithfully carry out the commitments contained in H.R. 14896 and to see to it that the nutritional objectives of the child nutrition programs are in no way endangered.

THE REPUBLIC OF CHINA

Mr. BROCK. Mr. President, the 10th day of the 10th month, October 10, marked the 61st anniversary of one of our Nation's stanchest allies—the Republic of China.

Mr. President, I wish to take these few moments to extend congratulations and heartfelt good wishes for continued growth and prosperity of their great nation to President Chiang Kai-shek and the 15 million people of this courageous free nation.

They have struggled under adversity through the years, and have never succumbed to the tremendous pressure from the outside. Even today, with strong challenges to its sovereignty, the government and people of the Republic of China stand strong, dedicated, and united among the nations of the free world.

They are to be congratulated. I wish to thank them for years of steadfast devotion to the freedom of all men, and extend my personal wishes and the wishes of the American people that they remain an outstanding example to free nations everywhere.

OMB FEDERAL ASSISTANCE REVIEW MOVES FORWARD ON THE STANDARDIZATION OF GRANT-IN-AID REQUIREMENTS

Mr. ROTH. Mr. President, on August 1 of this year I stated in the RECORD my support for the efforts of the Office of Management and Budget to bring more uniformity to the administrative requirements associated with Federal grants-in-aid to State and local governments. At that time I stressed the general need to make our vast array of categorical grants more readily usable by State, local, and private applicants, as well as more easily administered by Federal agencies. The Federal Assistance Review, initiated by President Nixon and being carried on by the OMB has been doing very important work in accomplishing these ends. I hope in the future that these rather unexciting, yet really essential undertakings, will be given wider recognition and endorsement in Congress and elsewhere.

On September 8, 1972, OMB promulgated the final two attachments to circular No. A–102, the basic circular directed at standardizing administrative requirements for programs. Other attachments had earlier been promulgated on October 19, 1971, and January 25, 1972. The various attachments to circular No. A–102 deal with the following aspects of program requirements:

First. Cash depositories.

Second. Bonding and insurance.

Third. Retention and custodial requirements for records.

Fourth. Waiver of single State agency requirements.

Fifth. Program income.

Sixth. Matching shares.

Seventh. Standards for grantee financial management systems.

Eighth. Financial reporting requirements.

Ninth. Monitoring and reporting of program performance.

Tenth. Grant payment requirements.

Eleventh. Budget revision procedures.

Twelfth. Grant closeout procedures.

Thirteenth. Standard forms for applying for Federal assistance.

Fourteenth. Property management standards.

Fifteenth. Procurement standards.

While these are all important reforms, there is still much that remains to be done in rationalizing our Federal aid apparatus. The standardization of program and project-specific requirements could well be the next goal of the FAR team working in this area. While this category of requirements will necessarily vary more than the administrative sort, there is probably much duplication and needless variety here too. Program information for grant users, as envisioned by my Program Information Act, passed by the Senate during the last two Congresses, is another area where energies could constructively be applied.

Grant consolidation and other grant reform devices, such as contained in the intergovernmental cooperation legislation introduced in both Houses of Congress, also address themselves to making grants-in-aid more usable and manageable. While this legislation passed the Senate recently, it has not yet been acted upon by the House. In the future we might also give consideration to establishing a "data bank" for grant information required of States and communities by Federal agencies. This development would relieve State and local bodies from the need to expend efforts and money in supplying the same information in several applications to different Federal offices.

In summary, I wish again to congratulate the Federal Assistance Review of OMB for a job well done and urge it to continue its efforts to make Federal domestic assistance a more positive contribution to our Federal system of government.

GENOCIDE CONVENTION DOES NOT USURP CONSTITUTIONAL GUARANTEES

Mr. PROXMIRE. Mr. President, two of the principal objections raised against the Genocide Convention are that it would be self-executing and that it might infringe upon the first amendment guarantee of free speech and press. In a 1970 report of the American Bar Association's Standing Committee on World Order Through Law, both of these objections are completely dismissed.

With regard to the self-executing argument, the standing committee ably points out that this Convention itself requires the participating nations to enact enabling legislation. Under our Constitution, no treaty could support criminal approval and action.

In the area of first amendment guarantees of free speech, in spite of the fact that the Convention makes incitement to commit genocide a crime, it must be remembered that only Congress can make a crime punishable under U.S. law. Moreover, there is an important distinction between advocacy, which is protected by the first amendment, and incitement, which is not so protected.

In the words of the standing committee's report:

> Another objection to the ratification asserted is that the treaty would be self-executing. The result, it is claimed, would be to impose a law upon the citizens of this country without the Congress having enacted any implementing legislation. Article I does designate Genocide as "a crime under international law." But Article V requires the parties "to enact, in accordance with their . . . Convention and . . . to provide effective penalties . . ." Could anything be clearer?
>
> Even in the absence of the requirement of Article V, a treaty cannot support a criminal prosecution in the absence of Congressional action.
>
> Because Article III makes "direct and public incitement to commit Genocide" a crime, it is claimed the treaty would constitute an infringement of first Amendment Constitutional guarantees of free speech and press. It should be noted again that the convention is not self-executing and does not make any act punishable under U.S. law. Only Congress can do this.

Mr. President, I urge the Senate of the United States to give this treaty its most conscientious attention that it may be considered in the next session of Congress.

A TALE OF TWO CAMPAIGNS

Mr. GOLDWATER. Mr. President, one of the most interesting aspects of the presidential campaign to date is the anguish and frustration being shown by members of the liberal press, because the American people have not taken seriously their charges of corruption in the Nixon administration.

These experts in the art of the double standard would like to see President Nixon held personally accountable for the Watergate incident and every other irregularity that has occurred during his term in office. They would like the public to believe that in some sinister way one of the greatest Presidents this country has ever had was personally pulling strings to have his campaign workers engage in illegal pursuits.

In effect, they make something of a superman out of the President in this respect. They depict a man who is not busy enough opening the door to Communist China, conferring in Moscow with Soviet leaders, winding down the war in Vietnam, placing the national economy on the road to prosperity, and attempting a massive reform of the Federal bureaucracy. They would have us believe the President is so energetic and efficient that he also has time to pass on every move made by every person engaged in the campaign to reelect him for 4 more years.

Liberal newsmen, on TV, on the radio, and in the newspapers have consistently bemoaned the fact that the Watergate affair has not convinced the American people that they should dump President Nixon and elect a man who would undo every bit of good that has been accomplished at home and abroad in the past 4 years.

This is a question on which I feel I have special qualifications to comment. This is true because the liberals who are today complaining because the public is not inclined to hold President Nixon personally accountable for every act committed by Republican workers are the same people who went all the way for the reelection of President Lyndon Johnson despite the crimes committed by his personal Senate protege, Bobby Baker. Although President Johnson, when he was in the Senate, often referred to Baker as the nearest thing to a son he had ever had, the liberals saw nothing strange in the fact that Mr. Johnson knew nothing about Baker's widespread and long-term felonious activities.

Here was a situation where criminal actions were taken by a man very close to the President of the United States, but a man whose activities the liberals and the voting public never even considered holding against Mr. Johnson. I am not suggesting that President Johnson had any knowledge of Baker's activities, nor am I suggesting that President Johnson condoned these activities. What I am saying is that Mr. Johnson had a much greater opportunity to know what Baker was up to than President Nixon had to know what the Watergate buggers were up to.

Mr. President, 8 years ago, the liberal press, especially those parts of it located in Washington, D.C., had no interest in harping continually on Mr. Johnson's close relationship to Bobby Baker. In fact, that aspect of Mr. Johnson's career was seldom even mentioned. But today, we find the liberal press demanding that every last detail of the Watergate affair be aired before the election because of "the people's right to know." Leading the campaign, with stories editorials and cartoons, is, of course, the Washington Post. I submit that the Post, in its hysterical and righteous complaints about the Nixon campaign, has got to have set some kind of an alltime record for political hypocracy. This is the newspaper which, in 1964, was so negligent of the public's right to know that it deliberately suppressed news about the arrest of one of President Johnson's top assistants at the direct request of Mr. Clark Clifford and Mr. Abe Fortis—both close friends of President Johnson. It will be recalled that it was not until Republican National Chairman Dean Birch got wind of this development and charged the news media with suppressing legitimate news that the story was printed.

In other words, Mr. President, the people who today are charging a political coverup by the Nixon administration were actually a part of the coverup by the Johnson administration in the 1964 presidential campaign.

And if memory serves me correctly, the Washington Post, which is so horrified at the possibility of political espionage, some years ago paid hundreds of dollars for information supplied by a man it thought was employed by a Senate committee headed by the late Joseph McCarthy. Apparently, where the liberal press is concerned, the end justifies the means. Because the Washington Post felt that McCarthy was the worst thing that ever happened in Congress, it apparently felt that any kind of methods, legal or illegal, were justified in obtaining confidential information. One wonders, in the light of this, why the Post is so agitated by the Watergate incident.

There is no attempt here to defend the people responsible for the Watergate affair. This is merely an attempt to draw the whole thing into better perspective in relation to the presidential election campaign.

The argument of Senator McGOVERN that President Nixon's administration is the most corrupt in the Nation's history is, of course, complete hogwash uttered by a candidate so far behind that he has become frantically superlative.

And when everything is said and done, the few incidents of alleged corruption McGOVERN alludes to have nothing to do with the conduct of governmental affairs which directly affect the lives of 208 million Americans, to say nothing of policies having to do with the future peace of the world. It is ridiculous on its face to suggest that President Nixon is somehow responsible for the Watergate affair. He has proven many times over that he is a completely honorable man deserving of reelection to 4 more years.

I believe the American people are to be congratulated on their maturity and poise in not letting the arch liberals get away with their sordid attempts to inject false issues into the presidential campaign. The time is now past when the liberal politicians and their allies in the communications media could hoodwink the electorate into voting against its own best interests.

In this connection, I believe the liberal commentators are doing the American people a grave injustice when they claim that the refusal of the public to become as exercised as the liberals over the Watergate affair, stems from a nationwide cynicism generated by the war in Vietnam. Just the reverse is true. The American people have learned to differentiate between fact and partisan ranting.

SENATOR GEORGE AIKEN'S POEM ON SENATOR SAM ERVIN

Mr. ALLEN. Mr. President, some evenings ago, Mr. and Mrs. Eugene Rietzke, of McLean, Va., gave a birthday dinner in honor of our colleague, Senator SAM J. ERVIN, JR., of North Carolina. I was among those who had the happy privilege of being present. The highlight of the occasion was the reading by the newly emerged northeast poet, Senator GEORGE AIKEN, of a poem which he had written for the occasion. This poem, which proves that Senator Aiken is a worthy successor to Longfellow, Bryant, and Robert Frost, merits preservation along with other great literary productions such as those of William Shakespeare. For this reason, I ask unanimous consent that a copy of this poem be printed at this point in the body of the RECORD.

There being no objection, the poem was ordered printed in the RECORD as follows:

MY EFFORTS AT WRITING A POEM FOR SAM ERVIN

1

From Pacific to Atlantic,
He drives school bus fellows frantic.

2

Smart boys tangling with Sam Ervin
Find his tactics most unnerving.

3

The years he put in as a judge
Now make him very hard to budge.

4

The way the Sioux mistreated Custer
Is how Sam works the filibuster.

5

Sam speaks with an accent very Southern
And never never never talks like George McGovern.

6

Tho representing the Tar Heel State
His worth to the Nation is simply great.

7

To sing Sam's praises is never hard,
But for writing poetry I am no bard.
So I give up.

By: GEORGE D. AIKEN.

SENATOR JOHN SHERMAN COOPER

Mr. GURNEY. Mr. President, when the next session of Congress convenes in January, it will be without a man who has served with great distinction in the Senate for 20 years, the distinguished senior Senator from Kentucky, JOHN SHERMAN COOPER.

As one who has served with him in the Senate for the last 4 years and in Congress the last 10, I can say that he will certainly be missed. He is a man with the courage of his convictions and a deep dedication to the job of representing the people of Kentucky—something he has been doing ever since he was first elected to the Kentucky State Legislature in 1928.

Senator COOPER — in the tradition of Kentucky statesmen such as Henry Clay and Alben Barkley, has put his stamp on American history as a member of the Senate Foreign Relations Committee. His opinions were universally respected and his courage widely admired even by Senators who may have held contrary views.

He has always done what he believed was best for America and has served this Nation well—as a legislator, a judge, a soldier, an Ambassador and, for the last 16 years, a U.S. Senator.

It is typical of Senator COOPER that he would choose to retire at a time when many others would choose to run again. I am sure I speak for all my colleagues in wishing him the very best in the months and years to come. The people of Kentucky, and the people of America, will certainly miss him and whoever is fortunate enough to be elected to the seat in November will have a big pair of shoes to fill.

PREVENTION OF NATURAL DISASTERS

Mr. CRANSTON. Mr. President, I invite the attention of the Senate to the fine program being developed by the California Institute of Technology's Center for Research on the Prevention of Natural Disasters.

Although we commonly speak of earthquakes, fires, floods, and tornadoes as acts of God or natural disasters, the damage they cause is in large part man arranged. The widespread structural damage caused by the 1971 San Fernando Valley earthquake in California, and the severe flooding resulting from Hurricane Agnes, for example, have tragically demonstrated the inadequacy of present disaster planning and building methods to reduce property damage and loss of life.

The California Institute of Technology has demonstrated unusual strength in research related to natural disasters. Profs. George Housner, Donald Hudson, Paul Jennings, Wilfred Iwan, and Ronald Scott have conducted extensive research on engineering problems of destructive earthquakes. Profs. Frank Marble and Edward Zukoski have been working actively on problems of fire and conflagrations. Profs. Anatol Roshko and D. E. Coles conducted in-depth study of destructive windstorms, and Profs. V. A. Vanoni, Fredric Raichlen, and T. Y. Wu have worked on problems of flood hazards and tsunamis.

The cooperation of this distinguished faculty in the operation of the disaster research center has provided a source of expertise which would be difficult to equal elsewhere, and their program is one which I am confident will pay great dividends in helping to reduce the high loss of life and property damage which natural disasters now cause. It is my hope that the center for research on the prevention of natural disasters, and programs like it, will receive strong and enthusiastic public support.

Mr. President, I ask unanimous consent that the abstract of the disaster research center's proposal to the National Science Foundation be printed in the RECORD.

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

PROPOSAL FOR A PROGRAM OF RESEARCH ON THE PREVENTION AND CONTROL OF NATURAL DISASTERS

ABSTRACT

This is an interdisciplinary program of research in the prevention and control of natural disasters. The program will be handled at the California Institute of Technology by the Center for Research on the Prevention of Natural Disasters. It will involve thirteen professional staff members who have been doing research in the fields of earthquakes, fires, winds, and floods. Based on a broad technical foundation in these fields, the program will study those aspects of the earthquake, fire, wind and flood problems that lead to disasters, and will examine and develop means for preventing or controlling disasters.

Particular attention will be given to disasters that may result from combined actions, such as, earthquake and fire, fire and wind, earthquake and tsunami flooding.

An important component of the program is the formation of a disaster information center which will serve as a library of pertinent publications on natural disasters, as a storage of general information, and as a data bank. This will serve as the main unifying element of the program. The disaster information service will also be a source of data and information for others concerned with natural disasters. It should be especially helpful to government agencies, private organizations, and practicing engineers who are involved with problems of natural disasters.

Another important element of the program involves short-term interdisciplinary studies, of two to six weeks duration, during which a particular problem or event will be studied by a group of faculty, research fellows, students, and a much larger number of active participants who can contribute special knowledge, and who have special need to solve problems posed by natural disasters.

The basic objectives of the program are to determine why natural events lead to disasters and by what efficient means they can be controlled or prevented.

EDITORIAL COMMENTS ON SALT INTERIM AGREEMENT

Mr. JACKSON. Mr. President, since the passage of my amendment to the SALT interim agreement resolution, considerable editorial comment has come to my attention, some of it published during the Senate debate on the amendment. I am encouraged to note how much of the comment supports our effort to secure passage of the amendment and recognizes that our demand for equality in intercontinental strategic forces in any future strategic arms limitation agreement is in the best interests of a sound and prudent national security posture for the United States.

Mr. President, I ask unanimous consent that a representative selection of the editorial comment be printed at this point in the RECORD.

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

[From the Columbus (Ga.) Ledger, Aug. 23, 1972]

SENATOR JACKSON IS RIGHT—EQUALITY IN MISSILE STRENGTH

There can be no sound argument advanced against the position Sen. Henry Jackson (D-Wash.) has taken on the October renewal of Strategic Arms Limitations Talks with the Soviet Union.

Sen. Jackson has offered a new preamble to the interim agreement ratified by the Senate as a result of the first round of SALT. Essentially, it urges the United States to seek equality with the Soviets in levels of intercontinental strategic forces during the October phase of negotiations.

Senators backing the Jackson guidelines are remarkable for their political diversity. Senators Barry Goldwater, Strom Thurmond and Gale McGee of strong views on defense have joined such senators as Robert Packwood, Lawton Chiles and David Gambrell, none of whom are particularly known as hard liners on defense matters. Sen. Jackson has, by what amounts to an individual crusade, found 30 co-sponsors for his resolution, a tribute to his ability to educate his fellow senators and draw support.

The Jackson measure says that we can't rely on the negotiators of the first round of SALT to produce a satisfactory deal on offensive weapons, an equal number of missiles, for each side, unless there is strong congressional opinion forcing them to do it. The deal which allows Russia numerical superiority in missiles and submarines is his target. Equality in numerical strength is his goal.

Welcome as the news of successful negotiations with Russia on this complex subject was to all Americans, there is rational opposition to the particular quotas of weaponry which are involved in possible agreements on offensive missiles and submarines. We believe Sen. Jackson is correct.

We believe equality is the minimum requirement for American security in any deal with Russia or any other major potential enemy. We prefer superiority but if equality is accompanied by improved and beneficial relations with potential enemies which makes them become potential friends, we support that much of a gamble because we believe the future of mankind and the world demands it.

We can't support agreements which would make us subject to potential blackmail if we allow ourselves to assume an inferior position to Russia or anyone else, however. Sen. Jackson has done well and he is correct. We believe he must achieve support of enough people to influence enough more of his fellow senators to get his guidelines made official.

[From the Greensburg (Pa.) Tribune-Review, Aug. 25, 1972]

ARMS INFERIORITY—SALT STACKED DECK AGAINST U.S. SECURITY

(By W. J. Griffith III)

For a man who prides himself on being an excellent poker player, President Nixon has managed to stack the deck against himself—and the security of the United States.

That's the basic assessment of Sen. Henry M. Jackson, D-Wash., regarding the anti-ballistic missile treaty and the five-year nuclear weapons "moratorium" agreement which evolved from the Strategic Arms Limitation Talks between the United States and the Soviet Union. Noting that the U.S. SALT negotiators themselves admitted the "moratorium" is unsatisfactory as a premanent solution, Jackson has proposed a resolution which would put the Senate on record opposing any more SALT agreements locking the United States into arms inferiority.

Jackson charges that the "moratorium" is onesided, limiting the United States to the present 42 nuclear submarines and 1,054 land-based intercontinental ballistic missiles while permitting the Soviets to continue construction of both weapons systems until they have 62 nuclear subs and 1,618 land-based ICBMs stationed in permanent silos. The Washington senator adds that while Washing unilaterally renounced construction of mobile ICBMs, Moscow is free to build as many as it wants without violating the agreement, as Secretary of Defense Melvin Laird acknowledged.

Further, Dr. John S. Foster Jr., Pentagon chief of research and engineering, warned: "Although the United States has a lead in deployed technology that now offsets this imbalance, (in numbers), Soviet exploitation of their numbers and throw-weight capability could adversely effect the strategic balance."

Nevertheless, Laird contends that both sides gave up something in the disarmament negotiations. Laird says that "we are stopping our momentum in the ABM field. They are stopping their momentum in the offensive weapons area." Foster offered a different analysis in June–July hearings before the Senate Armed Services Committee.

Sen. Howard W. Cannon, D-Neb., asked Foster: "Is it not true that the Soviets will not have to exercise restraint in their momentum, that is, they will not have to curtail their current building rate of submarines for at least three years and perhaps more?" Foster: "Yes, sir; that is correct."

Cannon: "On the other hand, the United States has agreed to give up something this year, and that is work on three ABM sites at the Minuteman missile installations. In fact, we will actually be dismantling work already started at Malmstrom Air Force Base . . ." Foster's reply: "Yes, that is correct."

In the hearings, Jackson asked Gerard Smith, chief U.S. SALT negotiator, how much Soviet momentum in offensive nuclear weapons had been slowed by the "moratorium." Smith answered: "I do not think you can answer that . . . I do not think you can get a specific answer to that question."

Smith couldn't answer a number of other questions, as well, about what the United States agreed to in SALT. Jackson asked Smith what "under construction" meant in regard to submarine production. Smith's answer: "We do not have an agreed definition."

Further, the chief negotiator admitted that "we were not able to negotiate a definition of what constitutes a heavy missile." Yet the USSR is allowed 313 heavy missiles while the U.S. is permitted none.

The "moratorium" is vague on other matters, too. For example, Jackson asked: "Did you try to negotiate a throw-weight freeze?" (Throw-weight is the payload a missile can throw or carry.) Smith answered: "No, sir."

Jackson asked why there was no limit on diesel subs which carry nuclear missiles. Smith replied: "I don't consider a 700- or 400-mile SLBM (submarine launched ballistic missile) a modern missile."

Adm. Elmo Zumwalt, chief of Naval operations, stated, however, that "a 700-mile range missile could do catastrophic damage to a substantial portion of our people and cities whereas it could do very little damage to theirs."

When Jackson tried to find out what, exactly, the United States bargained away during the negotiations, Smith refused to answer, stating that "I would not like to identify publicly what our position was."

Jackson presented figures he said represented the American position on Aug. 4, 1970: The United States demanded parity on all long-range missiles but eventually settled for 1,710 while giving the Soviets 2,358. Originally the Nixon administration proposed 250 heavy missiles for both sides but finally agreed to build none while Moscow was granted 313.

U.S. SALT negotiators two years ago demanded a ban on all mobile land-based ICBMs. Washington announced in May it would build none but the Soviets can construct as many as they want.

Dr. William Van Cleve, a SALT adviser for the U.S. from 1969 to 1971, agrees with Jackson's assessment of what the Nixon administration gave up. Van Cleve was the only person outside the government who was called upon to testify before the Senate Armed Services Committee in the June-July hearings.

"Those agreements," Van Cleve noted, "do not resemble those deemed acceptable in 1969 or 1970," which was nuclear equality. In fact they don't resemble what Laird thought was acceptable four months before they were signed. Last February, Laird warned that "if we were placed in an inferior position where the Soviet Union would have substantially more ballistic missile submarines than the United States had . . . this could have a tremendous effect

upon the future course of the United States."

[From the Greenburg (Pa.) Tribune-Review, Sept. 6, 1972]

ONLY ONE WINNER

Sen. Henry Jackson, D-Wash., has received a powerful assist from organized labor in their battle to prevent any more White House agreements, accepting American military inferiority.

The AFL-CIO executive council states: "American labor is firmly opposed to a treaty on offensive weapons that would limit the United States to levels of intercontinental strategic forces inferior to the limits provided for the Soviet Union."

The Washington Democrat has jointly sponsored a bi-partisan Senate amendment to the five-year "moratorium" on offensive weapons which grew out of the Strategic Arms Limitation Talks. This agreement lays the groundwork for a treaty which would permanently freeze levels of nuclear arms.

Jackson has pointed out that the "moratorium" is basically unilateral. The Soviet Union is free to go on building up a tremendous edge in both nuclear missile submarines and intercontinental ballistic missiles while the United States has agreed to maintain its present levels. Even if the Kremlin should honor the "moratorium," at the end of five years it would have three ICBMs and nuclear missile subs for every two of ours. The AFL-CIO warns: "If these disparities were made the basis for a follow-on treaty in this period of rapidly changing technology, the United States would be placed in a position of strategic inferiority."

Organized labor, in fact, is understating the danger. As Dr. John S. Foster Jr., director of Pentagon research, acknowledges, Soviet weapons technology could surpass that of the United States before the five-year period has expired, which would further endanger American security.

Up until recent years, the United States had always maintained nuclear superiority—a strategy that has prevented a major war between the free world and the Communist bloc. It is a policy that should not be abandoned, even for a short span.

In the arms race there is only one winner; the rest are losers.

[From the New York Post, Sept. 12, 1972]

A CRITICAL HOUR

(By William F. Buckley, Jr.)

When on accepting the renomination of his party at Miami Beach a few weeks ago Richard Nixon said that he would never negotiate an arms limitation agreement from a position of inferiority, he ran a terrible risk. The risk was that someone would read out to him from the transcript of the various press conferences in Moscow in which Henry Kissinger gave out the details of the SALT Treaty.

I counted *seven* times that Mr. Kissinger defended relegation of the U.S. to inferiority on the grounds that after all we were talking not about an ideal situation but about the current situation. Mr. Kissinger's point was that the Soviet Union has been going hell-bent for strategic armament for three years while we have been coasting, and that we are better off more or less freezing the situation than waking up a year or two from now to find the Soviet lead drastically lengthened.

In other words, we negotiated from inferiority.

The scandal of creeping American arms inferiority is easily the best kept secret in the world, notwithstanding that the facts are widely available and have been remarked by the Chiefs of Staff and by the Reader's Digest, who between them cover just about everybody. Fortunately, the facts are well known to a group of senators who are right this minute engaged in one of the toughest and most important parliamentary maneuvers of the decade.

They are fighting for what we call the Jackson-Scott-Allott amendment to the Interim Agreement. Now that amendment does several things. But mostly what it does is to address the President of the U.S. thusly:

Friend, when you come back to us in a couple of years with SALT II—the treaty that is supposed to incorporate a permanent lessening of the strategic potential of the Soviet Union and the United States—do not present this chamber with a document that grants the Soviet Union superiority.

As things now stand under SALT I, the Soviet Union has a 50 per cent advantage in launching sites and a 400 per cent advantage in payload, once they are done Mirving. Meanwhile, between now and the time you come back to us with the treaty, we in the Senate will from time to time question the Executive on what strides are being made to narrow the gap between the Soviet Union and the United States, within the terms of the current agreement. What kind of research are you doing, for instance? And when we say equality with the Soviet Union, we mean equality of the kind spelled out for instance in the ABM Treaty, not the fancy-talk equality by which such as Sen. Fulbright transmogrify a 4 to 1 disadvantage into equality, on the nice metaphysical principle that every Russian can only die once.

The doves, sensing a great danger to their vision of a disarmed America, are horrified to note that Sen. Jackson's got himself 44 cosponsors for his amendment. With 44 cosponsors, one can assume a great many others will vote with the 44 easily enough for a swollen majority. What will be left over is a highly visible minority who actually are voting against American equality in strategic arms, not the most attractive record to offer their constituents in an election year.

The doves then fought back with a Mansfield amendment about playing fair under the rules of SALT I, but the Jackson people completely outwitted them by going for it 100 per cent (the vote was 85 to 1) on the grounds that the language of the proffered amendment was totally harmonious with that of the Jackson amendment—thus stripping it of any real meaning. The doves talk now about throwing out the Jackson amendment at a conference with the House (which did not come through with a complementary measure), but the Senate strategists don't particularly care. SALT II is projected as a treaty, and is subject therefore to ratification by the Senate. By two-thirds of the Senate.

Richard Nixon is actually encouraging the Senate realists. He desires them to tie down his hands, and why should he not? Richard Nixon is not the only American who knows what the Russians have been secretly up to in recent weeks and months in the field of arms research and development. Hubert Humphrey also knows about it. It is only the American people who don't know about it but, inevitably, will know about it soon. They can reasonably demand to know how their Senators voted on the Jackson amendment at that critical hour.

[From the Kansas City Times, Sept. 14, 1972]

AFOUL OF MISTRUST ON ARMS PACT

The Soviets are on weak grounds in objecting to the views of the Pentagon and of Sen. Henry M. Jackson (D–Wash.) on the arms control agreement signed in Moscow last May. A statement by Izvestia, the government newspaper, charges the U.S. secretary of defense, Melvin R. Laird, with violating the spirit of the Soviet-American pacts limiting strategic arsenals and thus jeopardizing the effectiveness of the agreements. Izvestia specifically accuses Laird of pressing for the development of U.S. offensive systems.

Laird is indeed working for that purpose. He is asking Congress for funds to finance accelerated development of the new, longer-range Trident underwater missile and the B–1 strategic bomber. The terms of the Moscow treaty on offensive weapons do not forbid such programs. In fact the pact asserts the right of both the U.S. and Russia to pursue weapons development during a 5-year interim period before a full-fledged agreement is reached.

Why, then, are the Russians complaining? It is a fair question, particularly since the 5-year freeze applies to *numbers* of offensive nuclear weapons. But it does not prevent the Russians from proceeding with their as yet untested version of the SS9 multiwarhead missile, believed capable of carrying three warheads, each with a punch of 5 million tons of TNT. The U.S. has no comparable weapon.

What the Soviets apparently want is for the U.S. to deny itself more advanced weapons, as permitted in the temporary treaty, while they move ahead to establish an advantage. In seeking an advantage they strengthen the skepticism of those Americans who are wary of accepting any arms control understanding with the Soviet Union.

Senator Jackson has warned that the interim agreement is subject to unilateral interpretations. The Soviet protest tends to bear out Jackson's point. He is therefore trying to attach a rider that would require future agreements to be based on the principle of equality of forces. His proposal would not alter the treaty in its present form. And it might facilitate Senate approval of the treaty—something that needs to be done promptly so that the two governments can proceed next month with further arms control negotiations. It is in this round of talks that any objections by Moscow can be properly dealt with.

[From the Oregonian, Sept. 15, 1972]

TESTING THE RUSSIANS

The Senate's adoption of Sen. Henry M. Jackson's amendment requiring the United States to seek in a permanent treaty with the Soviet Union equality in "intercontinental strategic forces" is a proper action after a month-long debate which has produced a new awareness in Congress and the nation.

Once that hurdle was passed, after rejection of substitute amendments by Sen. J. W. Fulbright and other Foreign Relations Committee doves that would have weakened the directive to "over-all equality, parity and sufficiency," approval of the five-year interim agreement signed by President Nixon and Chairman Brezhnev in Moscow May 26 was a foregone conclusion.

We see no danger and some benefit in the Jackson amendment holding the Russians' feet to the fire as a test of their sincerity in Phase II of the Strategic Arms Limitation Talks. If the Russians really want a stand-off permitting reduction in the insane arms race, rather than a threatening dominance in offensive power, this is the time to find out.

The principle of equality in defensive weapons was recognized in the treaty limiting deployment in both the United States and the Soviet Union of anti-ballistic missiles, already ratified by the Senate. All that Sen. Jackson asked was that the U.S. negotiators be instructed to insist on equality in offensive weapons.

There are differences of opinion and in statistical reports on the relative missile power of the two nations at present, and the potential for each under the five-year interim agreement. Sen. Jackson has demonstrated, however, that the Soviet Union could build 62 nuclear submarines of the Polaris type

under the interim agreement while the United States would be limited to 44. He has shown that the Russians could replace their obsolete SS–7 and SS–8 ICBMs with new submarine-launched missiles on a one-for-one basis, but the United States, which has already retired its Atlas and Titan I missiles, has no such trade-in privilege. He has said the Russians are developing new ICBMs which would increase their "throw weight" advantage without going beyond the 1,618 ICBMs permitted under the interim agreement.

Sen. Jackson may be overly impressed with the statistics of overkill, but his opponents were even less realistic in favoring what amounts to a U.S. policy of unilateral arms limitation based on faith in the Russians. The American negotiators of the next step in SALT are certainly aware of the statistics of offensive capabilities, of first-strike dangers and of second-strike limitations. It should strengthen the hands of the diplomats, however, that Congress has added its voice to that of the Nixon Administration in demanding treaty equality in offensive weapons. No less will be accepted by the American people.

[From the New York Daily News, Sept. 16, 1972]

SALT Makes the Grade

The five-year interim agreement between the U.S. and the USSR on limitation of strategic weaponry was approved Thursday by the Senate, but only after adoption of a common sense amendment put forward by Sen. Henry Jackson (D-Wash.).

This proviso urges President Richard M. Nixon, in the next phase of SALT negotiations, not to settle for less than numerical equality in major arms with the Soviets.

American bargainers settled for less than parity in the present pact, conceding Moscow sizeable margins in land-based and undersea missile strength. Superior U.S. technology, particularly in multiple warheads, is supposed to make good the deficit in numbers.

But this nation would assume a foolish risk if it depended, as Sen. J. William Fulbright (D-Ark.) contends it should, on maintaining its scientific edge indefinitely. Fulbright apparently has learned nothing from the quick Russian catch-ups in development of A-bombs, H-bombs and long-range missiles.

DEFENSE BUDGET

We're happy the Senate heeded the far more hardheaded and realistic Jackson in this case, and we hope the rider will survive the coming Senate-House conference on the SALT resolution. Favorable House action on the Defense budget indicates the lower chamber may be more than willing to go along. In okaying the $74.5 appropriation bill on Thursday, the House gave Mr. Nixon just about every cent he requested for development of the Trident submarine missile system and the new B–1 manned bomber.

Lack of those advanced weapons, as the President has stressed repeatedly, would greatly handicap our negotiators in trying to obtain a long-range treaty on arms ceilings.

The notion that new defense programs will offend the Communist enemy is absurd. Time and time again. the Kremlin has shown that it respects strength and determination, just as it despises and exploits weakness.

[From the Ogden, Utah, Standard-Examiner, Sept. 16, 1972]

Senate OK's SALT

The U.S.-Soviet agreement on strategic arms limitations (SALT) is a more realistic document as it leaves the Senate than it was when originally drafted at the Kremlin.

The agreement, as approved late Thursday by an 88–2 vote in the Senate, includes Sen. Henry M. Jackson's amendment requiring numerical equality in intercontinental weapons that carry nuclear warheads.

This, if accepted by the U.S. House of Representatives and authorities in the U.S.S.R., would modify the original pact that had taken into consideration the American superiority in multiple warheads.

Sen. Jackson argued, and we agree, that this U.S. advantage could easily be wiped out by Russian advances during these next five critical years.

The goal of SALT from the start has been to curtail the arms race in nuclear weapons—including both land and sea missiles and aircraft.

This objective can better be achieved under the Jackson amendment than in the treaty as signed in Moscow during President Nixon's historic visit to the Soviet Union. Once in force, SALT's agreement will be in the best interests of world peace.

[From the Birmingham News, Sept. 16, 1972]

Jackson's Firm Stand

A healthy skepticism regarding Soviet military intentions and determination on the part of Sen. Henry M. Jackson (D-Washington) has resulted in a sounder Soviet-American approach to slow the arms race.

The Senate approved the five-year pact which President Nixon brought home from the Moscow summit, but served notice that the temporary agreements, specifically regarding numbers of nuclear warheads, would not be acceptable to serve as a basis for a permanent treaty.

Approved overwhelmingly by a vote of 87 to two, the agreement for the first time set limits on the number of offensive missiles deployed by the United States and the Soviet Union at least for the next five years.

Sen. Jackson, from the beginning of the debates, worked long and hard for the amendment which demanded strict, numerical equality in missiles for the two countries.

Jackson's logic for numerical equality is sound. "The present U.S. advantage in strategic weapons technology, which now offsets Soviet numerical superiority," Jackson argued on the floor of the Senate, "cannot be assured in a long-term treaty. What would be a tolerable basis for an interim agreement, therefore, would be intolerable as the basis for (permanent) treaty."

Jackson also asked the Senate to join with him in calling upon the Soviet Union to "reverse its weapons build-up and content itself with equality with the United States in strategic offensive weapons."

The senators who opposed Jackson's amendment did so out of fear that instead of the Russians reducing number of nuclear submarines and missiles to the U.S. levels, the U.S. would accelerate its nuclear program to reach the same numbers the Russians project, and that this see-sawing back and forth would result in another uncontrollable arms race.

The doves also have bought the "doctrine of strategic sufficiency"; that is, the U.S. needs only sufficient missiles to assure the destruction of the Soviets in case of nuclear attack. Anything more, they argue, is foolishness and waste.

The problem with the "doctrine of sufficiency" is that more and more sophisticated defense technology can radically alter what is sufficient to knock out a potential enemy.

Jackson argued that Russia's numerical superiority in numbers of weapons would, in only a matter of time, be supported by a technology equal or even more advanced than that of the United States.

The amendment Jackson pushed and which was backed by the White House should present no insoluable problem for the Soviets, if their real intention is peace.

If their real intention is not peace, and they are simply seeking time to achieve an insurmountable superiority, it is best we discover it now.

Sen. Jackson has served his nation well in doggedly insisting that the administration, the Congress and the Soviets confront what could be a key issue in the pursuit of a new era of peace.

[From the Daily Oklahoman, Sept. 17, 1972]

Arms Equality With Russia

Sen. Henry Jackson's misgivings about Russian intentions in the strategic arms race are widely shared and altogether justified by the record.

While the Russians were spinning out the strategic arms limitation talks (SALT) at Helsinki and Vienna, they were continuing to deploy land-based and submarine-launched ballistic missiles until they had acquired their present advantage which is frozen into the interim agreement the United States Senate approved the other day.

But the persistent Jackson was successful in attaching to the agreement an administration-backed amendment which calls on President Nixon to seek equality in "levels of intercontinental strategic forces" in negotiations for a permanent treaty.

Jackson had observed that the interim treaty gave the Soviets "more of everything; more light ICBMs (intercontinental ballistic missiles), more heavy ICBMs, more submarine-launched missiles, more submarines, more payload, even more ABM (anti-ballistic missile) radars." He had said the Soviet advantage in offensive weapons covered by the interim agreement was "on the order of 50 per cent."

Opponents of his amendment—notably Chairman J. W. Fulbright of the Senate Foreign Relations Committee, Sen. Jacob K. Javits, R-N.Y., and Sen. Stuart Symington, D-Mo.—argued that this country's forward bases in Europe and its superiority in missile accuracy and multiple warhead technology gave it an overall advantage.

It's true that the Russians haven't yet developed a MIRV (multiple independently targetable re-entry vehicle) capability. But they're working on it, and Sen. Jackson correctly points out that the U.S. advantage in this respect is temporary.

He has said that if the Russians "were to aggressively pursue a silo-killing MIRV program for their force of SS–9 type heavy missiles, they could, within the lifetime of the interim agreement, develop the capability to destroy virtually all of our land-based missile forces."

The interim agreement has a five-year life. Senate foes of the Jackson amendment argue that insistence on numerical equality with the Soviet Union would jeopardize the prospects for a permanent treaty on strategic arms limitation.

But to permit the Russians to widen their superiority would lessen their need for any kind of understanding. Worse still, it would lay this country open to nuclear blackmail five years from now.

[From the Dallas Times-Herald, Sept. 17, 1972]

A Vote for Security

One rejoices that the Senate backed Henry Jackson in his call for U.S.-Soviet equality in number of missiles. Not that we are out of the woods, of course, in our effort to negotiate a satisfactory arms control treaty with the Russians.

But passage of the so-called Jackson Amendment was absolutely vital to U.S. security. Under the SALT agreement (which is not a treaty in final form), the United States

over the next five years is permitted 1,054 land-based ICBM missiles and 710 underwater launchers; the Russians can have 1,618 ICBMs and 950 underwater launchers.

This is scarcely the kind of military inferiority which most Americans would like to see written into treaty form. Therefore, Jackson urged the Senate to demand in advance a treaty that provides numerical equality in intercontinental weaponry.

With the President's backing, Jackson last Thursday shepherded the amendment through the Senate. A conference committee could scrap the amendment. But Jackson says this doesn't matter. It is the Senate whose opinion counts, inasmuch as any future treaty will be submitted only to the Senate, not the House.

Predictably, Sen. Fulbright, the Ozark oracle, protested against the Jackson Amendment, basically because we have more nuclear warheads than the Russians, even if we have fewer missiles. Yet Donald G. Brennan of the Hudson Institute estimates that the Soviets have the capability of deploying "ten thousand or more MIRV (Multiple Independent Re-entry Vehicle) warheads on their allowed booster force within the lifetime of this agreement"—enough to "wipe out virtually all of our Minuteman force . . ."

Moreover, Jackson notes how "People and nations attach meaning to the relative strategic position of the two superpowers." It is not necessarily how strong we *are* that matters; it is how strong we *look*. That is what weighs with our allies no less than our enemies.

A good arms limitation treaty—one that does not create too many advantages for the Soviet Union—is going to be hard to negotiate. It will be immensely harder if the Soviets think us inclined to accept nuclear inferiority. They may think this of us anyway, but they are much less likely to now that the U.S. Senate has upheld Henry Jackson.

[From the Augusta, (Ga.), Chronicle-Herald, Sept. 17, 1972]

WILL TO SURVIVE

The U.S. Senate's vote, 56 to 35, calling for quantitative equality for the United States in any future arms agreements with the Soviet Union, was a victory for practical men who desire intensely the survival of the United States in an age of flagrant Communist aggression.

The overall interim agreement on arms, approved 87–2, is not affected by the controversial amendment. The effect of approval is to ratify the freeze President Nixon negotiated a few months ago in Moscow. This interim agreement, to last only five years, permits a marked lead for Russia in the number of missiles and submarines, by approving the number now completed or under construction.

The disparity in numbers that will result lies in the phrase, "or under construction." It means that the United States stands still, while Russia goes ahead with what are being built, the final approved figures being 1,618 intercontinental missiles for Russia as contrasted to only 1,054 for the U.S.; and with 62 Russian nuclear submarines, equipped with 950 missile launchers, in contrast to the United States' 44 submarines and 710 launchers.

The numerical-equality amendment which has just won 56–35 Senate approval was opposed by Sen. J. William Fulbright (D-Ark.) and others who have objected to stronger U.S. defenses. Their claim was that since we have superior technology, the capabilities of our missiles and submarines are equal to the far greater numbers which the interim agreement authorizes for the Communists.

Sen. Henry M. Jackson (D-Wash.), whose support for the numerical-equality amendment won White House support, replies that the U.S. technological advantage is temporary. In five years' time, he points out, a continuation of the numerical advantage for Russia can mean an advantage in first-strike effectiveness which would threaten the security—indeed the very existence—of America. Thus, he argues, the only safe policy is to set up now a policy of future parity in numbers of strategic weapons.

With all due acknowledgement of the idealistic dedication to absolute equality by Senator Fulbright and others who follow his lead, we must conclude that Senator Jackson's concern seems more than justified. The security of the United States is too urgent an issue for our government to indulge in armament guessing games that might prove to be wrong. We must remember that Russia has not agreed to any inspection system, nor does it show any indication of doing so. And we may doubt the permanence of satellite reconnaissance ability to keep tabs.

Agreements on arms limitations with Communist powers committed to our destruction are a hazardous matter at best. The least we can do is what a substantial majority of the Senate vote demanded—give away nothing to aggressor states in the way of military advantage.

[From the Pittsburgh (Pa.) Press, Sept. 17, 1972]

SENATE SERVES NOTICE

After more than a month of heavy debate, the U.S. Senate has approved a five-year missile-limitation agreement between the Soviet Union and the United States—with the Jackson "rider" included.

The Jackson rider was what the long debate was all about.

In the end, Sen. Henry M. Jackson of Washington succeeded in persuading the Senate to his resolution. It merely says it is the opinion of the Senate that in future arms negotiations with the Soviet Union, the United States should not consent to any arrangement which leaves this country with inferior numbers of offensive strategic weapons.

The five-year, or interim, agreement was reached by President Nixon and Soviet leaders on Mr. Nixon's trip to Moscow last May. Its chief purpose, apparently, is to hold the line on weapons developments until a new round on negotiations on arms limitations can get under way.

Both Senate and House now have approved this five-year agreement, but the House resolution does not include the Jackson rider. In the compromise between the two houses the rider may get dumped.

But, as Sen. Jackson says, no matter.

It is the Senate which acts on treaties, and the 56–35 vote by which the Senate adopted the Jackson rider serves notice on both Soviet and U.S. negotiators that the Senate is not apt to okay a treaty which could leave the United States in an inferior position.

In short, the Senate announces that the seeming advantages which Mr. Nixon granted the Soviet Union in an effort to get more arms-control negotiations under way is not to be taken as a precedent on which to base future treaties. And that is a useful service.

[From the Tucson (Ariz.) Daily Citizen, Sept. 18, 1972]

NUCLEAR TREATIES OPEN NEW ERA

Following more than a month's debate, the U.S. Senate has ratified the second of two arms control treaties signed by President Nixon during his visit to the Soviet Union. This one places limitations on each country's offensive strategic weapons.

More than a month ago, the Senate gave approval to the Antiballistic Missile Treaty. This pact—of unlimited duration—restricts each nation to two defensive ABM systems, one "centered in the party's national capital," and the other elsewhere.

Verification of each party's compliance will be "through national technical means," that is, spy satellites.

Senate ratification of the second treaty, an interim agreement on offensive weapons, was delayed as a result of a proposal by Sen. Henry M. Jackson, which was finally adopted.

Sen. Jackson wanted the Senate to go on record as reserving to the United States the right to scrap the agreement if future Soviet actions threaten to wipe out a major part of our deterrent force.

According to Sen. Jackson, a sound critic of strategic arms limitation accords, the interim agreement gives the Soviets an advantage in offensive weapons "on the order of 50 per cent," based on the highly complex rules of nuclear arithmetic.

Under the interim accord, which is to last five years, the Soviets are allowed a numerical superiority in intercontinental ballistic missiles and missile-launching sites.

Although many military experts regard the United States as having a big lead in what is described as multiple-warhead technology, Sen. Jackson does not want any treaty which "would limit the United States to levels of intercontinental strategic forces inferior to the limits provided for the Soviet Union."

The House of Representatives earlier had approved the second treaty, without provisions contained in the Jackson amendment. Now it goes to a House-Senate conference.

[From the Denver Post, Sept. 18, 1972]

A STEP TOWARD DISARMAMENT

The Senate's approval of a five-year U.S.-Soviet interim agreement setting limits on offensive nuclear weapons is an overdue, but welcome, action.

It now remains for a Senate-House conference committee to work out the differences which include a Senate amendment calling for parity on strategic arms.

The White House had expressed concern that further delays in approving the interim agreement—carefully worked out earlier this year by President Nixon and Soviet leaders in historic strategic arms limitation talks (SALT)—could impede other U.S.-Soviet accords.

The Senate gave overwhelming support to the first part of the SALT agreements by ratifying on Aug. 3 a treaty setting limits on defensive missile units. Since then the Senate had been debating the arms parity amendment principally by Sen. Henry M. Jackson, D-Wash.

The Nixon administration would have preferred no amendments, but went along with a revised version of the Jackson amendment deemed more conciliatory to the Russians.

Under the circumstances, this was a sound move for the administration to make. The Jackson amendment should help calm fears that the Soviet Union will gain a strategic advantage through the SALT accords.

It remains to be seen whether the amendment approved by the Senate will survive the conference committee deliberations.

But it is really an academic question because the interim agreement on offensive nuclear arms, which requires approval by both houses of Congress, is intended to be succeeded by a treaty which only the Senate can ratify. The potential treaty, therefore, will not be a matter for House action, and the administration and the Senate have now made clear where they stand on the issue.

Only experience gained during the next five years can determine what shape such a treaty will take—or even if there will be a treaty.

More permanent limitations on strategic arms will be considered during the SALT 2

discussions, which are expected to get under way in Geneva during the fall.

Final approval of the interim agreement by both houses of Congress ought to help launch SALT 2 in the right channel.

[From the Detroit News, Sept. 18, 1972]

IN NUCLEAR ARMS PACT—PARITY IS U.S. GOAL

Senate approval of the U.S.-USSR agreement to limit offensive nuclear weapons assures congressional adoption of the five-year pact. But it does not halt the arms race or the Soviet Union's efforts to achieve superiority over this country.

In fact, the interim agreement assures the Soviet Union a lead in some weapons. It freezes intercontinental ballistics missiles to those deployed or under construction, an estimated 1,618 for the USSR and 1,054 for the United States; limits the Soviet submarine force to 62 with 950 missile launchers, and restricts the U.S. underwater fleet to 44 submarines and 710 launchers.

Most of the debate in the Senate came over an amendment by Senator Henry Jackson, Washington Democrat, which finally was adopted. It calls upon the President to seek a future treaty on offensive nuclear weapons that "would not limit the United States to levels of intercontinental strategic forces inferior to the limits provided for the Soviet Union."

In negotiating the agreement, U.S. officials had accepted the higher figures for the Soviet Union on the grounds that the United States is ahead in multiple warheads (MIRV's) for each missile, U.S. submarines have forward bases which improve their relative efficiency and the United States has a numerical superiority in bombers, carriers and fighter-bombers based in Europe and the Far East and not subject to the new treaty.

However, Robert W. Bowie, director of the Harvard Center for International Affairs, has pointed out that while the agreement achieves a rough parity between the USSR and the United States at present, that status is "not likely to endure." He said that within three to five years, the Soviets can be expected to perfect their own MIRV's and then could take advantage of their much larger and more numerous launchers. In addition, new Soviet subs with longer radius would reduce the advantage of U.S. bases.

"In short, the existing parity is likely to be eroded as the Soviets catch up in technology in view of their 50 percent or greater edge in launchers," he wrote recently. "For the interim needed to negotiate a permanent treaty these are satisfactory risks but this would not be a satisfactory basis for a permanent treaty."

Even if the present U.S. deterrents were sufficient to avoid war with the USSR, nobody knows what kind of political leverage and blackmail the USSR might impose on other nations if it achieved superiority over the United States. So what Jackson really was asking for, and the Senate adopted, was a statement of warning to the then president to maintain parity when the permanent U.S.-USSR pact comes up for negotiation and adoption.

[From the McKeesport (Pa.) News, Sept. 18, 1972]

EXPECTED ACTION

Senate approval of the U.S.-Soviet interim agreement on offensive arms limitations was a foregone conclusion following earlier approval of a defensive missiles pact.

It is elementary that one treaty alone is worthless, for to curb defensive weapons solely without a similar limitation on offensive missiles would set off a staggering arms race and invite a first strike.

Approval of the five-year offensive agreement freezes ICBMs to those deployed or under construction, an estimated 1,618 for the Soviet Union and 1,054 for the United States. The pact also limits Russia to 62 submarines and 950 submarine missile launchers, and the United States to 44 submarines and 710 launchers.

It was the numerical edge given the Soviets that caused a delay in approval by the Senate by a 88–2 vote. The House had approved the agreement earlier. The Senate dispute was resolved by adopting an amendment calling for equality in long-range weapons in any future agreement.

The treaty had been viewed with some apprehension by some lawmakers, notably Sen. Henry Jackson who is noted for his deep concern over U.S. defenses. This group read into the terms a decided advantage for Russia. Such an interpretation understandably breeds misgivings. Other lawmakers saw the U.S. with a decided superiority in missile accuracy and multiple warhead technology.

Apparently the White House has no serious objections to the amendment since a spokesman says that President Nixon "obviously was very pleased" with approval of the agreement.

Jackson, author of the amendment, voiced unconcern whether or not the "equality" amendment would survive a Senate-House conference since what is involved is a future treaty upon which the Senate alone will act.

There is reason to regard Jackson's reservations about the interim pact as a contribution to a rational defense posture. And his amendment puts the Soviets on notice that when the next round of strategic arms negotiations gets under way that American Senators, who have the final say, will be keeping a close eye on developments.

[From the Kansas City Star, Sept. 20, 1972]

POSTSCRIPT TO THE MOSCOW PACT

Superiority or inferiority, no. Equality, yes. That, greatly simplified, was the majority position of the U.S. Senate when it came to approving the offensive arms agreement signed by President Nixon in Moscow last May 26.

The handling of this pact in Congress was unusual for two reasons. First, President Nixon is not required by law or the Constitution to obtain the sanction of Congress for an executive agreement such as the one covering offensive weapons. Second, the controversial amendment by Sen. Henry M. Jackson (D-Wash.) calling for equal strategic strength has no direct bearing on the 5-year accord with Russia. Instead it is intended as a guide to the kind of permanent arms control understanding that the U.S. will work for in the coming SALT II negotiations with the Soviet Union.

The Senate line-up for and against Jackson's proposal in general followed the pattern of voting on Senator McGovern's recent attempt to cut the military spending bill by $4 billion. The Democratic nominee lost that one by a margin of 59 to 33. The vote on Jackson's amendment was 56 to 35. Whereupon the Senate approved by 87 to 2 the actual 5-year arms agreement whose terms were not changed by the Jackson amendment.

Thus the group of liberal Democratic senators who embrace what has been called "the Proxmire philosophy" on defense spending continues to be thwarted. There are enough Republicans and Southern Democrats in Congress to knock down any move that smacks of 1-way disarmament. The majority, by approving funds for the advanced Trident submarine and the B–1 bomber to replace the overage B–52, has said that the improvement of weapons systems, as permitted by the temporary Moscow pact, is still necessary.

That position was the essence of the Jackson amendment in so far as any early meaning it may have. By not forfeiting strategic strength now, the U.S. will have much greater bargaining power at the next round of SALT. But the results of SALT I are now certain of final ratification by both houses of Congress. Thus a limited measure of progress on international arms control has been chalked up with the way open to further and more comprehensive agreement.

HEARINGS ON LIFE-THREATENING MEDICAL EXPERIMENTS

Mr. TAFT. Mr. President, I am pleased to read on page 34466 of the RECORD of October 10 that the chairman of the Health Subcommittee, the senior Senator from Massachusetts (Mr. KENNEDY), expects to hold hearings early next year on the subject of life-threatening medical experiments. I have urged such hearings for almost 2 years, in part because of totally unsubstantiated statements and charges made by Senate staff members and the press relating to a total body radiation project carried on at the University of Cincinnati Medical College. These statements have been damaging to professional men of the highest caliber, to a fine institution, and possibly to some of the patients involved. My prior statements on this question are set out in volume 117, part 36, pages 40749–47052; pages 250–256, January 19, 1972; pages 26237–26235, August 1, 1972; page 33162, October 2, 1972, of the CONGRESSIONAL RECORD.

It is therefore more in sorrow than in anger that I note another totally erroneous statement of the Senator from Massachusetts reported on page 34466 to the effect that the Cincinnati project made patient care secondary to experimentation. The project was thoroughly reviewed and given a complete vindication against such charges by a comprehensive peer review of the American College of Radiology, a report of which is set out on page 250 of the RECORD of January 19, 1972.

In view of this, I believe that the hearing planned should now also undertake an investigation of irresponsible, inaccurate, and preconceived staff actions and statements of Senate committee and staff employees.

BOMBING OF HANOI

Mr. KENNEDY. Mr. President, news reports over the past 24 hours strongly suggest that American bombs are responsible for the damage to the French and Algerian legations in Hanoi, and the personal injury and the loss of life that has apparently occurred.

Just 2 weeks ago, on September 28, the Judiciary Subcommittee on Refugees, which I serve as chairman, held a hearing on the impact on civilians of the air war over North Vietnam. In both open and closed sessions, administration witnesses assured us again and again—but without much proof—that what officials call "collateral damage" was minimal and that every precaution is taken to avoid air strikes over civilian and nonmilitary areas. In this connection, Hanoi and other cities in North Vietnam were singled out by the witnesses. Maj. Gen. John W. Pauly, Vice Director for Operations for the Joint Chiefs of Staff, had this to say about Hanoi in the closed session:

Hanoi city area has been relatively untargeted. The only things that have been

targeted at all are those that are in the fringe at 4 or 5 miles out from town that I have mentioned. These are the war-making facilities.

The only exception to this are the two bridges I mentioned that were taken out with LGB's. We have verified that there was no collateral damage. When we have a sensitive siuation, we will be looking specifically for collateral damage. Those were taken out clean and the downtown Hanoi area, as we will mention later, has relatively no damage. The only collateral damage that we have been able to identify in the specifics that have been provided (by the subcommittee) have been tied in the immediate vicinity of a strike against nearby military targets in which a stray bomb had gone off or where the strike force had, in fact, for various reasons, missed their target.

And so, Mr. President, there is "collateral damage" in Hanoi—and, based on testimony before the subcommittee, a great deal more, including several disastrous mistakes, in Haiphong, and Nam Dinh, and other cities and towns in North Vietnam.

In this connection, let me say that the much emphasized smart bombs are hardly used. The Defense Department informed me yesterday, in response to questions raised in the hearing, that:

The percentage of smart bombs dropped in North Vietnam since the current campaign began in May is 1.77 percent.

The growing collateral damage in North Vietnam raises troubling questions about the purposes of the President's air war over North Vietnam, and about the rules of engagement covering the bombing and shelling over all of Indochina.

Our country is apparently responsible for another disastrous mistake. For most Americans today the whole war is a mistake—and each day that this carnage is allowed to go on simply compounds that mistake.

DEATH OF FORMER SENATOR BUSH

Mr. WEICKER. Mr. President, upon the death of former Senator Prescott S. Bush, many newspapers throughout the State of Connecticut expressed the deep respect which all of us in the State have long felt for this fine man. I ask unanimous consent that nine of the editorials which have appeared over the last several days be included in the RECORD at this point.

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

[From the Greenwich (Conn.) Time]

EDITORIAL

Prescott S. Bush died Sunday at the age of 77. Thus ended a life remarkable for its many contributions to society and mankind.

Mr. Bush epitomized the characteristics associated with the idealized version of the public official candor, integrity, consistency, dedication. And another, which perhaps many of his constituents weren't as aware of—deep, human compassion and an unshakable sense of justice. In the rough and tumble arena of politics, the humanitarian persuasions of Pres Bush weren't as widely known. A deeply religious man, it could be said of him he was one of the rare ones who tried to carry through the precepts of his religion into his everyday life.

To list the accomplishments of this neighbor of ours can be done if you have sufficient space to catalogue a staggering array of achievements in many, many diverse fields. To him, the pinnacle of his career was the U.S. Senate, which he loved and served so well. In Greenwich, we also insist on placing high on the record the 15 years that Pres Bush served as Moderator of the Representative Town Meeting, a towering presence of firmness and fairness as he presided over the sometimes turbulent sessions. His dignity, authority, grace and—praise be, a good sense of humor—had a lot to do with the shaping of this community during those important years.

Pres Bush, as everyone knows, got his political indoctrination by heading Republican fund-raising efforts in the state. When he was persuaded to try for state office he was still not very well known.

He made his first run in 1950 but was defeated by Bill Benton by a slim majority of 1,000 votes. He liked his first taste of big league politics, good naturedly listened to the advice and ribbing of friends who felt they had to guide him into the "realities" of politics and bridge the gap between "the people" and the patrician world in which Bush moved. These friends quickly found out that Pres Bush was inately a good "people" man because he too began to enjoy his expanded association with various types and groups he probably never would have been exposed to had he not plunged into the political picture.

He once told a friend visiting him in his Senate office: "I've been very fortunate in my life and I've enjoyed it. But I love this United States Senate job more than anything I've done. It gives me a chance to try to be of real service to the people of the state and my country. But most of all, it's taken me out of the routine so familiar to all of us in Greenwich and I have been enriched by meeting and getting to know some wonderful people all over this state—ethnic groups, upstate farmers, Portuguese fishermen—you name it, we've got it in Connecticut.

This was a dimension of Pres Bush that not everyone got to know, for his general demeanor was dignified and restrained. Some, in the way folks tend to stereotype people in the public eye, even though he was stand-offish and aloof. No point to quarrel now—how could they know, as did those close to him, what a warm and vivacious man he could be. A fine singer (former Whiffenpoof) witty parodist, quick to appreciate a good line or anecdote, a man with a twinkle in his eye.

Friend and golfing associate of the late President Eisenhower, Pres Bush moved in the top echelons of power politically, socially and in the business world. His manner and attitude were the same in any milieu. He operated with the graceful ease of a man whose upbringing and career were almost of story-book nature: Yale, baseball at Yale, Whiffenpoofs, national senior golf champion in 1951, tennis player, swimmer, World War I captain, partner in Brown Brothers Harriman & Co., prominent civil leader, club man, successful party fund-raiser, head of a fine family. If such a shiny life should tempt a man to self-complacency, it didn't have that effect on Pres Bush. He plunged into the political arena with gusto. He took his first defeat, bounced off the floor and waded right in again. Next time he ran for the Senate he won, handing Abe Ribicoff one of the few defeats that worthy has ever sustained.

Pres Bush was an excellent Senator. He was reelected to a full term in 1956 and probably would have been reelected in 1962 had he not decided to eschew the run because of health problems.

Frankly, it is extremely difficult for us to contemplate a Greenwich minus Prescott Bush. Reality says we must. The great contributions he made to our town and state are part of our very fiber. But we'll miss more than that—we'll miss a great human being, a friend, a wise counselor, a man who cared a great deal, a man of probity and honor, a man of character.

We take some solace in seeing several sons in the political vineyard, so the name and the high purposes of Senator Bush will be carried on. To them, to the wonderful widow, Dottie, to all who have lost a fine friend and respected fellow townsman, our condolences. We are all truly the poorer today for his loss.

[From the New Haven (Conn.) Register, Oct. 10, 1972]

EDITORIAL

During his years in the U.S. Senate, Prescott S. Bush had performed to the fullest measure of his abilities, as any good man in office does, but with many essential differences that set him apart from many of the household names of his day:

His achievements were without fanfare or self-glorification.

Mr. Bush, a tall, regal looking man with an aura of ivy league about him, with fashionable Greenwich as his home and a Wall Street career as an investment banker, was as unlikely a poltiician as one would expect to find in ethnic-conscious industrial Connecticut.

He was a relative political amateur when he first bobbed to attention in a 1950 race for the Senate, but he made it close enough to gain a second chance two years later, when he went on to victory.

Mr. Bush was more than a man for his time. Hard working and vigorous, a man of deeply felt convictions, the Senator was not one to seize upon issues of the moment, but to perceive and put his energies behind issues that were of moment.

He recognized fully the urban blight that beset the cities and rallied early to their cause, playing a major hand in the shaping of the father of all redevelopment legislation, the Housing Act of 1954. He championed urban renewal at every turn. Beyond promoting and supporting legislation in Washington, Mr. Bush took the lead in bringing the message of urban renewal home to Connecticut's cities and towns, and played a vital role in New Haven's urban renewal fortunes.

The former Senator was among the first to recognize the danger of Joe McCarthyism, and his mark was that he could oppose the latter, but in never but a gentlemanly fashion. The other tactics were alien to Mr. Bush's character.

Mr. Bush's deep interest in urban renewal was matched by his equal deep concern for civil rights, better education, a strong U.S. military posture and fiscal responsibility in federal government, including the control of inflation. He predated much of the later day civil rights struggle with his battles against racial discrimination in FHA Housing and in employment, the latter among both management and unions. His humaneness showed in his persistant efforts on behalf of flood and storm victims. He was an advance man for ecology interests with his involvement in flood control and beach erosion problems.

Mr. Bush, a Yale graduate who had served 12 years as a member of the Yale Corp., was in retirement when he passed away Sunday at the age of 77. He will be remembered as a man of compassion and integrity whose distinguished service for his state and country will offer challenge to others to emulate.

[From the Waterbury (Conn.) Republican]

EDITORIAL

Prescott S. Bush was a distinguished gentleman who looked and acted like a U.S. Senator. He was a great credit to the State of Connecticut and to the entire Congress during the decade he served.

Mr. Bush left a career on Wall Street to seek office in Connecticut. He made the

transition successfully. One of his distinguishing characteristics was his ability to communicate with rank and file voters and with local politicos without letting his business background interfere.

Initially, Mr. Bush's political interests were on the local level in Greenwich, where he lived. He later became State Republican Finance Chairman and ran for U.S. Senator in 1950. He was defeated by only 1,000 votes. Two years later, after the death of Democratic Senator Brien McMahon, Mr. Bush was nominated for the unexpired term and was elected. He was re-elected in 1956.

He was a friend of the late President Eisenhower, often playing golf with Ike. His White House friendship helped increase his stature in the Senate.

The Naugatuck Valley benefited from his interest in the flood control program. Mr. Bush helped get both the authorization and financing for the floor protection system through the Senate.

Although he has not been active politically in some years, he has set the kind of example which should be followed by candidates for public office. He demonstrated concern for people, integrity and high principle.

[From the Ansonia (Conn.) Evening Sentinel]

PRESCOTT S. BUSH

Connecticut lost a man of high purpose Sunday with the death of its former United States Senator Prescott S. Bush in New York.

During his eleven years in the Senate, Bush gained a reputation as an authority on the national economy and government finance. He saw service as a member of the Public Works, Armed Services, and Banking and Currency Committees.

An Ohio native, Bush came to Connecticut in 1913 to study at Yale where he obtained a degree in history. An artillery captain in World War I, Bush began in politics in 1933 as a member of the Greenwich Representative Town Meeting, serving as moderator for 17 years.

He entered state politics in 1947, chairing the GOP Finance Committee. In 1952 he defeated Abraham A. Ribicoff, the current senior Senator for the unexpired term of Brien McMahon and, in 1956, won a second term by trouncing Thomas J. Dodd by a resounding 131,894 votes.

As a Senator, Bush took special interest in urban renewal, flood and hurricane control projects, and helped create the interstate highway system. His practical, conservative politics won him the confidence of President Dwight D. Eisenhower. Bush was, in fact, the chief draftsman of Eisenhower's platform at the 1956 GOP national convention.

Long after Bush declined to run for another Senate term in 1962, he kept up his ties with Yale and only last April, at age 77 he resigned as an Associate Fellow of Yale's Calhoun College to protest a speaking appearance there of Daniel Ellsberg, who was indicted for leaking the "Pentagon Papers." Bush wrote Calhoun College: "I can hardly think of anyone who is less deserving of such an honor."

Until his death, Bush remained the man of honor—unafraid to speak his mind. Yale and Connecticut will miss him.

[From the Hartford (Conn.) Courant]

EDITORIAL

When Yale, his alma mater, gave Prescott Bush a richly deserved honorary Doctorate of Laws, the University's citation said in part: "Loyal to your friends, faithful to your constituents, true to yourself . . . you have personified the best in both political parties." And as the thousands who knew and, almost inevitably, liked and admired Pres Bush, the citation was no inflated campus oratory. He was a man of immense personal dignity and complete competence, yet one who could relax in the company of friends and, as the occasion served, poke fun at himself.

He was a prodigious worker in a broad spectrum of activities. When he was a director of the Greenwich Boys' Club it was said that he spent more time with the boys in the clubhouse than any young member did. When he golfed, he played hard and well: at 55 he set a record for 66 for 18 holes that still stands for the U.S. Senior Championship.

He was a tireless and effective campaigner; one recalls many individual calls paid to the Courant to relax after political meetings. When he succeeded the late Thomas E. Dewey as National President of the United Service Organization in 1942, he took it on as a full time job. His energy and enthusiam for the USO were not diminished by the fact that his oldest son, now the United States Ambassador to the United Nations was a Navy pilot who was shot down by the Japanese over the Pacific.

He was one of the early enthusiasts for General Eisenhower's nomination and election. As chairman of the Platform Committee at the Republican Convention, a witty observer said, he had one difficult, self-imposed task: to take one word and expand it to 5,000. That one word, of course, was "Ike." The two men maintained their mutual regard and affection until President Eisenhower's death.

As President Nixon observed, Pres Bush established a fine example of devoted lifelong public service to his town, his state and his nation. He deserves to be long remembered.

[From the Hartford (Conn.) Times]

PRESCOTT S. BUSH

The public career of Prescott S. Bush fulfilled the promise his intimates saw in him while he was still a student at Yale University. Ruggedly handsome, charming and pleasant to know, he had obviously potential as a politician—a potential he did not fully realize until his mid-fifties.

But his more valuable qualities were what made him a good public servant. He proved to be a hard worker in the Senate.

He had a good grounding in economics, in part the result of his work in Wall Street, and he served on the Senate Committee on Banking and Currency and on the Joint Economic Committee of Congress. He earned national respect on both those committees.

Senator Bush recognized early the implications to Connecticut of Federal involvement in urban renewal. His guidance in this "then" new and unfamiliar area of governmental responsibilities was invaluable to many a Connecticut community.

He had considerable influence on the national policies of the Republican Party. He was chairman of the Platform Committee for the National Convention in 1956 and of the Subcommittee that drafted the planks on the economy, business and labor for the 1960 Convention. He was a friend and confident of President Eisenhower.

A friend says of him that he furnished a good example of how the people benefit from electing a gentleman to high office. He was indeed a gentleman, not merely in that he had a gentleman's education but far more in his unshakeable integrity and devotion to principle.

[From the New Britain (Conn.) Herald]

EDITORIAL

If a man is the sum total of all his experiences, then former United States Senator Prescott Bush, who died Sunday, was a very complete man.

But Mr. Bush was more than that: he was a dedicated and driven man who gave meaning to his experience—a man who brought his own uniqueness to his work and to those who served.

Republican politics, congress, higher education, the military, and his family were only a few of his varied interests. A list of his accomplishments is too long to be cited here—and it need not be: his contributions to Connecticut and the nation are well known and Mr. Bush will be remembered for a long time to come.

We join the many local, state and national leaders who mourn his passing.

[From the Norwich (Conn.) Bulletin]

EDITORIAL

President Nixon's description of former U.S. Senator Prescott S. Bush as a citizen of exceptional honor and integrity finds warm acceptance with all who were privileged to know him as a friend or as a long time public servant. Mr. Bush died this week at the age of 77.

"His years of distinguished service in the Senate were marked by high principle, consistently sound judgement and a deep devotion to the country" is the way the president tells of the Greenwich resident's career. Mr. Bush had many close acquaintances in Eastern Connecticut as a result of his varied and substantive contribution to the public welfare.

Prescott Bush was a member of the U.S. Senate ten years, the first four of which were filling an unexpired term and the last six on his own election. This was in the period of the 1950s and early 60s.

Senator Bush's principal interest in government were an urban renewal flood and hurricane protection. He was coauthor of the bill that brought the interstate highway system.

From a start in politics in his hometown he rose to great stature in the state and federal government circles; also contributing greatly to the promotion of numerous civic and charitable activities in a fulfilling life.

[From the Willimantic (Conn.) Daily Chronicle]

EDITORIAL

It is for his example of energy and devotion in the service of Connecticut, the flair of a strong personality coupled with unfailing courtesy, that one remembers Prescott Bush.

A political figure of the first order, he still lost his first attempt at election as Senator by 1,000 votes; then from 1952–1963 he held office. He brought a quality of competence to the area of affairs that identified him particularly among leadership figures. He campaigned hard, but with a list of humor that spared him, and his public, from the drudgery of drab and dull partisan contest.

Senator Bush was one of hte originators of Federal slum clearance and urban redevelopment legislation; he also was a notable supporter of legislation dealing with flood and hurricane relief, and the protection against such catastrophes. As a financier, his judgment on governmental financial matters was continually sought.

As sportsman, soldier, and one involved in educational, and civic agencies and efforts, Senator Bush enjoyed many friendships.

Connecticut always liked him, and it will miss him.

FARM BUREAU MEMBERSHIP IN 1972

Mr. GURNEY. Mr. President, on September 11, 1972, the Farm Bureau News offered its salute to those States which,

through their drive and determination, more than doubled their Farm Bureau membership in 1972. I was very pleased to see that my home State of Florida was ranked among the top three in membership increase and would like to request that a list of the States with the biggest membership increases be included at the end of my remarks.

Mr. President, I think it most appropriate at this time to take a look at both the background and benefits of this fine organization. The American Farm Bureau Federation, the largest U.S. farm organization, is an outgrowth of the country farm bureau movement. Shortly before World War I, the idea of using county demonstration agents, agricultural experts, or extension workers to provide farmers with the results of scientific study was adopted in a number of areas. In many localities these agents were supported by local groups of farmers who constituted country committees or bureaus.

Due at least in part to lack of Federal authorization for funds supporting county agent work during this early period, local farm bureau groups organized over a number of States. Their principal purpose was to take the lead in hiring and utilizing the services of those men later known as county agents.

With the passage of the Smith-Lever Act in 1914, authorizing the extension service, the bureau idea was given added impetus. Originally, the chief activity of the farm bureaus was to act as a local sponsor for county agents and as long as farm bureaus were organized only on a county basis, their primary interest was agricultural education. Before the end of the war, county farm committees in several States got together and formed State organizations.

Although most extension supporters viewed the State federations primarily as aids to extension work, the State organizations showed an early interest in commercial and legislative action. In November 1919, at a meeting in Chicago, the American Farm Bureau Federation was organized. Its constitution, which stated that its purpose was "to promote, protect, and represent the business, economic, social, and educational interests of the farmers of the Nation and to develop agriculture," was ratified and accepted by representatives of 28 States the following year.

The Farm Bureau currently has a membership of some 2,157,665 farm families in all 50 States working within the framework of a "free, independent, nongovernmental voluntary organization of farm and ranch families united for the purpose of analyzing their problems and formulating action to achieve educational improvement, economic opportunity, and social advancement, and thereby, to promote the national well-being."

With this type of goal it is no wonder that membership in this fine organization increased so sharply. As a member of the local farm bureau, one has the opportunity to meet and discuss problems and goals with persons having similar interests and common problems, such as rural health, farm management, and community betterment. Out of such discussions emerges a feeling of being a part of a coordinated effort, involving more than 2 million farmers throughout the country, to translate the ideas of American agriculture into positive action. Such programs as marketing, nutrition, production, and distribution—all of whch bring to the individual vital information on better farming practices—have been a beacon to which the farmers of our Nation have turned for guidance in fulfilling their needs.

Mr. President, I am sure that there are many of us here today who have at one time or another wondered what type of Government organization could have possibly fulfilled such a task, in such a short period of time, on such a limited budget. Our State farm bureaus deserve a lot of credit for their efforts on behalf of American agriculture.

The list of farm bureaus follow:

TOP 20 STATE FARM BUREAUS IN PERCENTAGE OF 1972 MEMBERSHIP QUOTAS

Pennsylvania.	Maine.
Virginia.	Idaho.
Florida.	Massachusetts.
Maryland.	Arkansas.
New York.	Nebraska.
Nevada.	Mississippi.
West Virginia.	Indiana.
Kentucky.	Oklahoma.
Louisiana.	Delaware.
Montana.	Utah.

POLICE LIVES AT STAKE BECAUSE OF CONGESTED TWO-WAY, MOBILE RADIO CHANNELS

Mr. PERCY. Mr. President, many of us have come to visualize the two-way police radio as one of the most invaluable of tools for law enforcement officers. Yet, as was tragically illustrated by a case in the Chicago area just a few days ago, even the two-way radio system can be crippled by overcrowded air waves—creating a potential threat to the lives of policemen and to public safety in general.

Today radio frequencies assigned to police and other emergency public safety departments are frequently so crowded with transmissions that an officer's radio call can literally be knocked off the air. That is exactly what happened in the Chicago area on October 1 when Hillside Patrolman Anthony Raymond, 24, stopped an auto that was driving erratically on the Eisenhower Expressway. Raymond attempted to broadcast the car's license plate number but his transmission was cut off by a broadcast from another of the 17 suburban police departments using the same radio frequency. Another car was sent to help Raymond. It arrived 2 minutes later, to find the patrol car empty and the officer apparently abducted. The officer, father of two small children, had still not been found a week later.

A research engineer who has studied the suburban police radio problem in the Chicago-Cook County area commented to the Chicago Daily News that the radio network used by the Hillside police force was the "second or third worst" in the county in terms of how busy it is. The system averages 600 messages every hour. However, in the South suburban area the problem of saturated calls is even worse where 35 suburbs share a single radio band for police calls.

Allen H. Andrews, executive director of the Illinois Law Enforcement Commission, called the case involving Patrolman Raymond, "a single and dramatic example of the need for a better system of police radio communications."

When such radio frequency saturation occurs, it is virtually impossible to get even as much as 10 seconds of exclusive use to transmit a radio call. Often, in the scramble for free air time, mobile units and base stations can knock out a transmssion already in progress without even realizing another unit may be transmitting. This was apparently the case with Patrolman Raymond.

According to the Federal Communications Commission, this situation is not unique to the Chicago metropolitan area, but is something that is going on in and around the top five metropolitan areas of the Nation.

Mr. President, this is clearly a problem of national proportions and one which should be dealt with promptly if we mean to minimize the many difficulties which law enforcement officers face in today's troubled times.

The air waves are a public resource which cannot be expanded. Clearly, then, better use must be made of the available broadcast space as well as providing additional frequencies where possible.

Mr. President, I believe the two-way communications systems of our police are among their most valuable assets. To safeguard police lives as well as insure that the general public can be protected by the prompt dispatch of patrol cars, all agencies of Government should be at work to assure that clear air channels are available to the police in our metropolitan areas.

Failure to act will only mean an increased threat to public safety and more tragic repetitions of the story of Patrolman Anthony Raymond.

Mr. President, I ask unanimous consent to have printed in the RECORD following my remarks, articles from the Chicago Daily News of October 3, 1972, and from the Chicago Tribune of October 8, 1972, respectively entitled: "Jammed Police Radios a Problem in the Suburbs" and "Traffic Jam Fouls Cop Radio Bands."

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

[From the Chicago Daily News, Oct. 5, 1972]

"JAMMED" POLICE RADIOS A PROBLEM IN SUBURBS

(By Phillip J. O'Connor)

The kidnaping of Hillside Patrolman Anthony Raymond has spotlighted a chronic problem among suburban police—overcrowded police radio bands.

Hillside is on the same police radio band as 16 other suburbs and officers from these communities must take turns using the bands as they patrol in squad cars.

Sometimes one department will accidentally cut in on another and drown out a message. This happened to Raymond and has made it more difficult to trace the kidnap-

ers because he was able to broadcast only three digits of an auto license number.

While the plight of Hillside and the other 16 suburbs sharing the same band is bad, it is not as serious as in the south suburban area where 35 suburbs must share a single radio band.

The Chicago-Cook County Criminal Justice Commission and the Illinois Law Enforcement Commission are moving to correct the overcrowding.

Bernard Ebstein, research engineer for ITT Research Institute, a part of the Illinois Institute of Technology, recently completed an $18,000 study on suburban police radio problems for the Chicago-Cook County commission.

"I would say the police radio band used by Hillside is the second or third worst in the county in terms of how busy it is," said Ebstein.

"That (Raymond's case) is exactly what happens on a very busy channel. Different users cut each other off. Often, they don't hear the other officer broadcasting a message."

Ebstein said the Federal Communications Commission has made available more ultra * * * Chicago area for land-based vehicles, such as police cars and taxi companies.

Ebstein said he has recommended that 23 of these additional channels be allocated to suburban police, who now have only 17 bands to serve Cook County's suburban area.

Ebstein said he is in the midst of grouping suburbs into groups to share the new total of 40 radio bands in a manner that would permit any suburban officer to have a clear channel to broadcast a message in from 5 to 15 seconds.

Ebstein said this should cut the number of police departments on a single band down to five or six in most instances.

Arthur Bilek, chairman of the Illinois Law Enforcement Commission, which distributes anti-crime funds in Illinois, and William Lacey, executive director of the Chicago-Cook County commission, both said the present suburban police radio network is unbelievably bad.

Ebstein said that other suburbs on the same channel with Hillside are Bellwood, Berkeley, Broadview, Elmwood Park, Forest Park, Franklin Park, Harwood Heights, Maywood, Melrose Park, Norridge, Northlake, River Forest, River Grove, Schiller Park, Stone Park and Westchester.

These 17 western suburbs have a combined population of 300,000, Ebstein added.

The 35 south suburbs on the same police radio band have a combined population of 460,000. They are:

Alsip, Blue Island, Burnham, Calumet City, Calumet Park, Chicago Heights, Chicago Ridge, Country Club Hills, Crestwood, Dixmoor, East Chicago Heights, Evergreen Park.

Also Hazel Crest, Hometown, Markham, Matteson, Merrionette Park, Midlothian, Oak Forest, Oak Lawn, Olympia Fields, Orland Park, Palos Heights, Palos Hills, Palos Park.

And Park Forest, Posen, Richton Park, Robbins, South Chicago Heights, Steger, Tinley Park, Westhaven, Worth and Crete. Crete is in Will County.

Bilek said virtually all suburban police cars are equipped with a second radio that connects them to what is known as the Illinois State Police Emergency Radio Network. All suburban departments hear messages on this network.

However this is designed for use by officers only when an emergency occurs, not prior to one. Bilek said that once Raymond stepped out of his car, he was unable to use this system to call for help.

[From the Chicago Tribune, Oct. 8, 1972]

TRAFFIC JAM FOULS COP RADIO BANDS

(By William Gaines)

Uninterrupted radio transmission from Hillside Patrolman Anthony Raymond would have been a vital aid in the investigation of the disappearance of the policeman last week.

But as Raymond radioed his station, the transmission was cut out by another message.

Overcrowded and undercoordinated police radio channels in the suburbs have been a growing concern of law enforcement officials in recent years. The incident in Hillside came at a time when the solution to the problem was near.

NEW CHANNELS RELEASED

The Federal Communications Commission has released 23 new channels for police broadcasting in the Chicago area, and federal grants from the Omnibus Crime Bill of 1968 are being made for new equipment in police radio rooms.

The occurrence in Hillside was "a single and dramatic example of the need for a better system of police radio communications," said Allen H. Andrews, executive director of the Illinois Law Enforcement Commission.

The commission received federal funding for studies in Cook and Du Page Counties on how to sort out the suburban police radio stations on the new frequencies and balance the waiting time of a policeman who needs to send a message.

The study of Cook County by the Illinois Institute of Technology showed that six of the 17 suburban police channels were so saturated with calls that it was almost a mathematical impossibility to get 10 seconds of exclusive use, said David Goldberg, communication specialist for the state commission.

"The result is that departments either do not transmit all of the necessary information or just override others in a free-for-all for radio time," he said.

THIRTY SEVEN SUBURBS COMPETE

The most overcrowded radio channel is the South Cook network, where 37 suburbs compete to be heard. Statistics in the study showed that the channel has an average of 1,139 messages of an average duration of 10 seconds for every hour. Complete saturation of a channel is reached when there are 360 messages per hour.

The 35 communities have a population of 464,858. By 1985, the study showed, they will have 643,975 people and, if the same system were continued, they would have 1,303 radio messages an hour.

Oak Lawn, population 60,305, is the largest suburb on the channel. Calumet City, Chicago Heights, Blue Island, Oak Forest, Evergreen Park, and Park Forest are communities of over 20,000 which share the channel.

Others are Alsip, Burnham, Calumet Park, Chicago Ridge, Country Club Hills, Crestwood, Dixmoor, East Chicago Heights, Hazel Crest, Hometown, Markham, Matteson, Merrionette Park, Midlothian, Olympia Fields, Orland Park, Palos Heights, Palos Hills, Palos Park, Posen, Richton Park, Robbins, South Chicago Heights, Steger, Tinley Park, Westhaven, Worth, and Crete.

Midlothian, one of the suburbs in the geographic center of the most congested channel, has discontinued routine use of the radio for reports of license numbers because of the improbability of being heard, said Police Chief John Ward.

LIKE A "PARTY LINE"

"It is as if a large town had everyone on a country party line," Ward said. "There's a constant clamor and the situation is worsening."

When the present system was started 15 years ago, Midlothian had just one squad. It now has as many as 10 on the street at one time. Some of the other villages on the channel did not exist when the channel was set up, he said.

Also contributing to the congestion on the suburban channels is the inclination of suburban departments to answer calls that might be considered petty in a large city, he said.

There are 16 suburbs which share the West Cook network with Hillside. There are 600 messages every hour, almost double the saturation level.

Among the other suburbs on the West Cook network, only Stone Park and Berkeley are smaller than Hillside, which has 9,600 people. Hillside must also compete with Bellwood, Elmwood Park, Franklin Park, Maywood, Melrose Park, Northlake, and Westchester, all over 20,000 population, and Broadview, Forest Park, Harwood Heights, Norridge, River Forest, River Grove, and Schiller Park, all over 10,000.

SERVES NINE SUBURBS

The Northwest Cook network has nine communities with a total of 318,992 residents. It includes Arlington Heights, Buffalo Grove, Elgin, Morton Grove, Mount Prospect, Niles, Palatine, Rolling Meadows, and Wheeling.

Radio operators on the Northwest Cook network have called transmission a "madhouse" between 4 p.m. and midnight.

The channel is so congested that the village of Buffalo Grove has installed a second radio in police squads with the frequency of the village public works vehicles to assure police communication with the station in emergencies.

Buffalo Grove is working on an application for a federal grant for conversions to the new system proposed by the law enforcement commission. Arlington Heights, Elk Grove Village, and Mount Prospect have applied for grants for joint use of one of the new frequencies. Oak Park, Forest Park, and River Forest also have applied for such a grant. Each group would have a common radio room.

The new groupings would mean that, on an average, no department would have to wait for more than 15 seconds before being able to transmit.

BETTER CONTACT SEEN

Oak Park will give up an exclusive channel to test the system because "it will mean that the police departments of the three villages will be able to keep in contact more readily," said Wilbur Reichardt, police chief.

A West Suburban Network serving 267,694 people; South Cook Network Two, which serves 172,455; and a North Shore Network, for 223,000, are beyond saturation.

Bartlett, Hodgkins, Justice, Lemont, Roselle, Willow Springs, Cary, Algonquin, Fox River Grove, East Dundee, Sleepy Hollow, West Dundee, Lockport, and Bloomingdale, all suburbs under 10,000, must compete on the West Surburban Network with the larger suburbs of Bedford Park, Bridgeview, Hanover Park, Hickory Hills, Hoffman Estates, Streamwood, Summit, Romeoville, Carpentersville, and Bolingbrook. The University of Illinois Chicago Circle Campus police are also on the band.

Dolton, Harvey, Homewood, Riverdale, and South Holland share the second south frequency with the smaller suburbs of Glenwood, Phoenix, Flossmoor, Thornton, New Lenox, Frankfort, and Mokena.

COSTS $2.6 MILLION

The overcrowded North Shore Network serves Evanston, Glencoe, Glenview, Kenilworth, Lincolnwood, Northbrook, Northfield, Wilmette, and Winnetka.

Implementation of the new Cook County system would cost $2.6 million. The Du Page study has not been completed.

Booster stations to relay local car transmissions would be included in the equipment. The relay system has solved Lake County's problem with inadvertent coverage of signals, such as that which occurred in Hillside, said Jay McClasky, director of the Lake County Police Radio Network.

Waiting time is still long because there are 34 stations on the channel, but the relay amplifies dispatches from a squad or walkie-talkie so that the base station and individual calls are equal in strength.

The signals are received by all stations and policemen who are on the band, thereby eliminating the chance of a unit transmitting because the other was not heard.

SENATOR BAYH ANNOUNCES ALLOCATION OF FEDERAL REVENUE-SHARING GRANTS TO INDIANA CITIES AND TOWNS FOR 1972

Mr. BAYH. Mr. President, the Joint Committee on Internal Revenue Taxation recently made available a breakdown of the 1972 revenue-sharing grants which they expect will be sent to Indiana cities and towns in the near future. In rough terms, Indiana will receive $104.3 million, of which $34.8 million will be for the use of the State government. The remaining $69.5 million will be distributed directly to local governments within the State. Because this information will be of great interest to my Hoosier constituents, I ask unanimous consent that this county-by-county breakdown of the fund allocation—including a listing of the funds to be distributed to the larger cities—be printed in the RECORD.

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

Revenue sharing funds for Indiana

[In dollars]

Total State grant to all locals	69,541,107
Amount returned to Indiana State government is	0

County and Total Grant

Adams County area	271,819
Adams County government	127,837
Total to all cities over 2,500	103,944
Total to all cities under 2,500	15,656
Total to all townships	24,381
Berne City	8,365
Decatur City	95,580
Allen County area	3,563,693
Allen County government	1,148,901
Total to all cities over 2,500	2,174,268
Total to all cities under 2,500	30,896
Total to all townships	209,629
Fort Wayne City	2,137,708
New Haven Town	36,561
Bartholomew County area	898,233
Bartholomew County government	443,681
Total to all cities over 2,500	378,394
Total to all cities under 2,500	42,653
Total to all townships	28,504
Columbus City	376,801
Edinburg Town (part)	1,593
Benton County area	134,359
Benton County government	73,312
Total to all cities over 2,500	14,813
Total to all cities under 2,500	21,146
Total to all townships	25,088
Fowler Town	14,813
Blackford County area	223,233
Blackford County government	110,800
Total to all cities over 2,500	77,391
Total to all cities under 2,500	19,263
Total to all townships	15,780
Dunkirk City (part)	2,694
Hartford City	74,697
Boone County area	295,096
Boone County government	186,021
Total to all cities over 2,500	62,333
Total to all cities under 2,500	34,862
Total to all townships	11,879
Lebanon City	62,333
Brown County area	91,555
Brown County government	77,992
Total to all cities over 2,500	0
Total to all cities under 2,500	2,119
Total to all townships	11,444
Carroll County area	215,250
Carroll County government	121,213
Total to all cities over 2,500	17,437
Total to all cities under 2,500	17,552
Total to all townships	49,048
Delphi City	17,437
Cass County area	486,105
Cass County government	237,765
Total to all cities over 2,500	184,087
Total to all cities under 2,500	32,850
Total to all townships	31,403
Logansport City	184,087
Clark County area	682,642
Clark County government	316,770
Total to all cities over 2,500	339,851
Total to all cities under 2,500	2,668
Total to all townships	23,354
Charlestown City	23,896
Clarksville Town	68,941
Jeffersonville City	232,568
Sellersburg Town	14,446
Clay County area	342,401
Clay County government	192,990
Total to all cities over 2,500	90,610
Total to all cities under 2,500	32,068
Total to all townships	26,733
Brazil City	90,610
Clinton County area	389,612
Clinton County government	198,670
Total to all cities over 2,500	122,152
Total to all cities under 2,500	30,473
Total to all townships	38,317
Frankfort City	122,152
Crawford County area	155,960
Crawford County government	87,786
Total to all cities over 2,500	0
Total to all cities under 2,500	15,876
Total to all townships	52,298
Daviess County area	387,613
Daviess County government	176,750
Total to all cities over 2,500	78,552
Total to all cities under 2,500	24,268
Total to all townships	28,042
Washington City	78,552
Dearborn County area	477,550
Dearborn County government	334,125
Total to all cities over 2,500	101,376
Total to all cities under 2,500	16,409
Total to all townships	25,640
Aurora City	49,044
Greendale Town	10,131
Lawrenceburg City	42,202
Decatur County area	335,016
Decatur County government	178,079
Total to all cities over 2,500	71,662
Total to all cities under 2,500	23,070
Total to all townships	62,206
Greensburg City	71,662
De Kalb County area	364,777
De Kalb County government	188,822
Total to all cities over 2,500	103,801
Total to all cities under 2,500	53,029
Total to all townships	19,126
Auburn City	61,696
Garrett City	42,106
Delaware County area	1,466,825
Delaware County government	533,181
Total to all cities over 2,500	677,240
Total to all cities under 2,500	72,330
Total to all townships	184,074
Muncie City	677,240
DuBois County area	383,728
DuBois County government	102,106
Total to all cities over 2,500	147,828
Total to all cities under 2,500	27,486
Total to all townships	86,308
Huntingburg City	50,581
Jasper City	97,247
Elkhart County area	1,131,879
Elkhart County government	455,415
Total to all cities over 2,500	583,717
Total to all cities under 2,500	35,175
Total to all townships	57,571
Elkhart City	426,946
Goshen City	124,187
Nappanee City (Part)	32,584
Fayette County area	423,587
Fayette County government	207,390
Total to all cities over 2,500	204,050
Total to all cities under 2,500	0
Total to all townships	12,146
Connersville City	204,050
Floyd County area	616,391
Floyd County government	238,931
Total to all cities over 2,500	338,628
Total to all cities under 2,500	16,613
Total to all townships	22,220
New Albany City	338,628
Fountain County area	237,586
Fountain County government	133,270
Total to all cities over 2,500	53,587
Total to all cities under 2,500	30,896
Total to all townships	19,832
Attica City	41,560
Covington City	12,028
Franklin County area	179,546
Franklin County government	127,221
Total to all cities over 2,500	18,709
Total to all cities under 2,500	11,053
Total to all townships	22,564
Brookville Town	16,220
Batesville City (part)	2,489
Fulton County area	247,224
Fulton County government	173,734
Total to all cities over 2,500	38,996
Total to all cities under 2,500	16,883
Total to all townships	17,610
Rochester City	38,996
Gibson County area	338,036
Gibson County government	196,178
Total to all cities over 2,500	90,243
Total to all cities under 2,500	28,778
Total to all townships	22,836
Fort Branch Town	10,543
Oakland City Town	20,881
Princeton City	58,819
Grant County area	976,735
Grant County government	319,997
Total to all cities over 2,500	545,974
Total to all cities under 2,500	70,765
Total to all townships	40,000
Fairmount Town	40,084
Gas City City	31,024
Marion City	463,719
Upland Town	11,147
Greene County area	348,763
Greene County government	240,138
Total to all cities over 2,500	42,658
Total to all cities under 2,500	28,336
Total to all townships	37,631
Bloomfield Town	14,628
Linton City	28,030
Hamilton County area	383,673
Hamilton County government	252,510
Total to all cities over 2,500	78,147
Total to all cities under 2,500	34,055
Total to all townships	18,961
Carmel Town	17,589
Noblesville City	60,559
Hancock County area	194,226
Hancock County government	80,885

Total to all cities over 2,500	43,512
Total to all cities under 2,500	23,978
Total to all townships	45,852
Greenfield city	43,512
Harrison County area	221,851
Harrison County government	144,138
Total to all cities over 2,500	16,457
Total to all cities under 2,500	10,895
Total to all townships	50,362
Corydon town	16,457
Hendricks County area	366,916
Hendricks County government	236,457
Total to all cities over 2,500	91,650
Total to all cities under 2,500	19,784
Total to all townships	19,025
Brownsburg town	24,094
Danville town	21,310
Plainfield town	46,245
Henry County area	605,894
Henry County government	287,815
Total to all cities over 2,500	202,688
Total to all cities under 2,500	87,906
Total to all townships	27,485
New Castle city	202,688
Howard County area	1,171,655
Howard County government	353,303
Total to all cities over 2,500	724,120
Total to all cities under 2,500	30,746
Total to all townships	63,486
Kokomo city	724,120
Huntington County area	395,107
Huntington County government	179,103
Total to all cities over 2,500	153,466
Total to all cities under 2,500	41,837
Total to all townships	20,700
Huntington city	153,466
Jackson County area	374,103
Jackson County government	182,005
Total to all cities over 2,500	127,699
Total to all cities under 2,500	46,166
Total to all townships	18,233
Seymour city	127,699
Jasper County area	269,531
Jasper County government	187,253
Total to all cities over 2,500	44,533
Total to all cities under 2,500	17,479
Total to all townships	20,266
Rensselaer city	44,533
Jay County area	352,853
Jay County government	175,531
Total to all cities over 2,500	124,713
Total to all cities under 2,500	35,414
Total to all townships	17,195
Dunkirk City (part)	39,911
Portland City	84,802
Jefferson County area	432,523
Jefferson County government	218,906
Total to all cities over 2,500	170,605
Total to all cities under 2,500	41,910
Hanover Town	14,459
Madison City	156,146
Jennings County area	246,858
Jennings County government	163,902
Total to all cities over 2,500	59,633
Total to all cities under 2,500	5,726
Total to all townships	17,597
North Vernon City	59,633
Johnson County area	470,024
Johnson County government	250,329
Total to all cities over 2,500	179,783
Total to all cities under 2,500	19,488
Total to all townships	20,423
Edinburg Town (part)	13,316
Franklin City	109,366
Knox County area	750,602
Knox County government	414,255
Total to all cities over 2,500	268,428
Total to all cities under 2,500	43,205
Total to all townships	24,713
Bicknell City	15,070
Vincennes City	253,359
Kosciusko County area	450,796
Kosciusko County government	228,795
Total to all cities over 2,500	95,926
Total to all cities under 2,500	72,123
Total to all townships	53,953
Nappanee City (part)	280
Warsaw City	80,062
Winona Lake Town	15,584
Lagrange County area	245,554
Lagrange County government	175,101
Total to all cities over 2,500	0
Total to all cities under 2,500	41,200
Total to all townships	29,952
Lake County area	10,605,451
Lake County government	4,756,601
Total to all cities over 2,500	5,804,820
Total to all cities under 2,500	44,031
Total to all townships	0
Crown Point City	60,231
Dyer Town	26,683
East Chicago City	912,151
East Gary Town	69,629
Gary City	3,069,017
Griffith Town	48,652
Hammond City	1,203,934
Highland Town	66,806
Hobart City	91,871
Lowell Town	10,281
Munster Town	44,223
Schererville Town	19,980
Whiting City	140,700
Cedar Lake Town	40,661
La Porte County area	1,358,327
La Porte County government	374,953
Total to all cities over 2,500	897,409
Total to all cities under 2,500	39,571
Total to all townships	46,393
La Porte City	226,527
Long Beach Town	8,602
Michigan City City	634,184
Trail Creek Town	9,596
Westville Town	18,500
Lawrence County area	426,269
Lawrence County government	213,314
Total to all cities over 2,500	174,892
Total to all cities under 2,500	11,759
Total to all townships	26,304
Bedford City	157,976
Mitchell City	16,915
Madison County area	1,519,196
Madison County government	481,011
Total to all cities over 2,500	825,388
Total to all cities under 2,500	103,741
Total to all townships	109,056
Alexandria City	33,944
Anderson City	666,454
Chesterfield Town	15,464
Elwood City	109,526
Marion County area	10,710,110
Marion County government	3,414,961
Total to all cities over 2,500	7,148,179
Total to all cities under 2,500	0
Total to all townships	146,970
Beech Grove City	58,604
Indianapolis City	6,983,136
City of Lawrence	66,121
Speedway Town	40,319
Marshall County area	449,705
Marshall County government	259,527
Total to all cities over 2,500	102,296
Total to all cities under 2,500	49,423
Total to all townships	38,460
Bremen Town	27,561
Plymouth City	74,735
Marin County area	212,962
Marin County government	90,602
Total to all cities over 2,500	16,240
Total to all cities under 2,500	7,578
Total to all townships	98,542
Loogootee City	16,240
Miami County area	551,692
Miami County government	272,905
Total to all cities over 2,500	185,667
Total to all cities under 2,500	46,459
Total to all townships	46,661
Peru City	185,667
Monroe County area	757,613
Monroe County government	344,900
Total to all cities over 2,500	358,399
Total to all cities under 2,500	16,027
Total to all townships	38,286
Bloomington City	358,399
Montgomery County area	379,734
Montgomery County government	200,296
Total to all cities over 2,500	105,894
Total to all cities under 2,500	46,551
Total to all townships	26,992
Crawfordsville City	105,894
Morgan County area	337,311
Morgan County government	213,587
Total to all cities over 2,500	85,768
Total to all cities under 2,500	12,235
Total to all townships	25,722
Martinsville City	70,236
Mooresville Town	15,532
Newton County area	225,329
Newton County government	163,319
Total to all cities over 2,500	0
Total to all cities under 2,500	45,066
Total to all townships	16,945
Noble County area	367,843
Noble County government	174,044
Total to all cities over 2,500	117,822
Total to all cities under 2,500	44,983
Total to all townships	30,994
Kendallville City	87,509
Ligonier City	30,313
Ohio County area	72,155
Ohio County government	44,503
Total to all cities over 2,500	0
Total to all cities under 2,500	19,875
Total to all townships	7,777
Orange County area	229,775
Orange County government	147,677
Total to all cities over 2,500	25,334
Total to all cities under 2,500	37,241
Total to all townships	19,523
Paoli Town	25,334
Owen County area	186,606
Owen County government	130,487
Total to all cities over 2,500	19,742
Total to all cities under 2,500	5,351
Total to all townships	31,025
Spencer town	19,742
Parke County area	265,748
Parke County government	186,163
Total to all cities over 2,500	25,922
Total to all cities under 2,500	25,738
Total to all townships	27,925
Rockville town	25,922
Perry County area	345,227
Perry County government	203,132
Total to all cities over 2,500	91,204
Total to all cities under 2,500	32,823
Total to all townships	18,067
Tell City city	91,204
Pike County area	219,077
Pike County government	135,192
Total to all cities over 2,500	42,703
Total to all cities under 2,500	20,821
Total to all townships	20,360
Petersburg city	42,703
Porter County area	658,560
Porter County government	191,912
Total to all cities over 2,500	368,180

Revenue sharing funds for Indiana—Cont.

[In dollars]

Total to all cities under 2,500	50,431
Total to all townships	48,037
Chesterton town	34,267
Porter town	19,116
Valparaiso City	169,207
Portage Town	145,590
Posey County area	359,477
Posey County government	197,973
Total to all cities over 2,500	77,800
Total to all cities under 2,500	34,211
Total to all townships	49,493
Mount Vernon city	77,800
Pulaski County area	224,120
Pulaski County government	155,351
Total to all cities over 2,500	0
Total to all cities under 2,500	38,527
Total to all townships	30,242
Putnam County area	335,702
Putnam County government	221,132
Total to all cities over 2,500	65,465
Total to all cities under 2,500	21,943
Total to all townships	27,163
Greencastle City	65,465
Randolph County area	302,479
Randolph County government	159,706
Total to all cities over 2,500	76,991
Total to all cities under 2,500	43,868
Total to all townships	21,914
Union City City	38,006
Winchester City	38,986
Ripley County area	224,527
Ripley County government	108,714
Total to all cities over 2,500	31,418
Total to all cities under 2,500	41,797
Total to all townships	42,598
Batesville City (part 1)	31,418
Rush County area	354,473
Rush County government	194,402
Total to all cities over 2,500	107,075
Total to all cities under 2,500	22,389
Total to all townships	30,608
Rushville City	107,075
St. Joseph County area	3,846,454
St. Joseph County government	1,327,370
Total to all cities over 2,500	2,191,867
Total to all cities under 2,500	108,357
Total to all townships	218,860
Mishawaka City	342,363
South Bend City	1,849,503
Scott County area	185,773
Scott County government	135,774
Total to all cities over 2,500	34,913
Total to all cities under 2,500	0
Total to all townships	15,086
Scottsburg City	34,913
Shelby County area	381,704
Shelby County government	193,049
Total to all cities over 2,500	151,669
Total to all cities under 2,500	8,420
Total to all townships	28,565
Shelbyville City	151,669
Spencer County area	275,647
Spencer County government	217,883
Total to all cities over 2,500	17,229
Total to all cities under 2,500	17,733
Total to all townships	22,802
Rockport City	17,229
Starke County area	270,947
Starke County government	179,710
Total to all cities over 2,500	42,842
Total to all townships	17,971
Knox City	42,842
Steuben County area	248,645
Steuben County government	120,281
Total to all cities over 2,500	38,379
Total to all cities under 2,500	20,791
Total all townships	69,194
Angola City	38,379
Sullivan County area	362,251
Sullivan County government	249,622
Total to all cities over 2,500	40,579
Total to all cities under 2,500	46,090
Total to all townships	25,961
Sullivan City	40,579
Switzerland County area	122,430
Switzerland County government	102,647
Total to all cities over 2,500	0
Total to all cities under 2,500	8,958
Total to all townships	10,825
Tippecanoe County area	1,125,435
Tippecanoe County government	368,552
Total to all cities over 2,500	664,942
Total to all cities under 2,500	16,169
Total to all townships	75,772
Lafayette City	518,129
West Lafayette City	146,813
Tipton County area	212,877
Tipton County government	146,866
Total to all cities over 2,500	36,509
Total to all cities under 2,500	14,341
Total to all townships	15,160
Tipton City	36,509
Union County area	75,294
Union County government	45,736
Total to all cities over 2,500	0
Total to all cities under 2,500	18,979
Total to all townships	10,578
Vanderburgh County area	3,021,321
Vanderburgh County government	1,112,955
Total to all cities over 2,500	1,863,003
Total to all cities under 2,500	0
Total to all townships	45,363
Evansville City	1,863,003
Vermillion County area	194,106
Vermillion county government	115,630
Total to all cities over 2,500	32,038
Total to all cities under 2,500	27,340
Total to all townships	19,098
Clinton City	32,038
Vigo County area	2,107,724
Vigo County government	995,421
Total to all cities over 2,500	1,091,645
Total to all cities under 2,500	20,658
Total to all townships	0
Terre Haute City	1,039,147
West Terre Haute City	52,498
Wabash County area	495,009
Wabash County government	227,900
Total to all cities over 2,500	227,354
Total to all cities under 2,500	21,988
Total to all townships	17,766
North Manchester Town	39,924
Wabash City	187,430
Warren County area	155,243
Warren County government	119,385
Total to all cities over 2,500	0
Total to all cities under 2,500	17,718
Total to all townships	18,140
Warrick County area	391,080
Warrick County government	288,575
Total to all cities over 2,500	39,735
Total to all cities under 2,500	41,972
Total to all townships	20,798
Boonville City	39,735
Washington County area	221,457
Washington County government	143,116
Total to all cities over 2,500	37,132
Total to all cities under 2,500	18,452
Total to all townships	22,758
Salem City	37,132
Wayne County area	981,427
Wayne County government	358,265
Total to all cities over 2,500	464,409
Total to all cities under 2,500	122,206
Total to all townships	36,547
Richmond City	464,409
Wells County area	208,163
Wells County government	121,475
Total to all cities over 2,500	60,234
Total to all cities under 2,500	16,792
Total to all townships	9,663
Bluffton city	60,234
White County area	254,568
White County government	151,920
Total to all cities over 2,500	36,801
Total to all cities under 2,500	40,580
Total to all townships	25,267
Monticello City	36,801
Whitley County area	236,718
Whitley County government	146,183
Total to all cities over 2,500	39,560
Total to all cities under 2,500	25,890
Total to all townships	25,085
Columbia City city	39,560

DEFENSE AND INTERNATIONAL ISSUES—ADDRESS BY ASSISTANT SECRETARY OF DEFENSE FOR INTERNATIONAL SECURITY AFFAIRS

Mr. TOWER. Mr. President, I am pleased today to bring to the attention of my colleagues, an address by the Assistant Secretary of Defense for International Security Affairs, Mr. G. Warren Nutter, before the American Legion's 54th annual National Convention in Chicago on August 22. In order that all Senators may have an opportunity to review these remarks on Defense and International issues, I ask unanimous consent that they be printed at this point in the RECORD.

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

DEFENSE AND INTERNATIONAL ISSUES

It is a great pleasure for me to participate again in the program of the American Legion. I am particularly pleased to be here today, for the Legion has always supported a strong and viable national security policy. Your support on this vital issue is needed now more than ever before.

I have been asked to speak on defense and international issues. This subject is one which, in this election year, we will hear a great deal about. Over the next several months all of us will be subjected to a wide variety of speeches—most of them highly partisan—about the state of the world and our place in it. Today I will address those same questions. But my remarks will not be partisan in nature. Rather, I shall attempt to give you an overview of the problems that underlie military planning and that we in the Department of Defense must therefore take into account.

Many factors have shaped our foreign policy over the past three years, but none has been so important, or so affected our thinking and planning, as the great increase in Soviet strategic power. This generation of Americans must face—and cope with—a Soviet Union that is now approaching a state of virtual strategic parity with the United States. The fact that the Soviets have been able to build the world's second most powerful military machine, and have now reached the stage where they can project that power worldwide, is largely the result of three factors.

First, it is now reasonably clear that the results of the Cuban missile crisis profoundly

influenced both the military and civilian leadership of the Soviet Union. They apparently made a conscious decision, after their backdown in Cuba, never to be placed in such a situation again. The great surge in their missile and naval construction programs dates from shortly after that crisis.

The second factor was the decision in the mid-1960's to forgo the heavy expenditures that would have been necessary to maintain US nuclear superiority in the face of the Soviet buildup.

Third, the Vietnam War, as it reached its peak in the 1966–68 period, drew ever more heavily on both our attention and our resources. The billions we were pouring into that war meant less for our strategic forces.

Nor was the only legacy of the war in Vietnam. As 1969 began, America was torn by internal dissension over the neglect of our domestic needs and the future course we should pursue in Southeast Asia. It is an irony of history that, at precisely the time the Soviets were moving into the role of a world power, backed by a full panoply of nuclear weapons, our own people were coming to doubt both the reality of the Soviet threat and the necessity for America's own world role.

It was against this background that the President announced the Nixon Doctrine. Its purpose was to set a new course for American foreign policy, a course based on changes in the world that made this policy not only desirable, but also necessary. These changes are well known, but are often not considered as we discuss and debate international affairs. Recognition of these changes now forms the basis for our new foreign and national security policies. The President outlined, these changes in his foreign policy report to the Congress:

The recovery of economic strength and political vitality by Western Europe and Japan.

The increasing self-reliance of the states created by the dissolution of colonial empires.

The break-up of unity in the Communist Bloc.

The end of an indisputable U.S. superiority in strategic strength.

The growth among the American people of the conviction that other nations should play a greater role in providing for their own defense.

One of the President's most urgent tasks was to reverse the escalation of American involvement in Vietnam without abandoning the South Vietnamese to an, at best, uncertain fate.

The Paris Peace Talks had been underway since spring 1968, without result. What was needed then was a complement to, and alternative for, those negotiations.

The answer was Vietnamization. Its purpose was to shift primary responsibility for defending their homeland to those most directly involved—the Vietnamese themselves.

Vietnamization has been a success:

In January 1969, U.S. authorized military strength in Vietnam was 549,500;

On September 1 of this year that figure will be 39,000;

During 1971, the South Vietnamese army, up to 1.1 million from the 1968 level of 800,000, conducted twenty major combat engagements for every one involving U.S. forces; during 1972 our ground combat forces have been reduced to two company size security units;

In 1969, the additional costs of the Vietnam War to the U.S. were $20.5 billion; the FY 72 estimate is $7.1 billion, down by about 85 percent since 1969;

Our combat deaths are 95 percent below the peak casualty figures of 1968.

A second challenge to the new administration was to assure strategic nuclear power sufficient to deter nuclear blackmail or attack. We have undertaken major programs for improvement and modernization of our strategic forces to meet this challenge. Thus, the FY 1973 defense budget funds such major programs as: development and procurement of the TRIDENT submarine; continued development of a new strategic bomber, the B–1; modernization of our MINUTEMAN force; deployment of the new POSEIDON missile; and continued deployment of the SAFEGUARD ABM system, subject to the changes required by the ABM Treaty.

But in so doing, we have not slighted the requirement for building and maintaining adequate conventional forces. Thus, we have also shifted savings resulting from our decreased Vietnam expenditures to force modernization and increased pay for our men in uniform. All of this has been done at the same time that the defense share of the budget and of GNP has been reduced. Today a greater proportion of the national budget is spent on human resources than on defense.

The reduction in our land-based forces in Asia means that our naval forces will take on added importance as both a military and political instrument to protect U.S. power and presence in that part of the world.

As we reduce our forces in Asia, it will become increasingly important for our own security that our friends and allies remain strong. To ensure this strength our program of security assistance must provide the training and materiel to friendly nations whose manpower—not ours—will form the basis for deterrence against conventional war.

And this is the essence of the final element of the Nixon Doctrine—a new emphasis on partnership. Just as we have sought to help South Vietnam to assume responsibility for its own defense, so we are moving to encourage our European and Asian allies to take on a greater share of the common defense burden. Our NATO allies have already taken measures to increase their alliance-related expenditures; they have been asked to do even more. Equally, our Asian allies will assume a greater share of responsibility for conventional defense.

As we shift responsibilities to our allies, we will need to consider carefully the new role and responsibilities of our own general purpose forces. They will need to be highly trained, extremely mobile, and well equipped to respond to a variety of potential crisis situations. Our National Guard and Reserves must be ready to supplement, when necessary, our active forces. And our force planning must take into account the force planning of our friends and allies.

Through the use of this Total Force Concept, we can make the most efficient use of our own forces. It will be especially necessary to do so as we move to the all-volunteer force next year.

We have not, of course, solved all of the major international issues that confronted us three years ago. Manifestly, the tremendous increase in Soviet military power carries with it the potential for increased US–USSR confrontation. Thus, there is an even greater need for restraint on both sides. An "era of negotiation" is not simply preferable, it is essential.

At the same time that the President was moving to reduce our Vietnam involvement and assure our continued military strength, he was also moving to open negotiations with the Soviet Union.

Hopefully, the results of the President's trip to Moscow will lead to further progress on issues that bear on the US–Soviet relationship. The President's trip was, of course, a central element in our effort to establish a more positive relationship with the Soviet Union, just as his trip to Peking was designed to re-establish contact between the US and Mainland China and thus to contribute to a relaxation of tension in Asia and the world.

The agreements reached at the Moscow summit signal the emergence of a new pattern of relationships between the United States and the Soviet Union. The most important of the agreements signed were the two limitations of strategic armaments:

The treaty limiting deployment of anti-ballistic missile systems, which has already been ratified by the Senate; and

The five-year agreement limiting selected offensive strategic systems, which is now being debated in the Congress.

Other agreements reached are of importance in this era of reduced tensions. They include:

An agreement designed to prevent incidents at sea and in airspace over it between vessels and aircraft of the US and Soviet navies. This understanding should prevent accidents between ships and aircraft operating in close proximity.

Co-operative ventures in space, including a joint docking in 1975, and in science, technology, health, and environmental protection.

New exchanges in the fields of education and culture.

Establishment of a joint commission on commercial and economic relations, with a view toward expanding trade between the two nations.

Let us look, for the next few minutes, at some of the lessons we have learned and the problems we will face in the years ahead.

It is a prophetic fact that Europe is one of the most stable parts of today's world, despite the fact that East and West have longest been in confrontation there. Two world wars began in Europe. Yet today that continent has been at peace for almost 30 years—longer than at any other time in the 20th century.

There is, I suggest, a lesson to be learned from the European experience, and it is this one: that the military strength of the United States and its European allies has furthered the cause of peace, not hindered it. NATO was the shield that provided the time and confidence necessary for Western Europe to rebuild and then move on to a new era of prosperity and unity. NATO is the shield that has deflected the Soviet Union and the Warsaw Pact from a policy of threat and coercion to a policy of detente. The history of East-West relations in Europe over the past three years has been a hopeful one.

Last year the four powers responsible for Berlin negotiated an agreement that facilitates access to the city for West Germans, makes life more tolerable for West Berliners, and, we hope, lessens the tension between East and West generated for so many years by that divided city.

The West will soon begin discussions with the East leading to a Conference on European Security and Cooperation.

Finally, we expect, in parallel with a Conference on European Security, to begin negotiations on mutual and balanced reductions in the forces of both sides in Europe.

There are those who argue that NATO has served its purpose; that in an age of detente American troops are no longer essential to preserve the peace in Europe. This is dangerous and misguided counsel. It does not seem to me the best of logic to argue that we should reduce Western strength—and thereby weaken Western cohesion—at precisely the time when strength and cohesion are beginning to pay dividends. Now, when we may be moving into an era of a more mature Soviet European policy, is hardly the time to throw away the card that led to that new approach.

But what we can and must do—in keeping with the economic realities around us—is to ask our European allies to accept a greater share of the cost and responsibility for maintaining the strength so necessary to the eventual success of detente.

Apparent Soviet restraint in Europe has not always been matched by equal sensitivity elsewhere. In the Middle East, the Soviet

Union has threatened the local Arab-Israeli balance of power by massive arms deliveries to its Arab clients, also establishing a major military presence of its own. In the case of Egypt, it now appears the Egyptians found such a presence intolerable. The Soviet presence in the area, now reduced, entailed the particular danger that what might otherwise be a purely local conflict could escalate into a struggle in which Soviet forces were directly involved. It also leads us to wonder whether there is a broader purpose to that presence, and to note that major Soviet military power in the Eastern Mediterranean poses a threat to NATO's southern flank. As a counter to that threat, we must ensure the continued presence and strength of the Sixth Fleet.

Twenty years of conflict in the Middle East is demonstrable proof that there is no easy solution for that troubled area. Our course has included these points:

Support the concept of negotiations under the aegis of Ambassador Jarring between the Israelis and the Arabs to achieve an overall peace agreement in accordance with the United Nations Security Council resolution of November 1967;

Remain available to both Israel and Egypt to assist in exploring an interim agreement involving re-opening the Suez Canal and some Israeli withdrawal;

Encourage the maintenance of the current ceasefire that resulted from President Nixon's initiative in the summer of 1970;

Continue our efforts to persuade the Soviet Union to exercise a restraint we are prepared to match if and when the Soviets give proof of their willingness to agree to some limitations for the area; and

Provide Israel with the military equipment necessary to maintain the local balance of power and to ensure its security.

In the Far East, the central questions we face turn on our relations with Japan and China, and the role each will play in the years ahead.

Japan is of paramount importance to our position in the Pacific and the prospects for security and stability in the region. A close relationship with Japan will remain a basic objective of our policy. But we must continue to adapt that relationship to reflect the new pride and strength of Japan and the waning of the postwar, bi-polar system. Part of this adaptation will involve developing a more balanced bilateral relationship with Japan, particularly in sharing the burdens of maintaining stability and peace in Asia and the Pacific.

It is most important that we do all we can to develop a new relationship with the most populous country of the world, China. The President's trip there marked the first substantial step on this road. In all candor, this initiative—coupled with our new economic policies—troubled Japan, who feared that we would act unilaterally on a matter of vital interest to her. But the basic purpose of our China policy is to encourage that nation to play a more constructive role in Asia, and eventually beyond; a role consistent with her weight, but one which recognizes the legitimate interests and aspirations of others. Improved Sino-American relations will not be at the expense of old friends and allies in Asia who must live with China as an ever-present reality. We believe there is increasing understanding in Japan and elsewhere in Asia of this basis for the President's initiative with China, and we will try to change the circumstances that have required such sizeable and costly American forces in Asia for so long to support those commitments.

So, the tasks before us are not easy. They will require patience. And they will require a recognition that, while we may no longer be prepared to be the world's policeman, neither do we intend to be the world's cop-out. Nor should we make the mistake of believing that the other side has everything going for it. We do not, for example, face a neighbor of some 800 million people with a growing nuclear capability and a 1,000,000 man army on our borders.

We do not head an alliance of reluctant associates most of whom would change their political and economic systems in a moment if given a chance, and all of whom are looking for greater independence from Moscow. NATO may be less monolithic than the Warsaw Pact, but it is an alliance of free peoples freely associated for a common cause.

Ours is not the way of empire; it is the way of partnership, the only way to a generation of peace. This is the fundamental message of the Nixon Doctrine.

THE OCCUPATIONAL SAFETY AND HEALTH ACT—THE MINIMUM WAGE

Mr. HANSEN. Mr. President, employers and small businessmen in Wyoming remain concerned about actions Congress has taken or has not taken on measures which affect their ability to make a living.

Because the Occupational Safety and Health Act, and the effort to increase the minimum wage seem of particular concern, I recently prepared a letter to Wyoming citizens reporting on these two issues.

Mr. President, I ask unanimous consent that this letter appear in the RECORD at the conclusion of my remarks.

Also, Mr. President, I have prepared a general report on activities of the Congress and Federal agencies which affect our Nation and my State of Wyoming. I ask unanimous consent that this report, entitled "Washington Roundup," be printed in the RECORD.

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

U.S. SENATE,
Washington, D.C., October 13, 1972.

To: Wyoming citizens.
From: Senator CLIFF HANSEN.
Regarding: OSHA, minimum wage.

Legislation to increase the federal minimum wage requirements died for lack of agreement between the Senate and the House of Representatives on differing versions. The House of Representatives several weeks ago passed a bill raising the present $1.60 hourly minimum wage for non-farm workers to $2.00. The Senate then passed a bill increasing the wage to $2.20 in two years and extending coverage to some six million additional workers—mostly domestics and government employees.

I voted against increasing the minimum wage in the Senate, for a number of reasons. The states have the authority to pass minimum wage laws if they so desire. As Governor of Wyoming, I recommended an increase in 1965 which was adopted by the Wyoming Legislature. But approval of such an increase as was voted by the Senate is not, in my opinion, in the national interest. It would price many unskilled workers out of the job market at a time when the unemployment rates are of concern, the welfare burden is growing at a tremendous rate, and the competition is greatly increasing with foreign countries who pay their working people only a fraction of what American workers receive. We are continuing to lose jobs to many countries, and an increase in the minimum wage at this time would only aid this process.

Debate in the Congress concerning the effect of the Occupational Safety and Health Act has reaffirmed the belief that workers are entitled to a safe working environment, but has also directed attention at inequities in this Act whch can injure employers and employees alike.

Earlier this year when considering an appropriations bill for the Departments of Labor and Health, Education and Welfare, both Houses approved a conference report containing a provision to deny expenditure of any Labor Department funds during fiscal year 1973 for enforcement of OSHA against employers with 15 or fewer employees.

This action was taken after members concerned about the problems caused by OSHA were unsuccessful in getting Congress to consider bills aimed at correcting inequities in the Act. I was pleased to join with Senator Carl Curtis of Nebraska in sponsorship of one of the bills to bring fairness to this law. The prohibition on enforcement against small employers was approved with the knowledge it was not a complete or permanent solution to OSHA problems, but with the hope it would give small employers time to determine what was required of them and permit changes to be made in the law by the Congress.

But, because it greatly exceeded the budget request, President Nixon vetoed the Labor-HEW appropriations bill containing the OSHA provision. The House of Representatives passed the appropriations measure a second time, once again including the 15-employee exemption. But when the Senate took up the bill, an amendment was approved which dropped this provision. Senator Carl Curtis and I then offered an amendment to prohibit expenditures for OSHA enforcement against employers with 7 or fewer employees, but this amendment failed. The Senate finally approved a provision denying the use of fiscal year 1973 funds for OSHA enforcement against employers with three or fewer employees. A House-Senate Conference Committee will have to determine the future of the OSHA provision. Conference Committee action was pending when this report was mailed.

I am confident efforts will resume when the 93rd Congress begins to secure consideration of bills to amend the Occupational Safety and Health Act to remove some of its inequities.

CLIFF HANSEN,
U.S. Senator.

STATE SCENE

JOHNSON COUNTY AID

Farmers and ranchers in a part of Johnson County hit by a recent hail storm may apply for emergency loan assistance from the Farmers Home Administration, according to Senator Hansen. County supervisors are now accepting and processing emergency loans for eligible operators.

These four counties are part of a newly-authorized Resource Conservation and Development Project to be aided by the Department of Agriculture in upgrading the area's economy, providing new jobs, and protecting existing resources.

TRIBAL RECREATION AREA

The Economic Development Administration has awarded a $484,000 grant to the Shoshone and Arapahoe Tribes of the Wind River Reservation for development of a public recreation area adjacent to the hot springs swimming pool three miles east of Fort Washakie. The project will provide employment for 48 persons in the area.

EVANSTON MOTEL ADDITION

The Small Business Administration will insure 90 per cent of the loan for a $514,600 project to add 50 new units to Evanston's 47-unit Ramada Inn. Senator Hansen said $463,140 of the total cost would be loaned by a local bank. The SBA application was submitted by the Greater Evanston Development Company. At present, 15 persons are employed at the Inn. The expansion will create nine new jobs.

SENATE ACTIONS AFFECT WYOMING

RAILROAD RETIREE PENSIONS INCREASED

Congress has voted to override a Presidential veto of a bill granting a 20 per cent increase in the pensions of 900,000 retired railroad employees.

Senator Hansen, who voted for the pension increase and then voted to override the veto, said he felt the increase was deserved, and said it would spur Congressional action early next year to find a way to "shore up" the financing of the Railroad Retirement Fund.

President Nixon had vetoed the bill providing the increase on grounds Congress had not provided a way to pay for the added benefits. The legislation provides for a "temporary" increase through June 30, 1973, on the assumption Congress will take action prior to then to make certain the retirement fund will be sufficient to finance the increase beyond that date.

Hansen said he was confident Congress would meet its responsibility to insure solvency for the fund.

"When the Penn-Central Railroad faced bankruptcy, Congress recognized the need to protect the public and insure continuing rail service by providing financial assistance," Hansen said. "With regard to the pension increase, it is just as important to consider the welfare of retired railroad employees, and I am confident Congress will find an acceptable way of insuring fiscal solvency for the Railroad Retirement Fund so these benefits can be paid."

WASHAKIE WILDERNESS, FOSSIL BUTTE MONUMENT

Two more bills of importance to Wyoming were cleared in October by the Congress.

Senate bills sponsored by Senator Hansen to establish the 280,000-acre Washakie Wilderness Area in Fremont County, and the 8,200-acre Fossil Butte National Monument in Lincoln County, were approved by both Houses. The Washakie bill is awaiting Presidential signature, and the Fossil Butte Legislation likely will become public law before the 92nd Congress adjourns.

Both bills were initially cleared by the Senate Interior Committee, on which Hansen serves, and Wyoming citizens traveled to Washington to testify at the time committee hearings were held.

HANSEN AMENDS LAND USE BILL

During recent debate on a bill requiring states to designate federally-acceptable uses for all non-federal lands or face loss of some federal funds, the Senate accepted two amendments introduced by Senator Cliff Hansen to dilute federal authority and protect state and individual prerogatives.

The bill would have required states to designate uses for non-federal lands, submit their plans to the federal government for approval, and face loss of up to 21 per cent of airport, recreation and highway funds if the government found the state plans lacking with regard to protection of federally-designated areas of environmental significance.

Hansen's amendments removed the provision requiring the states to undertake land-use planning, removed the economic penalties that would have been imposed on states submitting unacceptable plans, and rearranged the language so as to "suggest" to states that they undertake such planning if they so desired and to offer some federal assistance to those states wishing to do so.

During Senate debate on the bill, Hansen said the concept of federal authority over uses of non-federal lands was "contrary to everything I've ever believed about state and individual rights."

ROCK SPRINGS PROJECT CONTINUES

A four-paragraph item in a 1969 newspaper originally prompted Wyoming Senator Cliff Hansen to initiate a four-year project to help the City of Rock Springs conquer a coal mine subsidence problem.

Recently, during another of many trips the Senator has made to Rock Springs to work on the subsidence problem, he announced the newest phase of the effort to fill underground mine voids so further subsidence and accompanying property damage won't occur.

Hansen and two officials of the Bureau of Mines met with City Council and Urban Renewal Board members to explain three contracts the Bureau will soon sign for continued backfilling in the city. The first two will involve work to determine land levels throughout Rock Springs and to undertake necessary corehole drilling.

The third contract will provide for actual backfilling of an area yet to be selected, utilizing most of $800,000 which Congress recently appropriated to deal with the Rock Springs problem.

Hansen also reported that work is continuing on the city's Urban Renewal Program, a segment of which will aid citizens directly affected by the subsidence.

RECENT KEY VOTES

Here is how Senator Hansen voted on recent key issues considered by the Senate: * * * *for* the Military Procurement Authorizations Bill, which passed 92 to 5; * * * *against* an amendment permitting use of highway funds for urban mass transit, which failed 18 to 60; * * * *for* the Older Americans Employment Act, which was unanimously approved; * * * *for* the Revenue Sharing bill, which passed 63 to 20.

LEGISLATIVE ASSISTANT

Mrs. Bob Koester of Sheridan has joined Senator Cliff Hansen's Washington staff as a Legislative Assistant. Mrs. Koester, formerly Marilyn Enzi, is a University of Wyoming graduate with a Master's Degree in business. She is the daughter of Mr. and Mrs. E. J. Enzi of Sheridan. Her husband, a U. W. law school graduate, is an attorney with the Federal Power Commission. Marilyn accepts an autographed section of wood from the Presidential Inauguration stands under construction at the east front of the U.S. Capitol.

WISE HOME BUYING

The U.S. Department of Housing and Urban Development has published a booklet entitled, "Wise Home Buying," which contains useful tips for potential home buyers.

The book covers such areas as how and where to finance, how to inspect your potential new home, and what kinds of home not to buy under certain circumstances. It also explains real estate terminology and defines documents home purchasers should understand.

If you would like a copy, write me at 3107 New Senate Office Building, Washington, D.C., 20510.

VETERAN BENEFIT INCREASE

Though Congress hasn't completed action yet, it is virtually certain G.I. Bill benefits to veterans seeking an education will be increased soon. The Senate voted to increase benefits to $250 per month, while the House opted for $200. Negotiations are continuing between the two Houses to reach agreement. * * *

FOREIGN SERVICE GRIEVANCE BILL—A LEGISLATIVE ANALYSIS

Mr. BAYH. Mr. President, as you know, the Bayh-Cooper bill to establish an independent grievance procedure in the Foreign Service, which has passed the Senate twice, has been the subject of hearings during the past few months in the House.

On September 26, I had the opportunity to present testimony on the Foreign Service grievance bill to Congressman HAYS' Subcommittee on State Department Organization and Foreign Operations of the House Foreign Affairs Committee. Since the discussion surrounding the Bayh-Cooper bill has often been heated—and in too many instances misinformed—I sought through testimony to offer a thorough justification and history of each provision of the bill. The discussion during the hearing was productive and I wish that all persons interested in the fate of grievance legislation could have been present.

To assist those persons who did not attend the hearing, I would like to make the testimony more accessible by placing it in the RECORD. I hope that this very specific discussion of the legislation will refocus attention on the substantive issues involved in the debate. Discussion has continued for nearly a year and one-half; I believe it is time to secure statutory due process in the Foreign Service so that these employees can devote their full energies to the task for which they were so carefully chosen—the implementation of our Nation's foreign policy.

Mr. President, I ask unanimous consent that a copy of my prepared testimony together with a section-by-section analysis of the bill be printed in the RECORD.

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

STATEMENT BY SENATOR BIRCH BAYH BEFORE THE SUBCOMMITTEE ON STATE DEPARTMENT ORGANIZATION AND FOREIGN OPERATIONS OF THE HOUSE FOREIGN AFFAIRS COMMITTEE

Mr. Chairman, I am grateful for the opportunity to appear today before your Subcommittee to testify on Foreign Service Grievance legislation. As you know, I believe there is a strong need for legislation to ensure due process in the Foreign Service; I also believe we can and should pass such legislation this year.

Mr. Chairman, the effort to secure the rights of grievants has been arduous. Until 1971, only one hearing has been granted by the Department of State during the past 15 years despite hundreds of complaints and clear antagonism to Congressional inquiries on the subject of grievances led me to introduce my bill in June 1971. That bill was based on a proposal which the American Foreign Service Association had made to the Department earlier that year but which the Department, as usual, acknowledged and then ignored. It is true that since the introduction of this grievance legislation the Department has held more hearings and promulgated some new interim grievance procedures but the due process right to which each grievant is entitled is still so vulnerable that basic rights of Foreign Service officers are left to the whims of others. The regulations are so loosely defined that their basic meaning can be changed from day to day by both the Department and the grievance board, which is selected by that Department.

In short, legislation is still needed to provide a simple, explicit procedure protecting fundamental rights such as those enjoyed by other Federal employees. Ending the present second-class status of Foreign Service Officers demands that this Bill be passed. Meanwhile, this Congress is rapidly drawing to a close. Not only have both the Senate and the House held extensive hearings, but the Senate has passed two times in this session alone a grievance bill which I believe both assures to each employee his basic rights and meets all the Department's reasonable objections. I strongly urge that this Committee consider

and approve that legislation in time for final action before sine die adjournment.

Today I would like to review the history of this legislation and offer a thorough comparison of the various proposals before you: the original Bayh-Hamilton bill (S. 2659 and H.R. 10304), the compromise Bayh-Cooper bill (S. 3722 and H.R. 15457), and the Interim Grievance Procedure (IGP). I am submitting a tabular comparison of the bills which you may find helpful.

As I mentioned the Bayh-Hamilton bill was introduced in both Houses on June 8, 1971. In October of that year the Senate Foreign Relations Committee held two days of hearings but was unable to obtain any substantive analysis of the bill from the State Department. Although the American Foreign Service Association (representing 7,500 Foreign Service employees) and the American Federation of Government Employees had supported S. 2659 since its introduction, the Department's main response throughout 1971 was a general argument against any kind of legislation "at this time." To forestall action, the Department did promise in October to have its own alternative proposal ready by mid-winter of 1971. Unfortunately, mid-winter only brought further arguments for delay; late winter brought a request from Secretary Rogers himself for a special hearing so he might testify against legislation. Whatever the Secretary's arguments were, it is worth noting that he declined to make them when the Committee requested him to explain his position in an open hearing. Five months had passed since the October hearing without any progress, fresh information, or real cooperation by the Department. Meanwhile, the Committee became anxious to vote on the legislation; all parties realized that Convention and election recesses would only impose further delays on the possibility of final legislation action.

In March of this year the Committee on Foreign Relations indicated that it felt a responsibility to approve legislation soon. Senator Cooper, representing the Committee, and I began drafting a compromise designed to respond to the best suggestions from all the interested parties; our staffs met with representatives of the State Department, representatives of all employee groups, lawyers working on pending grievance cases, and with the Chairman of the Interim Grievance Board, Mr. William Simkin. Senator Cooper took the time to go to the State Department to discuss the fine points in the legislation. Thus, efforts at conciliation with the State Department extended far beyond the November hearings. During a solid month of constant discussions, five successive drafts were prepared, all interested parties were given a chance to comment, and changes were made to reflect all legitimate concerns. The result was the bill before you today, S. 3722. While some former supporters of S. 2659 have refused to support S. 3722 because they feel the original bill was weakened in drafting the compromise, opponents of the legislation claim the bill is unreasonable and unworkable; however, the employee organizations, the Foreign Relations Committee, a great majority of the Senate, and I feel S. 3722 represents a workable and effective compromise.

The bill has not been conceived hastily, or brought to this Committee without repeated efforts to resolve differences. And yet the bill continues to be the victim of the plea: "Delay." Mr. Chairman, we can delay the morale of the Foreign Service. The Department has had 26 years to internally negotiate acceptable grievance procedures. During that time it has not only ignored employee complaints, but has managed to exempt itself from a 1969 executive order imposing a uniform employee relations code on all Federal agencies. It has just spent over a year fending off reforms similar to those which Dean Rusk recommended in 1962—but which his subordinates never carried out. The situation would be ludicrous if it were less serious. The frustrations from blockaded complaints has continued to build over the years and has now been compounded by the Department's transparent delaying tactics until in-house debate is nearly impossible. That is why we are faced with a crisis of mistrust. And that is why legislation is necessary. The Department has already been given ample opportunity to take its own initiative and has failed; this legislation is reasonable—perhaps embarrassing, but reasonable—and I urge the Subcommittee to approve it so that the State Department can stop its infighting and redirect its attention to foreign policy.

With that introduction, I would like to explain the most important differences between the original and compromise bill and my reasons for supporting each provision in the compromise.

The general objective of the compromise was to eliminate unnecessary rigidities in the legislation so as to allow the Secretary and the grievance board sufficient flexibility to meet changing needs in the Foreign Service. The Secretary is given substantial authority to author and revise the implementing regulations; the board has authority to structure each hearing to meet the particular situation.

I believe you have already heard a persuasive argument from Mr. Simkin in favor of increased discretion for the Board. Of course, such discretionary authority for the Secretary and the board had to be balanced by guarantees that any situational adjustments would be made objectively and impartially. Therefore, the Board is designed to be as independent as possible from the Department. Its broad discretion is matched by an "outsiders" viewpoint compelling its adherence to general principles of due process rather than to past biases of the State Department. The Secretary's authority to change regulations is balanced by the explicit inclusion of the grievance procedures under the Administrative Procedures Act—thus any changes must meet the legal community's precepts of due process. I believe these two provisions are prerequisites of a credible self-correcting procedure.

As you know, our prominent priority was to establish an independent board with sufficient power to truly mediate between the Department and employees both on important and on insignificant matters. The rest of the bill is largely a compilation of basic rights of due process such as:

1. The right to a hearing;
2. The right to representation at all stages of the proceeding;
3. The right of access to documents relevant to a grievant's case;
4. The right to call witnesses from the Department and to cross-examine those provided by the other side;
5. The right of access to a transcript of the hearing;
6. The right of freedom from interference or coercion while presenting a grievance; and
7. The right to a reasonable expectation that after a fair hearing the findings of the Board will be carried out, and that if any due process rights are violated, the Board will have the power to enforce disciplinary action.

The employees can ask for no less; any grievance procedure worthy of the respect of the potential grievants and the public must be based on such rights. Again, I emphasize that this legislation merely provides the framework of a procedure. The language needed to secure the rights may be detailed, but the real details of the process are left up to the Department and the employees. I strongly object to any hint that the Congress of the United States has no business securing these rights for American citizens. It is not only our business; it is our duty. Unfortunately, the Department has demonstrated repeatedly that as a "special" agency, it has not had sufficient experience with day-to-day grievance problems and with vigorous internal disagreement to draw up its own workable and balanced grievance procedure. I'm sure you will agree that the Congress has had sufficient experience to secure protections for both sides.

SECTION-BY-SECTION ANALYSIS

Now, if I may I will begin a Section-by-Section analysis of the compromise bill, with comparisons to the Interim Grievance Procedure.

Sec. 691—Statement of Purpose

This section states that the bill is designed to provide to grievants and their survivors a grievance procedure guaranteeing "the fullest measure of due process, and to provide for the just consideration and resolution of grievances." This basic statement of purpose underlies the whole bill. It is this standard against which all regulations and actions must be measured because all regulations issued by the Secretary must conform with this basic purpose.

Sec. 692—Regulations of the Secretary

Section 692 guarantees certain basic rights to every grievant and gives to the Secretary the authority to implement the grievance resolution scheme which this bill establishes. The original bill made no provision for regulations or adjustments by the Secretary because of the thought that the Department would drastically curtail employee rights. Persistent comments from employee groups indicated that the grievant's rights of due process had been so narrowly defined under FAM 1820 and the Interim Grievance Procedure that they were seriously compromised.

For example, let us take a more obvious right—the right to a hearing. Under the old State Department regulations (which supposedly guaranteed the right to a hearing), a grievance first had to be handled administratively; if administrative channels did not produce satisfaction, the employee could elect to have a hearing before a three-member committee which the director of personnel was required to appoint within five days of the employee's request. However, in the three hearings which were actually held—although there were hundreds of requests—appointment of the hearing board was delayed for over a year, despite proper requests by the employees. In two cases, it was necessary to use court action to compel the State Department to establish one of these hearing boards. Under the Interim Grievance Procedure, more burdensome qualifications are placed upon the grievant's right to a hearing, such as an extensive and time-consuming informal consideration of the complaint, and consideration by the Board of its jurisdiction in the case. Even if the Board accepts the case, it may decide to conduct its investigation as a series of group meetings or personal interviews. A hearing is held only if the grievance is a "major" one, as defined by the Board. These examples only serve to demonstrate that narrow definitions have often served as real or potential loopholes for the Department. Every precaution must accompany a decision to give the Department power to change regulations or definitions and to open its own loopholes.

However, I do believe the Department should be able to adapt the grievance mechanism to changing circumstances, and to promulgate implementing regulations, within broad outlines established by legislation. The original bill would have put into statutory form all aspects of the proceedings. As I mentioned, Senator Cooper and I have attempted to do everything possible to avoid hamstringing the Secretary, to give him the discretion to make his own decisions. We deleted from the bill all but those basic rights, such as the right to a hearing, representation, cross-examination, etc., which guarantee due process. The Department and

employee representatives are expected to add necessary details of procedure to the basic structure or guarantees in the legislation.

To resolve the dilemma of how much "amendment" power to give the Secretary, this section authorizes the Secretary to promulgate and revise regulations only if they are completely consistent with the statement of purpose and with the statutory guarantees of due process in the bill. The Secretary is given wide discretion; protection of due process is afforded by putting into statutory form only those guarantees which are absolutely vital rather than by legislating in excessive detail.

Sec. 692(1)—Informal procedures and definitions

Section 692(1) provides a short "informal" procedure and establishes definitions for the legislation. The original bill required a hearing to be held whenever a complaint was filed; the goal was an indestructible right to a hearing. The Department has argued that a hearing would be time-consuming in cases which are resolvable and that each party should be given a chance to correct past mistakes before the problem is resolved formally. Although some groups were adamently opposed to informal procedures because of the Department's past record of undue delay and informal pressures on the employee to drop the complaint, Senator Cooper and I did agree to a floor amendment during the Senate debate providing for a 60-day informal procedure. This procedure should be further refined in a manner consistent with the purpose of the legislation by the Department and employee representatives.

Given the fact that the foreign service is designed to be an outstanding group of people with high *esprit de corps*, many ordinary complaints should be able to be resolved during informal negotiations. But in any case presenting difficult obstacles, the grievant must be given the absolute right to present his grievance to the Board for impartial consideration. Thus the definition of grievance is purposely broad, but the Board may establish a working definition of remediable grievances over time through precedent. Unreasonable grievances will certainly be filed, but their rejection will discourage others. The Department has argued that such a broad definition will lead to a flood of filings, but the American Foreign Service Association has rightly pointed out that only 3% of the Service filed grievances when invited to do so under the retroactive provisions of the IGP. It might be of interest to point out that Chairman Simkin of the IGP endorsed the definition of grievance under my original bill which is comparable in scope to the present definition.

Sec. 692(2)—Board and its duties

Section 692(2) establishes the board and guarantees its independence. Since the compromise bill gives wide discretion to the board in matters of central concern to the grievant, there must be no question of its impartiality and independence. Under S. 3722, the board consists of 3 permanent members, none of whom are officers or employees of State, AID, or USIA. One is chosen by the Secretary, one by the employee organization, and the third by the first two from a roster of 12 agreed to by the Department and employee organization. It should be noted that while the original bill required a new board for each hearing, the compromise bill provides a permanent board which can gain experience with time.

Chairman Simkin has proposed a nine-member board with flexible 3-member panels as an alternative. His declared objectives are certainly appropriate, but I would insist that even after rotations and choice of alternates, each 3-member voting panel be composed of one member chosen by the Secretary, one by an employee representative, and the third by the first two. Thus, neither side would have a clear choice of more than one of the three members. Obviously, this balance contrasts sharply with the composition of the Interim Board, all of whose members were designated by the Secretary after a perfunctory consultation with employee groups.

The rest of this section 692 (2) is self-explanatory, requiring only two remarks. First, regulations adopted by the Board must be "in accordance with this part". This language provides a standard against which objections to the Board's governing regulations may be heard. Second, the records of the Board must be separate from all other Department records. Promotion panels or any personnel officers must not be given free access to the records of grievances filed.

Sec. 692(3)—Time limits

Section 692 (3) provides a time limit for the initial filing of a grievance. The section parallels the IGP except that employees are given slightly more time to consider whether they wish to file grievances. S. 3722, unlike S. 2659, places a time limit on the filing of current grievances because of the Department's concern about locating past records.

Sec. 692 (4)—Conduct of hearing

Section 629 (4) provides a basic framework of due process for a hearing. Provisions governing the conduct of a hearing are no more laborious than the regulations under the IGP; they simply secure the rights of grievants more tightly. There is nothing more basic to due process under our system of laws than a fair hearing. This is especially true in a two-step procedure such as this with only one chance for a "day in court." That one chance must assure the grievant that his problem has received the fullest attention. As comparison, under the Civil Service regulations, an employee with a serious complaint is not only afforded a hearing before an examiner, but is allowed two separate appeals outside the agency. A hearing is also necessary because in the past alternatives to a hearing—such as a combination of investigation and hearing—have allowed either side to present the Board information without providing opportunity for rebuttal by the other side. For instance, under the IGP (Interim Grievance Procedure), one grievant discovered reference to a damaging inspector's report only upon receipt of the Board's final decision. He was unaware of the inspector's report during the course of the hearing although two members of the Board had interviewed the inspector during the course of their investigations. In other cases under the old regulations, the Board or personnel officers have been charged with examining non-security documents withheld from the grievant and of informally contacting the very supervisors charged by the grievant. A hearing would preclude these investigative abuses.

To continue the summary of this subsection: the grievant and his representatives are entitled to be present at the hearing, i.e., the hearing shall not proceed without their knowledge, Testimony is given by oath to ensure its realiability. The IGP, the original bill, and the compromise provide for cross-examination of any witness; the compromise stipulates in addition that such interrogatory must be relevant.

Provisions for calling witnesses do vary from bill to bill. The IGP does not permit a grievant to call hostile or reluctant witnesses such as a superior who wrote a damaging report. In practice the Department has even failed to supply witnesses requested by the IGP Board. S. 2659 permits the board to request hostile witnesses on behalf of the grievant. In conformance with general court practice, if the witnesses are not made available within a reasonable period of time, the facts at issue are to be construed in favor of the grievant. S. 3722 is similar to S. 2659 except that the grievant may call witnesses himself. In deference to a Departmental criticism, S. 3722 permits testimony by deposition since many witnesses are overseas. Finally, S. 3722 unlike S. 2659, does not require a copy of the transcript to be furnished without charge to the employee because of the expense. Of course the employee may order his own copy or have access to the file copy of the transcript which is required by the bill, as record for an appeal.

Sec. 692(5)—Freedom from restraint; Right to Counsel

Section 692(5) grants to each grievant the right to be represented by counsel at all stages of the proceeding. Both grievants and witnesses are to be free from departmental coercion and are entitled to reasonable periods or administrative leave in which to testify. This subsection, too, basically parallels, while expanding, the IGP. First, a grievant is entitled to counsel at every stage of the proceedings under S. 3722, but only "in presenting a grievance" under the IGP. Since informal procedures and prehearing conferences can often be complicated, grievants must be entitled to counsel at these stages. Second, participants in the hearing are granted "reasonable" periods of leave or free time under S. 3722 and the IGP but the IGP specifically requires a determination by the IGP Board that each participant's presence is necessary. Such determination could infringe the grievant's right to call hostile witnesses. Both S. 3722 and the IGP guaranatee freedom from restraint or reprisal; grievants have frequently complained of such problems.

Sec. 692(6)—Board's Access to Documents

Section 692(6) specifies that the board shall have access to all relevant documents. Although some limits on the grievant's access to documents are necessary, the board must have complete access to relevant documents or its decisions will not be based on a wholly informed perspective. S. 3722 provides for appropriate security measures during such review, and requires notification of a rating officer if his reports are being examined. IGP regulations place no explicit limits on the board's access to documents, but fail to ensure such access. Under one recent case the Department refused to provide the IGP board with security and security-related files, and failed to respond to the Board's request for other files. Since the Department's standard definition of security and privileged matter is broad, this practice imposes a severe restriction on the IGP board. Since the Department has failed to acknowledge, rather than refused, to honor requests for documents or witnesses, the IGP board cannot invoke its existing authority to interpret a refusal as an admission of the truth of the grievant's allegation.

Sec. 692(7)—Grievant's Access to Documents

Section 692(7) gives a much more limited right of access to documents to the grievant. The debate over what access to documents a grievant should have has continued throughout consideration of the bills. I strongly believe that the grievant must have access to all relevant records other than security records or personnel or security records of another officer. To avoid any potential for abuse, S. 3722 requires as a precondition to access, a determination by the board that the document is both relevant and material.

The wisdom of adopting such a position is buttressed by reference to the 1964 Act to Reorganize the Foreign Service. The legislation states, "Under such regulations as the Secretary may prescribe and in the interest of efficient personnel administration the whole or any portion of an efficiency record*

*Records considered by the Director General to be pertinent to the preparation of an evaluation of the performance of an officer or employee.

shall, upon written request, be divulged to the officer or employee to whom such record relates." Yet, despite this clear statutory mandate, even today foreign service officers do not have access to most of the 12–14 files which pertain to their own performance and careers.

Provisions of the IGP are particularly inadequate on this point and demonstrate the lengths to which Department officials are prepared to go to prevent access to documents. Not only must grievants justify to the IGP board the relevance of official records (most of which employees have never seen), but they are responsible without assistance for procuring all non-official evidence—much of which is contained in the "privileged" non-official files. Such a procedure is badly skewed against adequate defense work by the employees.

Sec. 692 (8)—Security Clearance

Section 692(8) requires the Department to expedite security clearances if necessary to assure a fair hearing. Obviously, a lack of security clearances can be as effective a bar to a fair hearing as a rule precluding access to documents. There is no corresponding section under the IGP.

Sec. 692 (9)—Rules of Evidence

As is true of most administrative proceedings, the Board may consider any evidence it considers relevant and which is made part of the record.

Sec. 962 (10)—Suspension of Departmental Action

The sole purpose of this subsection is to permit the Board, at its discretion, to suspend Departmental action which may adversely affect a grievance. For instance, since selection out of a difficult assignment could be detrimental to a grievant whose health is poor, the Board may decide to delay action for a few months. Like a court, it has the power to maintain the status quo pending the outcome of the proceedings.

The Department is concerned that every employee who dislikes a particular assignment will file a grievance in hopes of delaying his date of departure. I simply do not believe the Board would invite a flood of grievances by establishing the precedent of automatic or frequent suspension of Departmental action. S. 3722 only allows such a delay; it does not mandate it.

Chairman Simkin has argued that suspension could be viewed as prejudging the case. Nothing could be farther from the truth. All our courts at times find it necessary to preserve the status quo, usually with an injunction, during the pendency of a legal proceeding. Such action is by no means a judgment on the merits, but is only a necessary tool, needed to preserve the rights of all parties until the resolution of the legal and factual questions presented.

Sec. 692 (11)—Rulings by the Board

Section 692 (11) gives the board power to order final relief unless that relief pertains to promotion, assignment, or selection out, in which case the Secretary can reverse the board's recommendation if he believes the foreign policy or security of the U.S. would be adversely affected. Although the question of the board's power to grant relief has been the subject of considerable debate, I do not believe that S. 3722 is significantly more difficult for the Secretary than the IGP. Both allow the board to make final decisions in cases requiring normal redress. In those cases requiring redress related to promotion or assignment (plus selection out under S. 3722 and disciplinary action under IGP), both S. 3722 and the IGP authorize a recommendation by the board which is subject to review and final, written decision by the Secretary. The basic difference is that under S. 3722, the Secretary must review the case himself and reject the recommendation only if the foreign policy or security of the U.S. would be adversely affected. Under the IGP, the Secretary can reject a recommendation for absolutely any reason, no matter what its relation to the controversy.

Of course these distinctions stem from differences in philosophy between the two approaches. The IGP board is a theoretically impartial, in-house body which is clearly and explicitly under the authority of the Secretary. Under S. 3722 the board is specifically outside the Department's personnel system and is given independent stature and authority. To adopt the IGP approach and give the Secretary authority to reject the decisions of an independent board for any reason would make a farce of neutral grievance adjudication. The result soon would be a lack of confidence in the possibility of fair redress from the system, regardless of how fair the hearing was. Therefore, I believe it is essential to allow the board to order fair, reasonable redress. The Secretary still has the power to overrule but only for legitimate reasons which relate to valid concerns of the Department.

Sec. 692 (12)—Records

Section 692 (12) provides that no notation of a grievance filing or adverse decision shall be entered into any Department records other than the Board's own records, because of the fear of discrimination against those who file grievances. Necessary corrections of personnel files shall be made according to the board's findings but the Department shall not maintain a tally sheet of filed grievances. The IGP excludes notations of an employee's participation in a grievance only from his personnel file.

Sec. 692 (13)—Reconsideration

I believe this subsection is not controversial; it specifies that a disappointed grievant can obtain reconsideration only upon presenting newly discovered relevant evidence, and then only upon approval of the Board.

Sec. 692 (14)—Enforcement

Effective enforcement of the board's rules and of the guarantees contained in this bill is essential. This subsection authorizes the board to recommend to the Secretary appropriate disciplinary action for any person who contravenes any of the rights, remedies, or procedures guaranteed by the bill.

Although the Secretary can reject such informal recommendations, one whose rights have been violated is then entitled to file a formal grievance, alleging deprivation of due process.

As mentioned earlier, complaints by grievants of reprisals have been frequent. Retaliation, coercion and interference have been alleged present in at least 20 percent of the 65–70 grievances handled by the American Federation of Government Employees, Local 1534, during 1971. Although IGP regulations state that "each employee has freedom to seek adjudication of a grievance without fear of interference, coercion or reprisal," during one hearing the Director of Personnel's representative objected to any consideration of reprisals or due process failures as beyond matters appropriately subject to the grievance procedure.

An additional abuse requiring effective enforcement is the failure to provide witnesses. Under the IGP, which admittedly does not allow a grievant to call hostile witnesses, the Department refused to make employees available for testimony despite strong written requests from the Board to the Department.

In view of this past record of Departmental violation, the possibility under the IGP of summary and final rejection by the head of the agency of the board's recommendation with regard to disciplinary action is unacceptable.

Sec. 693—Previous filing of grievance

Because of the broad definition of grievance, some cases also may be eligible for a hearing under other procedures such as the adverse action machinery or Equal Employment regulations. In that case, the employee must choose his forum; he may not use first one then the other procedure.

Sec. 694—Judicial review

Section 694 allows for judicial review of these agency actions under the Administrative Procedures Act, as most agency actions are now reviewable.

Comparative of Foreign Service Grievances Bill Amending Foreign Service Act of 1946—Sec. 109

S. 3722	S. 2659	IGP
Title VI of Foreign Service Act (22 U.S.C. 981) is amended by adding at the end: "Part J—Foreign Service Grievances.	Same as S. 3722.	No such section; IGP is not a statute.

Statement of Purpose—Sec. 691

S. 3722	S. 2659	IGP
The purpose of Part J is to insure the fullest measure of due process and the just resolution of grievances of Foreign Service Officers, employees and survivors.	No statement of purpose.	The purpose is to establish uniform policies and procedures to consider and decide on grievances of Foreign Service Officers and employees. There is no mention of survivors.

Promulgation and Revision of Regulations—Sec. 692

S. 3722	S. 2659	IGP
The Secretary is allowed to promulgate and revise regulations consistent with the statement of purpose. These regulations may not alter or amend the statutory provisions for due process.	No provision for Secretary promulgating or revising regulations.	No such formal provision; Dept. may alter at will.

INFORMAL PROCEDURES AND DEFINITIONS—SEC. 692(1)

S. 3722

Informal procedures in accordance with the purposes of this part shall be established by agreement between the Secretary and the exclusive representative. If the grievance is not resolved within 60 days, the grievant shall be entitled to file a grievance with the Board.

Any officer or employee or previous officer or employee, (who is a U.S. citizen), or his survivor may file a grievance. A grievance is any complaint against any claim of injustice or unfair treatment of such officer or employee. Definition includes, but is not limited to:

1. actions leading to deprivation of due process
2. actions related to promotion of selection out
3. the contents of any efficiency report or security records
4. actions in the nature of adverse personnel actions and
5. separation for cause.

S. 2659

Any officer or employee of the Service who is a U.S. citizen may file a grievance which must be in writing. Defines grievance and appeal as any complaint against any injustice, unfair treatment of an employee or aspect of his work situation. Definitions include, but are not limited to:

1. actions leading to deprivation of due process
2. actions related to promotion or selection out
3. the contents of any efficiency report
4. actions in the nature of adverse personnel action and
5. separation for cause.

Grievance does not include matters of foreign policy or the general management of the State Dep't. unless it affects a right accorded an employee. There is no specific mention of security records.

IGP

A grievant may file a formal grievance only after informal discussions have failed. A formal grievance must follow a complicated outline: it must be in writing; it must identify and clarify the basis of the grievance; it must specify the personal relief requested; and it must contain all the correspondence made and received under the informal procedures. A grievance is defined as any matter of concern or dissatisfaction to an employee which is subject to control by his employing agency. Matters specifically excluded are personnel assignments, nonselection for promotion or selection for involuntary retirement, and others. There is no mention of security records or actions related to adverse personnel actions. It does not state that a survivor of a Foreign Service Officer may file a grievance.

BOARD AND ITS DUTIES—SEC. 692(2)

S. 3722

1. The board is composed of independent, distinguished, U.S. citizens, who are not officers or employees of State, USIA, or AID. The board consists of 3 members, one of whom is appointed by the Sec. of State, one of whom is appointed by the employee representative, and one who is appointed by the other 2 members from a roster of 12 independent citizens agreed to by the Secretary and the employee representative. The Board elects a chairman for a two-year term.

2. Members shall serve 2-year terms and receive compensation at the per-diem rate paid an individual at GS–18.

3. The Board may obtain facilities and supplies, and appoint and fix the compensation of such officers and employees of the Board as it deems necessary. Officers and employees so appointed are responsible solely to the Board. The Board, in accordance with this part, may adopt regulations governing its organization and proceedings.

4. The records of the Board are maintained by the Board and are separate from all other Department records.

5. Provisions are made to deal with additional panels.

S. 2659

1. The board consists of 3 members, one of whom is designated by the Federal Mediation and Conciliation Service and is designated the chairman, one of whom is appointed by the Dep't., and one of whom is appointed by the grievant.

2. All members serve for 2-year terms except the member appointed by the grievant who serves until the grievant's complaint is disposed. Members of the board are reimbursed by the Dep't. for travel, subsistence and other necessary expenses.

3. The chairman obtains the facilities, supplies, and employees (fixes their compensation) of the board. The chairman also assigns the business of the board to the employees. Expenses of the board are paid out of funds appropriated to the State Dep't.

4. Records of the board are maintained by the board and are separate from Dep't. records.

There is no provision for additional members or panels. There is a specific provision for disqualifications and for filling vacancies on the board.

IGP

1. The nine-member board is composed of:

(a) Two foreign Service employees or officers, each from the Dep'ts. of State, USIA and AID. These members are selected by the respective agency directors with the approval of the participating organizations.

(b) A chairman which is appointed by the Sec. of State from a list approved by agency directors and participating organizations.

(c) Two public members who are designated by the chairman from a list furnished by the Sec. and approved by the agency directors and participating organizations.

2. Assignments to the board are for the duration of the IGP. No compensation is specified.

3. The Sec. provides staff support to the board as necessary.

4. The records of the board are maintained by the board. Does not state that the records are separate from Dep't. records.

5. No provision for additional board members.

TIME LIMITS—SEC. 692(3)

S. 3722

1. Present Grievances: The grievant has 6 months after the occurrence of the injustice to file a grievance.

2. Retroactive Grievances: If the grievance arose prior to the date on which regulations are first promulgated, the grievant must then file within 1 year from the date of enactment. Excluded from the computation of any such period is any time during which the grievant could not have reasonably discovered the grounds which are the basis of the grievance.

S. 2659

1. Present Grievances: There is no time limit on filing of grievances which occur after enactment of this act.

2. Retroactive Grievances: The board shall receive and investigate for 1 year subsequent to the date of enactment of this act only grievances (or appeals) of a Foreign Service Officer who has departed the Service prior to the effective date of this act.

IGP

1. Present Grievances: Grievances which occur after regulations are promulgated must be filed within 30 days of occurrence or the date the employee became aware of the occurrence.

2. Retroactive Grievances: A grievance which occurred prior to promulgation of IGP regulations must be filed within 60 days after promulgation of these regulations or discovery of the act or occurrence giving rise to a grievance, whichever is later.

CONDUCT OF HEARING—SEC. 692(4)

S. 3722

1. The board conducts a hearing in any case filed with it. The hearing is open unless the board determines otherwise.

2. The grievant and his representatives are entitled to be present at the hearing.

3. Testimony at a hearing is given by oath or affirmation, which any board member will have the authority to administer.

4. Each party is entitled to examine and cross-examine witnesses and serve interrogatories upon another party and have them answered, unless the board finds such interrogatory irrelevant or immaterial.

5. Upon request of the board of grievant, the Dep't. must promptly make available at the hearing or by deposition any witness under the control, supervision, or responsibility of the Dep't. If the witness is not made available in person or by deposition within a reasonable period of time as deter-

S. 2659

1. The board must hold a hearing if an employee requests one within 30 days after filing the grievance or within 30 days of the board's notice that the record failed to sustain the complaint.

2. The hearings are open unless the grievant requests otherwise. The employee and/or his representative may be present at the hearing.

3. Testimony at the hearing must be given under oath or affirmation which the chairman shall have authority to administer.

4. Each party has the right to examine and cross-examine witnesses.

5. The board may request the Dep't. to make an employee available and if in the board's judgment, compliance with its request is essential to a full and fair hearing, the Dep't. must comply with the request within a reasonable period of time as deter-

IGP

1. If the grievance is not adjudicated through the informal procedures, the board may hold a hearing if in its discretion it thinks the hearing is necessary. The board conducts a hearing in any case where it determines the grievance to be a major one.

2. The hearing is not open to the public or press. The grievant and/or his representative may be present at the hearing but the hearing may proceed without them.

3. There is no mention of testimony under oath or affirmation.

4. Witnesses called by any party, including the board, shall be subject to cross-examination from all other parties.

5. The grievant has the responsibility to arrange for his witnesses to appear (grievant cannot call hostile witnesses). On request of the board, the agency must make an employee available when it is administra-

CONDUCT OF HEARING—SEC. 692(4)—Continued

S. 3722—Continued	S. 2659—Continued	IGP—Continued
mined by the board, the facts at issue shall be construed in favor of the grievant. 6. Hearings are transcribed verbatim.	mined by the board, or else the facts at issue will be construed in favor of the employee. 6. A verbatim transcript of the hearing is provided the employee.	tively practicable to do so. If it is impractical, the agency must make him available for testimony by deposition. Refusal of a witness to testify after a special request by the board may be deemed by the board to constitute an admission of the grievant's allegations concerning that matter. The Board *may* order a verbatim transcript or written summary of the hearing.

Freedom From Restraint; Right To Counsel—Sec. 692(5)

S. 3722	S. 2659	IGP
Any grievant or witness involved in a proceeding before the board is free from any restraint, interference, coercion, discrimination, or reprisal. The grievant has the right to a representative at every stage of the proceedings. The grievant and his representatives under the control, supervision or responsibility of the State Dep't. are granted reasonable periods of leave to prepare and present the grievance. The same is true for witnesses.	Same as S. 3722 except there is no specific statement on reasonable leave for witnesses to testify.	Same as S. 3722 except it does not specifically give the grievant the right to a representative at every stage of the proceedings. Language used is "in presenting a grievance" the grievant has a right to representatives. Also, time granted for participation in the hearing requires a determination by the Board that his or her presence is necessary.

Board's Access To Documents—Sec. 692(6)

S. 3722	S. 2659	IGP
1. The board has access to any document or information considered by the board to be relevant, including but not limited to, the personnel and, under appropriate security measures, security records of such officer or employee, and of any rating or reviewing officer. 2. Any such document or information requested must be promptly provided by the Dep't. 3. A rating or reviewing officer must be informed by the board if any of his reports are being examined.	Same as S. 3722 except there is no specific provision for security records. Dep't. must provide information within 5 working days of request.	Board may secure documentary evidence during an inquiry. Refusal by an agency to comply with a request by the board for disclosure of a record may be construed by the board in favor of the grievant. No explicit definition of the Board's access to documents.

Grievant's Access To Documents—Sec. 692(7)

S. 3722	S. 2659	IGP
The Dep't. must promptly furnish the grievant any such document or information (other than any security record or the personnel or security records of any other officer or employee of the government) which the grievant requests to substantiate his grievance and which the board determines is relevant to the proceeding.	No excuses for not furnishing documents: there is no specific exclusion of security records; no approval is needed from the board; and a 15 day time limit is imposed on the State Dep't. for furnishing information.	Access to personnel & security records is restricted: Grievant and representative have access to records as are deemed necessary by the board. Classified and privileged material are not available to grievant without express findings of the board that such disclosure is necessary to achieve justice and is not detrimental to the public interest.

Security Clearance—Sec. 692(8)

S. 3722	S. 3722	IGP
The Department must expedite any security clearance whenever necessary to insure a fair and prompt investigation and hearing.	Same as S. 3526 except purpose is to allow any member of the board, the employee, his counsel, or any witnesses to have access to classified material.	No such provision because security material is not available.

Rules of Evidence—Sec. 692(9)

S. 3526	S. 3722	IGP
The board may consider any relevant evidence or information coming to its attention, and which shall be made a part of the record of the proceeding.	Same as S. 3526 but more explicit: The board is not limited to court rules of evidence; cases of doubt are resolved in favor of admissibility; evidence does not have to be formally presented to the board (allows hearsay); and testimony may be received in the form of sworn affidavits or in the form of unsworn statements.	The board is not limited by legal rules of evidence. However, it must maintain reasonable bounds of competency, relevancy, and materiality and have the discretion to exclude any testimony or other evidence which is unduly cumulative.

Suspension of Departmental Action—Sec. 692(10)

S. 3526	S. 3722	IGP
If the board determines that (A) the Department is considering any action (including but not limited to, separation or termination) which is related to, or may affect, a grievance pending before the board, and (B) the action should be suspended, the Department shall suspend such action until the board has ruled upon such grievance.	Same as S. 3526	No such provision.

Rulings By the Board—Sec. 692(11)

S. 3722	S. 2659	IGP
1. If the board determines that the grievance is meritorious requiring relief that does not directly relate to promotion, assignment, or selection out, then its recommendations are directed to the Secretary and are final and binding upon all parties.	1. If the board determines that a complaint relating to a grievance is meritorious, then it directs the Secretary to grant such relief as it deems proper under the circumstances. 2. With respect to complaints of adverse	1. Following an investigation or hearing the board must make written findings, decisions, and/or recommendations. 2. In deciding grievances, the board has the authority to alter an employee's personnel record, to order a reversal of an admin-

2. If the board determines that the grievance is meritorious, requiring relief that directly relates to promotion, assignment, or selection out, then its recommendations are transmitted to the Secretary and are final and binding on all parties except that the Secretary may reject any such recommendation only if he determines that the foreign policy or security of the U.S. will be adversely affected. Any such determination must be fully documented and signed by the Secretary with a copy furnished the grievant.

3. No enumeration of possible remedies.

4. After review of the proceedings and the recommendations of the board, the Secretary must return the entire record of the case to the Board for its retention.

5. No officer or employee of the Dep't. participating in a proceeding on behalf of the Dep't. can prepare, advise, or otherwise participate in, any review or determination of the Secretary with respect to that proceeding.

6. There is no mention of minimum decisionmaking vote requirements.

S. 3722

The board has the authority to insure that no copy of the Secretary's decision to reject a board's recommendation, no notation of the failure of the board to find for the grievant, and no notation that a proceeding has been held, will be entered in the employee's personnel record or any other Dep't. records, other than the board's records.

S. 3722

A grievant whose grievance is found not to be meritorious can obtain reconsideration only upon presenting newly discovered relevent evidence and then only upon approval of the board.

S. 3722

The board must promptly notify the Secretary, with recommendations for appropriate disciplinary action, of any contravention by any person of any of the rights, remedies or procedures contained in this part or in regulations promulgated under this part.

S. 3722

An employee can file a grievance under this part only if he has not formally requested that his grievance be considered under provisions other than this part.

S. 3722

Regulations promulgated or revised, and actions of the Secretary or board pursuant to this legislation, may be judicially reviewed in accordance with the Administrative Procedures Act. The Secretary must promulgate and place into effect the regulations provided by section 692, establish the board, and appoint one member of the board as authorized, within 90 days of enactment of this act.

personnel actions, the board forwards the entire investigation records and its recommendations to the Secretary. The Secretary, within 30 days of the submission of a case relating to an adverse personnel action, must either accept the board's recommendations, return the case to the board for further investigation or reject the board's recommendations as detrimental to the foreign policy or security interests of the U.S.

3. Recommendations resolving complaints of adverse personnel actions may include extending the employee's time-in-class; the immediate promotion of an employee; removing any part of an employee's personnel record; and any other recommendations.

4. In any event, the board retains the record of the case.

5. No such provision.

6. A decision, finding, or recommendation of the board must be made only upon a vote of at least 2 members.

RECORDS—SEC. 692 (12)

S. 2659

Basically same as S. 3722.

IGP

No notation of an employee's participation in a grievance is recorded in his personnel file except in accordance with the orders or recommendations of the board. There is no mention of notations in other Dep't. records.

RECONSIDERATION—SEC. 692 (13)

S. 2659

Same as S. 3722.

IGP

No such provision.

ENFORCEMENT—SEC. 692 (14)

S. 2659

Same as S. 3722 except there is no mention of regulations promulgated.

IGP

The board may make recommendations to the agency's head on matters regarding disciplinary action which is left undefined. The head of the agency shall make a written decision within 30 days.

PREVIOUS FILING OF GRIEVANCE—SEC. 693

S. 2659

No such provision.

IGP

No such provision.

JUDICIAL REVIEW—SEC. 694

S. 2659

No mention of judicial review.

IGP

No mention of judicial review.

BYELORUSSIAN INDEPENDENCE RESOLUTION

Mr. SCOTT. Mr. President, the 10th Convention of Byelorussians of North America was held from September 2 to 4, 1972, in Toronto, Canada. By unanimous vote they adopted a resolution renewing a pledge of support to the captive nation of Byelorussia. I ask unanimous consent that this resolution be printed in the RECORD.

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

RESOLUTION

Whereas Russian rule over Byelorussia—first forcibly annexed by Muscovy in 1772 and 1793—was re-established by force of Bolshevik arms through destruction of the Byelorussian Democratic Republic, which had been proclaimed independent on March 25, 1918;

Whereas the Community Party in Byelorussia, under the subterfuge of the so-called merging of nations, conducts an intensive campaign of Russification and discrimination against Byelorussian culture.

Therefore we the Byelorussians of Canada and the United States of America, gathered at the 10th biennial Convention of Byelorussians of North America in the great city of Toronto, Canada, on September 24, 1972, to commemorate the 90th birthday of two of the foremost Byelorussian poets and national leaders, Janka Kupala (murdered in Moscow in 1942) and Jakub Kolas (d. 1956), as well as to mark the 450th anniversary of printing in Byelorussia, do unanimously resolve

To continue the struggle for re-establishment of a free and independent Byelorussian Democratic Republic;

To encourage in Soviet Byelorussia manifest trends toward liberalization, extension of civil rights, and cultural freedom;

To preserve in our own midst, along with Canadian and American values, our Byelo-

russian heritage—language, history, traditions, and the concern for the well-being of the entire Byelorussian nation.

EMPHASIS ON AGRICULTURE

Mr. HANSEN. Mr. President, because of its obvious benefit to rural areas of our country, many Wyoming farmers and ranchers have inquired about new programs under the Rural Development Act recently approved by Congress.

In an effort to inform my agricultural constituents about some of the programs which are a part of this act, and about other agricultural matters of current interest, I have prepared a report which I plan to send to Wyoming's farmers and ranchers.

I ask unanimous consent that this report, entitled, "Washington Roundup—Emphasis on Agriculture," be printed at this point in the RECORD.

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

WASHINGTON ROUNDUP BY SENATOR CLIFF HANSEN

EMPHASIS ON AGRICULTURE—OCTOBER 1972

Congressional actions affect agriculture

Southeastern Wyoming Project

In late September, the U.S. Department of Agriculture notified me it had activated the long-pending Southeastern Wyoming Resource Conservation and Development Project. This means applications for assistance with project plans can be submitted and considered for funding during fiscal year 1973, which began July 1.

The project will benefit Laramie, Goshen, Platte and Converse Counties, which several years ago joined together to plan projects of mutual benefit to be carried out cooperatively with the technical and financial assistance of agencies of the U.S. Department of Agriculture. The formal RC&D application was submitted in 1970.

Resource Conservation and Development projects are aimed at helping areas with common problems and economic characteristics. Goals of the Southeastern Wyoming project include enhancing the four-county area as a good place to live by improving sanitary and housing facilities, developing roads and highways, controlling air and water pollution, beautifying the area, providing better public services and utilities, providing more income through establishment of industries and creation of job opportunities, and improving and increasing recreation and tourism opportunities.

Plans call for conserving and developing the natural resources of the area, developing irrigation potential, providing flood control, and developing a cooperative effort to control weeds and pests.

The Project has the support of county elected officials, municipal officials, farmers and ranchers participating in irrigation districts throughout the area, and service organizations in the four counties involved.

Rural Development Act

The Rural Development Act recently signed into law will offer assistance to farmers and ranchers. Though the Department of Agriculture is in the process still of developing the new programs under this Act, there are a number of provisions in effect;

The Act authorized an increase in the maximum amount of Farmers Home Administration operating loans from $35,000 to $50,000. This provision went into effect officially on September 12, and County FHA Supervisors have information about this aspect of the Rural Development Program.

The Act authorizes Rural Enterprise Loans to help establish small businesses. The loans can be made to eligible citizens living in rural areas and towns of up to 50,000 population. The maximum loan is $100,000.

The Act authorizes Essential Community Facilities loans to public bodies and nonprofit associations for such essential community facilities as firehalls, firefighting equipment, community centers, ambulance services, and industrial parks.

The Act increases funding for water and waste disposal development from $100 to $200 million, and increases funding for comprehensive water and waste disposal planning grants from $15 million to $30 million annually.

The Act provides for insured operating loans, and eliminates the $4 million ceiling on loans for central community water and waste disposal facilities. It also authorizes insured loans for watershed work and flood prevention, as well as Resource Conservation and Development Projects.

See your County FHA Supervisor for information about these programs.

Meat Import Level

The Department of Agriculture reports that 1972 imports of meat from foreign nations is estimated at 1,275 million pounds.

This estimate is 35 million pounds higher than the previous estimate because of the President's decision to permit increased imports. The action to allow more foreign meat in this country was opposed by many members of Congress, including myself.

The 1972 import level is 15 percent above the 1971 level.

OUR AIRMEN IN THAILAND

Mr. CHURCH. Mr. President, America currently conducts its war over Vietnam from Thailand. Arnold Abrams, regular Southeast Asia reporter of the New Leader, writes:

Thailand has blossomed by default into the region's main American fortress.

The U.S. position is fraught with danger, though. The Thais, increasingly enmeshed in their own guerrilla insurgency, are particularly susceptible to Communist infiltration from neighboring Laos and Cambodia, moreover, Thailand's new importance in the Vietnam conflict increases the possibility of reprisal raids against the bases located here. And despite official confidence about security, those bases are highly vulnerable.

Once the fighting intensifies, how then will Washington respond? Is Thailand the latest American quagmire?

I ask unanimous consent that Arnold Abrams' article "The Airmen in Thailand: Professionalizing the War" from the New Leader of October 2 be printed in the RECORD at this point.

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

THE AIRMEN IN THAILAND—PROFESSIONALIZING THE WAR

(By Arnold Abrams)

BANGKOK.—Now that America's battle burden in Southeast Asia has fully shifted from ground to air operations and, to a lesser extent, naval bombardment, Thailand has become the U.S. linchpin. Some 45,000 troops, nearly all from the Air Force, are stationed at eight major military bases here, exceeding the number of soldiers remaining in Vietnam. They include 13,000 men rushed to Thailand after the start of North Vietnam's Easter offensive, reversing a gradual phaseout that had reduced U.S. forces from 49,000 in 1970 to 32,000 early this year. At the same time, American air strength was boosted from 450 planes to more than 800.

Newsmen were recently afforded a rare glimpse of this weaponry and the men who operate it. Bowing to high-level U.S. pressure, the Thais reluctantly permitted a guided tour of three bases and a series of encounters with fliers carefullly selected for the occasion.

Utapao, an orderly and antiseptic installation 100 miles north of Bangkok, has about 50 B–52 bombers. The sun-drenched surroundings and relative leisureliness of the personnel belie its reinvigorated military activity. Most of the young, clean-cut servicemen sport deep tans from the considerable time they spend swimming or playing tennis and handball. Almost out of place are the menacing trappings of their work—giant bombers whose tail sections tower over concrete revetments like fins in shark-infested waters.

The fliers' remoteness from the effects of their Indochina missions was underscored in their remarks, all closely monitored by information officers posted nearby. They denied accusations of dike bombing and described their efforts (each crew deposits 30 tons of bombs on enemy positions every other day) as "part of the job."

"There's nothing personal about this," said Major Stephen Levine, a 37-year-old Brooklynite who commands a B–52. "We're given target coordinates and flying information, we get the bombs, we go drop them." Sometimes, on clear days, Levine's six-man crew can actually see the target, more than 40,000 feet below. "But," he added, "we're too far away for it to have any meaning for us."

Although their B–52 has been nicked by enough antiaircraft fire to be named "magnet ass," Levine's crew described their missions over North and South Vietnam as essentially dull affairs, largely requiring attention to routine mechanical details. They get no direct feedback about the havoc wrought on the ground by their deadly cargo; they also are too high, and too well protected, to worry about interception by Communist aircraft.

The B–52 fliers presented to newsmen, mostly in their 30s, spoke in the quick, clipped manner characteristic of many military professionals. Their descriptions of bombing runs were so bland and brisk, they could have been discussing insurance policies or shoe sales. According to Levine, the men hold widely divergent views about America's involvement in Vietnam. "Still," the craft commander said, "the Air Force is a volunteer organization, and nobody has to participate in these operations if he feels strongly about them. We are pros, and we do the job we are given."

One female Thai reporter tried doggedly to extract admissions from the crew of more tangible—and to her, perhaps, more meaningful—affairs of the flesh. But the Americans stood firm on that, too. They do not often travel the 100 miles to Bangkok, they said, and have not sampled the delights of the Thai capital's legendary massage parlors. "We play a lot of handball, Ma'am," Levine offered.

At Takhli, some 30 miles further north, this same sense of detachment was displayed by jet fighter pilots, who have been flying less and enjoying life more since being shifted last spring from Vietnam's Danang airbase. In "Nam" they flew two to three missions per day; now, because of Takhli's distance (over 400 miles) from target areas, they average less than one per day. "We spend most of our time sitting around the pool, soaking up that good Thai sunshine," said Major Joseph Griffin, who looked it. "We don't talk much about the war beyond going over details of our jobs."

Griffin's colleagues agreed, with the exception of Major Gary Alden, a jet commander.

"We're not stupid, you know," he snapped. "Most Air Force officers are college graduates, and we are very much aware of the issues. We think a great deal about them, more than most people maybe, and we often get into discussions about them. Some of those sessions get heated, too."

After blurting out this admission, to the obvious discomfort of a listening information officer, Alden, a 37-year-old University of Oregon graduate, returned to the common refrain of the others. "Personal feelings don't enter into this, however," he stressed. "We set them aside. We're professional Air Force personnel, and we have a job to do. We think we do it well, and we're proud of that."

Thus the U.S. appears to have come full cycle in Vietnam: The war is back in the hands of a relatively small number of professionals, with the pilots of 1972 taking the place of the ground advisors of 1962. Embassy officials say the strengthening of the U.S. forces in Thailand has peaked, but reports that more men and planes are in the pipeline persist. The same officials insist on calling the buildup a temporary "augmentation," although they concede when pressed that no time limits have been set for it. "The augmentative forces will be here as long as as they are needed," journalists are told.

Pressure to leave is unlikely to come from Thai authorities, who welcomed the reinforcements and eagerly cooperated with Washington. "As far as the Thais are concerned," says one man in a position to know, "the more we bomb North Vietnam, the better. They've been urging us for years to bomb the dikes. They were afraid that Vietnamization would be a smokescreen for a bug-out, but seeing us mine enemy harbors and resume the bombing of the North has reassured them."

In addition to easing local doubts, the renewed build-up has illuminated this country's new role. With the continuing withdrawal of ground forces from Vietnam, the reversion of Okinawa to Japan and the mounting opposition to U.S. foreign policy in the Philippines, Thailand has blossomed by default into the region's main American fortress. "If we want to maintain a significant military presence on the Southeast Asian mainland, this is the only feasible piece of real estate available," a high-ranking American explained. "The combination of geography and changing political factors leaves us little choice."

The U.S. position is fraught with danger, though. The Thais, increasingly enmeshed in their own guerrilla insurgency, are particularly susceptible to Communist infiltration from neighboring Laos and Cambodia. Moreover, Thailand's new importance in the Vietnam conflict increases the possibility of reprisal raids against the bases located here. And despite official confidence about security, those bases are highly vulnerable.

A few successful sapper attacks in Thailand could present Washington with a grave choice: assigning U.S. patrols to guard the areas surrounding the installations—which would mean thrusting GIs into combat circumstances—or continuing to rely on Thai defenses and risk American lives. Few knowledgeable observers discount the situation's grim potential.

"We're bound to get some 'spectaculars' launched against the bases," concedes a top-level U.S. official. "In fact, I'm surprised it hasn't happened already. I don't know what the other side is waiting for." He hopes that he won't soon find out.

THE EVERETT McKINLEY DIRKSEN OFFICE BUILDING

Mr. PERCY. Mr. President, the Senate has honored one of the most distinguished and colorful Members in its history in naming the new Senate office building after the late Everett McKinley Dirksen. Senator Dirksen was regarded as Mr. Illinois Republican for nearly two decades in our State as well as in the U.S. Senate. In these days of confused debate and wrangling, we sorely miss his calm and cool observations, his keen wit, and his ability to pinpoint the heart of a problem and suggest its solution. I am pleased that the Senate has extended this recognition to a great American, and a great son of Illinois. All the people of Illinois can be proud of this tribute.

OVERCOMING HANDICAPS ON CAPITOL HILL

Mr. CHURCH. Mr. President, when Congress passed the Architectural Barriers Act, or Public Law 90–480 in 1968, we clearly stated that new federally funded buildings should be made accessible to handicapped Americans.

Our concern about barriers was based upon several important considerations. It is expected that over the next 30 years there will be as much new construction as there has been in the last 300 years: the mistakes of the past should not be repeated on a larger scale in the future. In addition, we felt that the time had come to challenge a general lack of concern about the barrier problem.

As Harold Russell, Chairman of the President's Committee on Employment of the Handicapped, has expressed it:

Architectural barriers surround our environment because of an invalid assumption on the part of the design professions that their design criteria meet the needs of a majority of the population. They design for persons with average dimensions, average powers, senses, limitations and adaptability. Unfortunately, the specific characteristics attributed to this mythical person are not possessed by all of our population. The non-average population, numbering in the millions, cannot adapt readily to average design . . . If we can have designs for the halt and the lame—in other words, the extremes of performance—or, failing that, if we can at least include a recognition of these needs in our design criteria whether or not we are capable of satisfying them in every instance, we will better serve both the "average" man and the handicapped or elderly person.

Despite Public Law 90–480, and despite the expression of congressional concern, much more remains to be done in the removal or prevention of barriers. Hearings before the Senate Special Committee on Aging showed that older Americans, as well as the handicapped, frequently are denied access to buildings and transportation systems simply because their special needs were not considered by designers of structures and vehicles supposedly meant to serve the public.

It is bad enough when such obstacles prevent a person from visiting a building for a special purpose such as medical care.

It is even worse when a person may be denied employment, or discouraged from continuing employment, in a building which abounds in barriers to the handicapped.

An example of this problem was provided by Washington Post reporter Judith Martin on October 1. Her article describes the problems encountered by three handicapped persons in the Senate Office Buildings and in the Capitol of the United States. Fortunately, these three individuals are able to perform their work, despite considerable difficulties. Fortunately, some help has been provided to them from the managers of the buildings. But it is painfully clear that they face a daily obstacle course. It is also clear that more should be done to help them and others.

Mr. President, with Mrs. Church, I have written a letter to the Architect of the Capitol asking for early action intended to make the Capitol Hill Federal complex a model of accessibility for employees and for the public. The challenge is all the greater since so many of the buildings were built long before Public Law 90–480. But I think we should be as concerned about modification of existing buildings as we are about design standards in new buildings.

I ask unanimous consent to have the Post article and the letter printed in the CONGRESSIONAL RECORD.

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

HANDICAPS ON THE HILL

(By Judith Martin)

Linda Teixeira, a legislative aide to the Senate Labor and Public Welfare Committee, does her office reading at night. Another professional staff member, Michael Burns, calls the Capitol superintendent's office in advance if he wants to go on a committee room dais. Joe Bruce, who interned for Sen. Edward M. Kennedy the last two summers, would run over to other Hill offices instead of telephoning.

With these adjustments, Miss Teixeira, who is blind, Burns, a quadraplegic, and Bruce, who is deaf, are able to hold jobs that engage their interests and intelligence, rather than only circumvent their handicaps.

They worked hard to get those jobs, and the adjustments that they and others must make so they can perform them are a constant hassle. Burns, who is confined to wheelchair, always gets a laugh when he repeats the excuse given to him for a refusal to put a ramp on the outside steps of the New Senate Office Building: "It would mar the beauty of the building."

But the fact remains that he has to ask a guard to help him up those steps every morning. Inside, the superintendent of the building simply sends out a portable ramp wherever it is needed. Burns gets around pretty quickly, although he says one cannot know how many ups and downs there are in the Capitol "unless you roll for a living."

Miss Teixeira pays readers, out of her salary, to come to her apartment at night and read her whatever material she needs on the job. She takes Braille notes and has a good memory—"I usually don't have to have anything read to me twice."

"We have a fairly decent system working," said Lisa Walker, her immediate superior, who has gotten a tape recorder for transmitting notes to Miss Teixeira but hasn't gotten used to working it yet. "We've all read to her from time to time. The inconvenience isn't important. We can overcome that. This has been a very good experience for a lot of people working here."

At Burns' office—he is a research assistant—people are so used to his agility that a recent telephone call was answered with, "I'm sorry, we can't locate Mr. Burns right

now. He's running around the building somewhere."

But Burns, a Vietnam veteran crippled in a service-connected injury, doesn't always find people that are casual about it. He has fought to get government buildings to comply with regulations requiring conveniences for the handicapped and gotten the answer that they only "serve one per cent of the population and can't be justified as cost effective." Until recently, he couldn't even get himself a parking space near his office—although "parking two blocks away would mean that I wouldn't be able to get here."

For Miss Teixeira, getting around is relatively simple. Having memorized all the areas she has already been, she simply asks directions as she goes when visiting a new office or committee room. A collapsible cane in her purse is unfolded when she knows she might encounter unfamiliar obstacles—such as the television cameras that are regularly left strewn around Capitol corridors.

Occasionally, she asks someone to accompany her to a new place, but generally she tries to avoid situations that may lead to her being smothered with over-protection. One day, she explains, she was late to work and went directly to a hearing instead of her office first—and by the time the hearing was over, two hours later, she found that her frantic colleagues had been calling all over and were about to ring the police.

"It's hard to explain these things to people without offending them," she said. "Handicapped people, like minorities, have a reputation for being arrogant."

But such protective attitudes, however well meant, are more than a problem of etiquette. Miss Teixeira, who wanted a Hill job for seven years before she got one last spring, says there are two basic attitudes that seem to interfere with prospective employers' being able to read and absorb the résumés of handicapped people.

"Either they feel that they don't want to hire someone who can't do everything, or else they want the handicapped person to be helpless. People would look at my résume and then ask me what I could do—what was in it would just go right through them."

Miss Teixeira, who was born with partial vision that she lost completely at the age of 13, "had this kind of dream in the back of my mind" about working on the Hill when she was an English major at Clark University.

Encouraging such dreams in bright young students is practically an American tradition in itself. In Miss Teixeira's case, however, she got a letter from a blind friend who said, "Forget it. They just don't hire blind people on the Hill."

She spent four years working at the Department of Housing and Urban Development, where she found "some good people, and some rough going." At one point, she threatened to bring a discrimination suit on the basis of her handicap, if they didn't give her real work to do, instead of shunting her around "to keep me happy."

Finally, she tried the Hill again, applying to the Labor and Welfare Committee with the argument that since the committee dealt with the handicapped, it might be useful to have a handicapped person sensitize the people there. Now, after four months on the job, she says, "I've been through a lot, but it seems to be working out."

It would work out for others, too, she feels, if people were interviewed for what they can or cannot do, and if reasonable accommodations could be made for the handicaps. The Washington area is poor in supplying readers for the blind, she said, and the Volunteers for the Visually Handicapped, which does so, "lacks the backing of people with thrust."

At Sen. Kennedy's office according to his staff specialist on the handicapped, Jan Verrey, there was no problem about other people telephoning for the deaf intern when telephoning was essential.

"People are so often treated the way they are because they're handicapped, not because of what they can do—and actually when you see someone who has achieved so much despite a handicap, you really have to be impressed.

"The telephone thing just wasn't a problem. People have got to learn to give a little."

U.S. SENATE,
SPECIAL COMMITTEE ON AGING,
Washington, D.C., October 4, 1972.

Hon. GEORGE M. WHITE,
Architect of the Capitol,
U.S. Capitol,
Washington, D.C.

DEAR MR. WHITE: You may have seen, in the Washington Post of October 1, an article describing problems encountered by several handicapped employees in the course of their duties in the Senate Office Buildings and in the Capitol. A xerox copy is enclosed.

That article raises issues of vital concern to us. We believe that Federal buildings, particularly those on Capitol Hill, should not put barriers in the way of employment of the handicapped. We believe that every effort should be made to make those structures—even the oldest of them—accessible to *all* potential employees of Government.

We are glad to read in the Post article that some efforts have been made to improve accessibility for the three employees discussed by the Post reporter. We are disturbed, however, by the report that a ramp on the outside steps of the New Senate Office Building has been refused on the grounds that: "It would mar the beauty of the building."

It would be unfortunate indeed if handicapped individuals are unable to accept employment, or who may be discouraged from continuing employment, simply because inadequate thought has been given to architectural barriers within the Capitol Hill Federal complex.

Instead, those buildings should become models of accessibility, not only for employees, but for visitors who may come on business or for sightseeing. After all, the Congress has said in public law that architectural barriers should not be tolerated in new Federal structures. We should do all possible to adapt older buildings to meet similar standards. In the Capitol, for example, we understand that ramps for wheelchairs were installed during the Franklin D. Roosevelt years to give him accessibility when visiting the Congress. We have been informed, however, that these ramps are too steep for an unassisted person.

We believe that a close examination should be made of the present situation, and we would like to offer assistance to you.

The Senate Special Committee on Aging has conducted hearings on the effects of barriers upon the elderly and the handicapped. Those hearings have put us in touch with several informed persons who have already assured us that they would cooperate in such an effort.

The United Cerebral Palsy Associations, Inc., includes among its membership several individuals who could be helpful, as well.

We would like to suggest, therefore, that you establish an Action Group to assist you to develop fully accessible Congressional buildings, to serve as models for similar action elsewhere.

We hope for an early reply, because we believe that action should be taken as quickly as possible.

Sincerely,

FRANK CHURCH,
Chairman, U.S. Senate Special Committee on Aging.

Mrs. FRANK CHURCH,
Director at Large, Women's Committee, United Cerebral Palsy Associations, Inc.

A NATIONAL ENERGY PROGRAM

Mr. HANSEN. Mr. President, the use of invective as a substitute for analysis is, in my opinion, a poor substitute for the reasoned analysis needed to propose solutions to the U.S. energy dilemma. One would hope that presidential candidates would exercise better judgment and take the time, pain, and effort to carefully analyze an issue before pronouncing upon it.

Using national energy policy as an example, I was deeply disappointed with the position paper the Democratic candidate for the Presidency issued earlier this week. It revealed little in the way of reasoned analysis, let alone reference to fact.

Specifically, I refer to the vituperation laced throughout the Democratic candidate's recent pronouncement on energy. When referring to our Nation's petroleum companies, he calls them "special interests," "big oil," "petroleum barons," and other such terms. He tries to paint a picture of oil companies mulcting the American consumer while raking in excess profits. Of course, such ipse dixits strike highly responsive chords in the hearts of traditional liberals and the antiestablishment crowd who have long reveled in burning the industry's effigy at the stake.

The facts of the matter are that our Nation's petroleum companies are having severe problems in maintaining themselves as a viable industry. Increased costs, including higher taxes and low prices, are causing major disruptions within the industry. An article in yesterday's Wall Street Journal provides an example of the variety of trouble that the petroleum industry is now facing. The board of directors of Gulf Oil Corp., it was reported, has authorized the write-off of $250 million in marginal and unprofitable operations. Gulf suffered a 28-percent plunge in second quarter earnings.

Gulf is not alone in the industry. Phillips Petroleum Co., due to similar problems, announced plans to withdraw its service station and home heating oil operations in the northeastern U.S. markept. Recently Atlantic Richfield Co. announced plans to withdraw from retail marketing operations in the southern, southwestern and Rocky Mountain Plains States. Other companies, too, have been having serious difficulties. The Wall Street Journal attributes the cause of the difficulties to a variety of reasons, ranging from higher taxes and the competitive inability to raise gasoline prices in the United States, to demands by foreign oil producing nations for a greater share of oil revenues.

The Wall Street Journal is not the only national publication as of late to recognize the increasingly tough financial straits of our petroleum industry. An article in the "Business" section of last week's Time magazine, for instance, concluded:

Until an economically practical, environmentally acceptable substitute is developed the U.S. and other Western countries may well be forced to make the best of their weighty reliance on oil by rethinking many of their national policies. *This could include*

making tax and environmental laws more—not less—favorable to domestic drilling, stepping up trade with nations that are rich in natural gas, notably the Soviet Union, and revising basic foreign policy in the Middle East.

Mr. President, I submit that had the Democratic candidate for the Presidency taken the time to participate in the National Fuels and Energy Study as his fellow members of the Senate Committee on Interior and Insular Affairs from both sides of the aisle have done, he would not have been as likely to overlook the facts. We have now conducted 31 days of hearings on 18 separate energy-related topics as part of our National Fuels and Energy Study. The Democratic candidate for the Presidency chose not to attend even one hearing. A cursory examination of his proposed energy program reveals not only his absence from the hearings, but also his absence of mind.

NUCLEAR REACTOR SAFETY RESEARCH, A VITAL AND FRUSTRATED PROGRAM

Mr. CHURCH. Mr. President, for several years I have attempted to call to the attention of the Senate the vital needs in the field of nuclear reactor safety research. I have noted that nuclear power holds the key to many of this Nation's energy problems but that the key will never be used to open the door which can lead to solving the Nation's energy crisis unless we answer reasonable questions which have been asked about the safety of water-cooled nuclear reactors.

Recently a series of articles appeared in Science magazine reiterating what has been said so many times before. If we do not answer the questions raised about nuclear safety, we run the very real risk of increased public reaction against nuclear power at the very time our energy needs are so vital. I commend these articles to my colleagues. I specifically request that the members of the Joint Committee on Atomic Energy give these articles careful and thoughtful review. Reactor safety research programs must be adequately funded if atomic energy is to achieve its promise. I ask unanimous consent that the series of articles appear at this point in the RECORD.

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

NUCLEAR SAFETY (I): THE ROOTS OF DISSENT

(By Robert Gillette)

(It is somewhat confusing that concern over nuclear plant safety has increased recently. Some explanation is undoubtedly to be found in sensationalist publications . . . but the most important reason appears to be the widespread lack of knowledge of both the excellent safety record of the nuclear power industry and the extreme efforts, unprecedented in any other industry, to assure that nuclear plants are designed, constructed and operated with the highest attention to public and employee safety.—The U.S. Atomic Energy Commission, in a statement to the congressional Joint Committee on Atomic Energy, February 1972.)

(This is being advertised as a no-risk business and that's not true. We don't know that reactors are unsafe, but we're concerned about their being as safe as the manufacturers would like you to believe. Maybe it's time the AEC told the public that if people want to turn the lights on they are going to have to expect to lose a reactor now and then, and possibly suffer great dislocations and property losses as well.—A senior reactor safety engineer, National Reactor Testing Station, Idaho Falls, Idaho.)

The great public debate over radiation standards that flared up 3 years ago has peacefully declined in recent months, probably because the Atomic Energy Commission (AEC) decided to impose strict new limits on the nuclear power plant emissions that sparked the controversy in the first place. But even as that furor was dying down, a new one was swiftly rising in its place—this time over the ability of reactor safety systems to guard against a disastrous accident, should a nuclear plant suddenly lose its cooling water. Expressions of puzzlement from the AEC notwithstanding, the indications are that this new debate over reactor safety comes as less of a surprise than the commission's remarks to Congress would suggest.

To be sure, the AEC has spent tens of millions of dollars in the past 25 years to ensure the safety of nuclear power plants. And it is probably true, as the AEC claims, that the fears of an ill-informed public and the eagerness of "sensationalist" publications have helped to magnify and distort the risks inherent in nuclear plants.

Nevertheless, the new issues of nuclear safety are real. What is more, they appear to be a direct outgrowth of serious internal troubles that have been building up for several years within the AEC's $53 million reactor safety research program.

The new safety debate has centered mainly on the adequacy of backup cooling systems in nuclear plants; the technical substance of this issue has been discussed in previous articles (see *Science,* 5 May). This current article, and others to follow, trace the roots of the issue to problems in the management of the nuclear safety program, and to an intense discord that has developed between the AEC and its national laboratories. This first installment outlines the major grievances of safety researchers and the turbulent history of their program. A second article will discuss long delays in key research projects, and a third will take up the safety program's relations with the AEC's entirely separate regulatory arm.

The internal problems of the nuclear safety program are complex, but there are two main ones. First, at a time when more and more of the nation's utilities are building increasingly powerful nuclear plants, the safety program has accumulated an enormous backlog of unfinished research and unanswered questions. Construction of large experimental facilities the commission itself has repeatedly described as urgently needed has fallen years behind schedule. One nuclear test facility at the AEC's National Reactor Testing Station in Idaho that was supposed to have been finished in the middle 1960's is still being built, and it shows little promise of producing useful data before the middle 1970's. By then, as many as 80 nuclear power plants that were to have benefited from these data will be near completion or in operation.

There are, in addition, dozens of "problem areas" in the safety of conventional water-cooled reactors that remain unresolved. Many of these problems are described in a 1970 AEC publication entitled "Water Reactor Safety Program Plan." The plan outlines 139 unsettled safety questions, and designates 44 of them (in the document's emphasis) as *"very urgent, key* problem areas, the solution of which would *clearly* have *great impact,* either directly or indirectly, on a major critical aspect of reactor safety."

The second major problem concerns the attitudes that safety researchers themselves, working in the national laboratories, hold toward all this unfinished business; a series of interviews during the past 2 months reveals that many of them are genuinely worried about it.

In Washington, the official position is that completion of this work certainly would be desirable, but that, in the meantime, nuclear plants are being designed with sufficient "conservatism" to make up for any uncertainties in their performance. In the national laboratories, however, a number of safety researchers are far less confident. "We are not trying to be accident-mongers," one project manager says. "But we don't think our tools are adequate for proving this assertion."

As the new debate has grown during the past 2 years, first internally, then out in public view, scientists and engineers in the safety program have come to believe that their work is linked to a vital national issue. At the same time, those interviewed say they have also become convinced that the AEC, in its eagerness to develop a thriving nuclear industry—and to get on with building the breeder reactors it has dreamed about for 20 years—has deliberately bypassed tough safety questions still hanging over ordinary, water-cooled reactors.

These beliefs are thoroughly entangled with widespread feelings of discontent over important changes that have occurred in relations between the AEC in Washington and its national laboratories. During the past several years, much of the old autonomy the laboratories had enjoyed for two decades has been supplanted by a forceful new style of management from Washington. And along with the new management has come a new emphasis on applied research and engineering tasks that seem inappropriate, if not distasteful, to many. Researchers and administrators in the laboratories do seem to recognize that, to some extent, these changes are an inevitable result of advances in nuclear technology. But they are nonetheless unhappy with what they consider to be a practice of "overmanagement" by Washington that allows little opportunity to appeal and debate decisions as to which research is important and which is not. The end result of all these feelings has been a deep, and for some, a rather bitter estrangement from AEC headquarters that has done nothing to speed the laggard pace of safety research.

To put things in an organizational context, it should be noted that all of the $53 million the AEC plans to spend on safety research this year will flow through the agency's main "promotional" branch, the Division of Reactor Development and Technology (RDT). This division holds jurisdiction over all civilian reactor R & D—including safety research and the commission's most prominent undertaking, the multibillion dollar breeder program. (Whereas this arrangement may make good sense from an administrative point of view, many of the AEC's critics—both inside and out—regard it as a built-in conflict of interest, in the sense that a single unit of the agency is responsible both for encouraging the growth of an industry and for supporting research with a high potential for raising embarassing questions about the industry's safety. Thus, one of the key questions to be answered is whether the RDT has been able to discharge both duties with equal enthusiasm. Its critics contend that it has not.)

This year, roughly half the $53 million earmarked for safety will go into water reactor studies—the focus of concern—and half into breeder safety. Of the water-reactor money, about $6 million is destined for Oak Ridge National Laboratory to pay for a miscellaneous assortment of eight to ten proj-

ects involving 75 scientists and engineers. Some of this also goes for research contracted by Oak Ridge to a small number of universities and private firms.

The remaining $20 million for water reactor safety is destined for the National Reactor Testing Station (NRTS), where the AEC's "operating contractor," the Aerojet Nuclear Corporation, does most of the nation's water reactor safety research. About 120 scientists and engineers at Idaho draw their salaries from this money. Technically, all are employees not of the government but of ANC, a subsidiary of the Aerojet-General Corporation that exists solely for the purpose of running the Idaho installation.

Thus, in criticizing AEC policies, the dissident scientists and engineers at Oak Ridge and Aerojet place themselves in the difficult position of biting the only hand that feeds them—namely, the RDT, and more precisely, the division's controversial director, Milton Shaw.

A former aide to Vice Admiral Hyman G. Rickover, Shaw supervised the design and development of the nuclear propulsion plants aboard the aircraft carrier *Enterprise* and the cruiser *Long Beach* before taking up his present job in December 1964. Over the years—and in spite of criticism from the laboratories—he has acquired a reputation in Washington as a strong and competent administrator. A man of engaging bluntness, Shaw readily concedes that dissension exists in his safety program, though he says the reasons are not entirely clear to him.

"Unquestionably, people are unhappy, and morale at Idaho is poor," he said in a recent interview, "but sometimes it's hard to know why." Shaw suggested that some of the enmity may be a natural backlash to several traumatic but necessary management shakeups at Idaho over the past few years. He also spoke of an "unwillingness" in the laboratories to adapt to changes imposed by an advancing technology. Beyond this, he said, the closeness of researchers to their work may make the possibility of nuclear accidents "seem more real than it is" and thus may inflate the urgency of safety research in their eyes. There are, moreover, strong feelings among Shaw's staff that the laboratories simply are "hungry for contracts" and are willing to exaggerate safety problems to get them—an accusation the researchers angrily deny.

What, specifically, are the laboratories' grievances? During interviews, research administrators at Oak Ridge and Idaho expressed a variety of allegations, which will be examined in more detail later. Among these were charges that:

Between 1968 and 1971 the RDT bootlegged money from water reactor safety to accelerate the breeder, and in the process killed or cut back a number of key research projects that had just begun to raise questions about nuclear plants coming up for licensing.

Shaw had shown considerable indifference toward urgent needs of the regulatory branch for technical help during this period, and for several years forbade direct contact between safety researchers and the AEC's regulatory staff.

Shaw allowed reactor manufacturers to pass judgment on new research proposals from the laboratory, and tended to skirt questions the industry insisted it had solved, even though safety researchers disagreed. Some of those interviewed said they considered this an effort to curry the industry's financial support for the breeder.

Shaw had used contractors at Idaho as a scapegoat for long construction delays on major test facilities for which he himself was largely responsible.

Besides all this, there is a profound dissatisfaction with Shaw's tight control over RDT programs in the laboratories. His style of administration is often described in the laboratories as "vindictive" and "autocratic" and one that is not above "forcing out" competent research managers who persist in their dissent from official thinking. An Oak Ridge administrator in the middle of the feud with Washington summarizes this view:

"It's no secret that there has been a trend away from science and toward more engineering work in the laboratories for a good number of years, and this is understandable, given the state of the technology. I don't regard it with disfavor, although we would like to do more science. . . . My big complaint about Shaw's setup is that too often it runs on the assumption that the chief is always right, rather than in a manner consistent with the public welfare where open debate takes place. In my view, the wrong people are in charge of water-reactor safety."

In talking about their grievances, critics both at Oak Ridge and Idaho uniformly insisted on anonymity. They contended that use of their names in connection with criticism of AEC policies or officials would, in all probability, cost them their jobs. As evidence, several named colleagues who had once held high-level positions in the safety program and had been shuffled to "nothing jobs," they said, after clashing with Shaw. "His is a vindictive administration," said one man who supervises a large-scale project at Oak Ridge, "and people are frightened."

At the Idaho facility the level of anxiety seemed even higher, and not without reason. In an interview, Charles Leeper, a physicist who became president of Aerojet Nuclear last year, emphasized that it was essential that the company maintain good relations with its "customer"—in this case, the RDT and its director. "I'm accustomed to dealing with the Air Force," Leeper said, "and I've watched program managers go down the chute right and left because they had trouble with the customer."

Prior to this reporter's arrival at Idaho Falls, where the NRTS maintains its administrative offices, Leeper said he reminded his senior staff of a standing rule that only he would express the company viewpoint. Others, he said, were free to voice personal or professional opinions, but only under this proviso: that if any employee's comments "sour his relationship with the customer, we cannot guarantee that after some time has elapsed that he will still be in his same position. We would, however, make every effort to find him a suitable opening in this organization, or elsewhere in Aerojet, or allow him to look beyond the company."

For some Aerojet staff, discretion thus ruled out talking in company offices. They did, however, consent to make arrangements for evening meetings at a designated spot on a back street in Idaho Falls, followed by a drive to private homes some miles away.

That men nationally recognized in their profession should feel impelled to such maneuvers suggests how far relations between the commission and the Idaho installation have deteriorated. For a fair perspective on the long trail of events that led to this situation it is worthwhile to trace the early history of the NRTS, its mission and self-image, and the ways in which both were sharply transmuted in the mid-1960's.

The Idaho facility had a fitful beginning in the late 1940's as the newly formed Atomic Energy Commission began roughing out its ambitious peacetime plans for military and civilian reactors. The commission had chosen the freshly organized Argonne National Laboratory near Chicago to lead its reactor R&D programs, and it came close to going a step further and picking Argonne as the place to build a series of large experimental reactors—among them the first breeder, the first prototype propulsion plant for nuclear submarines, and the AEC's powerful Materials Testing Reactor.

The AEC changed its mind on this point largely at the behest of physicist Edward Teller, who argued that the "calculated risks" taken by the Manhattan Project during the stress of war could no longer be justified, least of all in the suburbs of what was then the nation's second most populous urban area. Adherents of the Argonne site—among them Enrico Fermi, Robert Oppenheimer, and Glenn Seaborg—complained that Teller and the safety advisory group he headed for the AEC had exaggerated the dangers of a nuclear accident, but Teller prevailed. In 1947, the commission began a search across the West for a place to establish a remote proving ground.

The site that the commission finally selected, an old Navy gunnery range 30 miles west of Idaho Falls, could scarcely have been more remote. Even today, as in the 1940's, the overwhelming impression a visitor receives of the NRTS is one of vast emptiness. Nearly the size of Rhode Island, the site sprawls across 893 square miles of sand and sagebrush and the black, contorted lava flows of the Snake River plain. Snowy peaks of three mountain ranges—the Bitterroot, Lemhi, and Lost River mountains—embrace the site on its western boundary. To the east, more than 100 miles across the flat desert (and well beyond the site's perimeter) three sharp spires of the Tetons are visible on the clearest days. Within the proving ground, clusters of reactors and laboratories are scattered miles apart.

BOOM TIME IN THE 1950'S

During the 1950's and early 1960's, the testing station grew rapidly—in fact, well beyond the commission's initial expectations—as Congress, at the urging of the Joint Committee on Atomic Energy, pumped more than $2 billion into military reactors and the AEC's burgeoning efforts to promote civilian power reactors. In 1949 the AEC thought it eventually might build as many as 10 reactors in Idaho; by the mid-1960's, 40 dotted the landscape and 9 more were completed or under construction by last year. The total investment in hardware at the NRTS has since passed $500 million and the work force, though down from a peak of 5500, remains nearly 4000.

Despite its great cost and historic importance to nuclear technology though, the NRTS somehow always remained the ugly duckling in the commission's collection of research establishments, never quite achieving recognition as a full-fledged national laboratory. For one thing, institutional arrangements lent an overall incoherence to the installation that made it seem to outsiders as more of a melange of independent activities than a unified laboratory. It was thought of mainly as the place where separate groups—the Navy, Argonne, Westinghouse, General Electric, and others—went to build experimental reactors in secure isolation not only from the public, but as things worked out, from each other as well. Above all, Charles Leeper says, NRTS is still chiefly a proving ground. "One problem," he says, "is that some people would like it to be a national laboratory, but it is not."

Even so, a collective sense of identity as an important and distinctive research institution did manage to take root over the years. It flourished, interestingly enough, within the nuclear division of the Phillips Petroleum Company, which the AEC hired in 1950 as the site's operating contractor. During the next 15 years, the Phillips contingent provided a full range of "housekeeping" services for the site, and it operated (and helped to design) a dozen test reactors for the commission. Along the way, Phillips acquired several hundred scientists and engi-

neers, many of them reactor physicists and materials scientists who made important contributions to the scientific base for advanced designs of reactors.

Within Phillips the first semblance of a coherent safety research program appeared in the 1950's. It grew quickly, in step with the general pace of reactor R & D. As the program expanded it acquired a certain cohesiveness and esprit, nurtured partly by the exotic nature of its work—the abnormal behavior of nuclear plants—and partly by a large measure of freedom the commission granted it in choosing which problems demanded first and closest attention.

Reminiscing about happier times, one manager at Idaho described the mission of the safety program and its liberal relationship with the AEC this way:

"The commission put us out here 15 years ago to learn about abnormal reactor behavior and to think about what would happen if one of these machines went out of control. . . . You have to understand that an operating, pressurized water reactor contains an immense amount of stored energy—the equivalent of 50,000 pounds of TNT in the mechanical energy of the circulating hot water alone, and 50 to 100 times that in thermal energy. The whole problem comes down to containing this energy to squeeze a little more out of the nuclear fuel, and to controlling this energy in the event of an accident.

"This is such an extremely complicated area that, historically, Washington was content to let us tell them what their designs didn't cover, and to make research proposals. In effect, they let us tell them what we should be doing in reactor safety."

This prolonged honeymoon began a swift decline in 1965, shortly after Shaw took command of civilian reactor programs. By last year, the relationship had fully reversed itself: Now the NRTS, and the safety program in particular, function on a short, tight leash from Washington. Research proposals are subjected to painstaking scrutiny by teams of engineers under Shaw; money available and the tasks assigned to Idaho vary from month to month under strict control from headquarters.

"Isn't this reasonable?" Leeper says rhetorically. "The highly creative days and the permissive times are behind us, and the demands now are for a hard bitten reduction to economical practices."

The researchers themselves agree that times are hard all right, but not quite in the same sense. During one conversation three senior scientists and engineers complained that the budget now fluctuates wildly, that Washington often assigns new tasks without allocating more money, and that the emphasis in research programs continually varies—all with little explanation from Washington. Said one project manager:

"The budget has become a year-long confusion, a continuing battle. It gets rewritten four or five times a year; the year before last it was reprogrammed no less than 12 times. We are constantly having to accelerate some projects, decelerate others, and shift people from one thing to another. All of this gives the safety program a great instability and generally slows our progress."

Another critic at Idaho added this commentary:

"It has been impressed upon us that we are a captive contractor, and this is one of our main complaints. It means that we're not allowed to pick up contracts from elsewhere—from the AEC or the industry—in times of slack budgets. We're forever having to hire professional people, lay them off, hire them back. . . . Under manpower ceilings set in Washington, we sometimes have more money to spend than people to spend it on. After awhile, guys get tired of being shuffled from one job to another, or of pumping gas and selling real estate in town, waiting to be rehired, and they leave. It's pretty hard to keep research teams together under these conditions."

Shaw says that when he took over in 1964, reactor R & D programs in all the national laboratories were in a "deplorable" state. Research on water-cooled reactors, he says, was poorly coordinated among the laboratories, frequently redundant, and heavy entwined with basic research ventures to an extent that it was no longer appropriate for a technology presumably on the brink of commercial status.

As he saw it, there were two main tasks at hand: To wean the industry from government support of water reactors, and to marshall his forces for a concerted thrust on the commission's prime objective—an economical breeder. By all accounts, he took on both these tasks with immense energy and with a lesson learned from Admiral Rickover—namely, that a tough, centralized management stressing a "disciplined engineering approach" both to research and to construction of new reactors may not win friends, but it gets results.

The results so far are mixed, but certainly few friends have been won. Within months after taking office in December 1964, Shaw began a series of drastic reorganizations at Idaho that finally brought the demise of the Phillips organization last year, the rise of Aerojet in its place, and a continuing series of purges of old Phillips people from the new Aerojet structure.

Simultaneously, amid this turmoil, Shaw began imposng a rigorous and unfamiliar regimen of quality control standards and procedures on research projects in all the AEC's laboratories, Idaho included. It was all part of the new era of engineering discipline, and it was necessary, Shaw says, in order to rectify slipshod practices in the conduct of research. But to workers in the laboratories, the new regulations and the paperwork that came with them placed a staggering and, they felt, inappropriate and unnecessary burden on their work with little benefit in return.

"Engineering is the name of the game," says Shaw, an engineer.

"When he came in, science died," says a physicist at Idaho.

Thus, by 1967, the present conflicts had been kindled, and the forces were set in motion that would bring safety research of the highest priority to a virtual standstill.

NUCLEAR SAFETY (II): THE YEARS OF DELAY

(By Robert Gillette)

Although it could hardly have foreseen so at the time, the Atomic Energy Commission embarked in 1963 on a construction project that was to become one of the longest-running, most trouble-ridden ventures of its kind in the commission's 25-year history. That was the year the AEC set out to build a modest little nuclear reactor called LOFT at the National Reactor Testing Station in the Idaho desert. The reactor's name was an acronym for "Loss of Fluid Test," and it aptly indicated the $18 million facility's unusual mission.

According to plans at the time, LOFT would be completed in 1966. It would then be studded with instruments and sealed inside a massive concrete and steel "containment" dome at the desert proving ground. After a series of small-scale experiments, technicians would run the reactor up to its full power of 50 megawatts and abruptly drain it of its cooling water.

Inside the dome, LOFT would partially melt. But in destroying itself it would give safety researchers their first look at a reactor in the throes of what the AEC had formally declared to be the "maximum credible accident" that a nuclear power plant could reasonably be expected to suffer—a major loss of cooling water through a ruptured pipe.

The LOFT project was, therefore, of central importance to the commission's safety research program. In making this point, in its annual requests to Congress for money, the AEC was not stingy with superlatives. LOFT was the "largest and most vital" test facility in the safety program. It was the "focal point which provides a fundamental sense of direction to water reactor safety investigations." Among other things, LOFT would demonstrate a "live accident [that] makes investigators face reality."

Later on, the AEC promised that LOFT could make "extensive contributions" toward erasing nagging doubts about the adequacy of backup cooling systems in nuclear power plants—a subject the commission considered to be "perhaps the most urgent problem in water reactor safety," even before it became a public issue.

For all its stellar importance though, the only reality LOFT has yet made anyone face is that putting together an experimental reactor—even a small one—can be a very trying experience. Nine years later, the AEC is still struggling to finish building the LOFT facility, let alone run it. At last report construction was 80 percent completed, but work is now more than 6 years behind schedule. LOFT's crucial experiments have been expanded in scope but postponed until 1974 or 1975, by then, as many as 80 nuclear power plants that might have made use of the results in their design will already be running. What's more, now that construction costs have ballooned to $35 million, AEC officials in charge of the project have just about given up the idea of letting such an expensive piece of equipment seriously damage itself, much less melt. So in all probability the consummate experiment originally planned will not take place.

Nor is LOFT the only major safety test facility to have sustained long delays and soaring costs. A second reactor at the Idaho installation—the Power Burst Facility (PBF)—was completed last summer, 4 years late and $8 million or 100 percent over the original cost estimate. The PBF was designed to subject nuclear fuel assemblies to abnormally stressful conditions, in order to better understand the behavior of fuel rods before and during an accident. The commission has designated fuel-failure research as being of highest priority; thus between the two test reactors, some of the most urgent safety research planned by the AEC has been postponed.

What happened to LOFT and PBF? Interviews with AEC officials in Washington, and with scientists and engineers at the NRTS in Idaho, turn up a tangle of conflicting charges and countercharges that reflect strong disharmonies that have grown up between the two sides in recent years. An article last week outlined the nature of these problems and some of their history. This week's article attempts to unravel the reasons for delays in important safety research projects that appear to be both cause and victim of this enmity.

The basic causes of delay and overrun are clear enough in themselves; the controversy arises over whom, if anyone, to blame. For both reactors, the first major delays occurred just at the point when detailed designs had been completed and construction was about to begin. In the case of the PBF, the fuel-testing facility, AEC headquarters sent down an order in April 1965 to revise the blueprints and build a more "versatile" reactor, capable of running in a steady state as well as of producing bursts of power. It was a major design change, and one that the Government Accounting Office (GAO), the investigatory arm of Congress estimates cost $1.3 million and 10 months in progress.

The GAO, in a brief report on LOFT and PBF last year, did not comment on the merits of this decision.

As for LOFT, by far the more troubled of the two projects, the AEC decided in May 1967 to radically alter the reactor's main purpose from one of proof-testing a containment shell of the type that surrounds nuclear power plants to one of testing out emergency core cooling systems. In this case, the GAO report made no comment on the merits or the consequences of this decision, although a reasonable guess might attribute half the delay and overrun to it.

More controversial is the matter of "quality assurance." Both sides agree that Washington made a vigorous effort, beginning about 1966, to apply strict new quality standards to the construction of the two reactor plants, and it is evident to all concerned that both projects became bogged down in the process. But whose fault was it?

Milton Shaw, the AEC's director of reactor development and technology (RDT), and the central figure in this dispute, is explicit: The responsibility, he has made amply clear in interviews and in testimony before the congressional Joint Committee on Atomic Energy, belongs to the Phillips Petroleum Company, whose nuclear division was hired by the AEC in 1950 to run the NRTS and to manage the Idaho site's safety research programs. At Shaw's behest, the AEC severed its remaining ties with Phillips last summer and turned over full responsibility for safety programs to the new operating contractor at NRTS, the Aerojet Nuclear Corporation.

Shaw describes the years trying to complete the two projects—particularly LOFT—as one of the most frustrating experiences of his life. In the first place, he says, their objectives were "narrowly conceived" by Phillips. And second, for some reason, the company had endless problems getting pumps, valves, and other parts of "acceptable quality."

"For one reason or another," he told the Joint Committee in March 1970, "we were unable to get from Phillips the management talent necessary to get the LOFT and PBF projects done."

At Idaho, however, scientists and engineers in the safety program—some of them formerly employed by Phillips—tell a different story, the essence of which is that AEC used Phillips as a scapegoat for much of its own ineptitude. To the extent that their story can be independently verified, there is evidence that Shaw shifted a significant portion of the blame for delays and overruns from the AEC to Phillips.

In interviews, the Idaho researchers conceded that the Phillips contingent at the NRTS did have some trouble hiring talented engineers and managers, partly because the site was so isolated.

At the same time, however, Shaw's explanations of the problems at Idaho appear to have omitted the fact that for virtually all the 15 years that Phillips ran the safety program it did not have full legal authority to administer design and construction contracts to the firms that actually built the dozens of test reactors at Idaho. Instead, that responsibility belonged to the AEC's own outpost at the proving ground, the Idaho Operations Office.

One senior engineer formerly with the PBF project explained the limits of Phillips authority this way:

"Our responsibility was limited to early, conceptual designs for projects like LOFT and PBF. The AEC operations office let the contracts to architect-engineers—the design firms—and to construction companies. Once detailed design began we merely had authority to review and comment on a project's safety and whether it was meeting its objective. These observations were passed on to the AEC."

As problems developed with LOFT and PBF, former Phillips officials at Idaho are said to have made a strong plea to Shaw in 1968 for full authority over the two floundering projects. The authority was granted in early 1969. Within 3 months, as problems continued and the Joint Committee wanted to know why, Shaw stripped Phillips of its management authority over the safety program on the grounds of its inability to hire sufficiently qualified staff. "The name of the game," said one man now employed by Aerojet, "is cover your number."

The GAO report on the two projects, issued in August 1971, confirmed but did not comment on, this train of events. Several researchers at Idaho, including two who had reviewed a draft version of the report, said that the final, public version omitted serious criticisms of the AEC's management of the LOFT and PBF projects. One of those who had read the draft said that they attributed these deletions to pressure exerted by the commission, which customarily reviews GAO reports of AEC affairs before they are made public.

In an interview, Shaw was asked whether he thought it was fair to blame Phillips for delays in construction when they lacked full authority over contracts. "If they didn't have it, who did?" he said. The AEC, it was suggested. "Well, let's be fair. Neither Phillips nor the AEC out there had the necessary competence."

Perhaps the bitterest conflict of all at Idaho developed around Washington's efforts to institute stringent new quality standards in the construction of reactors—not only for commercial nuclear power plants, but for the AEC's own test reactors as well. These two parallel efforts—one internal, one aimed at the industry—commingled to a large extent, and, in the view of a number of safety program staff, with disastrous results. An administrator at Oak Ridge National Laboratory who watched the battle at Idaho from afar says:

"You have to give Shaw credit for pushing the industry to adopt tougher standards. They were urgently needed, and some elements of the industry—and I refer to Westinghouse and General Electric [the two leading reactor manufacturers]—fought it all the way. The question is whether these or similar standards are appropriate for research facilities. We think they are not."

The critics in Idaho charge that in late 1966 Shaw co-opted the LOFT project for use as a "showcase" for standards, to prove to a reluctant industry that they really were feasible. The problem, says an engineer involved in the affair, was that some of the standards, in their initial form, turned out not to be feasible:

"The whole philosophy became one of using LOFT to develop standards and check them out, rather than producing the safety information we desperately needed. And some of them were a bit extreme, requiring that metals be traceable back to the mine . . . The overall effect was to drive up costs of some components by a factor of 3 to 5 and to stretch out timetables by two and a half."

Months were consumed by haggling among Phillips, the AEC in Idaho, and teams of engineers under Shaw in Washington over the acceptability of particular pieces of plumbing. Voluminous documentation was required to verify that standards were being met and that tests and inspections were being carried out according to the new rules.

(Meanwhile the Power Burst Facility was having problems of its own. No one tried to use it as a showcase, but the new standards meant redesigning many parts. To speed things along, project engineers tried to meet the "intent" of new standards for pipes, pumps, valves, and other parts while liberally construing the "letter" of the standards. For their trouble, some were fired. "It was a hard learning experience," one man recalls, and one the GAO says accounted for most of the slippage in schedule.)

Amid all the bickering, construction on LOFT came to an almost complete halt between May 1968 and October 1970. One problem, it developed, was that no manufacturer in the country would bid on such essential items as coolant pumps and valves and control-rod mechanisms that Washington wanted made according to its new standards. This impasse was finally resolved by "cannibalizing" these parts from a number of old reactors, including one aboard the scrapyard-bound N.S. *Savannah*, the nation's first and only nuclear freighter. "So here we sit," says an engineer at Idaho, "building it out of scrap."

Roy Swanson, the AEC's project manager for LOFT at Idaho, confirms that such parts are being used in the reactor, but he says it's unfair to characterize them as "scrap," even if they are 10 or 12 years old and don't fully measure up to the new standards. He said that the pumps and valves are now being refurbished in shops at NRTS and they'll soon be good as new.

Did the use of LOFT to develop new standards cause major delays in the project? Swanson said:

"Sure, it caused some delay, but the standards weren't that far out. They were based on experience in the Navy and elsewhere. And there were other problems, like building a 200-ton door for the containment [shell] so we could move the reactor in and out on a railroad car. . . ."

Was LOFT used to show industry that the new standards would work? Did this ploy work?

"Yes, this did happen. You'd take a company by the hand and show them step by step how they could meet a standard, and you're starting to see companies advertise in trade journals that they meet RDT-Shaw standards. . . . It's true that some were a little too tough, and we couldn't get bidders on pumps and valves at first, but you go in and negotiate these things. And sometimes you have to compromise a little."

Isn't it understandable, Swanson was asked in a conversation, that safety researchers should be upset at having their project "expropriated" for this purpose? "Sure," he said. "But whenever you get into standards you take a beating on the head."

In Washington, Milton Shaw says that it's "ridiculous" to think that so important a research facility would be used principally as a showcase to sell new standards to the industry, although if it did so "that might have been a worthwhile spinoff."

Shaw says it was all part of a strenuous effort on his part to introduce a "disciplined engineering approach" to the conduct of reactor R & D by the AEC's national laboratories. For the laboratories' management, this entailed occasionally drastic reorganizations aimed at tying research more closely to specific goals—such as developing an economical breeder reactor—and it also meant establishing firm, clear lines of authority, modeled after the aerospace industry, leading back to Shaw's own teams of engineers in Washington. Moreover, laboratories were instructed to seek out and employ new program administrators who were familiar with the nuclear industry and sympathetic to the need for rigorous quality control in research.

This was necessary, Shaw says, to improve the reliability of expensive and potentially dangerous experimental facilities. "We were losing data because of breakdowns and defective equipment, and because some things were not being calibrated well enough to permit an experiment to be repeated."

The campaign for quality assurance at Idaho was prompted in part, he said, by the

discovery in 1965 of "bum welds" in the Advanced Test Reactor while it was under construction. Repairs required virtually rebuilding the reactor, he said.

In the case of LOFT, Shaw conceded that he has had a hard time convincing experimenters at Idaho that their reactor should be built to higher standards than those applied to commercial nuclear power plants. This disparity is justified, he argues, because LOFT is meant to provide empirical verification of safety system designs, and it is not meant merely to "proof-test" a typical reactor. And he wants to prevent any mishaps, such as a ruptured pipe, that might accidentally damage the reactor. "We don't want the technology damned because of flaws in the equipment."

In important ways, during the past 8 years, Shaw has industrialized those segments of the national laboratories that come under his aegis as director of civilian reactor R&D. Major portions of the laboratories, he reported to the congressional Joint Committee this year, have been "converted from a research orientation to one stressing disciplined engineering application, proof-testing, and quality assurance, as well as soundly developed applied technology."

The laboratories have not taken kindly to this discipline, which they are inclined to view as excessive. (One of the first and sharpest protests came in 1967 from Albert V. Crewe, then director of Argonne National Laboratory, who remarked in a speech that Argonne's purpose was "not to build submarines but to produce knowledge.")

At Idaho, a senior physicist associated with the LOFT project made his complaint:

"Around 1968 money for basic physics, such as nuclear cross-section work, just dried up. The philosophy was that if something didn't solve a problem—particularly for the breeder—it wasn't going to be picked up in the budget. . . . We can't even do *applied* research now in some cases. Money budgeted for development work on instruments for LOFT essentially stopped in 1968. We'd like to make some improvements in them to extend the data we get from this reactor. But we're forced to use instruments already 'on the shelf'."

At Idaho and within the safety program at Oak Ridge National Laboratory equally strong feelings prevail that the new quality standards have driven up the cost of doing research without producing any visible improvement in the quality of the research itself.

Certainly test reactors at Idaho grew more expensive. At Oak Ridge, where a much smaller safety research program revolves to a lesser extent around great test facilities, estimates are that RDT standards have driven up the purchase cost of materials by 8 to 10 percent and doubled the cost of some equipment.

These added expenses—combined with the general inflation in the cost of doing research during the 1960's and on into the 70's—dealt a harsh blow to reactor safety research. As costs rose, the program's overall budget grew slowly in some years and remained static in others. At the same time, the Atomic Energy Commission, partly in response to prodding from the Joint Committee on Atomic Energy, found itself accelerating the breeder program, and dipping into money allocated to water reactor safety to do it. Something had to give, and what gave was research intended to resolve questions of the utmost urgency pertaining to dozens of commercial nuclear power plants then on the drawing boards and under construction.—ROBERT GILLETTE

THE FALL OF PHILLIPS NUCLEAR

The nuclear division of the Phillips Petroleum Company, it appears, was on its way out as operating contractor of the National Reactor Testing Station even before a fight erupted over its conduct of research projects. In May 1965 the Atomic Energy Commission announced that Phillips' contract would be terminated forthwith—except for its safety research responsibilities—and the contract to run NRTS would be put put for open bid. An AEC news release at the time said this was not to be construed as a sign of dissatisfaction with the company, but was only "intended to give other companies a chance to compete for an AEC operating contract."

This decision marked the beginning of antagonism between scientists and engineers in the safety program, who were employed by Phillips, and the AEC's Division of Reactor Development and Technology. Although most of the 1800 Phillips employees not in the safety program were to be absorbed by the new contractor, the move understandably offended company loyalties. Moreover, it led to administrative complexities that safety research managers would just as soon have done without. "Suddenly we were an arm grafted onto a new body," said one. "New working relationships had to be established, and generally it was an unnecessary disruption."

The operating contract, worth $29 million in 1966, amounted to a rich subsidy for reactor manufacturers, and the AEC was not bashful about saying so. Special consideration, the commission said, would be given to bidders with a strong interest in commercial nuclear reactors "as evidenced by the firm's activity and investment in the field of atomic power."

Phillips had not involved itself in nuclear energy beyond its activities at the NRTS; consequently it was out of the running. The winner of the contract was the Aerojet General Corporation, which at that time had made heavy investments in gas-cooled reactors and was facing a bleak outlook for sales. Together with the Allied Chemical Corporation, which had invested in nuclear fuel reprocessing, Aerojet formed the Idaho Nuclear Corporation in 1966 to run the NRTS.

The safety program remained in Phillips hands for 3 years more, but by 1969 the LOFT and PBF projects that it ostensibly supervised were in deep trouble. That June, under orders from the AEC, Phillips joined Idaho Nuclear as a third and minor partner with no top-management authority.

Last summer, yet another major reorganization removed both Phillips and Allied from the unequal triumvirate of operating contractors and left some research managers wondering about the legality of it all. Although no open bidding process took place, the AEC negotiated a new operating contract that led to the dissolution of Idaho Nuclear and to the creation of an entirely new corporate entity as the operator of the NRTS—the Aerojet Nuclear Corporation, a solely owned subsidiary of Aerojet General. Although AEC officials say that no contract procedures were violated in this shuffle, it does leave a residue of irony. Several years ago Aerojet dropped out of the reactor business, except for its duties at Idaho, for which the company now receives nearly $50 million a year.—R.G.

NUCLEAR SAFETY (III): CRITICS CHARGE CONFLICTS OF INTEREST

(By Robert Gillette)

One February day in 1971, the Oak Ridge National Laboratory (ORNL) in Tennessee received a bit of bad news from Atomic Energy Commission headquarters in Washington that still evokes feelings of anger and resentment among the laboratory staff. With only a brief explanation, Oak Ridge administrators were told that a project they considered to be the laboratory's single most important piece of nuclear safety research—a study of how reactor fuel rods might behave during a major loss-of-cooling accident—was going to be canceled, even though it was nowhere near completion.

Oak Ridge had already absorbed significant cuts in its $5 million safety research budget, and the laboratory had suffered them in relative silence. But this was too much to bear: The project had run only 2 of a scheduled 4 years; it pertained to a problem that the AEC itself had said demanded urgent attention; the study was the only one of its kind then under way; it pursued issues of great interest to the AEC's regulatory staff, which depended on the safety program for technical support; and above all, in the opopinion of Oak Ridge researchers, the fuel-rod study had begun to raise some troubling questions about the margins of safety in nuclear power plants then under construction.

"We are astounded at your decision to discontinue this experimental work," William B. Cottrell, ORNL's director of nuclear safety, protested in a memorandum to his counterpart at AEC headquarters, Andrew J. Pressesky, the assistant director for nuclear safety.

"This matter is of such grave concern to so many persons," Cottrell wrote on 4 March and again on 30 April, "that I expect ORNL management to raise questions with others in AEC. . . . No one really knows what will happen in a reactor core in the event of a loss-of-coolant accident [and] the AEC in general—but Regulatory in particular—needs an in-house program to assess this very complex matter."

The safety director's pleas were fruitless, however, and the project was killed. The official explanation had to do with a general shortage of funds for safety research, but one Oak Ridge administrator, who insists on anonymity, says that Pressesky offered a remarkably different explanation in private. "You won't find this in writing," the administrator said, "but the reason he gave for canceling the study was that it raised more questions than it solved."

Safety researchers took that to mean their findings were rubbing the reactor "vendors" or manufacturers the wrong way, but Pressesky denies this inference. In a recent interview he asked whether his quoted remarks were written or oral. Informed that they were oral, he said, "What I probably meant was that I had misgivings about how well these experiments represented real nuclear fuel."

Whatever the truth of the matter, the incident served to reinforce a growing conviction among safety researchers, both at Oak Ridge and at the National Reactor Testing Station in Idaho, that authorities in Washington were shaping the safety program more to fit the desires of the nuclear industry than to accommodate the needs of the AEC's own regulatory and licensing staff. In its haste to get on with developing the breeder, Washington seemed to researchers in the field to be methodically sidestepping grave uncertainties that still surrounded ordinary, water-cooled nuclear power plants. Why it should do so was something of a mystery, but two possible motives suggested themselves to worried researchers at Oak Ridge and Idaho. Either officials in Washington attached far less urgency to water-reactor safety than they professed to, or they were deliberately attempting to "keep a low profile" on embarrassing safety questions that threatened to jeopardize the industry's financial support of the breeder program. "I am convinced," says one research manager at Idaho who subscribes to the latter view, "that RDT (AEC's Division of Reactor Development and Technology) is simply in bed with the vendors. Everyone wants his merit badge for the breeder."

The AEC's congressional testimony over the past few years leaves no question that

large segments of the water-reactor safety program are lagging far behind schedule. What remains open to debate is whether these delays were as deliberate as they might appear. An article last week traced some major delays and shortages of funds to cost overruns and other administrative problems in building two major research reactors at the Idaho installation. This current article takes up the critics' contention that, fundamentally, the safety program's difficulties derive from serious conflicts of interest within RDT, of which the safety program is part.

Allegations of an inborn conflict of interest—on the ground that it both promotes and regulates the nuclear industry—are old hat to AEC. It has long since learned to shrug off such accusations with the argument that there was no reason why the same agency could not carry out both functions independently and with equanimity, so long as the proper checks and balances of internal power prevailed.

With this in mind, the AEC reorganized itself in 1961 in an effort to separate regulatory functions from the agency's "development" programs. These functions—including all the administrative machinery for licensing nuclear power plants—were joined together to form a distinct regulatory arm, whose director answered to the five commissioners. Glenn Seaborg, the former AEC chairman, has written that this organization "evolved for one simple reason: so that the right hand would know what the left hand was doing, yet be independent of it."

Looking back though, it appears that things never quite worked out that way. The regulatory staff never achieved full independence. Moreover, right from the beginning and all through the years communication and coordination between the two sides was notoriously poor—in part because the commission simply neglected to establish clear and reliable lines of administrative contact between the two "hands" of its staff. Indeed, in April 1967, more than 5 years after a distinct regulatory staff came into being, Congress's usually friendly and paternal Joint Committee on Atomic Energy found itself imploring the commission to improve its internal communications:

"It appears to the committee that not all the necessary steps have been taken in the past to coordinate the work of these two organizations. The supposed ease of exchanging information and views between the operating and development staff, on the one hand, and the regulatory staff, on the other, is one of the chief arguments made against a complete separation of the AEC's regulatory functions from its other activities. It is most important that this exchange take place in fact as well as in theory, and that one of the results be a meaningful nuclear safety research effort."

The 1961 reshuffle had left both sides—the regulatory and development units—in a difficult situation, pregnant with conflicts of interest. For one thing, the safety research program had remained behind in the AEC's main development arm, the RDT. While this probably made eminent sense at a time when nuclear power plants were still under development and far from a commercial reality, times changed. Five years later, the regulatory staff would depend heavily on the safety program for help in assessing the safety of dozens of power plants coming up for licensing. Thus, in the middle 1960's, the RDT found itself in the position of conducting a research program that was actively engaged in raising pointed questions about the very reactors the RDT had worked so hard to develop. Moreover, the division could scarcely have hoped to avoid accusations of mutual backscratching with the industry when, precisely at the time the AEC began cutting back its reactor safety budget, it began spending lavishly on the breeder program and encouraged utilities and reactor vendors to do the same.

To make matters worse, the regulatory staff remained almost totally dependent on the charity of the RDT to pay for research on any broad, pressing questions that new designs of nuclear power plants might raise. Whereas "Reg" could let small, special purpose consulting contracts to universities or private firms, the commission gave it no money for a coherent research program of its own. Nor has the regulatory arm ever had the option of paying money directly to the RDT for work it wanted done. Instead, the most it could do was submit a formal "request for information" and hope Shaw and his division could see their way clear to spend the time and money required. There is abundant evidence to suggest that, more often than not, the time and money was not available and the questions went unanswered.

The inherent drawbacks of these arrangements might have remained mostly academic, had two unforeseen problems not developed in the middle 1960's.

First, around 1966, the regulatory staff encountered what appeared to be major gaps in the information generated by the safety research program. Utilities had begun ordering nuclear plants of unprecedented size—with capacities of 1000 megawatts electrical, more than ten times the size of any pressurized water reactors then in operation—but the technical reports of the safety program dealt mostly with much smaller reactors. New information and new experimental data were needed to assess the safety of the mammoth plants that the utilities wanted, and the safety program would have to produce it as expeditiously as possible in order to make any contribution at all to the licensing process.

Then the second problem popped up. Just as the regulatory staff requested this new research, the budget for water reactor safety research hit a plateau and then, incredibly, declined.

What apparently triggered the regulatory staff's hunger for information was an application from Consolidated Edison of New York for a permit to build an 873-megawatt nuclear plant named Indian Point 2. The design of the plant proposed a dramatically high power level that in turn implied a new reliance on such safety features as the emergency core-cooling system to protect the reactor, as well as the nearby public, from an accidental loss of cooling water and a potentially disastrous melting of the core.

The AEC issued Con Edison its permit on 14 October 1966, but evidently did so with some misgivings. Two days earlier, the AEC's semiautonomous Advisory Committee on Reactor Safeguards (ACRS) issued a statement stressing an urgent need for new research to ensure the reliability of the hitherto untested backup cooling systems. Two weeks later, on 27 October, then director of regulation Harold L. Price took the unusual step of appointing a "task force" of 12 prominent scientists and engineers to review the information available on loss-of-cooling accidents, and the backup systems that were intended to lessen the consequences of such accidents. One year later, the task force, headed by the late William K. Ergen of ORNL, issued its findings in a 221-page report that pointed to a host of technical uncertainties. More had to be learned about the mechanism and circumstances of pipe rupture, the presumed cause of a coolant loss. More had to be known about the behavior of fuel rods and the fission wastes inside the fuel rods during an accident. Improvements, based on experimental work, were needed in existing computer simulations of accidents.

The Ergen report was scarcely one to inspire confidence, and even at that, according to one man who helped write it, the document represented a "serious compromise" between the least sanguine members of the task force and the far more optimistic industrial participants. The AEC did eventually publish the report but went to no great lengths to encourage its circulation. The public version bore no date, price, or address of any place where it might be obtained, nor did it bear the identification numbers customarily assigned to such reports.

If the available correspondence on the subject is any indication, the RDT's response to the demands for new research on loss-of-cooling accidents was phlegmatic at best. To his credit, Milton Shaw in 1967 reoriented a major research reactor then under construction at Idaho to emphasize studies of emergency cooling problems. But the project, called the Loss of Fluid Test facility (LOFT), ran into prodigious cost overruns and delays and began gobbling up money that might have gone into research. More than 2 years after the Ergen group had dropped its bombshell, the ACRS complained to Glenn Seaborg, then chairman of the AEC, that its exhortations for more work on loss-of-coolant accidents and related problems seemed to be falling on deaf ears. In a letter of 12 November 1969, the ACRS told Seaborg:

"The committee has strongly recommended safety research of this kind several times during the last three years; the regulatory staff has also strongly supported such work. However, only small or modest efforts have been initiated thus far.

"In its comments on 20 March 1969, the committee also recommended that '. . . considerable attention be given now to the potential safety questions related to larger water reactors likely to be proposed for construction during the next decade. Larger cores, higher power densities, and new materials of fabrication are some of the departures from present practice likely to introduce new safety research needs. . . .' It appears that, because of funding and for other reasons, the recommendations of the ACRS will not be implemented at this time."

It should be noted that this criticism also came 2 years after the Joint Committee on Atomic Energy upbraided the AEC for not fitting the safety program to the regulatory arm's needs.

Those needs, of course, had not been ignored altogether. Even the modest effort cited by the ACRS was producing results, and these results was even less encouraging than the Ergen group's findings. According to one man involved in this research at Idaho:

"The more we worked this problem the more it fell apart in our laps. Everything we did to analyze the physical phenomena, to improve correlations, to better describe what happens during blowdown [the explosive depressurization of a reactor vessel] pushed our predicted temperatures higher toward melting and the margins of fuel safety lower.

"The more we got into this the more it became apparent that RDT was very unhappy with all this. The problems we were raising were upsetting their cozy relationship with the vendors and utilities, whose support they needed for the breeder. . . . It also became clear that Shaw and others just didn't believe a serious accident of this kind could happen, and that it was really worth working on. They'd say all the right things in public, but in the small, executive session their enthusiasm would cool off."

Both sides think the probability of a major accident is low, but low means different things to different people. In the spectrum of estimates, officials in Washington lean toward lower estimates—on the order of one chance in a billion—than researchers in the laboratories. "What bothers me most," says a prominent engineer at Oak Ridge, "is that after 20 years we are still making purely subjective judgments on what is important and what is not in reactor safety. Purely by decree, some things, like the rupture of a reactor pressure

vessel, are ruled impossible. To decide these things without some objective measure of probabilities is, to me, almost criminal."

It is difficult for an outside observer to judge the extent to which estimates of accident probabilities have cooled or fired enthusiasm. Shaw and Pressesky acknowledge that differences of opinion "exist, but they say the debate is irrelevant. 'Our job is to work out these problems," Pressesky says, "and that's what we're trying to do. For our purposes, the probability of an accident is one." Shaw adds that he thinks serious reactor accidents will inevitably occur—but that safety systems will protect public life and property.

And yet, all this time, strange things were happening to the safety budget. As always, Congress authorized money for both breeder reactor and water-cooled reactor safety in one lump sum each year, and between 1969 and 1972 this sum oscillated gently between $34 million and $37 million. Within that essentially constant budget, though, money allocated to breeder studies during the 4-year period rose from $4 million in 1969 to more than $11 million in 1972.

The source of this added money was clear, and so were the effects of its transferral. Over the vigorous protests of the Advisory Committee on Reactor Safeguards and the regulatory arm, water reactor safety research was being sacrified for the benefit of the breeder.

Who is responsible for this sacrifice is far less clear. One analysis suggests that not all the blame is Shaw's, although he has tended to serve as something of a lightning rod for the rancor of short-changed researchers. In his annual appearances before the Joint Committee's budget hearings, Shaw has forthrightly pointed out that pumping new money into the breeder has brought about cutbacks in "vital and important" studies pertaining to water-cooled reactors. Moreover, the records of the hearings show that he consistently asked for 10 to 20 percent more money for nuclear safety than he ultimately received. Just as consistently, the AEC's own budget-makers and the White House budget office markedly reduced the amount Shaw was allowed to request from Congress. It is difficult to imagine that these cuts were not approved, at least in part, by the five commissioners. And the Joint Committee, in its eagerness to press on with the breeder, has shown no public signs of anxiety over water reactor safety either. (The Joint Committee may also have cast a skeptical eye on AEC requests for safety money after the agency diverted to other purposes or simply failed to spend $12 million or 8.5 percent of the funds appropriated for nuclear safety from 1965 through 1968. The committee said in 1969 that this was "indicative of persistent overestimates of budget needs.")

Nevertheless, the ups and downs of the safety budget, and the emphasis on the breeder, aroused strong suspicions among safety researchers that the RDT had been a bit too intimate with the industry. The suspicions have been further piqued by the RDT's efforts to escape its financial problems by divesting itself of major safety research tasks and inducing the nuclear industry—especially the utilities—to pay for the work instead. In Washington, it is argued that the industry really ought to shoulder a larger part of the burden for safety research, now that nuclear energy is a commercial reality. "They have to stand on their own two feet," Shaw says of the utilities and vendors.

But a number of the critics at Oak Ridge and Idaho fear that, if the commission is too successful in this endeavor (which to date it has not been), the AEC may cripple its own ability to judge the quality of industry-sponsored work. To Washington, this bears a taint of special pleading, but the critics respond that the entire effort raises still more questions of conflicting interests. As one senior administrator puts it, "This is like asking the agricultural chemical industry to tell us how safe pesticides are."

These feelings are coupled closely with the researcher's irritation at RDT's practice of letting reactor manufacturers review their proposals for new research, before RDT passes judgment on the proposals. In an interview, an administrator at Idaho expressed the complaint this way:

"Shaw will say, 'Have you found a problem? Just send us a proposal.' So we send a proposal. First it's screened by teams of engineers in his office before anyone, including REG, has a chance to comment on it. If it gets past this stage, they send it to the vendors for comment. Not to impartial experts in universities or foundations, but to the vendors. And great Scott, the industry is very upset by these proposals. We keep raising questions that they'd just as soon not hear about. They've already convinced REG that it's not a problem at all. . . . In the end, RDT chooses to identify with the needs of the industry, not the regulatory staff."

Officials in Washington have an explanation for this procedure, which is simply that they want to ensure that safety research is related to practical problems of reactor design. Pressesky makes the point that proposals go simultaneously to vendors and the regulatory staff, and sometimes not to vendors at all. Accusations of favoritism toward industry are flatly denied. "I hear things about conflict of interest all the time," Shaw says. "I can't let it bother me. . . . Some of the industry people come down on us just as hard."

How are relations now between the development and regulatory sides of the AEC? In some respects things are looking up. Funds for reactor safety are up to $53 million this year, and about half the increase since 1971 has gone toward water reactors. Perhaps the most charitable judgment of the present situation comes from L. Manning Muntzing, the director of regulation, who told the Joint Committee last March that his staff had a "very close working relationship" with the RDT.

If that is true, it would seem to represent a dramatic transformation. Only a month before, the ACRS again criticized the RDT for failing to heed the interests of the regulatory staff in a letter to the new chairman, James Schlesinger, the ACRS ticked off a list of problems yet unsettled, some still hanging fire from the middle 1960's. Among its demands, the ACRS asked for "special emphasis" on fuel studies of the sort Oak Ridge used to do, and it suggested that, 'in the future, the AEC safety research program should reflect more directly in extent and detail the recommendations and needs of the Regulatory staff and the ACRS."

It was a familiar refrain, and one that evidently caught the ear of the General Accounting Office, the investigatory arm of Congress. Although no congressman has asked it to do so, the GAO has initiated its own investigation of the turbulent relations between the safety program and the regulatory staff. The GAO expects to have its report ready sometime next spring.

TRIBUTE TO SENATOR COOPER

Mr. McGEE. Mr. President, I regret that my duties as a delegate to the United Nations in New York prevented me from joining with my colleagues yesterday in paying tribute to a distinguished friend and fellow Senator—JOHN SHERMAN COOPER. However, I would like to take the opportunity to do so at this time.

The retirement of JOHN SHERMAN COOPER from the U.S. Senate is indeed a sad occasion for this body. JOHN is an individual who has a timeless quality about him. It is this quality, combined with his outstanding intellectual ability, his many valuable contributions to the welfare of this Nation, and his stature as a public servant, which makes it difficult for us to accept his retirement from the Senate.

JOHN is an individual who has always risen above partisanship. He has always represented the highest qualities of statesmanship that lesser men can never hope to attain. His decisions have been marked by wisdom and a deep intellectual grasp of issues and problems. For these reasons, his presence in this body will be sorely missed.

I will always be grateful for the opportunity I have had to serve with JOHN, not only in the Senate, but as a member of the Committee on Foreign Relations. He has always been one of the most knowledgeable Members of the Senate on foreign issues and policy.

JOHN SHERMAN COOPER has exercised the highest moral leadership in his public service. He always has been, and remains, a man of principle, judicious temperament, quality, and excellence, combined with a deep sense of compassion for the needs of his fellow man.

I have a deep affection for JOHN SHERMAN COOPER and I will deeply miss him as an esteemed colleague and friend.

GLEN CANYON NATIONAL RECREATION BILL

Mr. MOSS. Mr. President, we are now in what appears to be the closing hours of the 92d Congress, and despite the strong urging of the Department of the Interior and the Nixon administration, and despite the all but universal approval of the bill by the people of Utah, Congress has not taken final action on legislation to establish the Glen Canyon National Recreation area in southern Utah and northern Arizona. The heartbreaking aspect of the situation is that the bill teeters very close to final enactment—it has been passed by the Senate, and favorably reported, with amendments, by the House Interior Committee. The amendments are not impossible of compromise. But unless there are some unexpected developments, the bill will die with the session.

The establishment of Glen Canyon National Recreation area, by statute, and the establishment of its permanent boundaries and the spelling out of the regulations under which it will be managed, have been under consideration by the Congress since 1963.

Many hours of work have gone into the effort, session after session, in the hope of perfecting a measure which will give the scenic and recreational values of the area, the protection they must have and yet assure that other uses of the area would not be curtailed, or that the full economic development of southern Utah would in no way be jeopardized.

The bill for the 92d Congress (S. 27) was introduced in the Senate on Janu-

ary 25, 1971, the first day on which bills could be introduced in this body, and its companion bill was dropped in the hopper several days later in the House. In the Senate, S. 27 was part of a package of four bills intended to develop the scenic and recreational potential of southern Utah—the other three bills provided for the establishment of Capitol Reef National Park, of Arches National Park, and for the expansion of Canyonlands National Park. Hearings were held on all four bills in the Senate Interior Committee on June 3, 1971, and all were passed by the Senate on June 21 of that year. and referred to the House 2 days later.

The House Interior Committee gave consideration to the three national park bills rather quickly, and all were passed in October of that year and became public law in December 1971.

But the Glen Canyon National Recreation bill was separated from the package and held back from consideration. Despite repeated requests that hearings be scheduled on that bill, the Utah representative on the House Interior Committee did nothing to have the measure considered throughout the remainder of 1971. It was not until May 27, 1972, that field hearings were held in Utah, and until June 8, 1972, that hearings were held by the House committee in Washington. And it was not until August 11—2 months later—that the bill was finally marked up and ordered reported by the House committee.

Then came the most unexplainable delay of all. The report and the bill itself were not filed in the House of Representatives by the House Interior Committee until September 26—after 5 weeks had passed.

In fact, the filing of the report—a fairly simple one to write—was delayed so long that by the time it was available, the House Rules Committee had announced it would no longer consider granting any more rules to bills this session. The Glen Canyon bill has been forced, therefore, into the only route open to it for passage—to call it up under suspension of rules which requires that two-thirds of the House of Representatives support it.

As of the time I am making this statement—2 days before anticipated adjournment—the bill has not been called up.

Every effort made to discuss in advance possible bases for conference agreement between the House and Senate versions of the bill has been rejected. The differences are not great—they are subject to negotiations—but it now appears that there will be inadequate time to sit down and try to work them out in free and open discussion, and to get final passage in this 92d Congress on this long-sought legislation.

My disappointment is enormous, as will be the disappointment of the people of Utah when they learn what has happened.

KENNAN'S MEMOIRS II

Mr. CHURCH. Mr. President, George F. Kennan is an exceptional American diplomat. He has served his country brilliantly in eastern Europe and in Russia; his conclusions over the years about the Soviet Union, as he has written in his Memoirs, "emerge with admirable clarity," in the opinion of John Kenneth Galbraith, in a major review of Kennan's new book.

The review, like the book, is well worth reading. Accordingly, I ask unanimous consent that it appear here in the RECORD.

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

MEMOIRS 1950–63

(By John Kenneth Galbraith)

I don't see how a memoir could be better; even if you aren't interested in the subject at hand, the language carries you along. And the story here told—with all action subject to the finest Kennan introspection—is both important and absorbing. Covered in this second volume are the origins of the Korean War; the cold war mystique of Acheson and Dulles; Moscow in 1952 in the last months of Stalin; how Kennan got thrown out of the Soviet Union for an unguarded remark in a Berlin airport; the McCarthy attack on old friends; the convulsion of the cold warriors over Kennan's Reith Lectures proposing disengagement in central Europe; and his service in Yugoslavia under Kennedy. All of it is graced by the Kennan style; all is stamped with the Kennan foreign-policy trademark.

The latter consists of an ability to think clearly about complicated matters with an utter independence of mind. He draws on a superb stock of historical knowledge; he makes use of a capacious if somewhat less adequate stock of contemporary information, a matter to which I will return in a moment. The worst thing about all thinking on foreign policy is the narcotic attraction of the fashionable view. "You are so right, Mr. Secretary. It's the way we all feel." For this Kennan has only contempt, but he also derives no special pleasure—as I always do—from the feeling that everyone else is wrong. Having made up his mind, Kennan then gives the reasons with consummate skill and complete certainty. No one should misconstrue the Kennan tendency to introspection; it regularly raises the question that he *might* be wrong but then with rare exceptions discards the possibility.

Most of the conclusions that George Kennan has reached over the years involve, in one way or another, the Soviet Union, and they emerge with admirable clarity from this book.

He has always thought that the Soviets were primarily concerned with their own affairs; he was never captured by the thought that they would invite destruction in pursuit of world revolution. He always believed that they would negotiate where there was a chance for mutually rewarding results and would keep the resulting agreements. Their prospective response to sentiment or affection, a prime Kennan point, he has always thought negligible. A conventional war with the Soviets would, he was persuaded, be unwinnable and a nuclear conflict insane. In dealing with the Soviets he considers the military a blunderbuss, the Congress irresponsible, hysterical and uninformed and the political leadership, including that of the State Department, in its subservience to wild-eyed generals and Congressmen, gutless to the point of being obscene. He loves Russia, was always committed to the idea of peaceful coexistence and leaves one deeply puzzled as to how we happened to survive the diplomacy (and military subservience or recklessness) of Acheson, Dulles, Radford and LeMay. Certainly we were more fortunate than we deserved.

The Kennan view has been admirably affirmed by events, and yet I would not want to give him a complete bill of health. He sees the Korean War as the logical response by the Soviets to our decision to proceed with a separate peace with Japan and to retain Japanese military bases. Korea was outside this defense perimeter; the Soviets reacted by having their clients try to take it over. On all recent form it would seem equally plausible that they were discovering that puppets, especially in that part of the world, are hard to control. The South was weak; the Americans seemed not very concerned; why might the North Koreans not decide for themselves to march down and have one country? Perhaps they got permission; maybe they just informed the Soviets and then went ahead; maybe they were discouraged but did not listen. Certainly both we and they have since become accustomed to independent behavior by our client states.

Also Kennan's world is one of governments in which men have a choice between sensible and stupid action and are not greatly subject to social imperative. There is a good example of this view in his treatment of John Foster Dulles. He begins a less than affectionate treatment of Dulles by suggesting that by knowledge, experience, ambition and a certain deviousness of manner he was admirably equipped for his job. (Except for the last I do not entirely agree.) He then explains the Dulles errors as the result of poor character plus an unwillingness to stand up to Congressional and military opposition. But surely Dulles had one other disqualifying trait which was his access to only one piece of social knowledge, namely that there was a difference between free enterprise and Communism, and that good men chose the first and the willfully wicked the second. That deprivation, political oppression and economic exploitation might drive men and governments to solutions distasteful to a Wall Street lawyer was well beyond his range of thought. Kennan is not sensitive to such a flaw.

I think Kennan, with others, also misunderstands the McCarthy phenomenon. He puts the blame on primitives like McCarthy, McCarran, Jenner and the men of the Establishment who were too cowardly to stand up to them. With all this one must agree. But something must surely be attributed to the way liberals of my generation acquiesced in a standard of guilt. If it could be shown that one ever had a pro-Communist, pro-Soviet or even a pro-socialist thought, it was accepted that he was disqualified for public service and the company of true statesmen. By this standard almost everyone of any intellectual viability had some disqualifying stain. Men were kept busy righteously disavowing what was true but shouldn't have mattered. They were right to blame the man who went around hitting people in the jaw. But they should have asked why so many equipped themselves with a glass jaw.

Finally Kennan sees the Congress, along with the generals, as the natural enemy of all sensible foreign policy. I am willing to concede him the generals, the cold war generation at least, and I agree that in these years the Congress was frequently a force for irresponsible anti-Communism. But of late, surely, the Senate has been a powerful force for caution and good sense. It was the experts and the generals who proposed or rationalized the more reckless or brutal actions in Vietnam. They destroyed Lyndon Johnson with recommendations that, one senses, he knew would be fatal. Over the last half-decade Fulbright, Morse, Gruening, Kennedy, Cooper, Church, Hatfield and McGovern have surely been more sensible than the senior officials of the Department of State. On the average I think we are safer if we keep foreign policy under the influence of men who must be reelected. It was surely this need, not any change in inner conviction or any advice

from the State Department, that sent Richard Nixon on his pilgrimages to Moscow and the People's Republic China.

All of this is to say that not even Kennan is infallible. But it remains a privilege, nonetheless, to argue with this most brilliant and civilized of students of the public scene.

REPRESENTATIVE EMANUEL CELLER

Mr. MATHIAS. Mr. President, the Congress is like every other human institution where men and women join together for a common purpose. As in all groups, each Member of Congress develops personal as well as professional relationships with other Members. In the Congress, for instance, there are always those to whom one turns in times of stress and confusion, in times of celebration as well as defeat. There are those to whom one turns to for leadership and strength. And, there are always those to whom one turns to as a friend. EMANUEL CELLER is all this to me as he is to so many Members of the other body. He is the dean of the House not just because he has survived longest, but because he has fought with gallantry and courage for longer than anyone else.

I have a deep, warm, affectionate feeling for Representative CELLER. I am sad to see him leave; however, I know that his conduct, his achievements and his standards will leave an impression for generations to come.

When I think of Chairman CELLER, I, of course, think of his great leadership and triumphs in the civil rights movement and his keen knowledge and wisdom of the law. But even more prominent in my memory are his sensitive human qualities and the way he humanized everything he dealt with. In this age of computers, regulations, and growing bureaucracy, Congressman CELLER reminded the Congress time and time again that we were dealing with human beings—with people. He got this message across in many different ways. I remember so well the numerous times he defused a charged issue with a story that sparked a laugh instead of a flame. The stories always have a point and are worth remembering.

History will record the work of EMANUEL CELLER as the leader and the legislator. I shall remember him as the man, subject to all the moods and emotions that please or plague us, but always a man who tried to understand his fellow men and to move the stones from their path.

ST. ANDREWS PRESBYTERIAN COLLEGE HONORS SENATOR ERVIN

Mr. ROBERT C. BYRD. Mr. President, on May 21, 1972, St. Andrews Presbyterian College of Laurinburg, N.C., awarded the honorary degree of Doctor of Laws to our colleague, Senator SAM J. ERVIN, JR. I ask unanimous consent that the citation accompanying the award be printed at this point in the body of the RECORD.

The PRESIDING OFFICER. There being no objection, the citation was ordered printed as follows:

SAMUEL JAMES ERVIN, JR.

The original purpose of the degree of *Legum Doctor* was to serve as a means of recognizing learning or attainment in the law. Today the degree is commonly awarded in recognition of distinguished service in the fields of government, politics, and public administration. The man St. Andrews chooses to honor with this degree today uniquely satisfies both the old and the new qualifications, as student of the law, jurist, Constitutional authority, legislator, and Senator.

Sam J. Ervin, Jr., was born in Morganton, Burke County, North Carolina, where he received his early education and where he began his career as a lawyer and judge. Graduated from the University of North Carolina in 1917, he served eighteen months in France during World War I. He was twice wounded. His decorations include the Fourragère, the Silver Star, and the Distinguished Service Cross.

In 1922 he earned a law degree from Harvard University. He was a representative from Burke County during several terms of the N.C. Assembly, and he served as U.S. Representative in the 79th Congress. He was, successively, judge of Burke County Court and of the N.C. Superior Court, and for six years was an associate justice of the N.C. Supreme Court. He has been in the U.S. Senate since 1954.

A statesman is judged by what he fights for and by what he fights against. Throughout his life Sam Ervin has been for the law and for its goals of order and justice and freedom, for he believes that law and the respect for law are the basis of order is a free society. He believes that the individual's respect for law must be balanced by the law's reverence for the individual's rights.

It is significant that Sam Ervin's first major speech in the Senate challenged the threats and intimidation of the then powerful Senator Joseph McCarthy. As a member of the select committee to study censure charges against Senator McCarthy, he helped to bring a period of national hysteria and near insanity to a close.

As a staunch defender of the Bill of Rights, he has warned against the network of intelligence-gathering systems being developed by government and private agencies, saying that "in these systems, where they contain the record of the individual's thoughts, beliefs, habits, attitudes, and personal activities, there may well rest a potential for political control and for intimidation that is alien to a society of free men." In the name of Constitutional civil liberties, he has fought to uphold freedom of speech, thought, and privacy. In the spirit of the First Amendment he opposed the prayer amendment proposed in 1966 by Senator Dirksen. Sam Ervin was quoted at the time as saying, "I am a possessor of a great affliction—a Scotch-Irish [Presbyterian] conscience, which will not permit me to follow after a great multitude to do what I conceive to be evil."

He has fought to preserve the Fourth amendment guarantee against government assaults on privacy. He has defended federal employees against an inquisitive bureaucracy, and he has opposed military snooping, "no-knock" legislation, preventive detention, government censorship of the press, and other police state techniques. It should not be forgot that as a member of the N.C. Assembly in the early twenties he helped to defeat a bill that would have possibly brought the Scopes "monkey trial" to North Carolina, and that in recent years he was responsible for Congressional action that finally extended full civil rights to American Indians.

His decisions and actions throughout his career have been based on the first ten amendments to the U.S. Constitution, the ground where true conservatives and true liberals meet.

President Hart, on behalf of the Faculty I present to you Sam J. Ervin, Jr.

THE DISTURBANCE AT THE DISTRICT OF COLUMBIA JAIL

Mr. PERCY. Mr. President, following is a letter that I have mailed today to Mr. Kenneth Hardy, Director, District of Columbia, Director of Corrections, that needs no further elaboration:

MR. KENNETH HARDY,
Director, District of Columbia Department of Corrections, George Washington University Hospital, Washington, D.C.

DEAR MR. HARDY: Your courage and determination in the face of great personal danger deserves the respect of every citizen in the District of Columbia.

I think that it needs to be said that the disturbance at the D.C. Jail yesterday was in no way a reflection of your leadership in the Department of Corrections. I believe the disturbance was caused by problems endemic to the entire correctional system in this country today: overcrowded courts, crowded and ancient jail facilities, and a group of men and women whose existence society prefers to forget.

Your longstanding endeavors to upgrade the correctional programs in D.C. and your leadership, not only in the past few days but also in the recent negotiations at Lorton, have my full support.

I wish you a speedy return to good health. The District of Columbia and, indeed, the entire field of corrections, need men of your stature and you may be assured of my continuing support.

Sincerely,

CHARLES H. PERCY,
U.S. Senator.

PERSONAL EXEMPTIONS FOR AMERICAN SAMOANS

Mr. INOUYE. Mr. President, on behalf of myself and Senator FONG I intend to submit an amendment to H.R. 1467. This amendment is designed to clarify a currently confused area with respect to the tax treatment of subsidiary corporations of domestic U.S. corporations which operate in possessions of the United States. The amendment is substantially the same as H.R. 11158, a bill introduced by Congressman MATSUNAGA, which was ordered reported by Ways and Means, with the amendments, on October 13, 1971.

Section 931 of the Internal Revenue Code allows subsidiaries of domestic corporations operating in possessions of the United States which meet certain technical requirements to exclude from their gross income, the income earned in such possessions. Section 1504(b)(4) provides that corporations entitled to the benefits of § 931 may not join with other corporations in filing a consolidated return. The IRS had ruled that a corporation which met the technical requirements of § 931 could not join in a consolidated return regardless of whether such corporation received a benefit from § 931. Thus, a subsidiary possession corporation which had suffered losses during a taxable year was barred from joining in a consolidated return with its parent even though such corporation received no benefit from § 931. The IRS position was motivated by

some corporations which moved in and out of a consolidated return yearly depending upon their operating results. While the Tax Court of the United States has ruled that the IRS position was erroneous there still exists substantial uncertainty in the area.

H.R. 11158 as reported, and the proposed amendment to H.R. 1467, correct this situation by providing that a corporation must elect to take advantage of the benefits of § 931. Such an election is effective for 10 taxable years. While such election is effective the corporation cannot join in a consolidated return. Provision is made by revocation of the election with the consent of the Secretary or his delegate.

H.R. 11158 and the amendment hereby proposed, make it clear that once a company has elected to take advantage of § 931 it is bound by that election for a period of 10 years, during which period it cannot join in a consolidated return. On the other hand, if an election is not made a company is free to join in a consolidated return. This provides the certainty needed in the area while at the same time eliminating the abuse at which the IRS was directing its enforcement activities.

The amendment would apply to all taxable years ending on or after December 31, 1971, and also provides that if a taxpayer so elects, the provisions of the amendment apply to all taxable years ending before December 31, 1971, to which the Internal Revenue Code of 1954 applies.

This amendment differs from H.R. 11158 in only one respect. H.R. 11158 provided that the election to take advantage of § 931 would be effective for a period of 10 years following the end of the taxable year in which the corporation first failed to meet the technical requirements of §931. The amendment hereby proposed would limit the effectiveness of the election to a specific period—10 taxable years.

Some corporations having operations in possessions are having difficulty understanding the precise impact of the following sentence, which is the third full paragraph on page 3, from H. Rept. 92–1300 on H.R. 11158:

> A corporation which acquires the assets of a domestic corporation whose election is still effective (where sec. 381(a) applies) is bound by an already outstanding election of the domestic corporation.

Some construe this sentence as barring the application of § 332 to liquidations of possessions subsidiaries by their parents. There is also concern that the sentence may prevent a parent from joining in a consolidated return if the assets of a company which has an election in effect under H.R. 11158 are acquired by the parent in a transaction to which § 381(a) applies.

I believe that the sentence from the Ways and Means Committee report quoted above is necessary to avoid tax abuse and is intended only to prevent transactions designed to avoid the mandatory election period provided in H.R. 11158 and this amendment through the acquisition of the assets of a domestic corporation which has elected to come under § 931 by another subsidiary corporation which has not so elected. Under our amendment, the corporation acquiring the assets of such a subsidiary corporation in a § 332 liquidation will not be barred solely by reason of such acquisition from joining in the filing of a consolidated return. I hope the amendment will be given favorable consideration, I ask unanimous consent to have the amendment printed in the RECORD.

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

Amendment intended to be proposed by Mr. INOUYE (for himself and Mr. FONG) to H.R. 1467, an act to amend the Internal Revenue Code of 1954 with respect to personal exemptions in the case of American Samoans.

At the end of the bill add the following new section:

"SEC. . (a) Section 931 of the Internal Revenue Code of 1954 (relating to income from sources within a possession of the United States) is amended—

"(1) by striking out in subsection (a) 'citizens of the United States or domestic corporations' and inserting in lieu thereof 'a citizen of the United States, and in the case of a domestic corporation which elects the application of this section'; and

"(2) by adding at the end thereof the following: '(j) ELECTION.—The election provided in subsection (a) shall be made in such manner as the Secretary or his delegate may by regulation prescribe. Such an election shall remain in effect until the expiration of the 9th taxable year following the taxable year for which such election was first effective and for which such taxpayer satisfied the conditions of paragraphs (1) and (2) of subsection (a). Such an election may be revoked prior to such time with the consent of the Secretary or his delegate.'

"(b) Section 1504(b)(4) of such Code (relating to definition of includible corporation) is amended to read as follows:

"'(4) Corporations with respect to which an election under section 931 (relating to income from sources within possessions of the United States) is in effect for the taxable year.'

"(c) Section 246(a) of such Code (relating to deduction not allowed for dividends from certain corporations) is amended to read as follows:

"'(a) DEDUCTION NOT ALLOWED FOR DIVIDENDS FROM CERTAIN CORPORATIONS.—The deductions allowed by sections 243, 244, and 245 shall not apply to any dividend—

"'(1) from a corporation organized under the China Trade Act, 1922 (see section 941);

"'(2) from a corporation which, for the taxable year of the corporation in which the distribution is made, or for the next preceding taxable year of the corporation, is a corporation exempt from tax under section 501 (relating to certain charitable, etc., organizations) or section 521 (relating to farmers' cooperative associations); or

"'(3) out of earnings and profits of a corporation attributable to amounts excluded from the gross income of such corporation under section 931.'

"(d)(1) The amendments made by subsections (a) and (b) shall apply with respect to taxable years ending on or after December 31, 1971. Such amendments shall, at the election of the taxpayer made under this paragraph within one year after the date of the enactment of this Act, also apply to all taxable years ending before December 31, 1971, to which the Internal Revenue Code of 1954 applies.

"(2) The amendment made by subsection (c) shall apply with respect to distributions made after December 31, 1971."

JOHN SHERMAN COOPER—A GREAT SENATOR

Mr. RIBICOFF. Mr. President, it is with regret that I note that JOHN SHERMAN COOPER is retiring from the Senate. The senior Senator from Kentucky is a great Senator, a compassionate and brilliant human being, and a cherished friend of mine. The Senate is a better place because of his presence. The Senate will miss him.

Senator COOPER is all the things Senators should aspire to be. He is intelligent, thoughtful, perceptive, and eloquent. He is proud of his Republican Party and its past and he has labored long and hard to make it a potent force in American political life. But Senator COOPER is also an independent citizen of this Nation and he has never hesitated to assert that independence and freedom of thought and exercised his vote as he saw fit, even when that vote was contrary to his party's position. And the Republican Party is a stronger, more dynamic party because of Senator COOPER.

As his colleagues spoke about Senator COOPER and his decision to retire these past few days, I was deeply impressed by the warmth and respect Senators feel for him. I was particularly struck by the words of Senator SYMINGTON, who has known Senator COOPER for 50 years.

Senator SYMINGTON said it best when he observed that he found it extraordinary, but true nonetheless, that in the half century that they had been friends he had never heard criticism of JOHN SHERMAN COOPER.

My friendship with Senator COOPER does not go back that far. But in reading Senator SYMINGTON's remarks, I too recalled that in the 20 years that I have known JOHN SHERMAN COOPER I have not heard criticism of him either. This is an all the more extraordinary consideration when we realize that Senator COOPER has never withdrawn in the face of controversy. On the contrary, he has spoken his mind and voted his conscience. It is a rare individual, indeed, who can command the respect and admiration and friendship of virtually all he meets in a lifetime of public service and politics. Part of the explanation for this achievement may stem from the fact that JOHN SHERMAN COOPER is, and always has been, a good man, a man of deeply ingrained moral fiber and principle. When the decency in a person is that strongly felt, others—friends and foes—sense it and, while they may disagree, they know better than to question motives or impugn character. Speaking to this aspect of the man, the Louisville Courier Journal once noted that:

> The goodness that looks from COOPER'S face is a passport among humans everywhere.

There are too few men and women of this stature in public life today. The Nation needs its JOHN SHERMAN COOPERS. But Senator COOPER has every right to retire from the Senate now if he wishes.

His service in this body has been productive and earns for him a place of honor in the history of the Senate.

I join with my colleagues in extending best wishes to Senator JOHN SHERMAN COOPER in retirement. In doing this, though, I am confident he will serve his country in new, important roles—and very soon. Any field he enters, any pursuit he engages in, I know, will be greatly enhanced by him.

NAME DESIGNATION OF SENATE OFFICE BUILDINGS

Mr. GAMBRELL. Mr. President, yesterday the Senate passed Senate Resolution 296, legislation to designate the Old Senate Office Building and the New Senate Office Building as the Richard Brevard Russell Office Building and the Everett McKinley Dirksen Office Building respectively. In my opinion, this designation of these two buildings is a fitting tribute to the memory of two most outstanding Senators.

Richard Brevard Russell dedicated 38 years of his life to the U.S. Senate. Elected in 1932, he began his service in the Senate with hard work and unequaled dedication. Through his mastery of parliamentary procedure and his constitutional expertise, Dick Russell gained the power and prestige that was to be his. From his early efforts obtaining school lunches for all children to his later years of service as counselor to several Presidents, Richard Russell's devotion to his State and his country was never questioned. Dick Russell's high principles, integrity, and motivation may be matched by other great men, but his dedication to the U.S. Senate must be unequaled.

This designation of the office building in which the late Senator Russell maintained an office for nearly four decades is, I think, a fitting tribute. I commend the distinguished majority whip, Mr. BYRD, for offering this resolution. I appreciate being added as a cosponsor, and I am pleased at its adoption by the Senate last evening.

CUMBERLAND ISLAND NATIONAL SEASHORE

Mr. GAMBRELL. Mr. President, Tuesday night the House passed H.R. 9859, a bill to establish the Cumberland Island National Seashore in the State of Georgia. There are only minor differences in this bill and S. 2411 which Senator TALMADGE and I introduced and which passed the Senate July 24, 1972. Hopefully, these differences can be resolved in short order. This action on the Cumberland bill represents considerable work on the part of Congressman WILLIAM STUCKEY of Georgia's 8th District who has spent a great deal of time in an effort to construct effective and reasonable legislation.

Cumberland is a 24,000 acre island off the southern coast of Georgia, the largest of Georgia's Golden Isles. It is the last large island along the Atlantic coast which remains almost entirely in its natural state. Along with its 18 miles of what the National Park Service has concluded to be one of the best undeveloped beaches along our coast, Cumberland contains dense forest, fresh water lakes and abundant wildlife, as well as being of great archeological and historical significance. The Park Service recognized, as early as 1955, that Cumberland Island would be a significant addition to the Nation's public land holdings and through the generosity of the Mellon Foundation, now owns over 13,000 acres in addition to that owned by the State and Federal Government.

During hearings by the Subcommittee on National Parks and Recreation on S. 2411 last May, I expressed the opinion that the acquisition of Cumberland would be a bargain to the American taxpayer. It is my hope that Georgians and all Americans will come to know the beauty, the tranquility, the unspoiled loveliness that is Cumberland, and I am pleased to have been a part of this effort to preserve the island. I commend Mr. STUCKEY for his energetic efforts on behalf of this legislation. I look forward to a speedy resolution of the differences between the Senate and House versions of this legislation and enactment by this Congress.

SUBCOMMITTEE APPROVES SPEEDY TRIAL LEGISLATION

Mr. ERVIN. Mr. President, I am pleased to announce that S. 895, a bill to give effect to the 6th amendment's guarantee of a speedy trial, has been favorably reported to the Judiciary Committee from the Subcommittee on Constitutional Rights. This represents over 2 years of work by the subcommittee and its staff, during which the bill, originally introduced in the 90th Congress, was subjected to careful analysis by over 200 prominent members of the bench and bar, reviewed in hearings held by the subcommittee in 1971, and completely redrafted at least five times.

The consequences of delay on the effectiveness of the criminal justice process are well known. Where there is protracted delay in a criminal case the zeal of complainants cool, memories fade, and witnesses fail to appear. When this happens, the prosecution is forced to plea bargain and to reduce criminal charges. Delay undermines the prosecution and society pays the price in less justice and less respect for the law. The phenomena has been well documented. A study in a busy Illinois State court indicates that the conviction rate in cases promptly disposed is twice that of cases in which there is substantial delay. On the other hand, the benefit to the prosecution from a firmly enforced speedy trial rule are also well established. Mr. Whitney North Seymour, Jr., U.S. attorney for the southern district of New York, has detailed the increase in convictions, the increase in guilty pleas, the better investigative work, the improvements in the performance of his office—in short, the better quality justice that has resulted from a self-imposed "60-day ready-rule" in the U.S. attorney's office pursuant to the second circuit's new speedy trial requirements.

Another unfortunate consequence of slow justice is that when there is substantial delay in trials—in excess of 8 to 9 weeks—the threat of subsequent criminal activity by defendants on release is substantially increased. Unfortunately this administration has tried to deal with this problem by advocating preventive detention. But that expedient has proved not only to be a gross invasion of constitutional liberty but also a complete and utter failure, as I have previously demonstrated in speeches before the Senate.

The purpose of S. 895 is to confront the problem of delay and the related issue of pretrial crime, not avoid it and suspend the Constitution—the approach followed by the administration in its preventive detention proposal. Prof. Daniel Freed of Yale Law School, in testimony before our subcommittee summarized the philosophy behind S. 895 quite eloquently. He described the bill as comprehensive legislation which rejects arbitrary rules, abridged rights and instant dollars as solutions to the complex problem of delay in the Federal trial courts.

The bill is designed to reform the backlogged Federal criminal process where, as of 1971, two-thirds of the criminal cases were pending more than 3 months prior to disposition. This goal is to be accomplished by establishing reasonable time limits of 60 days within which trials must take place, at the pain of dismissal. However, to give the criminal justice system time to reform itself, the 60-day time limits are delayed until 3 years after enactment. Further, a mechanism has been devised to provide resources earmarked for the achievement of this goal. The bill provides for a planning process in each Federal district court which will result in a nationwide plan itemizing the necessary additional resources which will be transmitted to the appropriate committees of Congress. Finally, the bill authorizes the establishment of ten pilot pretrial services agencies to help provide supervision of those released prior to trial as required by the Bail Reform Act of 1966 and by the Constitution.

Since S. 895 was introduced this session, 52 Senators have joined me in sponsoring the bill. When the bill was first introduced I made it quite clear that the bill would be subjected to the type of analysis and change which it has undergone during the past 2 years. The subcommittee has made important refinements in the language of the bill which reflect the opinions of experts outside the Senate, and which accommodate many of the suggestions which the Justice Department representatives made when they appeared before the subcommittee in September of last year.

Despite the numerous technical improvements in S. 895, the bill is still predicated on the conviction that substantial reform of unconscionable delays in the judicial process can only be accomplished by Federal legislation—and that the best way to achieve speedy trial in criminal cases is to provide for dismissal of trials which do not occur within a time certain for a particular defendant.

After 2 years of study the subcommittee has reached the conclusion that not only is it both necessary and feasible to deal with the problem of court delay by Federal legislation but that we believe that S. 895 as improved, is the appropriate means for achieving that goal. As William Rehnquist, then Assistant Attorney General, testified before our subcommittee:

For it may well be, Mr. Chairman, that the whole system of Federal criminal justice needs to be shaken by the scruff of its neck, and brought up short with a relatively preemptory instruction to prosecutors, defense counsel, and judges alike that criminal cases must be tried within a particular period of time. That is certainly the import of the mandatory dismissal provision of your bill.

Although I am pleased to announce that the subcommittee has reported the bill, it is with considerable regret that I must also announce that the Justice Department has at the same time changed its position and withdrawn its support for speedy trial legislation. Since the bill was first introduced in February 1971 support for effective steps to achieve speedy trial has been expressed not only by a majority of the Senate and many Congressmen, but by the Chief Justice, the Judicial Conference, the President, Second Circuit Court of Appeals, the New York State judicial system, and the U.S. attorney for the Southern District of New York, Whitney North Seymour, Jr., among many others.

After an unusual delay, the Justice Department finally appeared before the Constitutional Rights Subcommittee in September 1971 and, under the leadership of Assistant Attorney General Rehnquist, declared its support in principle for S. 895 and promised active cooperation with the subcommittee in resolving problems presented by the bill. That cooperation was forthcoming as promised. A subsequent letter from Mr. Rehnquist outlined very carefully and objectively a series of defects in the original legislation. The work of the subcommittee over the last year has in large part been directed toward improving the bill along the lines pointed out by Mr. Rehnquist. Quite clearly, the bill would not be as polished had we not had the help from the Department that Mr. Rehnquist promised and delivered. While in September of 1971 the Department might have disagreed with many provisions of S. 895, there was not one whisper in the Department's testimony or subsequent correspondence that Congress should not be legislating in this area.

Unfortunately, it appears that with Mr. Rehnquist's elevation to the Supreme Court, the Department's commitment to speedy trial has been promoted out of existence.

A recent letter to me from the Deputy Attorney General makes it clear that the Department has cooled in the support voiced last year. The letter only thinly veils what probably is a reversal of its position on speedy trial legislation. The Justice Department states its new position quite succinctly:

We strongly believe that legislatively imposed time limits not only will defeat the ends of justice but avoid the real issue of reform in the Federal criminal justice system.

Its attitude of compromise, cooperation and support, acknowledging the propriety of Federal legislation setting time limits, has been replaced with one of unequivocal opposition. But, curiously, the Department has no problems with time limits imposed by others, such as the time limits required by the U.S. Court of Appeals for the second circuit. The Department also opposes the planning mechanism contained in S. 895 because the judiciary has just adopted a similar system, rule 50b of the Federal Rules of Criminal Procedure. According to the Department, Congress should not legislate until experience can be gained from the new rule. This should sound very familiar to the members of this body. For the Department is once again arguing—

Trust us. Do not exercise your constitutional authority and responsibility to legislate in this area. This is another matter which should be left to the wise discretion of the Executive and Judicial branches.

I could not disagree more. This is not a problem whose solution should be left to the initiative of the other branches. Generations of deference to the executive and judicial branches has led to the present quagmire in the Federal courts. Indeed, I believe that to a very significant extent what progress we have seen during the past year—the Second Circuit Rule, and rule 50b, can be traced to the work of the Constitutional Rights Subcommittee in developing S. 895 and to other congressional activity on speedy trial. Perhaps the judiciary has finally decided to do something about court delay because it fears that if it fails to act, Congress will impose upon it mandatory legislation such as S. 895. Whitney North Seymour, Jr., has spoken eloquently on the problem of speedy trial and the success of the second circuit rule. He pointed out in a recent speech that the key to its success has been the wholehearted cooperation of the investigative agencies, prosecutors, judges, and other personnel involved. Although I agree that Congress cannot legislate that sort of cooperation and initiative, I believe that the wholehearted cooperation that Mr. Seymour speaks about in the second circuit may be due, in part, to the threat of tough Federal legislation such as S. 895.

S. 895 has had a positive effect even though it has not yet been enacted. If enacted, the legislation would assure that the gains made in the past few years are not temporary, but become a permanent part of the Federal criminal justice system. The sanction in S. 895 is that Federal judges and prosecutors know that their failure to solve the problem of court delay would lead to dismissals of criminal indictments, and the public will not tolerate that. The Justice Department and the judiciary would be held accountable and where there is accountability there will be action.

If the Department and the Federal judges cannot meet the provisions of this bill, it may be because Congress has not appropriated enough money for the Federal criminal justice system, for new prosecutors, judges, court personnel, et cetera. And if that is the case, Congress should and would bear the responsibility for the failure of the Speedy Trial Act, S. 895. Congress cannot avoid the fact that it is accountable ultimately for the crisis in the Federal criminal justice system once the courts, the Justice Department and the defense bar have met their own responsibility.

Over the past 2 years, I have studied very carefully most of the important schemes now being used in the Federal and State court systems for achieving speedy trial—the Second Circuit Rule, rule 50b of the Federal Rules, the New York State Rule and the various State statutes. I am convinced that S. 895 contains the best features of all these provisions and would strike the proper balance between society's interest in speedy trial and the defendant's and Government's right to a fair trial. It certainly is the only scheme which I have seen which could commit the Federal criminal justice system to the achievement of speedy trial and provide the promise of the resources to achieve that goal.

It is quite late in the session and the likelihood of action by the full committee is slim but I hope to get this measure to the floor early next session.

I urge my colleagues to study the amended bill and the committee report which is presently being prepared by the subcommittee staff. Therefore, I ask unanimous consent that the bill as reported from the subcommittee be printed at this point in the RECORD.

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

S. 895

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 "Speedy Trial Act of 1972".

TITLE I—SPEEDY TRIALS

SEC. 101. Title 18, United States Code, is amended by adding immediately after chapter 207 a new chapter 208, as follows:

"Chapter 208.—SPEEDY TRIALS

"Sec.

"3161. Time limits and exclusions.
"3162. Sanctions.
"3163. Effective dates.
"3164. Interim limits.
"3165. District plans.
"3166. Definitions.
"3167. Sixth amendment rights.

"§ 3161. Time limits and exclusions

"(a) In any case involving a defendant charged with an offense, the appropriate judicial officer, at the earliest practicable time, shall, after consultation with the counsel for the defendant and the attorney for the Government, set a day certain for trial.

"(b) The trial of a defendant charged with an offense shall be commenced as follows:

"(1) (A) Within sixty days from the date the defendant is arrested or served with a summons, except that if the prosecution is initiated by filing an information or indictment prior to arrest or summons (and made public) then within sixty days from the date of such filing;

"(B) Notwithstanding the provisions of subclause (A) of this clause, for the first twelve-calendar-month period following the effective date of this chapter as set forth in

section 3163 of this chapter, the time limits imposed by such subclause (A) shall be one hundred and eighty days, and for the second such twelve-month period, such time limits shall be one hundred and twenty days.

"(2) If the indictment or information is dismissed upon motion of the defendant for reasons other than those provided in section 3162(a) and thereafter the defendant is charged with the same offense or an offense based on the same conduct or arising from the same criminal episode, within sixty days from the date the defendant is arrested or served with a summons with respect to such charge, except that if the prosecution is initiated by filing an information or indictment prior to arrest or summons (and made public), then within sixty days from the date of such filing; or

"(3) If the defendant is to be tried again following a declaration by the trial judge of a mistrial or following an order of such judge for a new trial, within sixty days from the date the action occasioning the retrial becomes final. If the defendant is to be tried again following an appeal or a collateral attack, within sixty days from the date the action occasioning the retrial become final, except that the court retrying the case may extend the period for retrial not to exceed one hundred and eighty days from the date the action occasioning the retrial becomes final if unavailability of witnesses or other factors resulting from passage of time shall make trial within sixty days impractical.

"(c) The following periods of delay shall be excluded in computing the time within which the trial of any such offense must commence:

"(1)(A) Any period of delay resulting from other proceedings concerning the defendant, including but not limited to—

"(i) delay resulting from any examination and hearing on competency;

"(ii) delay resulting from an examination of the defendant pursuant to section 2902 of title 28, United States Code;

"(iii) delay resulting from trials with respect to other charges against the defendant;

"(iv) delay resulting from interlocutory appeals; and

"(v) delay resulting from hearings on pretrial motions.

"(B) With respect to any delay referred to in clause (1)(A) of this subsection, only such court days as are actually consumed in connection with any pretrial motion or other hearing, examination, presentation of an interlocutory appeal, or a trial with respect to another charge shall be excluded, and in no event shall any period of delay which occurs while any of the aforementioned matters under clause (1)(A) are under advisement or are awaiting decision be so excluded.

"(2) Any period of delay during which prosecution is deferred by the attorney for the Government pursuant to written agreement with the defendant, with the approval of the court, for the purpose of allowing the defendant to demonstrate his good conduct.

"(3)(A) Any period of delay resulting from the absence or unavailability of the defendant.

"(B) For purposes of subclause (A) of this clause, a defendant shall be considered absent when his whereabouts are unknown and, in addition, he is attempting to avoid apprehension or prosecution or his whereabouts cannot be determined by due diligence. For purposes of such subclause, a defendant shall be considered unavailable whenever his whereabouts are known but his presence for trial cannot be obtained by due diligence or he resists being returned for trial.

"(4) Any period of delay resulting from the fact that the defendant is incompetent to stand trial.

"(5) Any period of delay resulting from the treatment of the defendant pursuant to section 2902 of title 28, United States Code.

"(6) If the information or indictment is dismissed upon motion of the attorney for the Government and thereafter a charge is filed against the defendant for the same offense or any offense required to be joined with that offense, any period of delay from the date the charge was dismissed to the date the time limitation would commence to run as to the subsequent charge had there been no previous charge.

"(7) A reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run and no motion for severance has been granted.

"(8) Any period of delay resulting from a continuance granted by any judge on his own motion or at the request of the defendant or his counsel or at the request of the attorney for the Government, if the judge granted such continuance on the basis of his findings that the ends of justice and the best interest of the public as well as the defendant would be served thereby. No such period of delay resulting from a continuance granted by the court in accordance with this paragraph shall be excludable under this subsection unless the court sets forth, in the record of the case, either orally or in writing, its reasons for finding that the end of justice and the best interest of the public and the defendant were served by the granting of such continuance.

"(d) If trial did not commence within the time limitation specified in section 3161 because the defendant had entered a plea of guilty or nolo contendere subsequently withdrawn to any or all charges in an indictment or information, the defendant shall be deemed arraigned on the information or indictment with respect to all charges therein contained within the meaning of section 3161, on the day the order permitting withdrawal of the plea of guilty becomes final.

"§ 3162. Sanctions

"(a) If a defendant is not brought to trial as required by section 3161, the information or indictment shall be dismissed on motion of the defendant. The defendant shall have the burden of proof of supporting such motion except that the Government shall have the burden of proof of establishing any exclusion of time under subparagraph 3161 (c)(3). Such dismissal shall forever bar prosecution for the offense charged, any offense based on the same conduct or arising from the same criminal episode, and any other offense required to be joined with the offense. Failure of the defendant to move for dismissal prior to trial or entry of a plea of guilty or nolo contendere shall constitute a waiver of the right to dismissal under this section.

"(b) In any case in which counsel for the defendant or the attorney for the government (1) knowingly allows a date certain for trial to be set without disclosing the fact that a necessary witness would be unavailable for trial on such date; (2) files a motion solely for the purpose of delay which he knows is totally frivolous and without merit; (3) makes a statement for the purpose of obtaining a continuance which he knows to be false and which is material to the granting of a continuance; or (4) otherwise willfully fails to proceed to trial on the date set for trial without justification consistent with section 3161 of this chapter, the court may punish any counsel or attorney, as the case may be, as follows:

"(A) in the case of an appointed defense counsel, by reducing the amount of compensation that otherwise would have been paid to such counsel pursuant to section 3006A of this title in an amount not to exceed 25 per centum thereof;

"(B) in the case of a counsel retained in connection with the defense of a defendant, by imposing on such counsel a fine of not to exceed 25 per centum of the compensation to which he is entitled in connection with his defense of such defendant;

"(C) by imposing on any attorney for the Government a fine of not to exceed $250;

"(D) by denying any such counsel or attorney for the Government the right to practice before the court considering such case for a period of not to exceed ninety days; or

"(E) by filing a report with an appropriate disciplinary committee.

The authority to punish provided for by this subsection shall be in addition to any other authority or power available to such court.

"(c) The court shall follow Rule 42 of the Federal Rules of Criminal Procedure in punishing any counsel or attorney for the Government pursuant to this section.

"§ 3163. Effective dates

"The time limitation in section 3161—

"(1) shall apply to all offenses charged in informations or indictments filed on or after the date of expiration of the twelve-calendar-month period following the date of the enactment of the Speedy Trial Act of 1972; and

"(2) shall commence to run on such date of expiration as to all offenses charged in informations or indictments filed prior to that date.

"§ 3164. Interim limits

"(a) During an interim period commencing ninety days following the date of the enactment of the Speedy Trial Act of 1972 and ending on the date immediately preceding the date on which the time limits provided for under section 3161(b)(1)(A) of this chapter become effective, each district (and the Superior Court for the District of Columbia) shall place into operation an interim plan to assure priority in the trial or other disposition of cases involving—

"(1) detained persons who are being held in detention solely because they are awaiting trial, and

"(2) released persons who are awaiting trial and have been designated by the attorney for the Government as being of high risk.

"(b) During the period such plan is in effect, the trial of any person who falls within subparagraph (a)(1) or (a)(2) of this section shall commence no later than ninety days following the beginning of such continuous detention or designation of high risk by the attorney for the Government. The trial of any person so detained or designated as being of high risk on or before the first day of the interim period shall commence no later than ninety days following the first day of the interim period.

"(c) Failure to commence trial of a detainee as specified in subsection (b), through no fault of the accused or his counsel, or failure to commence trial of a designated releasee as specified in subsection (b), through no fault of the attorney for the Government, shall result in the automatic review by the court of the conditions of release. No detainee, as defined in subsection (a), shall be held in custody pending trial after the expiration of such ninety-day period required for the commencement of his trial. A designated releasee, as defined in subsection (a), who is found by the court to have intentionally delayed the trial of his case shall be subject to an order of the court modifying his nonfinancial conditions of release under this title to insure that he shall appear at trial as required.

"§ 3165. District plans

"(a)(1) Prior to the expiration of the twelve calendar month period following the date of the enactment of the Speedy Trial Act of 1972, each United States district court, with the approval of the judicial council of the circuit, shall prepare and submit to the Administrative Office of the United States Courts a plan for the trial or other disposition of offenses under this chapter (within

the jurisdiction of such court) during the period that the one hundred and twenty day trial limitation required by section 3161(b)(1)(B) of this chapter is in effect. Prior to the expiration of the twenty-four calendar month period following such date of enactment, each such court, with the approval of such council, shall prepare and submit to the Administrative Office of the United States Courts a plan for the trial or other disposition of offenses under this chapter (within the jurisdiction of such court) on and after the expiration of the thirty-six calendar month period following the date of the enactment of the Speedy Trial Act of 1972.

"(2) Each such plan shall be formulated after consultation with, and after considering the recommendations of, the Federal Judicial Center, the United States attorney, and attorneys experienced in the defense of criminal cases in the district, including the Federal Public Defender, if any. Such plan shall include all such recommendations and shall further include a description of the procedural techniques, innovations, systems, and other methods by which the district court has expedited or intends to expedite the trial or other disposition of criminal cases. The plan shall make special provision for the speedy trial of cases at places of holding court where there is no judge continuously resident. The district court may modify such plan at any time with the approval of the judicial council of the circuit and shall modify the plan when directed by such council. The district court shall notify the Administrative Office of the United States Courts of any modification of such plan.

"(b)(1) Prior to the expiration of the twelve calendar month period following the date of the enactment of the Speedy Trial Act of 1972, the chief judge for the Superior Court of the District of Columbia, with the approval of the Joint Committee on Judicial Administration in the District of Columbia, shall prepare and submit to the Administrative Office of the United States Courts a plan for the trial or other disposition of offenses under this chapter within the jurisdiction of the Superior Court during the period that the one hundred and twenty day trial limitation required by section 3161(b)(1)(B) of this chapter is in effect. Prior to the expiration of the twenty-four calendar month period following such date of enactment, the chief judge of such court, with the approval of such Joint Committee, shall prepare and submit to the Administrative Office of the United States Courts a plan for the trial or other disposition of offense under this chapter, within the jurisdiction of such court, on and after the expiration of the thirty-six calendar month period following the date of the enactment of the Speedy Trial Act of 1972.

"(2) Such plan shall be formulated after consultation with, and after considering the recommendations of, the Joint Committee, the Corporation Counsel, United States Attorney, the Public Defender Service and attorneys experienced in the defense of criminal cases in the District of Columbia. Such plan shall include all such recommendations and shall further include a description of the procedural techniques, innovations, systems, and other methods by which the district court has expedited or intends to expedite the trial or other disposition of criminal cases. The chief judge may modify such plan at any time with the approval of the Joint Committee and shall modify the plan when directed by such Committee. The chief judge shall notify the Administrative Office of the United States Courts of any modification of such plan.

"(c) Within fifteen calendar months after the date of the enactment of the Speedy Trial Act of 1972, the Administrative Office of the United States Courts, with the approval of the Judicial Conference, shall submit a report to the Congress detailing the plans submitted to it pursuant to the first sentence of section 3165(a)(1) and 3165(b)(1) of this chapter, including any legislative proposals and appropriations necessary to achieve compliance with the time limitations provided in section 3161. Within twenty-seven calendar months following such date of enactment, the Administrative Office of the United States Courts, with such approval, shall submit such a report to the Congress covering plans submitted to such Office pursuant to the second sentence of section 3165(a)(1) and 3165(b)(1) of this chapter.

"(d) For the purpose of carrying out the provisions of this section, there is hereby authorized to be appropriated such sums as Congress may find necessary.

"§ 3166. Definitions

"As used in this chapter—

"(1) the terms 'judge' or 'judicial officer' mean, unless otherwise indicated, any United States magistrate, Federal district judge, or judge of the Superior Court for the District of Columbia, and

"(2) the term 'offense' means any criminal offense, other than a petty offense (as defined in section 1(3) of this title) or an offense triable by court-martial, military commission, provost court, or other military tribunal, which is in violation of any Act of Congress and is triable by any court established by Act of Congress.

"§ 3167. Sixth amendment rights

"No provision of this title shall be interpreted as a bar to any claim of denial of speedy trial as required by amendment VI of the Constitution".

TITLE II—PRETRIAL SERVICES AGENCIES

SEC. 201. Chapter 207 of title 18, United States Code, is amended by striking section 3152 and adding the following new sections:

"§ 3152. Establishment of pretrial services agencies

"The Director of the Administrative Office of the United States Courts shall establish, on a demonstration basis, in each of ten judicial districts (other than the District of Columbia) a pretrial services agency authorized to maintain effective supervision and control over, and to provide supportive services to, defendants released under this chapter. The districts in which such agencies are to be established shall be designated by the Chief Justice of the United States after consultation with the Attorney General, on the basis of such considerations as the number of criminal cases prosecuted annually in the district, the percentage of defendants in the district presently detained prior to trial, the incidence of crime charged against persons released pending trial under this chapter, and the availability of community resources to implement the conditions of release which may be imposed under this chapter.

"§ 3153. Organization of pretrial services agencies

"(a) The powers of each pretrial services agency shall be vested in a Board of Trustees which shall consist of seven members. The Board of Trustees shall establish general policy for the agency.

"(b) Members of the Board of Trustees shall be appointed by the chief judge of the United States district court for the district in which such agency is established as follows:

"(1) one member, who shall be a United States district court judge;

"(2) one member, who shall be the United States attorney;

"(3) two members, who shall be members of the local bar active in the defense of criminal cases, and one of whom shall be a Federal public defender, if any;

"(4) one member, who shall be the chief probation officer; and

"(5) two members, who shall be representatives of community organizations.

"(c) The term of office of a member of the Board of Trustees appointed pursuant to clause (3) (other than a public defender) and (5) of subsection (b) shall be three years. A vacancy in the Board shall be filled in the same manner as the original appointment. Any member appointed pursuant to clause (3) (other than a public defender) or (5) of subsection (b) to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term.

"(d) After reviewing the recommendations of the judges of the district court to be served by the agency, the Board of Trustees shall appoint a chief pretrial service officer who shall be a member of the bar of that court. Such officer shall receive compensation at a rate to be established by the chief judge of the court, but not in excess of the rate prescribed for GS–16 by section 5332 of title 5, United States Code. The chief pretrial service officer, subject to the general policy established by the Board of Trustees shall be responsible for the direction and supervision of the agency and may appoint and fix the compensation of such other personnel as may be necessary to staff such agency, and may appoint such experts and consultants as may be necessary, pursuant to section 3109 of title 5, United States Code. The compensation of such personnel so appointed shall be comparable to levels of compensation established in chapter 53 of title 5, United States Code.

"§ 3154. Functions and powers of pretrial services agencies

"Each pretrial services agency shall perform such of the following functions as the district court to be served may specify:

"(1) collect, verify, and report promptly to the judicial officer information pertaining to the pretrial release of each person charged with an offense, and recommend appropriate release conditions for each such person;

"(2) review and modify the reports and recommendations specified in paragraph (1) for persons seeking release pursuant to section 3146(e) or section 3147;

"(3) supervise persons released into its custody under this chapter;

"(4) with the approval of the Administrative Office of the United States Courts, operate or contract for the operation of appropriate facilities for the custody or care of persons released under this chapter including, but not limited to, residential halfway houses, addict and alcoholic treatment centers, and counseling services;

"(5) inform the court of all apparent violations of pretrial release conditions or arrests of persons released to its custody or under its supervision and recommend appropriate modifications of release conditions;

"(6) serve as coordinator for other local agencies which serve or are eligible to serve as custodians under this chapter and advise the court as to the eligibility, availability, and capacity of such agencies;

"(7) assist persons released under this chapter in securing any necessary employment, medical, legal, or social services;

"(8) prepare, in cooperation with the United States marshal and the United States attorney such pretrial detention reports as are required by rule 46(g) of the Federal Rules of Criminal Procedure; and

"(9) perform such other functions as the court may, from time to time, assign.

"§ 3155. Report to Congress

"(a) The Director of the Administrative Office of the United States Courts shall annually report to Congress on the accomplishments of the pretrial services agencies, with particular attention to (1) their effectiveness in reducing crime committed by persons released under this chapter; (2) their effective-

ness in reducing the volume and cost of unnecessary pretrial detention; and (3) their effectiveness in improving the operation of this chapter. The Director shall include in his fourth annual report recommendations for any necessary modification of this chapter or expansion to other districts. Such report shall also compare the accomplishments of the pretrial services agencies with monetary bail or any other program generally used in State and Federal courts to guarantee presence at trial.

"(b) On or before the expiration of the seventy-two-month period following the date of the enactment of this Act, the Director of the Administrative Office of the United States Courts shall file a comprehensive report with the Congress concerning the administration and operation of the Speedy Trial Act of 1972, including his views and recommendations with respect thereto.

"§ 3156. Definitions

"As used in sections 3146 through 3155 of this chapter—

"(1) the term 'judicial officer's means, unless otherwise indicated, any person or court authorized pursuant to section 3041 of this title, or the Federal Rules of Criminal Procedure, to bail or otherwise release a person before trial or sentencing or pending appeal in a court of the United States, and any judge of the Superior Court for the District of Columbia, and

"(2) the term 'offense' means any criminal offense, other than an offense triable by court-martial, military commission, provost court, or other military tribunal, which is in violation of an Act of Congress and is triable by any court established by Act of Congress."

SEC. 302. The analysis of chapter 207 of title 18, United States Code, is amended by striking out the last item and inserting in lieu thereof the following:

"3152. Establishment of Pretrial Services Agencies.
"3153. Organization of Pretrial Services Agencies.
"3154. Functions and Powers of Pretrial Services Agencies.
"3155. Report to Congress.
"3156. Definitions."

SEC. 303. For the purpose of carrying out the provisions of this title, there is hereby authorized to be appropriated for the fiscal year ending June 30, 1973, the sum of $10,000,000, and for each fiscal year thereafter, such sum as Congress may appropriate.

SEC. 304. Section 604 of title 28, United States Code, is amended by striking paragraphs (9) through (12) of subsection (B) and substituting in lieu thereof:

"(9) Establish pretrial services agencies pursuant to section 3152 of title 18, United States Code;

"(10) Purchase, exchange, transfer, distribute, and assign the custody of lawbooks, equipment, and supplies needed for the maintenance and operation of the courts, the Federal Judicial Center, the offices of the United States magistrates and commissioners, and the offices of pretrial services agencies;

"(11) Audit vouchers and accounts of the courts, the Federal Judicial Center, the pretrial service agencies, and their clerical and administrative personnel;

"(12) Provide accommodations for the courts, the Federal Judicial Center, the pretrial services agencies and their clerical and administrative personnel;

"(13) Perform such other duties as may be assigned to him by the Supreme Court or the Judicial Conference of the United States."

SURFACE MINING RECLAMATION ACT OF 1972

Mr. JACKSON. Mr. President, on October 6 I introduced an amendment in the nature of a substitute (amendment No. 1713) to S. 630, the Surface Mining Reclamation Act of 1972. I noted at that time that I would have a section-by-section analysis of the amendment printed in the CONGRESSIONAL RECORD prior to the Senate action on surface mining legislation.

Mr. President, the section-by-section analysis has been prepared and I ask unanimous consent that it be printed at this point in the RECORD for the information of Members of the Senate.

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

SECTION-BY-SECTION ANALYSIS

TITLE I—STATEMENT OF FINDINGS AND PURPOSE

Section 101

This section declares, as Congressional findings that the surface mining of coal and other minerals is a significant activity which contributes to our Nation's economic, social, and material well-being. It serves as a significant source of employment and supplies crucial fuels to meet potentially critical energy shortages, materials for critical metallurgical process, materials for transportation and communication systems, and other necessary public requirements. At the same time surface mining has numerous adverse economic, environmental, and social effects. It destroys or diminishes the utility of land for commercial, industrial, residential, recreational, agricultural, and forestry purposes. It contributes to floods, pollutes the water, destroys fish and wildlife habitat, impairs natural beauty, damages property, degrades the quality of life in local communities, and counteracts governmental programs to conserve soil, water, and other natural resources.

This section concludes, as a Congressional Finding, that effective regulation and in some areas prohibition of surface mining is necessary and appropriate to preserve the benefits, but eliminate the adverse effects of surface mining. A further finding is that such regulation is initially the responsibility of the States. As discussed in the analysis of section 204, the States are better equipped to handle the regulation of surface mining because of their knowledge of and sensitivity to the great diversity of terrain, climate, biologic, chemical and other physical conditions of, and the needs and aspirations of the local citizens and governments in areas where surface mining occurs. Secondly, the States possess the police power, the land use planning authority which is required for a truly effective surface mining regulatory program.

Section 102

However, as section 102 establishes, in its statement of purpose of this amendment, a nationwide program of regulation of surface mining operations is required and if and when a State manifests a lack of desire or inability to participate in that program and to meet the requirements of this amendment, the Federal Government is to exercise the full reach of Federal constitutional powers to insure the effectiveness of that program. The purpose of the program is to prevent the adverse effects to society and the environment resulting from surface mining, to assure no lasting degradation of land and waters from such mining, and to assure that reclamation as required by this amendment is undertaken as contemporaneously as possible with the mining.

TITLE II—EXISTING AND PROSPECTIVE SURFACE MINING AND RECLAMATION OPERATIONS

Sec. 201. Grant or Authority: Promulgation of Federal Regulations

This section places authority for the administration of this Act with the Secretary of the Interior. The Secretary's initial responsibilities are to prepare and publish, within 90 days, regulations concerning surface mining and reclamation operations for coal and a detailed description of actions to be taken by a State to develop a State Program to regulate such operations for coal. Within one year, regulations concerning operations for "other minerals" (defined in section 401) and a detailed description of State actions necessary to develop a State Program to regulate such operations for other minerals are to be proposed.

This amendment differs from the measure adopted by the House in that it requires regulation of surface mining operations for not only coal, but other minerals as well. The surface mining of coal has received more national attention and does constitute the most immediate environmental problem. Yet, in many areas of the country, sand and gravel operations, copper mining, phosphate mining, and other surface mining operations impose serious social and environmental costs which also require regulation. To address only coal in Federal legislation could effectively delay consideration of, and action on, the many problems associated with the surface mining of other minerals.

This section also provides procedures for public notice of the proposed regulations and for public hearings, with adequate notice, to be held in the affected States and regions on any proposed regulation to which objections have been filed prior to final promulgation of the regulations.

Throughout this amendment are provisions which insure due process—due process not only for surface mine operators, but also for State and local governments, surface owners, persons with valid legal interests, and local citizens. Due process is insured through numerous reporting and notice provisions, burden of proof provisions, public hearing provisions, and administrative and judicial review provisions. The Administrative Procedure Act (APA) is to be applicable to the administration of the amendment. However, in several instances, the provisions of the amendment depart from or are more specific than the APA. In such cases, the provisions of this amendment will prevail.

Sec. 202. Office of Land Use Policy, reclamation and enforcement

To insure administration of the program by an independent agency with neither a resource development (the promotion of mining, marketing, or use of minerals) or resource preservation (pollution control, wilderness or wildlife management) bias or mission, this section establishes the Office of Land Use Policy, Reclamation, and Enforcement in the Department of the Interior. This Office will be separate from any of the Department's existing bureaus or agencies. It is intended that the Office exercise independent and objective judgment in implementing this amendment.

To insure sufficient authority to administer this amendment, the Office will have a Director, appointed by the President with the advice and consent of the Senate. The Director will be compensated at the rate provided for in level V of the Executive Pay Schedule. Officers and employees of the Office are to be recruited on the basis of their professional competence and capacity to administer this amendment objectively. This section specifically states that there cannot be transferred to the Office any existing legal authority in the Department of the Interior, which has as its purpose, promoting the development or use of coal or other minerals.

The duties of the Secretary, acting through the Office, include: administering the various grant-in-aid programs provided in this amendment; administering research and development projects provided in this amendment; reviewing State programs for surface mining and reclamation operations, developing and administering any Federal Programs for surface mining and reclamation opera-

tions for States which do not have or are not enforcing State Programs; maintaining a study of and a Data Center for land resources, land use planning, and surface mining and reclamation operations; cooperating with States in dissemination of relevant data and in standardized methods of collecting and classifying such data; and providing technical assistance to the States to enable them to undertake responsibilities provided for in this amendment.

It has been argued that the Environmental Protection Agency (EPA) should administer this amendment. However, after careful analysis EPA was rejected as the administering agency in favor of the Office for the following reasons:

(1) As noted in the discussion of Title I, surface mining is an activity critical to the nation's and many local communities' material, economic, and social well-being. Yet, this activity also inflicts heavy environmental and social costs on both the national and local levels. Any regulation of this activity must, of necessity, involve a careful weighing and balancing of social and economic as well as environmental costs and benefits.

The most useful existing mechanism for such a weighing and balancing procedure has been identified by both the Executive Branch and the courts to be the environmental impact statement required by the National Environmental Policy Act of 1969 (P.L. 91-190). However, EPA has been made largely exempt from the environmental impact statement requirement by subsection 511(c) of the Federal Water Pollution Control Act Amendments of 1972.

(2) A prime consideration of this amendment is due process for all concerned parties. Due process, in this case, means wide public participation. The impact statement made decisionmaking open and visible. However, EPA's exemption means that were EPA to write the regulations and administer this amendment, decisionmaking need never be exposed to public scrutiny. As some have noted, this could mean that crucial decisions might be made not by EPA at all, but by the Office of Management and Budget.

(3) A proper weighing and balancing of costs and benefits—a careful concern with environmental quality as well as with employment, community stability, and national energy and economic needs—cannot be achieved by a mission-oriented agency. To insure fairness, an agency which is devoted entirely to either developmental or environmental advocacy should not administer this amendment. EPA is certainly mission-oriented and certainly has a mandate for environmental advocacy.

(4) The Office, unlike EPA, is in major respects a land use planning agency. A single-minded regulatory program, with its inherent incremental decisionmaking and without a land use planning capability will prove inadequate to the purposes of the amendment. Effective regulation of surface mining activities is not possible without long range planning. As recognized in section 215 of the Act, surface mining regulation requires that long term decisions be made as to the uses of the land resource and the development or conservation of our mineral and other natural resources. Regulatory considerations should not be limited to simply determining whether a mineral can be mined and reclamation can be achieved successfully. Also considered should be the uses of the land after reclamation and whether the proposed uses meet State and local needs. EPA has no such land use planning or resource management experience, capability, or expertise.

In fact, in administering its pollution control programs, it has, at times, demonstrated a disdain for proper land use policy by creating incentives to polluters to locate on undeveloped or rural lands. As a recent Interior Committee National Fuels and Energy Study report demonstrated, these incentives helped to create the Four Corners situation . . . huge power complexes and extensive strip mining operations are being located on undeveloped land in the Southwest in part because the coal is located there, but also to avoid Federal and State air quality standards in the Los Angeles region.

On the other hand through the United States Geological Survey, the Bureau of Land Management, and other agencies, the Department of the Interior does have the nucleus of a land use planning and resource management capability.

(5) Unlike S. 630, as reported, all the requirements of this amendment are applied to the Federal and Indian lands and new authority is provided to insure careful regulation of surface mining and reclamation operations on Federal and Indian lands. EPA has no jurisdiction over such lands or over mining on such lands. To avoid divided administration of the amendment, good public policy suggests lodging the entire program in an independent office in the Department of the Interior.

(6) Finally, as legislation recently proposed by the Administration to exempt the water quality permit program from NEPA and as the explanatory language on subsection 511(c) of the conference report on the Federal Water Pollution Control Act amendments for 1972 suggest, the Environmental Protection Agency is already administratively overburdened. Whereas the new Office of Regional Planning at the Department of the Interior is already geared up to accept additional land use planning and resource management responsibilities.

For these reasons, an independent office in the Interior Department was chosen as the best entity to administer this amendment.

Sec. 203. Surface mining operations not subject to the act

This section provides specific exemptions for certain types of activities which might otherwise be construed to fall within the definition of "surface mining operations" and thus be subject to the amendment. Activities specifically excluded are (1) those which should not be included because their scope or impact is so minor; (2) those which have a few characteristics common to surface mining but which are primarily for other useful and, in some cases, public purposes; and (3) those which do not present the environmental or social costs which regulation under the amendment would internalize. Neither S. 630, as reported, or the measure adopted by the House provide this exemption. However, it is apparent that Federal legislation should not, because of ambiguity, address local conditions and the actions of individuals which have no national, State, or regional significance or which present no important questions of Federal or State policy. This exemption is similar to, and in some ways patterned after, the exemption in the Nation's toughest state surface mining law: the Pennsylvania law.

The exempted activities include:

Foundation excavations in construction of buildings and other structures;

Highway and railroad cuts and other excavations for public projects where the Federal, State or local government requires reclamation of the affected areas;

The excavation of minerals by a landowner for his own noncommercial use from land owned or leased by him;

The extraction of minerals or the removal of overburden for commercial purposes in amounts of less than one thousand tons in any one location (or not more than two acres) in any one calendar year—the so-called "pick and shovel" operation;

The extraction of minerals for exploratory, assaying, and quality testing purposes in amounts of less than 240 tons in any location (of not more than one acre); and Archeological excavations.

The Secretary may identify other activities not subject to the amendment and issue regulation further defining the exempted activities taking into consideration their magnitude (in tons and acres), their potential environmental impact, and whether the class, type, or types of activity are already subject to existing Federal, State, or local regulatory systems. In identifying and defining other exempted activities, the Secretary is expected to follow a rule of common sense. The purpose of this amendment is to insure that social and environmental costs of surface mining are internalized by reclamation. Any activity which inflicts significant costs and which should be accompanied by reclamation should, of course, not be exempted. On the other hand, individual, non-commercial, extremely localized, activities which do not cause environmental damage should be exempted not only to insure fairness but also to relieve the administrative burden of the regulatory authorities so that the authorities can concentrate on those activities which truly require careful regulation.

Section 204. State authority; State programs

This section establishes the four reprequisites for any State to obtain financial assistance and to assume full reponsibility for all regulation of surface mining and reclamation operations within the State. The State is required to:

Have appropriate legal authority to regulate surface mining and reclamation operations in accord with the Act's requirements;

Provide sanctions, including civil and criminal sanctions, bond forfeitures, and cease and desist orders for violations of State laws, regulations or permit conditions concerning surface mining and reclamation operations which meet the requirements of the amendment;

Have sufficient personnel, interdisciplinary expertise and financial resources to enable the States to regulate surface mining and reclamation operations in accord with the amendment's requirements; and

Submit to the Secretary for his approval a State program for the effective implementation and enforcement of a permit system for surface mining and reclamation operations for coal and a second State program for other minerals, both of which meet the requirements of this amendment.

The section also provides time periods and procedures for the Secretary's approval or disapproval of State Programs and for revisions and resubmittals of disapproved State programs. Prior to approving a State Program, the Secretary is directed to hold a public hearing within the State and solicit the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies with relevant expertise.

The final subsection of this section requires the Secretary, when he disapproves a State Program, to notify the affected State and allow the State sixty days to resubmit a revised Program. The notification is to be in writing and is to contain the reasons for disapproval. It is intended that the Secretary's modification be very specific. Only with such specificity will a State know how best to revise its State Program so it will meet with the Secretary's approval.

Sec. 205. Federal programs

This section provides for Federal regulation of surface mining and reclamation operations in any State which proves unwilling or unable to do the job itself. In accord with the purposes and findings in Title I, Federal regulation is to occur only if a particular State wishes to forego or fails to assume primary responsibility for regulating

surface mining operations within its boundaries.

The section directs the Secretary to prepare, promulgate, and implement a Federal Program covering surface mining and reclamation operations for either coal or other minerals for any State which (a) fails to submit a State Program for coal or a State Program for other minerals within twelve months of the promulgation of the relevant Federal regulations, (b) fails to resubmit an acceptable revised State Program after the Secretary's disapproval of the original submission, or (c) fails to enforce its approved State Programs.

The Secretary becomes the regulatory authority with full regulatory powers when he promulgates a Federal Program. In preparing and implementing a Federal Program, the Secretary is directed to take into account the affected State's terrain, climate, and other physical conditions. A public hearing must be held in the affected State prior to promulgation of the Federal Program. All State permits remain valid after promulgation of a Federal Program; however, the Secretary is directed to undertake a review of such permits and where such permits fail to meet the requirements of this amendment, to afford the permittee reasonable time to conform his operations with those requirements or to submit a new permit application.

The section also provides procedures and timetables for the lifting of the Federal Program in any State when a new State Program receives the Secretary's approval.

The assumption of regulatory authority over surface mining operations in any State by the Secretary through promulgation of a Federal Program for that State is regarded as a "last resort" measure. It is certainly preferable that the State regulate such operations through State Programs which meet the requirements of this amendment. The assumption is that the States, in good faith, will develop such State Programs and make full use of their police powers to implement the Programs. However, if they fail to do so, the purpose of this amendment and this section in particular is to insure that the full reach of the Federal constitutional powers will be exercised to achieve the purposes of this amendment.

Sec. 206. Moratorium on surface mining operations for coal pending State compliance

This section provides a moratorium on new starts, or the reopening of abandoned mines, or the acceleration of existing activities in or for the surface mining of coal until permits for the surface mining and reclamation of coal are obtained under an approved State Program.

Neither S. 630, as reported, nor the measure adopted by the House has a comparable provision.

The moratorium has three principal purposes. First, as discussed in the analysis of section 201, although this amendment covers the surface mining of all minerals, the surface mining of coal is the most immediate and pressing problem. The severity of the environmental and social costs imposed by the unregulated surface mining of coal is not disputed. Therefore, one purpose of the moratorium is to insure that these costs are not multiplied by new and accelerated operations before the State Programs, provided for in this amendment, to regulate surface mining and reclamation operations for coal can take effect.

Second, in the case of a number of Federal laws requiring State regulation of an activity and, in case of a State's failure to regulate, Federal regulation of the same activity, many States have opted for Federal regulation. Although there are valid reasons, particularly financial (let the Federal government "foot the bill"), for the State's decisions to choose Federal regulation, such Federal regulation often works a disservice to all concerned. Federal regulation can never adequately reflect the unique physical, social, and economic conditions of each State, each region, and each locality. Also, Federal regulation is by nature more arbitrary and less flexible. State regulation is favored in this amendment precisely because it can and should embody this flexibility and sensitivity to local conditions. Therefore, by the requirement that it be lifted only by an approved State Program, the moratorium serves as an incentive to the States to take the initiative to exercise State responsibility and assure State, rather than Federal, regulation.

Third, the moratorium also serves as an incentive to surface mine operators to support, rather than block, efforts to develop effective State Programs which meet the requirements of this amendment.

This moratorium is a tough measure to insure compliance with the amendment. However, in recognition of the importance of the moratorium, a carefully worded proviso is included. Two problems with a moratorium have been identified: the problem of assuring a smooth transition, and the problem of avoiding a single-minded sledgehammer approach in which innocent parties' needs and legitimate expectations concerning essential public services may be defeated. The proviso is designed to correct these problems.

The proviso provides that the Secretary may waive the moratorium for specific operations when he determines that all of the following conditions exist: (1) the operations provide the only practicable source of coal to support regionally or nationally important power generation, metallurgical processing, or other essential activities impressed with a public interest, *and* (2) firm plans and substantial financial and legal commitments were made in and for such operations prior to the enactment of the amendment, *and* (3) the provisions for reclamation in conjunction with such operations offer every reasonable assurance that such reclamation will be made compatible with the amendment's requirements.

Sec. 207. Permits

This section provides a timetable for obtaining permits to conduct surface mining and reclamation operations pursuant to this amendment from either the State regulatory authority under a State Program for coal or a State Program for other minerals or the Secretary under a Federal Program for coal or a Federal Program for other minerals. (Hereafter, the words "regulatory authority" will be used to mean the State regulatory authority where the State is administering the amendment under either of the two State Programs or the Secretary where the Secretary is administering the amendment under either of the two Federal Programs. Furthermore, "State Program" will be used to mean either the State Program for coal or the State Program for other minerals, whichever, is relevant, and "Federal Program" will be used to mean either a Federal Program for coal or a Federal Program for other minerals, whichever is relevant.)

Under this section, no person can engage in surface mining operations of coal without a valid permit under an approved State Program or a Federal Program beginning one year from the date of enactment of the amendment. Permits for surface mining operations for other minerals are requried beginning two years after enactment. These deadlines are to provide the States with a reasonable period of time after the Secretary promulgates his regulations to prepare their State Programs. (Federal regulations for coal are due three months after enactment, while Federal regulations for other minerals are due one year after enactment.) Of course, this timetable is partially qualified by the Section 206 moratorium on the surface mining of coal.

Permits are to run for no more than five years and can be renewed, subject to any new conditions or requirements reflecting changing circumstances which the regulatory authority may apply, if the permittee demonstrates compliance with the requirements of an approved State or Federal Program and with his Reclamation Plan (see Sections 208 and 212). The intent of this provision is to avoid the extremes of a too short or a too long permit period. One-year permits tend to limit meaningful public participation because the permit applicant need not disclose to the public any but his most immediate intentions. One-year periods also work against good regulation in that they unnecessarily burden the regulatory authority with paperwork and, worse, they tend to create an atmosphere of incremental decisionmaking without a full understanding of the long-term implications of short-term permit approvals. On the other hand, long-term permits can foreclose public participation during the critical period when mining and reclamation operations are conducted and can bind the regulatory authority, the permittee, and the public with quickly outdated reclamation standards and techniques. The five-year maximum was chosen not simply because it is a "happy medium", but also because it is the standard time period for reclamation performance bonds.

To assure that no one will be locked into outdated reclamation requirements because of the potential situation in which permits are taken out and renewed without operations being undertaken, this section provides that permits will terminate if permittees have not begun actual mineral production within three years of the issuance of the permits.

Sec. 208 Permit application requirements: Information, performance bond, insurance, reclamation plans

Section 208 describes the four principal submissions necessary to obtain a permit for surface mining and reclamation operations for coal or other minerals under a State Program or a Federal Program: (1) administrative information; (2) a performance bond; (3) a certificate of public liability insurance and (4) a Reclamation Plan.

Administrative information includes names and addresses of the applicant and its officers, of any property owners or holders of leasehold interest in the property to be mined, and of owners of all surface areas within five hundred feet of the proposed mining and reclamation site; statement of any permits held or bonds posted by the applicant which have been suspended or revoked; maps and topographical information; and a copy of the applicant's advertisement in the local newspaper (which must appear at least once a week for four successive weeks). This last requirement insures public notice, particularly to local governments and citizens, so as to insure a meaningful hearing on the permit application, as required in section 209.

The performance bond must be in an amount sufficient to allow the regulatory authority to contract for all necessary and required reclamation operations by a third-party contractor when and if the permittee defaults on the bond. A proviso establishes that a bond may be adjusted upward at any time if, as a result of experience or changed circumstances, it is determined to be inadequate.

The applicant must submit either a certificate issued by an insurance company certifying that he has a public liability insurance policy for the proposed surface mining and reclamation operations or appropriate

evidence that he has satisfied other State or Federal self-insurance requirements which meet the requirements of the regulations promulgated pursuant to this amendment.

Finally, the most important submission which an applicant must make is the Reclamation Plan. The Reclamation Plan must establish that reclamation of all affected lands in a manner which will fully meet the detailed requirements set forth in section 212 can and will be accomplished.

Sec. 209. Permit application approval procedures

This section establishes the procedures for obtaining a permit for surface mining or reclamation operations for coal or other minerals under a State Program or Federal Program. It provides (1) time limits for initial approval or disapproval of the permit application by the regulatory authority; (2) a hearing upon the request of an applicant if the permit is disapproved and a time limit thereafter for final approval or disapproval; (3) a public hearing prior to the initial approval or disapproval if written objections are filed by persons having a valid legal interest which will be affected by the proposed surface mining and reclamation operations or Federal, State or local governmental agencies having responsibilities affected by such operations; and (4) a right of appeal for review by a court of competent jurisdiction for such persons if they participated in the application procedures.

These procedures are designed to insure that the "due process' discussed in the analysis of section 201 is provided to all interested parties: permit applicants, Federal, State, and local governments, surface owners, and persons with "valid legal interest." Rather than dictate one single national standard of "valid legal interest," the definition is left to the courts. It is hoped that the courts, situated in the region where the proposed operations would occur, will be more sensitive to local conditions and situations in developing that definition. The words "court of competent jurisdiction" also were not lightly chosen. Some have contended that Federal courts should be granted exclusive jurisdiction in order to obtain uniform interpretation of the law and to avoid immediate local pressures—be they developmental or environmental. However, more persuasive were the arguments for allowing State courts to hear suits under the amendment in instances where state law and a state program is involved. Avoidance of burdening too greatly the Federal courts and utilization of the State courts' greater knowledge of local conditions and situations were the principal reasons for the decision to use the words "court of competent jurisdiction."

Subsection (d) of this section makes it clear that the burden of proof that reclamation which meets the requirements of this amendment can and will be accomplished lies not with the Secretary or the State regulatory authority but with the permit applicant. Two important concerns dictate placing the burden of proof on the permit applicant. First, the applicant either already possesses or is in the best position to obtain any and all information necessary to meet the burden of proof. Secondly, to place the burden of proof upon the regulatory agency would only frustrate the purposes of the amendment. Such a step would administratively and financially burden the regulatory authority and could foster either endless delays in processing permit applications or pro forma approvals of applications.

Sec. 210. Release of performance bonds

This section establishes the procedures for release of the performance bond. No bond can be fully released until all reclamation requirements are met and an authorized representative of the regulatory authority inspects the surface mining and reclamation operations covered by the bond. A hearing is also provided for when a request is made by any person having a valid legal interest which would be affected by the failure of the permittee to have complied with the requirements of this amendment. The hearing must be scheduled in a manner so as not to unduly burden the permittee with continuous hearings when a bond is released in phases, but so as to insure public participation before so much of the bond is released as to make forfeiture of the remainder, rather than full accomplishment of reclamation, inviting. Therefore, the section requires that the hearing be held after 50 percent but before 90 percent of the bond is released.

Sec. 211. Revision and revocation of permits.

This section describes procedures and time limits for revision and revocation of permits for surface mining and reclamation operations for coal or other minerals by the regulatory authority.

Requests for revisions of a permit can be made by the permittee. The regulatory authority is to establish guidelines for the scale or extent of a revision request for which all permit application information and procedural requirements, including notice and hearing, will apply. However, (1) any revisions which propose a substantial change in the intended future use of the land (such as from a residential development to a shopping complex) or significant alterations in the Reclamation Plan (e.g., changes in treatment of surface and ground water) must, at a minimum, be subject to the section 210 notice and hearing requirements, and (2) any extensions to the area covered by the permit, other than incidental boundary revisions (such as additional footage to permit the better siting of an access road), may be accomplished only through application for new permits, not through revision applications.

Revocation procedures include written notice detailing the reasons for revocation, a reasonable time for the permittee to take corrective action, and a hearing, if requested by the permittee. It should be noted that violations of permit conditions, the State Program, or the Federal Program are sufficient to invoke revocation. Consistent with the "due process" concern throughout the amendment, revocation is regarded as a last resort, after cease-and-desist orders and other procedures have failed. Minor failures to meet the requirements of the amendment which do not and will not result in any serious adverse environmental, economic, and social impacts should not be cause for revocation. Permits should be revoked only for clear violations which have such impacts.

Finally, no transfer, assignment, or sale of the rights granted under a permit may be made without the written approval of the regulatory authority.

Sec. 212. Criteria for surface mining and reclamation operations

Section 212 is the principal statement of the criteria which would be required to be met by surface mining and reclamation operations. It consists of two sets of requirements. Subsection (a) enumerates the information which, as a minimum, would be required to be set forth in any Reclamation Plan submitted as part of an application for a surface mining permit. Subsection (b) enumerates the minimum requirements which would be required to be placed upon any permittee by regulations promulgated pursuant to this measure.

212(a). This Subsection is intended to enumerate the minimum items of information which would be required to be set forth in any Reclamation Plan submitted by an applicant for a permit to conduct surface mining. A Reclamation Plan is required by Subsection 208(d) as part of the permit application. The plan is the basis by which the State regulatory authority, or the Secretary in those States which may be under a Federal program, determines the feasibility and adequacy of reclamation which is proposed to be done by the applicant under the terms of his permit. It also provides the before-the-fact information upon which public hearings may be based. It is essential, therefore, that information provided in the Reclamation Plan be adequate to judge the probable final result of the surface mining and reclamation proposed in the application. The following specific items of information are enumerated.

212(a)(1). A description of the condition of the land area which will be effected by the proposed mining and reclamation must be provided. This description is intended to include general topography, vegetative cover, and cultural development. If the area has been previously mined, the description should cover both the uses of the land existing at the time of the application and those which existed prior to any mining at the site. The description must also include an evaluation of the capability of the site to support a variety of uses prior to any mining disturbance. This description should give consideration to soil and foundation characteristics, topography, and vegetative cover.

The description is to serve as a benchmark against which the adequacy of reclamation and the degradation resulting from the proposed mining may be measured. It is important that the potential utility which the land had for a variety of uses be the benchmark rather than any single, possibly low value, use which by circumstances may have existed at the time mining began.

212(a)(2). A similar description is also required of the use to which the land affected by the proposed mining is to be put following reclamation and its capacity to support a variety of alternative uses. The comparison of this description with that required by 212(a)(1) will provide an evaluation of the net impact which the proposed mining and reclamation will have upon the usefulness of the area affected.

212(a)(3). This section requires a general statement of the techniques and equipment which will be used in the mining and reclamation operations. This should be a complete statement adequate to insure that the reclamation proposed to be accomplished is capable of achievement and that the requirements set forth is subsection 212(b) and any regulations promulgated pursuant to that subsection can be complied with.

A cost estimate for the reclamation is also required as a basis for review of the adequacy of the performance bond required by Sec. 208(b).

212(a)(4). The techniques and procedures which will be used by the applicant to insure compliance with all applicable air and water quality laws and regulations must be described in sufficient detail to permit an evaluation of their adequacy and probable effectiveness.

212(a)(5). It is probable that a number of surface mining and reclamation operations, particularly those in the same general locality, will be similar in terms of general problems and technologies. The purpose of this requirement is to insure that reclamation plans do not become stereotyped and ignore the unique conditions of specific sites. The reclamation plan must set forth a description of the particular considerations which have been given to the conditions found at each site; for example the effect of precipitation, temperatures, wind, and soil characteristics upon revegetation at the site. Furthermore, there must be a statement of the consideration which has been given to new or alternative reclamation technologies.

212(a)(6). There must be a discussion of the potential recovery of the mineral resources of the site to be mined. To the ex-

tent that any portion of the resource will not be recovered, the reasons and justification for non-recovery shall be set forth.

212(a)(7). A time schedule for the completion of the reclamation which is being proposed is to be provided.

212(a)(8). A statement is required demonstrating that the permittee has considered all applicable State and local land use plans, zoning laws, ordinances, and regulations and that the reclamation plan is consistent with them.

212(a)(9). A disclosure to the regulatory authority of all rights and interests in lands held by the applicant which are contiguous to the lands covered by the permit application is required. The purpose of this disclosure is to provide the regulatory authority with information on the prospective long-term plans of the applicant in the immediate vicinity. This amendment would not require public disclosure of this information, however, it does not preclude State law from requiring disclosure of part or all of it.

212(a)(10). A disclosure to the regulatory authority of the results of test borings made by the applicant in the area covered by the permit and the results of chemical analyses of the coal or other minerals and overburden is required. This information is essential for the critical evaluation of the adequacy of the Reclamation Plan by the regulatory authority. Because of its proprietory nature, it is not to be publicly disclosed.

212(b). This subsection sets forth the minimum criteria which must be required by State or Federal Programs regulating surface mining or reclamation operations for coal or other minerals.

212(b)(1). The basic criteria for reclamation is to require all surface areas to be returned to a condition at least fully capable of supporting the uses which they were capable of supporting prior to any mining. In other words, the original utility of the site for a variety of purposes is to be maintained or enhanced. Regardless of the prior condition, the reclaimed area shall not be left in a condition which presents a hazard to public health or safety.

212(b)(2). Reclamation shall require backfilling, compacting and grading to the approximate original contour of the land with all highwalls, spoil piles and depressions eliminated. Alternative grading plans may be proposed as a part of a permit application and may be approved by the regulatory authority in advance of the initiation of mining if they would achieve environmentally sound conditions and desirable uses of the reclaimed area.

This provision of latitude for alternatives to "approximate original contour" reclamation recognizes that in many situations other reclamation objectives may be more desirable from an environmental as well as other standpoints. For example, in areas of meager rainfall grading to provide accumulations of runoff might be the only means of establishing revegetation and might actually result in increased productivity of the area. Although the latitude to approve such alternatives is granted to the regulatory authority, the remaining criteria must be met by the alternative and the procedures for approval of permit applications provide for public scrutiny of the proposal prior to initiation of mining.

212(b)(3). Regardless of the type of reclamation which is proposed (*i.e.*, approximate original contour or alternative such as terracing), all highwalls, terraces, and spoil remaining at the conclusion of reclamation must be stable and remain stable. The requirements for a permanently stable condition, of course, will vary depending upon the characteristics of the materials, the slope, the climate, and the treatments such as compaction and revegetation proposed.

212(b)(4). All areas affected by the mining and reclamation operations shall be stabilized by means of compaction where advisable and by means of vegetation which will insure prevention of erosion both immediately after the reclamation is completed and permanently in the long term. A stable and self-regenerative vegetative cover is to be established. Wherever possible native vegetative cover is to be established. Whenever possible native vegetation is to be employed.

It is recognized that there are situations (such as heavy clay soils) in which compaction of surface soils may be inadvisable or detrimental to the success of revegetation and should not be required. It is similarly recognized that in some situations nonnative species of vegetation may be required to achieve successful revegetation or they may be preferable to native species for environmental, productive, or esthetic reasons and should be permitted.

212(b)(5). The soil to be removed from the mined area is required to be segregated and preserved so that topsoil and other desirable strata will be available to be used for reclamation purposes.

212(b)(6). Offsite areas must be protected from damages caused by slides which might occur during mining and reclamation operations. Furthermore, all waste accumulations and damages must be contained within the permit area. This provision not only serves to protect landowners not associated with the mining, it also insures that the permit will encompass an area which covers the entire mining activity, including the storage or disposal of spoil and waste. Therefore, the entire activity will be subject to all of the terms of the permit.

212(b)(7). The quality of surface and groundwaters in the area is to be maintained both during and after the term of the mining and reclamation operations. Specifically:

(A) Acid mine drainage must be prevented from entering surface and groundwater sources by preventing the contact of water with acid forming materials, retaining acid waters, or treating acid waters to acceptable standards of acidity and iron content before releasing them to water courses. Whichever means are adopted, the reclamation plan must provide for continuation of the protection after the completion of reclamation for so long as may be required.

(B) During the course of mining and reclamation activities at the site, regulations shall insure that effective practices are observed which will minimize the contribution of silt to runoff from the disturbed area. It should be noted that this provision recognized the practical impossibility of preventing any silt runoff during earth moving operations. Reclamation standards require, however, that remaining reclaimed surfaces be graded and otherwise protected to prevent further erosion.

(C) Bore holes, shafts, and wells are to be appropriately treated to prevent acid mine waters from draining out of them or into groundwater bodies by means of them.

(D) The regulatory authority may prescribe other practices or methods to protect water quality.

212(b)(8) Wherever underground mining involves surface operations, regulations must provide for the protection of the surface area involved.

212(b)(9) The disposal of debris from mining and reclamation operations must be done in a manner which will prevent contamination of surface or ground waters.

212(b)(10) Explosives are to be used in conformance with existing State and Federal law. As a minimum, surface mining reclamations shall provide for:

(A) sufficient notice to local government and to individuals in the locality to provide for warning and if necessary for protective measures to avoid injury or property damage from blasting;

(B) procedures for protection of buildings and property in the locality from the effects of blasting;

(C) specific limitations upon the sites and timing of charges, the types of explosives, or other factors which are necessary to protect persons and property in the locality including underground mining operations which might be effected.

212(b)(11) Reclamation efforts are to proceed as contemporaneously as possible with the mining both to avoid the situation where large unreclaimed areas would be permitted to exist for the duration of adjacent mining operations and to provide experience with the results of reclamation procedures and opportunity for improvements as the work progresses.

212(b)(12) Such other regulations may be promulgated as are found to be necessary to achieve the objectives of the measure particularly to insure that where surface disturbance is sustained, the maximum effective recovery of the mineral resource is achieved.

Sec. 212(c) The purpose of this subsection is to recognize that there are types of surface mining which result in disturbances for all practical purposes impossible to reclaim in accordance with the requirements of this measure. An example of such mining situations are quarries in which relatively little overburden is removed from a small surface area and then sizeable quantities of stone are removed over extended time periods, often decades. The result of such operations is a large pit without available materials for backfilling and grading. The extent of surface disturbed by operations of this nature, however, is exceedingly limited with comparison to more convention strip mining operations.

This subsection establishes special reclamation criteria for mining operations for minerals other than coal which meet the following qualifications:

(1) The quantity of material removed in the mining operation is very large in proportion to the surface area disturbed (*i.e.*, the excavation is deep).

(2) The mining operation at the site has an extended life. In other words, the mine resembles an industrial site which remains in operation for many years and is a dependable economic activity in the area.

(3) There is no practicable method to return the area to conditions approximating original contour. If such reclamation is possible, of course, it would be required regardless of the nature of the operation otherwise.

(4) Finally, there must be no practicable alternative source of the mineral resource. It is not the purpose of this subsection to perpetuate destructive mining operations where preferable methods are available or where the same mineral can be obtained by more acceptable means elsewhere.

The alternative regulations which are promulgated for surface mining operations which meet all of the above qualifications must at a minimum result in stable surfaces including highwalls and spoil, meet applicable air and water quality standards, protect public health and safety, and require the maximum practicable reclamation of the area in question.

Sec. 213. Inspections

This section establishes the minimum informational requirements which a permittee must fulfill—either through reporting, monitoring, or affording rights of entry to the regulatory authority's inspectors—once a permit is granted.

First, the section directs the Secretary of the Interior to make whatever inspections are necessary to evaluate the administration of State Programs or to develop and enforce any Federal Program. The section provides that authorized representatives of the Secretary are to have a reasonable right of entry to a permittee's operations. "Reasonable"

is to be interpreted so as not to overly burden the permittee but also provide the inspectors with the best possible opportunities to evaluate the operations in relation to the requirements of the amendment.

Second, to insure that the requirements of the amendments are met, the regulatory authority must require the permittee to keep records, make reports, install and maintain monitoring equipment, and provide other necessary information which will assist the authority to carry out the purposes of this amendment. For example, the permittee might be required to report periodically on acres mined; acres reclaimed; deviations, if any, from the Reclamation Plan and, in particular, its schedule, etc.

Third, the section establishes the right of entry to and inspections of the surface mining and reclamation operations, premises where records are kept, and the records themselves by the regulatory authority. The inspections are to occur on an irregular basis averaging not less than one per month for coal operations and biannually for other mineral operations. They must be conducted without prior notice and inspection reports must be filed upon their conclusion. The "irregular basis" and "without prior notice" requirements are to insure that the permittee is not capable of making merely "cosmetic" or momentary changes is an operation which otherwise would not meet the requirements of the amendment because he has been forewarned of an inspection. Inspections are the heart of any regulatory program and when they become either too "friendly" or too "infrequent" the regulatory program inevitably suffers a loss of effectiveness.

Fourth, permits and permittees' Reclamation Plans must be filed on public record with appropriate officials in each county or other appropriate subdivision of the State in which the operations covered by the permits will be conducted. The purpose of this provision is to insure readily accessible information to concerned citizens and affected local governments so that their participation, as provided for throughout the amendment, will be meaningful and effective.

Finally, each permittee is required to conspicuously maintain at the entrances to his operations a clearly visible sign showing his name, business address, and phone number and his permit number. The purpose of this provision is identical to the one directly above.

Sec. 214. Federal enforcement

This section outlines the Federal sanctions under a Federal program or for violations of the amendment under a State Program.

The first two subsections provide for administrative steps for violations of the amendment's requirements. When a violation by any person is discovered by Federal inspection, the Secretary or his inspectors may issue an immediate cease and desist order and hold a hearing within three days of the issuance of the order if the person requests it. If a violation is suggested by information other than by inspections, the Secretary notifies the State regulatory authority and allows the State ten days to take appropriate action. If the State fails to take such action the Secretary is to issue an order requiring the person to correct the violation.

Subsection (c) provides for Federal enforcement when the Secretary determines violations of an approved State Program are so widespread as to indicate a failure of the State to enforce its Program. Time limits are provided for the State to take corrective action. A public hearing is also required before Federal enforcement would occur. Under Federal enforcement, the Secretary must enforce all permit conditions required under the amendment either by issuing an order for compliance or bringing a civil or criminal action. Of course, if the State's unwillingness to enforce its Program continues for any length of time, the Secretary is expected to promulgate and implement a Federal Program pursuant to section 205 rather than to enforce those aspects of the State Program and those requirements of permits issued under the State Program which are required by the amendment.

Subsection (d) describes in greater detail the contents of any order issued by the Secretary.

Subsection (e) provides for the institution of civil action for retraining orders, injunctions, or other appropriate remedies, by the Attorney General, at the request of the Secretary of the Interior.

Subsection (f) provides for a civil penalty to be assessed against any person, who fifteen days after notice, continues to fail to comply with the requirements of the amendment. The penalty must not exceed $1000 per day. It also provides for a criminal penalty for anyone who knowingly or willfully violates the requirements of the amendment. The criminal penalty is to consist of a fine of not more than $10,000 or imprisonment for not more than six months or both.

Subsection (g) provides for application of this section's penalties when the person in violation is a corporation or other entity.

Subsection (h) states that this section's penalties are in addition to any other remedies afforded by the amendment or any other law or regulation.

Sec. 215. Designation of land areas unsuitable for surface mining

As discussed in the analysis of section 202, no regulatory program can be truly effective unless it is conducted on a solid base of planning. As surface mining and reclamation operations are so intimately associated with the land resource, the proper planning base for regulation of such operations is land use planning. Therefore, section 215 mandates that each State develop a land use planning process upon which to anchor State Programs to control surface mining and reclamation operations.

In subsection (a) the Secretary is authorized to make annual grants of not more than $25,000,000 to the States to assist them in developing State land use planning processes which will determine which, if any, land areas are unsuitable for any or all types of surface mining operations. The grants must not exceed 80 per cent of the cost of developing and managing State land use planning processes for the first two years and 60 percent thereafter. Grant funds for the development of State land use planning processes are to be distributed on the basis of the Secretary's appraisal of the present and projected levels of surface mining operations in, the need for areawide planning by, and the size of each State.

Areas may be designated unsuitable for surface mining operations pursuant to a State land use planning process if (1) reclamation as required by the amendment is either physically or economically impossible; (2) 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 (3) the area is an area of critical environmental concern "Areas of critical environmental concern" are defined as areas 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.

Subsection (b) directs the Secretary to review Federal lands to determine whether there are areas on those lands which are unsuitable for surface mining operations. The Secretary may withdraw such areas or he may condition mineral leasing or mineral entries so as to limit surface mining operations on such areas. It is intended that this subsection apply to the fullest extent possible to areas already subject to vested mining rights. However, designation is even more important as a "due process" means of forewarning surface mine operators as to whether they can mine those areas or under what conditions they will be able to mine those areas. This provides the operators with more lead time in planning their operations than they would have if they were first confronted with a bar to mining or conditions on mining at the time their rights otherwise would vest.

Subsection (c) provides a measure of protection to areas of critical significance to the public. First, it provides that no mining is to be conducted within 100 feet of primary or secondary roads or lakes, streams, and tidal waters which enjoy public access or use. Of course, the regulatory authority must further define "roads", "lakes", "streams", and "tidal waters". It is recognized that, in certain circumstances, surface mine operators have moved and substantially improved secondary roads. It is intended that the regulatory authority will have the flexibility, on a case by case basis, to enter into agreements with permit applicants to undertake such actions.

Second, this subsection bars surface mining operations which will adversely affect publicly-owned parks unless screening or other measures are jointly agreed to by the State regulatory authority or the Secretary and the Federal, State, or local agency with jurisdiction over the park and are made a condition in the permit.

Sec. 216. Federal lands and Indian lands

This section requires the Federal government to "put its own house in order" at the same time that, through this legislation, it places tough requirements on the States.

The Secretary of the Interior is required to promulgate and implement a Federal Lands Program 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 must, at a minimum, simultaneously incorporate all of the amendment's requirements and also reflect the diversity of various Federal and Indian lands. Thus, the requirements of the amendment and the Federal Lands Program are to be incorporated in all Federal mineral leases, permits, or contracts issued by the Secretary involving surface mining and reclamation operations. In short, the Federal Lands Programs would operate in the same manner as State Programs or Federal Programs would operate under this amendment.

Subsection (c) of this section provides for joint Federal-State Programs covering permits on land areas which contain State, Indian, and Federal lands either interspersed or checker-boarded within the scope of a single permit or more than one permit for essentially a single operation and which, for conservation and administrative purposes, should be regulated as single management units. The purpose of this provision is to alleviate a significant problem in Western mining. Where Federal and non-Federal lands are checker-boarded, mining operators often find themselves working under two separate permits, two separate bonds, and two entirely different regulatory systems—Federal and State. The joint Federal-State Programs should allow the operator to conduct his operations under a single regulatory system. In order to implement joint Federal-State Programs the Secretary is authorized to enter into agreements with the States, to delegate authority to the States, or to accept a delegation of authority from the States. Except as provided in this subsection, the Secretary is not to delegate to the States his primary authority or jurisdiction to regulate or administer mining or other ac-

tivities on the Federal lands and Indian lands or to delegate his trustee responsibilities toward Indians and Indian lands.

Sec. 217. Study of slope limitations

This section directs the Chairman of the Council on Environmental Quality to conduct two detailed interagency studies of impacts—social, economic, and environmental—of imposing general bans or slope degree limitations on surface mining operations for coal and for other minerals. The purpose of these studies is to develop information necessary to achieve even a rudimentary understanding of the effects—positive and negative—of imposing, or failing to impose, bans or specific slope limitations for regional or nationwide application.

The measure adopted by the House does contain several specific slope limitations. After careful consideration of such limitations, it was concluded that no one knew or could adequately guage the potential impacts of applying such inflexible limitations, as the House bill would, on a nationwide basis. Such arbitrary limitations do not take into account the full diversity of terrain, climate, geography, and other physical and chemical conditions which bear upon mining operations on slopes in various sections of the country. Knowledge of how these limitations would work, given this diversity, is essential. Furthermore, virtually no consideration has been given to the economic and social impacts of such limitations. Therefore, these studies are mandated in order to gain an understanding of such impacts. As the participation of several different Federal departments with pertinent expertise is necessary, the studies are placed in the Executive Office of the President.

Directed to participate in the studies with the Chairman of the CEQ are the Secretaries of the Interior, Agriculture, and Commerce, the Administrator of the Environmental Protection Agency, the Chairman of the Federal Power Commission and such other heads of Federal agencies and agencies of State governments as the Chairman.

Slope limitations which will be studied include prohibitions on the permanent disposition of spoil on slopes with grades of various degrees from the horizontal, a total prohibition of surface mining operations on slopes with grades of various degrees from the horizontal, a total prohibition upon all surface mining operations or specific types of operations such as augur or contour mining, and requirements that the steepest contours of the highways after terracing cannot exceed slopes with grades of various degrees from the horizontal.

The impacts to be studied include the full range of economic effects (effects upon energy supply, metallurgical processes, etc.), social effects (effects on employment, local tax bases, level of local government services, improvements in living conditions, and the quality of life), and environmental effects.

The study on slope limitations on surface mining operations for coal must be submitted to the President and Congress within one year of the date of enactment of the amendment. The deadline for the study for other minerals is two years from enactment.

A sum of $2,000,000 is authorized to be appropriated to the CEQ to conduct the studies.

Sec. 218. Public agencies, public utilities, and public corporations

This section, unlike S. 630, as reported, or the measure adopted by the House, applies the requirements contained in the amendment to public corporations, public agencies, and publicly owned utilities, including, for example, the Tennessee Valley Authority.

TITLE III—ABANDONED AND UNRECLAIMED MINED AREAS

Whereas title II deals with existing or future surface mining operations, title III is addressed to the correction of the worst effects of previous surface mining operations. The increasing national awareness of the need for surface mining regulation has been based upon observation of the past adverse impacts of surface mining. Therefore, to fully correct the adverse effects of surface mining, the amendment must be addressed not only to future operations, but to past operations as well. The past surface mining which presents the greatest reclamation problem and to which this title is directed is that associated with lands which were never adequately reclaimed and are now abandoned.

Sec. 301. Abandoned mine reclamation fund

There is created in section 301 an "Abandoned Mine Reclamation Fund." Lodged in the Treasury, the Fund will have an initial appropriations authorization of $100 million. In addition, the Fund will be augmented by moneys derived from the sale, lease, or rental of land reclaimed pursuant to section 302, from any user charge imposed on or for land reclaimed pursuant to section 302, and miscellaneous receipts accruing to the Secretary through the administration of this amendment which are not otherwise encumbered.

Sec. 302. Acquisition and reclamation of abandoned and unreclaimed mined areas

This section authorizes the Secretary to use the moneys of the Fund to reclaim abandoned land which has been subjected to the worst ravages of past surface mining activities or has suffered subsidence from past underground mining activities.

Subsection (a) establishes that acquisition of any interest in land or mineral rights for reclamation purposes is a public use or purpose, even if the Secretary plans to hold the reclaimed land as open space or for recreation or to resell it.

Subsection (b) authorizes the Secretary to acquire abandoned and unreclaimed land or any interest therein by purchase, donation or otherwise. Prior to making any acquisition, the Secretary is required to make a thorough study of the available tracts. Based upon the study, the Secretary is to select lands for purchase according to the priorities of subsection (i).

Subsection (c) and (d) establish the procedures for condemnation of abandoned and unreclaimed land for land for which title cannot be established. Immediate taking procedures are authorized 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.

Subsection (e) encourages the States to acquire abandoned and unreclaimed mined lands and donate those lands to the Secretary to be reclaimed pursuant to this title. The encouragement is in the form of grants to the States not to exceed 90 percent of the cost of acquisition of the lands to be acquired. The States are also to have a preference right to purchase the lands they have donated to the Secretary, once they are reclaimed, at fair market value (less the State's portion of the original acquisition price). The States are invited to participate in title III for the same reasons they are given the primary regulatory role in this amendment: they are more sensitive to local conditions and local needs. Thus, presumably their selection of lands to be acquired would more closely approximate the wishes and priorities of local citizens and governments.

Subsection (f) requires the Secretary, with the assistance of other Federal departments and agencies, to prepare specifications for the reclamation of lands acquired under this title.

Subsection (i) establishes the priorities for purchasing and reclaiming abandoned and unreclaimed lands under this title. Priority is to be given (1) to lands which the Secretary believes 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 finds suitable for public recreational use. The latter lands, one reclaimed must be put to use for recreational purposes.

Where reclaimed land is found by the Secretary to be suitable for industrial, commercial, residential or private recreational development, the Secretary is authorized to sell such land pursuant to the provisions of the Surplus Property Act of 1949, as amended.

NOTE.—In printing the amendment, three subsections to section 302 were inadvertently omitted. Subsections (g), (h) and (k), at such time as the amendment is considered, will be introduced as amendments to it. The text of these subsections is as follows:

"(g) The Secretary shall reclaim the lands acquired under this title in accordance with the specifications prepared therefor pursuant to subsection (f) of this section as moneys become available to the Fund.

"(h) Administration of all lands reclaimed under this title shall be in the Secretary until disposed of by him as set forth in this title."

"(k) The Secretary shall hold a public hearing with the appropriate notice, in the county or counties or the appropriate subdivisions of the State in which lands acquired to be reclaimed pursuant to this title are located. The hearing shall be held at a time which shall afford local citizens and governments the maximum opportunity to participate in the decision concerning the use of the lands once reclaimed."

These subsections are self-explanatory. Subsection (k) is of particular importance in that the Secretary should take great pains to insure that reclamation is accomplished in a manner that is compatible with the wishes of local citizens and governments. Direct input of local citizens and governments is necessary to insure this as the Federal Government is too many levels removed to simply divine such wishes without such an input.

TITLE IV—ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS

Sec. 401—Definitions

This section contains twenty-three definitions. Of importance to this analysis are "surface mining operations", "lands within any State", "other minerals", "backfilling to approximate contour", and "terracing".

"Surface mining operations" is so defined to include not only traditionally regarded surface mining activities but also surface operations incident to underground mining. Activities included are excavation to obtain coal or other minerals, by contour, strip, augur, or open pit mining, dredging, quarrying, in situ distillation or retorting and leeching; 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. Activities not included (other than those excluded by section 203) are 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. "Surface mining operations" also includes all areas (1) upon which occur surface mining activities and surface activities incident to underground mining, or (2) where such activities disturb the natural land surface. It also includes all roads, facilities structures, property, and materials on the surface resulting from or incident to such activities.

"Land within any State" is so defined and used throughout the amendment so as to insure that the States, through their State Programs, will not assert any additional authority over Federal lands or Indian lands, other than that authority delegated to them by the Secretary in developing joint Fed-

eral-State Programs pursuant to subsection 216(c).

"Other minerals" for which the Secretary must promulgate regulations and the States must develop State programs is defined to include 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.

"Backfilling to approximate contour" is defined so as to give a five degree leeway from the original average slope and so as to bar depressions capable of collecting water except where retention of water is determined by the regulatory authority to be required or desirable for reclamation purposes.

"Terracing" is defined to mean grading to the extent necessary to insure that (1) the steepest contour of any remaining highwall will be permanently stable and will not erode and (2) the table portion of the restored area will have no depressions which hold water, except where water retention is determined by the regulatory authority to be required or desirable for reclamation purposes.

Sec. 402—Advisory committees

This section establishes two National Advisory Committees for surface mining and reclamation operations, one for coal and the other for other minerals. Each Committee will have seven members appointed by the Secretary. The membership should be balanced among Federal, State, and local officials, consumers, and representatives of conservation or other public interest groups.

Sec. 403. Grants to the States

This section contains the administrative provisions for the principal grant program to the States under this amendment; the grant program to assist the States to develop, administer and enforce State Programs for the surface mining and reclamation of coal and of other minerals. The grants are not to exceed 80 percent of the total costs incurred during the first year, 70 percent in the second and third years, and 60 percent each year thereafter.

The section also directs the Secretary to render training, curriculum, surface mining and reclamation operations inventorying, and technical assistance to the States. All Federal agencies are to make relevant data available to the States.

Sec. 404. Research and demonstration projects

This section authorizes to be appropriated $5,000,000 annually to the Secretary for purposes of conducting and promoting, through contracts or grants, the coordination and acceleration of research, studies, survey, experiments, and training in carrying out the purposes of the amendment. In addition, the funds are to be used to contract with or make grants to States and their subdivisions, other public institutions and agencies, business and public organizations, and persons to carry out demonstration projects for reclaiming lands which have been disturbed by surface mining operations.

Sec. 405. Annual report

The Secretary must report annually to the President and Congress concerning activities conducted by him, the Federal Government, and the States pursuant to the amendment, and any recommendations he may have for additional administrative or legislative action.

Sec. 406. Authorization of appropriations

Authorized for appropriations for administration of the amendment and for section 403's grants to States is $1,000,000 for the fiscal year ending June 30, 1973; $20,000,000 for the next two succeeding fiscal years, and $30,000,000 for each fiscal year thereafter.

Sec. 407. Temporary suspension

This section grants a critically important authority to the President to temporarily suspend the operations of this amendment under emergency conditions. The temporary suspension would be for ninety days. The emergency conditions are a national emergency, a critical national or regional electrical power shortage, or a critical national fuels or mineral shortage.

The President is to make the suspension based upon the findings and recommendations of the Director of the Office of Emergency Preparedness. The Director must 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.

Any suspension must be followed by a report to the Congress within five days of the suspension order. Congress will then be in a position to take whatever remedial long-term action appears necessary.

Sec. 408. Other Federal laws

This section contains the standard savings clauses concerning existing State or Federal mine health and safety, and air and water quality laws, and the mining responsibilities of the Secretary and heads of other Federal agencies for lands under their jurisdiction.

Sec. 409. State laws

This section contains the standards savings clauses protecting the States' rights to have or develop laws and regulations providing more stringent or different controls of surface mining and reclamation operations.

Sec. 410. Protection of the surface owner

Where the surface owner is not the owner of the mineral estate he is provided the following protection:

(1) The applicant of the permit must include in his application the written consent of, or a waiver by, the owner or owners of the surface lands to be mined; or

(2) The applicant must execute a bond or an undertaking to the United States or the State, whichever is applicable, to secure the payment to the surface owner or owners of any damages to the surface estate, crops, or tangible improvements of the surface owner or owners. This bond is in addition to the performance bond required by this amendment.

This provision is of special importance in those States where the broad form deeds, often signed before the technology of surface mining existed, have been interpreted to give the mineral rights owners complete rights to fully destroy the surface and thus deprive the surface owner of any use of his property. It is also of particular importance in the State of Montana where the owner of the mineral estate is given the right to condemn the surface estate for mining purposes.

Sec. 411. Preference for persons adversely affected by the act

This section requires the Secretary to develop regulations which will accord a preference in the award of contracts for reclamation pursuant to title III and demonstration projects pursuant to section 404 to surface mining operators and individuals who have been adversely affected by the operation of the amendment. The purpose of this section is to alleviate any social dislocations and costs which occur as a result of the application of the amendment. In many sections of the country, surface mining operations are of critical importance to the economic and material well being of local communities. Thus any dampening effect this amendment may have on such operations may work hardships on local economies and employment. This provision should mitigate those hardships and also insure that the skills and equipment developed and used in surface mining will not be ignored in or lost to the reclamation efforts.

Sec. 412. Severability

This section contains the standards severability clause.

IMPRESSIVE PROGRESS IN WAR ON CRIME

Mr. HRUSKA. Mr. President, earlier this week Attorney General Kleindienst spoke before the Economic Club of Detroit regarding the efforts made by the Nixon administration to control crime in this Nation. While indicating that the war on crime has not yet been won, the Attorney General concluded that—

We can say with more assurance that the wave of crime and violence that shocked America in the 1960's is not the wave of the future, and that America is once again becoming a safe and lawful society.

Mr. Kleindienst discussed two important aspects of this administration's efforts in the law enforcement field: First, massive Federal aid to State and local enforcement agencies acting against street crime; and second, a crackdown on racketeers, drug traffickers, and other violators of Federal law whose operations stimulate street crime. The results of both of these drives are impressive and are spelled out in detail in the speech.

In addition, Mr. President, the Attorney General cataloged the record of the presidential nominee of the Democratic Party on the issue of law and order. While decrying the efforts of the Nixon administration in this field, Senator McGOVERN has compiled a dismal record in support of effective law enforcement legislation. In fact, the record is less than dismal; it is nonexistent. I believe that it deserves to be spread on the record.

For these reasons I think that my colleagues would be interested in having the full text of the Attorney General's remarks and I ask unanimous consent to have it printed in full in the RECORD.

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

IS CRIME BEING CONTROLLED?

(By Hon. Richard G. Kleindienst)

In his classic analysis of the Government-business relationship, *The Good Society*, Walter Lippmann pointed out that "all property, and everything which we include in the general name of private enterprise, is the product of legal development and can exist only by virtue of law. This is evident enough in periods of social disorder when for want of law observance and law enforcement the whole private economy may collapse in a day."

Perhaps it requires such startling words to remind us of what we take for granted—that business as we know it can only operate in a stable and lawful society. Crime and enforcement have become issues in this 1972 campaign, and I believe this audience is vitally interested in those issues. So I would like to discuss with you the war on crime in this country and to contrast for you the records of the Nixon Administration and of the Democratic Presidential nominee.

From 1960 to 1968 serious crime in the United States, as compiled in the annual Uniform Crime Report of the FBI, increased by more than 120 percent. What's more, the increase kept increasing. The President's Crime Commission, created to investigate the alarming trend, reported in 1967, "One-third of a representative sample of all Americans

say it is unsafe to walk alone at night in their neighborhoods."

The next year Richard Nixon made this appalling wave of crime and lawlessness an issue in his campaign for President. "Let us resolve," he said, "that the wave of crime and violence will not be the wave of the future in America." And he promised firm action to strengthen the peace forces against the criminal forces in this country.

The Nixon Administration has attacked the crime wave in two ways. First, by providing massive financial aid to State and local enforcement agencies acting against street crime. Second, by conducting a massive crackdown on racketeers, drug traffickers, and other violators of Federal law whose operations stimulate street crime.

So, the Nixon Administration mounted the first all-out war against organized crime. To help get evidence against its leaders we made use of court-authorized wiretapping, which Congress provided in 1968 but which the previous Administration had refused to use. We won from Congress a new and tougher law giving us still better weapons against this menace. The President mobilized all the Federal enforcement agencies in this war and concentrated them in the major cities across the country. He greatly enlarged the budgets and the number of investigative agents in these services.

The result has been an enormous increase in indictments and convictions of racketeers. In Fiscal 1972 our Organized Crime and Racketeering Section secured indictments against more than 3000 defendants—nearly triple the figure for Fiscal 1968—and nearly 1000 convictions—almost double the 1968 number. For the first time, in major cities throughout the country, we have been able to put the arm of the law on many of the top gangland bosses. Officials who have been in our Criminal Division for many years say they cannot remember a time when such inroads have been made into the underworld.

I might add that in this drive on organized crime we have received much cooperation from legitimate American business. The United States Chamber of Commerce has been very helpful in putting us in touch with companies that can provide jobs for witnesses who must be removed to other cities under different identities to protect them from retaliation by the underworld.

At the same time President Nixon gave drug enforcement a top priority. Again, he enlisted all Federal enforcement agencies in the battle, and where necessary created new agencies to coordinate the total Federal effort. He secured from Congress a new drug law with real teeth in it. He was the first President to make this crusade an integral part of his foreign policy, and by determined pressure won the active cooperation of foreign countries that were sources of drugs.

In Fiscal 1972, ending last June 30th, the Bureau of Narcotics and Dangerous Drugs alone seized six times more heroin than in Fiscal 1969.

Federal agents made more than 16,000 narcotics arrests in Fiscal 1972, nearly double the number in Fiscal 1969.

Since it was launched in January, the Office for Drug Abuse Law Enforcement—working with State and local authorities—has initiated more than 1900 investigations, involving more than 2800 suspects. Of these, approximately 2,000 have already been arrested.

The next question is, has this enormous effort inside and outside our country had any effect on keeping narcotics out of the hands of addicts and would-be addicts? For the first time in the history of American drug enforcement, we can begin to answer "yes" to that question.

Starting last November, we noticed signs of a heroin shortage on the East Coast, and this has spread from New York City and Washington, D.C., to include Boston, Baltimore and Detroit. The shortage can be fairly well measured by the well-known yardstick of supply and demand. The price of heroin on the street went up and the quality or purity went down, and addicts are flocking to the treatment centers in much larger numbers than ever before. Here in Detroit the average purity of heroin has dropped from 40 percent to four percent within 18 months.

An added result of these successes is that we are now getting a better picture of the total number of addicts and other aspects of the drug problem in this country.

One of the weapons that proved especially useful against organized crime and the narcotics traffic was court-authorized wiretapping. We have smashed a number of narcotics rings with such evidence. We have secured a total of some 1600 indictments on evidence from court-authorized wiretaps. We have been able to make an average of four arrests for every such wiretap, and in the special field of narcotics five arrests per wiretap.

Now let me turn to the Nixon Administration's drive to reduce general crime, sometimes called street crime, most of which is not under Federal jurisdiction but may nevertheless be attacked by Federal leadership and financing.

Much of this has been accomplished by grants through the Law Enforcement Assistance Administration. No Administration has provided anywhere near the financial assistance to State and local enforcement agencies. The previous Administration provided $33 million of such funds. From 1969 to 1972 we provided a total of one-and-a-half billion dollars in such funds, and our current 1973 budget is more than $800 million.

Some idea of the effectiveness of this LEAA program around the country may be gained from the opinion of the Detroit Commissioner of Police, John F. Nichols, who has written, "here in Detroit, the assist we have received from LEAA is truly making our Department far more responsive and far more effective."

Now, what has been the result of our efforts to reduce the threat of crime in this country?

The growth of general crime began to decelerate from a record rise of 17 percent in 1968 down to a rise of only seven percent in 1971. In the first half of 1972 it went up only one percent, compared to the first half of 1971—a rise comparable to the annual increase in population. I am also able to report that in the first half of 1972, violent crime also went up just one percent over the first half of 1971—the same as property crime.

In fact, robbery is the largest category of violent crime, and the one that has contributed most to fear on the streets of the inner cities, and robbery showed an actual decrease of four percent in the first half of 1972.

In short, we are at ground zero with regard to the crime rate in the United States.

In fact, as you know, the crime problem was the most fearsome in the largest metropolitan cities, and they are bringing the crime wave under control. Total crime for the six cities of over one million in population was down seven percent in the first half of 1972. Here in Detroit, crime was down 17 percent.

Assuming that these six months results hold up for the year as a whole, we are truly seeing an historic reversal of a frightening crime wave in the United States. This is not a minute ripple in the statistical curve. Crime figures have been kept by the FBI since the early 1930's, and with the exception of one year they have been rising continually since 1948. The rise grew much steeper through the 1960's, and by 1968 there was nearly four-and-a-half times more crime than 20 years earlier.

So this one percent rise in the first half of 1972 over the same period in 1971 is the lowest, not only in this Administration, or in the past two administrations, but the lowest first-half rise in any year since 1959.

It is in this context that I say that President Nixon has kept his promise to do something about the crime wave, and that the results are fully justifying that statement.

Now I would like to compare the record I have just discussed with the record of the man who seeks to unseat President Nixon.

Senator McGovern gave a speech in New York last week indicating that law enforcement would be his number one domestic priority. He also criticized the Nixon Administration for "law and order" rhetoric and indicated that it is really Richard Nixon who is "permissive" about crime.

But before I begin, I wish to point out that what you hear from me won't be my words, but will be the words of Senator McGovern. And when Senator McGovern comes back tomorrow and accuses Dick Kleindienst of distoring his record, let it be clear that he is going to have to repudiate *his own* record.

The record shows that the man who says that crime and law enforcement will be his number one domestic priority is a man whose actions have shown that the law will be treated as often in the breach as it is in the observance.

The man who now poses as a champion of law enforcement is the same man who said that J. Edgar Hoover was a "menace to justice." After Mr. Hoover passed away, here is what Senator McGovern said:

"Hoover had lived beyond the normal years, so I couldn't feel the pathos I would for a young man. I could feel *nothing but relief* that he was no longer a public servant. I thought he had become a menace to justice." (emphasis added)

I knew John Edgar Hoover, and every citizen and law enforcement agency in America is indebted to Mr. Hoover. He was a true American giant—a man whose devotion to his country and to the rule of law cannot be questioned. Yet, only days after Mr. Hoover's death, Mr. McGovern claimed that he was relieved Mr. Hoover was no longer around. I regret those words of Senator McGovern; they do not reflect well on his compassion or his knowledeg of law enforcement.

And who would Senator McGovern choose to replace Mr. Hoover? Listen again to his own words: "I don't know whether you could persuade Ramsey Clark to take the job or not, but he'd be perfect, if you could get him." Imagine this, the man who traveled to the enemy's capital to be heard on the enemy's propaganda radio broadcasts is going to be the "perfect" choice of Mr. McGovern's FBI Director. Words defy description for such a notion.

The man who is now posing as "Mr. Law and Order" also has a unique sense of obedience to the law regarding theft of top secret documents from the Government of the United States. We all hear Mr. McGovern traveling the country deploring lawlessness and proclaiming his own honesty and forthrightness. Yet he has a peculiar record with reference to the so-called "Pentagon Papers."

Daniel Ellsberg, a former Defense Department employee, is charged with stealing Government property and unauthorized disclosure of national defense information. As Attorney General I cannot comment on proceedings before the court. However, I can and will comment on Senator McGovern's conduct in this affair.

Here are the Senator's own words from the October issue of *Intellectual Digest:*

"Ellsberg asked me whether I would release the (Pentagon) papers. I felt since I was in the business of making laws, not breaking them, it wouldn't be a good idea for me. *I urged him to go to the New York Times . . . I'm glad he did, and I think he performed a tremendous service."* (emphasis added)

Let us also take a few moments to look at Senator McGovern's contention that the Nixon Administration is permissive.

The Nixon Administration is not permissive about marijuana; it never has been. The President unequivocally opposes the legalization of marijuana. On the other hand, Senator McGovern suggested, on February 16, 1972, that marijuana might be treated along the "same lines as alcohol," i.e., legalized. I'm not sure where he stands now—his position changes almost daily—but let's not forget that his record on marijuana reeks of permissiveness.

Moreover, I can guarantee you that the Nixon Administration is not permissive about having tough-minded justices on the Supreme Court of the United States. Senator McGovern voted against putting William Rehnquist on the Supreme Court. Mr. Justice Rehnquist was at the top of his law school class; he is a brilliant young legal scholar; he is highly respected for his precision of thought and knowledge of the law. And why did Senator McGovern vote against his confirmation? He voted against Justice Rehnquist because William Rehnquist believes in strong law enforcement and upholding the rights of the citizen against the criminal.

On pornography, this Administration has been fighting an all-out battle against the porn-producers and smut-peddlers. The President has pleaded with Congress to do something about the multi-million dollar smut traffic. He has had no help from Senator McGovern. On October 13, 1972, Senator McGovern's colleagues in the Senate overwhelmingly passed a Resolution rejecting the permissive findings of the Commission on Obscenity and Pornography. Only five Senators voted against the Resolution, and Senator McGovern was one of them. Let Senator McGovern explain his vote, and let him explain his statement in *Playboy* magazine that he is "not particularly concerned about" the change in sexmores.

How do we reconcile the law and order McGovern with the McGovern who is proposing unconditional, blanket amnesty for draft dodgers. Those who evaded the draft broke the law. They are either incarcerated or in foreign exile. Senator McGovern has promised that those who evaded their responsibility will not have to pay any penalty. They will be freed from prisons and allowed to come home from Canada without any penalty whatsoever; without any alternative service requirement; without so much as a slap on the wrist for their dereliction of duty and refusal to obey the law.

One area, however, where Mr. McGovern's permissiveness comes to halt is on the question of forced busing. It is a fact that Senator McGovern endorses busing for racial balance. And I must say he is entitled to his position. But there is an arrogance in his attitude which displays callousness towards those parents who object to having their children used as pawns by the bureaucrats. Mr. McGovern said in an interview on February 19, 1972: "Suppose your kids have to ride the bus? What the hell difference does it make?"

This attitude suggests elitism and indicates an uncaring feeling towards the deeply-held beliefs of millions of American parents. It makes a great deal of difference, Mr. McGovern.

The record is clear. It is clear that the Senator talks about law and order while his record shows something else. He accuses the Nixon Administration of being permissive, but ignores the permissiveness which pervades his candidacy. We might point out, as well, that the man who gave law enforcement such high priority last week is the same man who holds the most dismal record in the Congress of the United States on questions of crime and law enforcement.

The Omnibus Crime Control and Safe Streets Act became law in 1968. Senator McGovern missed 21 of 29 votes on this bill and did not even bother to show up to vote on final passage. McGovern missed all twelve votes on amendments to this Act pertaining to the admissability of confessions in court, eyewitness testimony and funding for various law enforcement programs.

Senator McGovern missed all six votes on the Organized Crime Control Act of 1970, and yet last week boasted of his proposals to curb organized crime.

The truth is that *only one* of the six law enforcement bills McGovern has sponsored during 14 years in Congress has ever passed, and that bill authorized the United States District Court to hold session in Deadwood, South Dakota. Of the 16 bills McGovern has co-sponsored, only three have passed the Congress. One need only consider this listing to see that the Senator's record mocks his campaign conversion to law and order.

From slurring J. Edgar Hoover and urging the unauthorized release of top secret Government documents to permissive attitudes on marihuana and pornography, the McGovern record—which I have not distorted *in any respect*—would be a disaster for the rule of law in America. I take no particular pride in pointing out the record, but I do feel it is my responsibility to comment on what would be in store for 210 million Americans should Senator George McGovern become President.

At the same time I am proud to point up the contrast between this record and that of the Nixon Administration, which believes that the peace forces in this country needed to be strengthened against the criminal forces, which has done something about it, and which has some results to show for it.

I do not want to close by giving you the impression that the war on crime has been won and that Americans can now rest secure. Crime is far higher than it should be, and this Administration—working with State and local authorities—will continue to do everything possible to reduce it.

But we can begin to say with more assurance that the wave of crime and violence that shocked America in the 1960's is not the wave of the future, and that America is once again becoming a safe and lawful society.

HELIUM

Mr. HRUSKA. Mr. President, this Nations helium reserves are being rapidly depleted, and it is beyond question that this unique natural resource is essential for the continued technological growth of our Nation.

The helium program is in various forms of litigation and the Congress, of course, should not take action which in any manner impinges on those lawsuits.

However, the recent action of the Department of Interior cannot go unnoticed. I find that the Department has just shut off its valve to the pipeline to storage which will cause 600 million cubic feet of helium a year to be wasted for no reason whatsoever.

The administration of the helium conservation program has undergone much criticism, but the need to conserve helium for the long-term benefit of this Nation is indisputable.

The Bonneville Power Administration, Department of the Interior, for example, in its comments on Interior's draft environmental statement, told the Bureau of Mines on July 6, 1972:

Information available to BPA indicates that by the year 2000, approximately 5,000 million cubic feet of helium per year may be required for electric power use.

This 5 billion cubic foot need will be at a time when all of this Nation's known helium reserves have been exhausted.

The Environmental Protection Agency in its comments dated August 7, 1972, stated:

We hope, however, that some feasible alternative might yet be found to conserve the helium presently available in natural gas in order to assure that future national needs will be met at reasonable cost. The anticipated application of helium technology to the electric power industry appears to hold substantial promise for future enhancement of environmental quality.

The Federal Power Commission in its comment dated August 8, 1972, expressed the following views:

Super conducting power transmission lines would permit the transportation of very large blocks of electric power underground. . . .

Super conducting magnets are an important factor in the development of MHD power generating systems. The successful development of MHD and its use would greatly improve the efficiency of fossil fired power plants and, therefore, decrease the fuel usage and emissions to the air and environment. The improved efficiency would also result in relatively lower thermal pollution than can be attained with conventional power generating systems.

Although the prospects for nuclear fusion are somewhat in the future, it has the potential of suppling seemingly unlimited supplies of energy with the lowest environmental impact. Current research indicated that helium cooled super conducting magnets are necessary to provide the magnetic fields for containment of the fusion reaction. Consequently, helium could be expected to play an important part in assuring minimum environmental impact of many aspects of future electric generating systems.

The motion by one of the contractors to require the Interior Department, on a nonprejudicial basis, to store the helium produced during litigation was denied by the Court of Claims on September 27, 1972. In its order, the court stated:

The issue thus resolves itself into one solely of the need to continue the storage of helium for general purposes of conservation. That is a very important matter but not one upon the basis of which the court is authorized to enter a compulsory order where, as here, it is not necessary or appropriate for the particular case before us which involves only a monetary claim by the plaintiff for breach of contract. Public Law 92-415, 86 Stat. 652, together with the law existing prior to that statute, does not empower this court to enter such a specific mandatory order solely on grounds of conservation, no matter how great those needs may be.

The Interior Department closed the pipeline valve on September 28, 1972, and the helium is now being wasted.

I have asked Secretary Morton to look into this matter immediately and advise us on why this helium cannot be stored for the general purposes of conservation.

EQUAL EDUCATIONAL OPPORTUNITIES ACT, 1972

The PRESIDING OFFICER (Mr. STEVENSON). Under the previous order, the hour of 10 a.m. having arrived, the Chair lays before the Senate the unfinished business, H.R. 13915, which the clerk will state.

The assistant legislative clerk read as follows:

H.R. 13915, to further the achievement of equal educational opportunities.

The Senate resumed the consideration of the bill.

The PRESIDING OFFICER. Under the previous order, the 1 hour allotted before the Senate proceeds to vote on invoking cloture will be equally divided and controlled by the distinguished Senator from Alabama (Mr. ALLEN) and the distinguished Senator from New York (Mr. JAVITS).

Who yields time?

Mr. JAVITS. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from New York is recognized for 5 minutes.

Mr. JAVITS. Mr. President, we approach now yet another cloture vote with respect to this matter of the so-called antibusing bill. The points I would like to make this morning relate to certain facts which have been adduced here in support of the rather shortcircuiting way in which it is felt we had to proceed and which has been the basis for this kind of forced draft operation at the end of this session. A good many facts have been tossed into the RECORD without the opportunity to analyze and cross-examine as would have been done in a hearing before a committee, but we have done our utmost to get reactions to these facts in the best way we can under these circumstances, and I would like now to report some of our findings to the Senate.

First, as to the overall matter of busing both in cost and in number, we have an interesting piece of collateral evidence which comes out of an inquiry I have been pursuing for some years regarding the safety of school bus transportation. In the course of that inquiry, we come across the following facts which are furnished by the Secretary of Transportation. Although they are not directly pointed at segregation or desegregation, they are certainly helpful in giving us some concept of the orders of magnitude involved.

For example, the National Highway Traffic Safety Administration has submitted the following facts, that the total cost, including capital expenditures of all busing in 1970–71 was $1,517,900,000. In the year 1971–72, $1,700,177,000—or a difference, roughy, of $187 million.

But, Mr. President, the amount of the increase was attributable, 95 percent, to population growth and less than 1 percent to desegregation. These are not my figures. These are their figures. One percent of the increase is under $2 million, and yet that is the figure related to all pupils transported at public expense.

So the Civil Rights Commission makes the following comment on these facts which I think are critically important for the Senate:

> Figures from DOT indicate that in 1954 the total operational cost for busing, excluding capital outlay, was approximately $329,000,000. In 1971–72, the estimate is approximately $1,700,000,000. The increase over this 18 year period is $1,481,000,000. Busing for the purpose of desegregation was not a significant expense until the 1968–69 school year. In that year, the total expenditure for operating buses was $901,000,000. The 1971–72 figure of $1,700,000,000 supplied by DOT includes capital expenditure.
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> The increase from $901,000,000 to $1,700,000,000 between the years 1968–69 to 1971–72 is, therefore, $799,000,000. If the DOT percentages are correct, then 1% of the increase over a period of three school years amounts to approximately or less than $8,000,000. If we accept Secretary Richardson's estimate that approximately 4% of all children being bused are bused for purposes of desegregation, it would not appear to be unreasonable to calculate 4% of the 1971–72 figure of $1,700,000,000 which includes capital outlay for all busing, not just the outlay for new buses for desegregration purposes. Four percent of the 1971–72 figure amounts to $68,000,000.

These are extremely reliable statistics.

The ACTING PRESIDENT pro tempore (Mr. HART). The 5 minutes of the Senator from New York have expired.

Mr. JAVITS. Mr. President, I will continue with this factual analysis. There is a great deal more to it. But I would, in the meantime, like to yield 5 minutes to the distinguished Senator from California (Mr. TUNNEY).

The ACTING PRESIDENT pro tempore. With the understanding that the remarks of the Senator from California will be separate.

Mr. JAVITS. Yes, Mr. President.

The ACTING PRESIDENT pro tempore. The Senator from California is now recognized.

Mr. TUNNEY. Mr. President, my remarks will take a little bit longer than 5 minutes.

Mr. JAVITS. What does the Senator require, 10 minutes, 15 minutes?

Mr. TUNNEY. 15 minutes.

Mr. JAVITS. I yield 15 minutes to the Senator from California.

The ACTING PRESIDENT pro tempore. The Senator from California is recognized for 15 minutes.

Mr. TUNNEY. I thank the Senator from New York very much.

Mr. President, once again, the Congress is locked in a great debate whether this Nation shall treat all her citizens as equals under the law.

Once again, we are confronted with the fundamental choice of continuing to break down the barriers to racial integration or to ressurect them.

Once again, we face the blunt question: Should another generation of Americans be denied the heritage of freedom most Americans enjoy.

The question before us is busing.

The busing bill before us is a repudiation of its very name—"the Equal Opportunity Education Act."

It is a repudiation of our Supreme Court and its effort to sustain the Constitution.

It is a repudiation of the Court's 1954 Brown decision that "separate educational facilities are inherently unequal."

It is a repudiation of the 1969 Alexander decision that a school system should be one "within which no person is to be effectively excluded from any school because of race or color."

It is a repudiation of the 1971 Swann decision that found busing a "normal and accepted tool of educational policy" and added, "desegregation plans cannot be limited to the walk-in school."

The intent of these rulings is clear: Give every youngster the opportunity to a good education.

Their intent was not to fix some inflexible racial balance in our schools, or to herd our children aboard schoolbuses or to remove children from their neighborhoods.

It was their intent to bridge the gap between races and help unite this country in true fraternity.

This bill tries to sugarcoat segregation by promising additional money to neglected schools.

But this is deceptive, because it merely diverts money that would have been used to help schools desegregate. It adds not one penny to the education of a single youngster.

Furthermore, the bill is a massive intrusion into the fundamental separation of powers between legislature and judiciary.

It would allow the reopening of every desegregation case since 1954—even cases which did not involve busing.

It orders the Justice Department to intervene on the side of local school districts in upsetting busing orders.

In short, it is an effort to thwart the courts from dealing effectively with violation of our 14th amendment. I think the House debate is particularly revealing on this. Representative MIKVA offered a very simple amendment which said just one thing—that nothing in the bill precluded enforcement of the 14th amendment. Immediately Representative PUCINSKI rose to oppose the amendment with these words:

> It seems to me that if we adopt this amendment we will just undo everything that has been done here so far.

Mr. President, I think that this exchange sums up the purpose of the bill before us. It is a bald attempt to prevent the courts from enforcing the 14th amendment.

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

Mr. TUNNEY. I yield.

Mr. JAVITS. I have rarely heard so apt an analogy. I have just listened to the Senator and he is absolutely right on target. The Senator is so right. It shows the whole hand here. That is what we have been trying to argue in a much less artistic way and the Senator has hit it with one clean shot.

We have been trying to argue that the reopener clause simply turns the clock back. It suspends the Constitution, which we settled 18 years ago. And there we have it as an admission against interest by the main sponsor of the bill.

I could not think of a cleaner or more precise argument than the one the Senator just made, right out of the mouth of the House sponsor of the whole measure.

Mr. TUNNEY. I want to thank my able and distinguished colleague.

I read the House debate and I was in a sense appalled by what I read. Although I have seen polls that suggest that if there was an opportunity today to vote on some of the original amendments to the Constitution, the Bill of Rights and the 14th amendment among them, that people in certain areas of the country would vote against such constitutional amendments.

I cannot help believing that the average American, if he sat down and had to face realistically whether or not he wanted to have equal protection of the

laws or not, would say, "Yes, I want equal protection of laws." And if he were faced with the problem of whether or not he wants his children to have equal education, he would say, "Yes. I want equal education."

And yet, if one reads the House debate, which the Senator has, there is a statement that we do not want the 14th amendment to apply any more to schoolchildren if it is going to involve integration of schools.

That is the most incredible admission, to my mind, of what the political forces at play here are. It is one of the reasons we should not be considering this bill just before an election.

It is true there is a great deal of emotion throughout the country about this matter; but on the other hand, as a legislative body, we should not be passing on major legislation, emotional legislation, just before an election, so as to garner a few extra votes.

I have had an opportunity to be in the Chamber when the Senator was making his argument during the last several days, and he most articulately and eloquently expressed the viewpoint that those of us who oppose this bill are simply saying that we want the 14th amendment of the U.S. Constitution to be recognized as the law of the land. The Senate and the House should not be passing legislation which they know is violative of the 14th amendment. Furthermore, it will have the tendency for us once again to politicize the Supreme Court, because obviously this bill, if passed, is going to get to the courts, and obviously they are going to overturn it on constitutional grounds. Then we are going to have the Supreme Court held up once again to the abuse of those people who would like to have the laws interpreted just exactly the way they would like to have them interpreted, and not the way the Constitution reads.

Mr. JAVITS. If the Senator would yield again, I cannot think of a more apt quotation from the debate itself than the Senator has read in which the House itself indicated the lightness with which it regarded the 14th amendment by the so-called reopener clause. It is absolutely incredible that our colleagues under the stress and heat of this moment would have adopted such a provision to reopen every decree—violative of every principle of justice, violative of every principle of government, and violative of every principle of separation of powers, if the Supreme Court let us get away with that.

I do not care how many conservative judges we have. And if we persist in engendering a confrontation between the Congress and the Supreme Court in this manner, we are certainly highly improvident legislators, and yet that is exactly what we are being asked to do.

Mr. TUNNEY. The term highly improvident is correct, and reckless, too, because after all to maintain order in society we have got to have respect for the law, as well as the laws on the book. If Congress by its action does what is essentially a lawless act, passing a bill that any Member of this Chamber knows if he has read the Supreme Court decisions is violative of those decisions and will have to be declared unconstitutional, how can people in the country have respect for Congress and how can they have respect for their Constitution? How can they have respect for law, order, and justice, when they know that Congress is purposely acting in a lawless fashion, when it passes a bill that it recognizes to be unconstitutional?

Mr. JAVITS. It is what we call in the parlance of sports, which the Senator knows so well, playing to the galleries.

Mr. TUNNEY. That is correct and very apt.

Mr. JAVITS. I thank my colleague.

Mr. TUNNEY. But in addition, this bill intrudes into the provinces of our local school district by restricting their ability to bus students beyond their neighborhood schools no matter what the educational imperative might be—whether it be overcrowding or special classes.

Statistically, the busing issue has been blown out of proportion, for only a tiny fraction of American schoolchildren are bused as a means to end desegregation in our schools.

It is estimated about 43 percent of all schoolchildren are bused daily to and from school—only 2 to 3 percent are bused for purposes of school integration.

In my home State of California, 800,000 students daily ride buses—less than 2 percent because of desegregation plans.

No one is proposing that the school bus supplant the school room as the essential unit of education in this country.

Busing is simply a tool that can be used when all else fails to liberate youngsters from the oppressive disadvantage of segregated schools.

Busing is just one instrument to assure that all children have, at least, the opportunity of quality education.

The drawing of school boundaries, the location of new schools, the designation of central schools for special programs are more basic elements toward integration.

By a variety of means, the least of which is busing, California school districts have made substantial progress toward desegregation.

Sacramento, Fresno, Pasadena, San Francisco, San Jose, and many other cities report progress toward integration, and all, unanimously, reject the retreat proposed by the present busing bill.

Los Angeles was particularly emphatic that passage of the bill would—

> Further permit the emotionally needed issue of busing to obscure the real issue which is our national responsibility to provide equal educational opportunities for all students.

Congress, clearly, should not legislate to inhibit the drawing of school boundaries to decrease desegregation.

Nor, clearly, should it prohibit the construction of schools in locations where they will serve all races.

Nor should we now legislate to prevent local school authorities from busing youngsters as a means of assuring each one of them a better education.

Congress should not handcuff our local schools with the iron prejudices of the past, and say to a school, "You are responsible for providing quality education, you are responsible for teaching to students that all men are brothers in society and equal before the law," while at the same time not having classrooms integrated so that white students, black students, and chicano students can know from personal experience what it means, one with the other in the same classroom, and to be able to carry on a dialog and to learn to think of the person with a different ethnic and racial background as a human being and a potential friend rather than a stranger, a foreigner, somebody to be feared and hated.

The PRESIDING OFFICER. The Senator's 15 minutes have expired.

Mr. TUNNEY. Mr. President, I yield myself another 15 minutes. The Senator from New York has indicated that I would control time for that purpose.

The PRESIDING OFFICER. The Senator from New York has 9 minutes remaining. The Senator from California is recognized for 5 minutes.

Mr. TUNNEY. Mr. President, nor should Congress fetter the minds of our young by proscribing the books they might read or the classmates they might have.

Congress should not constitute itself as the school board for the Nation.

Mr. President, if there is one thing I have learned from serving for 2 years on the Senate District of Columbia Committee, it is that Congress makes a poor city council, and it would make just as poor a school board.

Congress cannot and must not try to circumscribe local school policies to prevent children of all races from attending school together.

The barriers of prejudice are beginning to erode in this country, and it would be wrong for Congress to rebuild them.

Our young are helping reduce those barriers.

Particularly, our very young are unhampered by old hates. They can play and learn together unselfconsciously.

All around them are indications of diminished barriers.

In school, in the arts, on TV, in sports, persons of all races labor and laugh together.

Today, our youngsters throughout America laugh together with Flip Wilson and thrill to the exploits of Willie Mays or Larry Brown.

Today, our young people are fused with an idealism about our Nation and her future.

It would be a tragedy to repudiate those young people.

Ours has been a history of including more and more Americans in the promise of our democracy.

And it would be a tragedy, by the adoption of the busing bill, to repudiate that history.

To be sure, many Americans are understandably apprehensive about busing.

The apprehension is shared by Americans of all races. It finds its origin, not in old prejudices, but in abiding concern for their children and their education.

Black, white, brown, yellow, they want the very best for their youngsters.

They do not want their youngsters in

schools so distant from home that it is inconvenient or impossible for parents to attend school functions or to meet with teachers and counselors.

For some, there is concern that their children might be sent to schools that are run down and neglected because their black or brown student bodies were condemned to inferior education; and for some, they are afraid for the very safety of their children being bused into a hostile area.

In California, I have visited enough schools to remember those in ghetto neighborhoods—with their tattered text books and unpainted classrooms in sharp contrast to schools in all-white neighborhoods.

There is no inherent virtue in having a black child sit next to a white child in a classroom—although there would be inherent value in our society if blacks and whites lived together in harmony.

In theory, black schools could be as good as white schools. In practice, however, they are not, and resources are inevitably centered in white schools to the permanent disadvantage of segregated ones.

Black schools traditionally have been shortchanged. And black children cannot prepare themselves to participate effectively in society if they are herded into separate and inferior schools. Nor can white children, segregated into lily-white schools, learn about life in the multiracial world with which they will have to cope as adults.

Instead of legislating regressively to prevent our schools from integrating, instead of legislating repressively to sentence some students to inferior schooling, instead of legislating to rigidify dual systems of learning, Congress should seize the initiative in assuring our schools adequate financing to provide a quality education to every child.

Mr. President, I think one thing is clear. No one is suggesting during the course of this debate that it is appropriate to have massive busing programs, transporting children for hours in buses and moving them across large geographic expanses to schools that are miles and miles from home where they will receive inferior education. Nobody is suggesting that. No one says that racial balance for the sake of racial balance is a good thing and that all schools should have an absolutely equal representation of minority students. I, for one, do not subscribe to such a point of view nor do I think does the Supreme Court.

Mr. President, I want to stress to my colleagues in the Senate today that the job of guaranteeing equal educational opportunity to American children is not limited to protecting the rights of black children. Native American children, Mexican-American children and children of oriental descent have also suffered from the inherent inequality of segregated education. In the past, in my own State of California the children of these racial and ethnic groups were prevented by law from attending school with the children of white Californians. Until its repeal, section 804 of the California education laws permitted the exclusion of oriental children from schools attended by white students. Although the law was designed, as were many other equally infamous laws passed in California at that time, to ward off the so-called "yellow peril," school officials used the statute as a handy excuse for discriminating against American Indian students as well. Since the law permitted the exclusion of children whose parents were Indian—intending to mean those who traced their origin to India—school officials, by intentionally misinterpreting the statute, did not allow American Indian students to sit with white children. Chicano students were excluded as well since they were assumed to have Indian blood.

Commissioner Manuel Ruiz of the U.S. Commission on Civil Rights recently recounted this most unfortunate part of California history in his testimony before the subcommittee of the House Committee on the Judiciary on June 8, 1972. Commissioner Ruiz stated:

> If you recall, we had anti-oriental legislation in Section 804 of the State of California Education Law. I recall, when I was permitted to practice law, the children of Japanese, Chinese, Mongolian, and Indian parents could be segregated, there were no laws against the black segregation. And they were segregating the Mexican-Americans in the public school system in California because they had Indian blood.
>
> I recall, the reason they did it was they misinterpreted the article with respect to the Indian being anti-oriental legislation. It was the India Indians from the Orient that were being referred to. The law was finally repealed. There were many good Anglos and many good black people and we are grateful to them for assisting us in eliminating that anti-oriental legislation.

Mr. President, as the California history I have just related indicates, the disease of racism has in the past spread throughout this land. All of us, no matter what State we come from, must continue our efforts to cure that disease. We must overcome for once and for all its lingering effects.

The denial of equal educational opportunity to Chicano students is of particular concern to me. Mexican-Americans comprise the largest minority group in California and likewise their children constitute the largest group of minority students in the State's schools. Nationwide, Mexican-Americans are our second largest minority group.

There are an estimated 2.3 million Spanish surnamed pupils in the United States. They represent about 5 percent of our total public school enrollment. Of these Spanish surnamed pupils, about 1.5 million are Mexican-Americans who attend public school in the five Southwestern States of Arizona, California, Colorado, New Mexico, and Texas. In that region, Chicano students comprise 18 percent of the enrollment. More than 80 percent are found in Texas and California, with nearly 50 percent in California alone.

For the past several years the U.S. Commission on Civil Rights has conducted a study of Mexican-American education in the Southwest. The first report of that study, which was issued in April 1971, considered the ethnic isolation of Mexican-Americans in the public schools. The data for the report are based on an extensive mail survey of schools and districts in the Southwest conducted by the Commission in 1969, plus staff field trips and followup investigations conducted since that time.

In its 1969 survey the Civil Rights Commission found that a large proportion of Chicano pupils attend schools in isolation from their Anglo counterparts. This is due, in part, to the segregation of Mexican-Americans and Anglos in separate school districts. More than 400,000 Chicano pupils throughout the Southwest attend school in predominantly Mexican-American districts. In Texas, where isolation by district is most severe, nearly 60 percent of Chicano students are in districts in which their own ethnic group predominates.

The heavy concentration of Mexican-American people in South Texas is one factor contributing to isolation by district. Thus, segregation of Chicano students can be attributed, to some extent, to mere demography or "natural causes." For in South Texas, as elsewhere in the Southwest, it is not uncommon to find a district that is almost entirely Chicano sitting next to one that is almost completely Anglo. The presence of neighboring districts of such contrasting ethnic composition may have resulted from segregation in violation of the Constitution and title VI of the Civil Rights Act of 1964. The failure of responsible efforts to eliminate this ethnic isolation may also violate these standards.

The Civil Rights Commission's documentation of the segregation of Chicano students by school district should come as no surprise. The facts of such discrimination have been known for some time. But unfortunately State and Federal officials have taken few remedial steps. Here as in so many instances of school segregation the courts have been forced to step in, because of the default of the local, State, and Federal officials with the primary responsibility in this area.

For example, in its 1968 hearing in San Antonio, Tex., the Commission on Civil Rights heard testimony on the segregation of Mexican-Americans by district in Del Rio, Tex. Anglo children from an Air Force base located in San Felipe School District, which is predominantly Mexican-American, were being bused from San Felipe to the neighboring Del Rio School District, which is predominantly Anglo. Despite the fact that the San Antonio and the Del Rio school district facts had been brought to the attention of HEW as early as 1969, and even though HEW a year later, on May 25, 1970, issued a memorandum urging school districts to examine current practices and to assess compliance procedures, it was not until 1971 that HEW conducted compliance reviews in the two districts of San Antonio and Del Rio. Before HEW had made much progress in negotiating a remedy, a U.S. District Court judge ordered the two districts to consolidate.

Such school district consolidation or other remedial altering of school district lines is very often the most appropriate, and sometimes the only effective remedy

for the ethnic isolation of Mexican-American students by school districts. Yet H.R. 13915 would effectively deny that remedy to the Federal courts.

Section 404 provides that in formulating remedies under sections 401 and 402 of the act, school district lines shall not be ignored or altered except where it is established that the lines were drawn for the purpose, and had the effect, of segregating children among public schools.

Thus, H.R. 13915 tries to establish school district lines as absolute barriers. But it is clear from the Del Rio and San Felipe case I have described that school district lines were never sacrosanct when they could be ignored in order to perpetuate segregation.

Section 404 will effectively deny an often necessary remedy in such cases because it requires a court to find that school district lines were drawn for the purpose of segregating children before the court may alter or ignore them. As the lawyers in this Chamber well know, it is often extremely difficult to prove the motive behind an official action. School boards can always recite a host of apparently neutral alternative reasons for any of their actions. It is the effect of these actions or inactions that are the determining factor.

By requiring proof of discriminatory purpose or motive rather than merely discriminatory effect, section 404 is directly contrary to the Supreme Court's holdings 3 months ago in *Wright* v. *Council of City of Emporia,* 40 U.S.L.W. 4806 (June 22, 1972), and *United States* v. *Scotland Neck City Board of Education,* 40 US.L.W. 4817 (June 22, 1972). Those cases involved the attempted withdrawal of geographic subdivisions of school districts which were in the process of dismantling dual school systems under court order. The Supreme Court held that it was the effect of the redrawing of district lines that was crucial, and that it was not essential to find a discriminatory purpose.

In my discussion on the segregation of Mexican-American students by school districts, I do not mean to imply that these students do not also suffer from discrimination within school districts. They clearly do. Fully half of all Mexican-American students are isolated by schools within their respective school districts. In 1968, 54.1 percent of all Mexican-American students in the Southwest attended predominantly minority schools. By 1970, that proportion had increased slightly to 54.6 percent.

Another major area of concern is those practices which tend to segregate Mexican Americans within school walls. Such practices include ability grouping, tracking, and placement in classes for the educable mentally retarded.

Unpublished data from the Civil Rights Commission's 1969 survey underscores the need for intensive State, local, and Federal effort to combat this kind of segregation. As of 1969, about four of every six schools in the Southwest practiced some form of ability grouping. One of every six schools placed students in one ability group for all subjects. Further, the proportion of Mexican Americans in EMR classes was about twice that of Anglos. I am sorry to say that the placing of Mexican-American students in classes for the educable mentally retarded has been in the past a particular problem in California.

Often this type of discrimination against the Chicano child results from the fact that Spanish rather than English is his primary language. In this regard I must state that section 201(f) would represent a step in the right direction. That section provides as follows:

DENIAL OF EQUAL EDUCATIONAL OPPORTUNITY PROHIBITED

SEC. 201. No State shall deny equal educational opportunity to an individual on account of his or her race, color, sex, or national origin, by—

(f) the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs.

But, Mr. President, this is the only, I repeat, only, positive provision in this entire act. Furthermore, what the act offers with this one hand, it takes away with the other. I believe that adequately funded bilingual educational programs offer the best hope of overcoming English-language deficiencies without damaging the cultural, language, and ethnic heritage of the minority student. Bilingual education also is the only method which directly benefits the majority student as well. The basic premise of this method is that both languages will be employed in the schools.

Clearly, bilingual programs can only exist in schools where there are both Spanish-speaking and English-speaking students.

Thus, while subsection 201(f) offers some promise to minority language students, it destroys the hope for effective programs by restricting, and in many cases making absolutely impossible, the elimination of racial and ethnic isolation in the schools.

Furthermore, no subsection—no matter how progressive it may be in isolation—can justify support of an act such as this one which is in its totality so patently unconstitutional and retrogressive.

Mr. President, one of the most offensive aspects of this entire debate is the fact that this bill is being railroaded through the Senate, bypassing all of the procedures developed over two centuries in this body to assure constructive and effective legislation.

We have had no committee hearings on this bill, there has been no thorough study of its provisions. In fact, most of it was drafted in the heat of emotional debate on the House floor, a process known for producing ill-considered, short-sighted legislation which brings remorse and regret directly in its wake.

But the most outrageous part is the comparison with the reception other bills—equally important bills, in fact more important bills have had in this Chamber.

We spent the last 2 weeks trying to pass a consumer protection bill—a bill designed to even the score between the little guy and big business; a bill designed to protect the hard-earned but meager dollars of the American worker. A Senate committee spent a year producing that bill, after many previous years of effort to arrive at a fair solution.

There was no great rush to enact that bill. In fact, the very people who prevented that bill from ever getting to a vote are the ones who are circumventing every normal procedure to rush out this "quickie" bill in time for the election. And yet, the consumer bill had vastly more significance and far greater long-term benefit to every American.

Look at another example—gun control. In 1971, 10,000 murders were committed with firearms and guns accounted for 21,000 deaths. From 1961 to 1970, 604 police officers were killed by firearms. Yet despite 10 years of hearing after hearing, study after study, and dozen after dozen of witnesses, the same people who want to ram this busing bill through fought just as hard to kill gun control legislation with more hearings, more study, and more delay.

To listen to the rhetoric in this Chamber you would think that school buses are more dangerous to life and limb than firearms.

Take another case—pension reform. Thirty million workers in this country have invested billions of dollars in pension programs to protect against poverty in their later years. Over $130 billion are contained in pension plans in this country.

Yet, we have now learned that for millions of those workers the dream of a retirement pension is an illusion—they will never receive a penny of those pensions. The Senate Labor Committee spent 2 years on a massive study of this problem and formulated a major reform of our pension systems, yet, we cannot even get it to a vote. In fact, the tortuous road the bill had to follow led it from one committee to a second where it was stripped of its substance only to languish further on the floor.

Or take health insurance—what is more critical to the well-being of every American than the assurance of adequate and affordable medical care. Yet, we stand today no further down the road toward decent health coverage than we did when I first came to the Senate.

Mr. President, there is not a doubt in my mind that if the Nixon administration cared one-tenth as much for health insurance as it does about busing, we could have given every American the guarantee of adequate health care.

Or take auto insurance. We spent $14 billion per year on an auto insurance system that is essentially a fraud on the pubic—returning less than 50 cents of every dollar to accident victims. But when we tried to reform that system, there was no great haste to do so. Even after 3 years of study and a volume report by the Department of Transportation demonstrating beyond any doubt the importance of passing the no-fault bill this year the Senate voted to send it back to the committee. And that was a bill which had spent 2 years being carefully drafted by the Commerce Committee.

But look what we are doing now—on a bill that probably has less significance to most Americans than any of the bills

I have just mentioned, we find ourselves being stampeded to provide some campaign fodder for playing on the fears of parents.

Of all of the frauds that have been decried on the floor of the Senate, this bill is the biggest consumer fraud in our history.

Mr. ALLEN. Mr. President, I yield myself such time as I may consume.

Mr. President, I am always intrigued to hear those Senators who represent States which have little or no desegregation hammering for the immediate desegregation of schools in States that in the past have had segregation. I am always intrigued by those Senators who represent States that have no busing demanding that busing continue in areas where busing exists at this time.

I was very much interested in the remarks of the distinguished Senator from California with respect to the 14th amendment and the fact that this bill contravenes the provisions of the 14th amendment. I would like for any Senator to point out a single provision in the bill before us that is inconsistent with any binding ruling by the U.S. Supreme Court on desegregation, that is inconsistent with the laws of Congress already enacted on the subject of the desegregation of public schools. I would like for any Senator to point out a single provision of this bill which is not consistent with traditional principles of equity which prescribe limitations on the exercise of discretionary powers by Federal court judges.

The last few days I have listened with interest to the arguments made by those Senators who oppose this bill. The first argument made was that it did not go to a committee. The second, that it was unconstitutional, and despite the claim that it is unconstitutional under present law, that it goes back to 1954. Others made the argument that cloture should not be imposed.

One Senator was critical of the fact that the bill provides for an authorization of only $500 million for the purpose of helping economically deprived schools and school children. Of course, it was pointed out to him that the bill was open to amendment. If he thought that amount was too small, he could offer an amendment; but no such amendment was offered.

Mr. President, the discussion of this bill, in addition to continuing national interest in this most important subject, pending action by the Congress, has brought to a close an era here in the U.S. Senate that I think is worthy of comment. When I came to the Senate there was a group of more than a dozen Senators who had always voted for cloture, on the theory that any bill coming before the U.S. Senate and getting to the calendar should be voted on by the membership up or down. I heard very definite arguments to that effect here on the floor by Senators who have spoken on this subject. There were some 20 Senators who had never voted to apply cloture.

I believe that situation is now changed. I believe there is not a single Senator who has now not at one time or another voted to apply cloture. The Senator from Arkansas (Mr. MCCLELLAN) for the first time in 30 years of service in the Senate voted for cloture, because of the importance of this issue. I believe the distinguished Senator from Connecticut (Mr. RIBICOFF) voted against cloture for the first time.

I believe this is a good trend.

The junior Senator from Alabama, on the first cloture vote on this issue, voted for cloture for the first time.

I believe it is best to consider measures on their merits and each individual bill on its merits. Obviously, if there is a bloc of 20 Senators who refuse to vote for cloture at any tme, it is going to be almost impossible to cut off debate. So issues should be decided on their merits.

Legislation aimed at Alabama and the South has been enacted by the Congress in such measure that there is nothing left to enact, and we in the South need affirmative legislation; and this is affirmative legislation.

What does it do? Mr. President, far from contravening the provisions of amendment No. 14, it acts under section 5 of amendment 14, which says "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article." That is all the bill does. It provides the remedies that may be applied by Federal courts throughout the land in implementing desegregation orders.

That does not mean that there shall be a uniform policy for desegregation of the schools. Even if this bill is passed, there is still going to be some segregation of schools in areas outside of the South that are protected by Federal law, statutory, and judge-made. Segregation is going to continue in areas outside the South, protected by Federal law. But when the Federal court does take under its jurisdiction the matter of desegregating a public school, then this bill provides the formula that must be applied, no matter where that Federal judge is.

That is all the bill does. It provides the order of remedy. It does not change substantive rights. It merely provides the remedies that may be used by the Federal courts in implementing its desegregation orders.

This bill has been in the breast of the Senate, or a companion bill, S. 3395, recommended by the President, went to the Committee on Labor and Public Welfare on March 22 of this year and has reposed there. I do not suppose it will see the light of day in this session, certainly. It would be futile to do so. But if H.R. 13915 had gone to that committee, it would still be reposing there.

As I say, the bill did not even go to the committee at all. It would have been a futile thing if it had gone to the committee; and by not going to the committee, it merely followed a practice used and recommended in 1957 and 1964 by those who now criticize the fact that the bill did not go to the committee.

Mr. President, if the bill merely states the present law—and in some places that is all it does—what is the complaint? Why not pass it and give the proponents of the measure what they want? It does not do anything, some Senators say, as the record will show.

But there must be something to it. There must be something that they fear. Maybe they do not want the same remedies applied by Federal courts throughout the land. Maybe they want to continue fostering and protecting segregation in their areas. Maybe they do not want segregation of public schools to be a national policy. Maybe that is what they fear by the passage of the bill.

They say the bill is unconstitutional. Well, if it is unconstitutional, and patently so, as they say, is it not obvious that there would be no great objection to the bill? It would be stricken down in a matter of weeks. The last enactment of Congress, on June 23 of this year, Public Law 92–318, became effective on that date and was rendered inoperative by Mr. Justice Powell in the Augusta, Ga., case when he said that the stay provision on a busing order for the purpose of achieving racial balance did not apply to the facts of the Augusta case, because he said that that was seeking to break down desegregation and not to achieve a racial balance.

Obviously it could not be to achieve a racial balance, Mr. President, because Chief Justice Burger had pointed out that if an order called for strict racial balance, the order would have to be reversed. So there is no field of operation for the last enactment of Congress in this regard.

Therefore, some action has got to be taken by Congress if we are not going to continue to have mass forced busing throughout the South.

And, Mr. President, it is coming to other areas. I dare say, and I serve this word of warning to my friends who are seeking to defeat this bill, that the time will come when the Supreme Court will rule that if the public schools of Alabama and the South must be desegregated to give each child the equal protection of the laws, the northern school systems must desegregate in order to give each northern child the equal protection of the laws. For, Mr. President, why should it be in the South a denial of equal protection of the laws not to desegregate, and not be a denial of the equal protection of the laws to continue with a segregated system in areas outside the South?

Mr. President, I would say to the distinguished opponents of this legislation, there is more of a field of operation for this bill in areas outside the South than in the South, and the day is going to come when those who are now fighting this measure will wish that they had supported it.

Alabama and the South, Mr. President, have accepted desegregation, and I dare say that more than 90 percent of the minority-race children in Alabama and the South go to schools with a white majority, whereas in many areas outside the South it is true that segregation is on the increase. How can that type of system continue, and how can Senators who have no desegregation in their States say that this bill seeks to deny equal protection of the laws to children? This bill would guarantee equal protection of the laws to all schoolchildren, irrespective of their race, their color, or their religion.

I reserve the remainder of my time.

The PRESIDING OFFICER (Mr. TUNNEY). Who yields time?

Mr. JAVITS. Mr. President, may we know how much time we have and how much time the other side has?

The PRESIDING OFFICER. The Senator from New York has 4 minutes, and the Senator from Alabama has 8.

Mr. JAVITS. Mr. President, I shall use all of our time but 1 minute, just to have a reserve if we should need it, and I hope the Senator from Alabama will then use some of his time.

Mr. President, I yield 1 minute to the Senator from Michigan (Mr. HART).

Mr. HART. Mr. President, at the approach of this cloture vote, I ask unanimous consent to have printed in the RECORD three strong expressions, first of the American Baptist Convention, second of the American Federation of Labor and Congress of Industrial Organizations, and third of Common Cause, against the enactment of this measure.

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

AMERICAN BAPTIST CONVENTION,
Pennsylvania, Pa., September 1, 1972.

Hon. PHILIP A. HART,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HART: It is our understanding that in the near future the Senate is to consider the measure recently passed by the House of Representatives declaring a moratorium on busing as a possible tool in providing quality education for all American children. As General Secretary of the American Baptist Convention I wish to express concern about the Senate taking action on this issue at a time when political considerations tend to assume preponderance in major decisions.

We wish to bring to your attention the following section from the resolution on "Quality Education" passed by the delegates of the American Baptist Convention in annual session at Denver, Colorado, May 10–14, 1972, by a vote of 991 to 426 with 37 abstentions.

One aspect of quality education is the shared living experience of pupils of various racial, ethnic, social, and economic backgrounds. We support, therefore, efforts to implement the 1954 Supreme Court Decision (Brown vs. Topeka Board of Education) through plans which may involve the redistricting, regrouping, and/or busing of pupils.

In the discussion prior to the vote it was obvious that those favoring the resolution did not do so because of a desire to promote busing but rather because of their conviction that all American children deserve the best education that we can provide. It was felt that busing was not the real issue at stake as indicated by the following facts among others:

(1) Approximately 43% of all American children are now bused to school, yet there has been little or no opposition to busing until the courts decreed that it should be used as one means of providing quality education for all children regardless of racial background or place of residence.

(2) According to a study made by the U.S. Department of Transportation, less than 1% of the annual increase in busing can be attributed to desegregation.

(3) There was no outcry against busing when both white and black children were being transported, in some instances for long distances, in order to maintain racially segregated schools.

(4) There has been no attempt to secure legislation which would prohibit the use of public funds for the transportation of children to private or parochial schools or to racially segregated academies.

In the light of these facts I as an individual, and as the designated leader of one of the major Protestant denominations, urge you to refuse to support any legislation that could be used to erase the progress we have made over the past several years in providing American children the kind of education which will equip them to live as good citizens in a pluralistic society.

Sincerely,

ROBERT C. CAMPBELL,
General Secretary.

AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS,
Washington, D.C., October 6, 1972.

Hon. PHILIP A. HART,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HART: The AFL–CIO strongly urges you to vote against cloture on debate of the Equal Education Opportunities Act of 1972. To curb debate at the very outset on this highly controversial and—in all probability—unconstitutional legislation would be making a mockery of the Senate's reputation as "the world's most deliberative body."

While the AFL–CIO has supported all efforts to liberalize Rule XXII, the very Senators who now seek immediate cloture, have been the bitterest opponents of any rule change. A number of Senators, as a matter of principle, have never voted against cloture, but the AFL–CIO has long maintained that it is no violation of principle to use the present rules of the Senate to protect the constitutional rights of America's children.

H.R. 13915, as enacted by the House, has been sharply criticized by some 500 law professors from 42 law schools throughout the country. Yet, no hearings on the House-passed measure have been held by the appropriate Senate committee. Although the bill passed the House in mid-August, its Senate supporters blocked referral to the Senate committee thereby prohibiting normal Senate procedure.

To block committee consideration of this critical legislation and then immediately to attempt to halt any floor debate is unconscionable.

There is no question that busing is a highly volatile issue, but the House-passed bill strikes at the very core of school desegregation. The bill would permit all desegregation orders—going back as far as the Supreme Court's 1954 Brown decision—to be reopened for new litigation.

The Senate must not allow itself to be stampeded into accepting legislation that would curb the courts, virtually ban busing as a tool to bring about constitutional desegregation, and re-open cases long resolved.

An AFL–CIO President George Meany declared, March 22, 1972: "The rights in question are those of individual school children and once lost for any school year cannot be recaptured."

Sincerely,

ANDREW J. BIEMILLER,
Director, Department of Legislation.

COMMON CAUSE,
Washington, D.C., October 3, 1972.

DEAR SENATOR: The Equal Educational Opportunities Act of 1972, H.R. 13915, will be debated by the Senate shortly. Common Cause opposes this bill as written. H.R. 13915 would turn back the clock on eighteen years of progress in school desegregation. Desegregation plans that have been functioning effectively for years would be subject to change and possibly destroyed. The bill is totally destructive. It provides no new money and does nothing to assure equal educational opportunities.

Normally, such ill-considered legislation would not only have little chance for passage, it would not be seriously debated on the Senate floor until after hearings and study by the apppropriate committee. The Senate should not be stampeded by the present emotional atmosphere over "busing" to pass legislation like H.R. 13915 whose constitutionality is seriously questioned.

We oppose passage of the legislation on procedural grounds as well. In spite of the great seriousness of the legislation, H.R. 13915 was maneuvered directly to the Senate floor without the benefit of committee deliberation and without affording interested individuals and groups an opportunity to testify on it. Moreover, it is not the bill recommended by the House committee. It was radically amended on the House floor and thus has had none of the usual scrutiny by the committee members.

Common Cause's statement in opposition to H.R. 13915 is enclosed for your consideration.

Sincerely,

JACK T. CONWAY,
President.

COMMON CAUSE STATEMENT IN OPPOSITION TO H.R. 13915

Six months ago, Burke Marshall, deputy dean of the Yale University School of Law and a former assistant attorney general, testified on Common Cause's behalf before the House Judiciary Committee in opposition to a proposed constitutional amendment, the practical purpose of which would be to deny the courts the right to rectify deliberate, government-enforced school segregation. In his testimony, Dean Marshall said this about the issue of busing:

"There is no evidence that the federal Judiciary has suddenly, in recent years, become peopled with wild men, arbitrarily ordering indiscriminate and massive busing of children. This is an issue grown out of political rhetoric; out of inflamed fear of steps that have not been taken and never will, as far as the cases now on the books are concerned; out of imagined rather than real threats to family life and family ties to communities. This is therefore the worst possible of atmospheres in which serious men should seriously consider changing the Constitution."

Now, out of such inflammatory rhetoric, has come H.R. 13915—the mislabeled Equal Educational Opportunities Act of 1972, a bill which contains a formula not for equal educational opportunity but for resegregation. Even before House floor amendments increased the inequities in the bill, it was described by a minority of the House Education and Labor Committee as "a frontal attack on the 14th Amendment and an unwarranted and frightening intrusion" by the legislative branch into the judicial branch.

H.R. 13915 pays lip service to the need to eliminate dual school systems—but what it really does is constrain the courts from ordering what is in many cases the only feasible and available method by which such dual systems may be dismantled. It allows only busing to the "closest" or "next closest school". Even if busing beyond such schools were essential to eliminate denials of equal educational opportunity, the courts would be unable to order it. And since other effective remedies—magnet schools, pairing and the like—of necessity involve some degree of transportation, their use would also be precluded by the bill.

The House-passed legislation would also allow a reopening of all court orders and desegregation plans approved by the Department of Health, Education and Welfare, unsettling innumerable communities where the issue has already been thrashed out and decided. As many as 154 desegregation decisions in 19 states, according to HEW, could be challenged anew.

If this legislation were enacted and held to be constitutional, it would result in nothing short of a return of "separate but equal" schools in many parts of the nation. However, we are confident that H.R. 13915 is unconstitutional; the Congress, in our view, cannot lawfully forbid the courts to enforce the Con-

stitution. Should the bill, nevertheless, be enacted, it would precipitate a damaging collision between the President and the Congress on the one hand, and the Supreme Court on the other, a collision that would further divide our nation.

The answer to this difficult problem is not to attack the courts and infringe on their responsibilities, but to guide and fund school districts in undertaking genuine long-range efforts of educational reform. H.R. 13915 will not do this. Its passage would serve instead to exacerbate racial tensions and sabotage much progress already made in school systems throughout the country; it would cause a confrontation between the branches of government, bring on a fresh wave of litigation, and give the apostles of "massive resistance" another chance.

Above all, it would be a sign to all black Americans that their government was no longer willing to enforce the Constitution when public hysteria opposed it.

We ask each member of the Senate to search his conscience and consider the full meaning of civil rights before he votes on H.R. 13915.

Mr. HART. Finally, I wish to thank the many organizations across the country which have taken responsible and I am sure in many cases difficult positions in opposition to this bill. They are to be complimented, and I think their influence has been demonstrated.

Mr. EASTLAND. Mr. President, I am pleased to speak in support of H.R. 13915, the Equal Educational Opportunities Act of 1972.

In my judgment, this legislation affords Congress the best opportunity it has ever had to remedy the evil of federally coerced busing of students to achieve racial integration. This legislation has passed the House; and the President has stated his support for it. All that remains to be done is for the Senate to work the will of the majority of this body and approve this legislation. H.R. 13915 clearly has the support of the majority of the Members of the Senate. We should approve this legislation and send it to the President for his signature.

I do not claim that the enactment of this bill into law will necessarily solve all of the problems connected with federally coerced busing to achieve racial integration. It is possible that the Federal courts and the Federal bureaucrats will again fail or refuse to get the message. Based on their past behavior, it is conceivable that they will dream up another ingenious method of evading the clear meaning of an act of Congress, such as happened when they circumvented the provisions of the Civil Rights Act of 1964 prohibiting Federal coerced racial balance in the schools.

These efforts to evade the language of the Civil Rights Act of 1964 gave rise to the fallacious de jure-de facto distinction invented by the Federal courts and Federal bureaucrats to enforce racial balance in the schools. If this legislation is circumvented by the courts or the bureaucrats, then, in my judgment, it will be necessary for the Congress to propose a constitutional amendment to deal with this problem. Frankly, I favor the constitutional amendment approach.

However, I believe that a great deal of good can come from the adoption of this legislation, and I enthusiastically support it.

In the first place, it should be borne in mind that the branch of Government primarily empowered with expressing national policy on domestic matters is the Congress. Too frequently in the recent past, the Federal courts have invaded the province of Congress in this regard, and have decided cases on the basis of the courts' notions of sound public policy. This invasion of the power of Congress has been especially flagrant in this area of school integration.

If Congress enacts this bill into law, it will be a clear and ringing statement to the Federal courts, the Federal bureaucrats, and most of all, to the American people, that the people of America, speaking through their elected representatives, are determined to put a permanent stop to this irrational and insane busing of schoolchildren for the purpose of achieving integration.

Second, if the courts and the bureaucrats listen for once, they may interpret this law in the fashion intended by Congress, and thus obviate the necessity of the adoption of a constitutional amendment.

One of the most important features of this bill is section 406, the so-called reopener provision. This would allow any school district currently under court order to integrate the schools the opportunity to reopen the proceedings and have the order modified to conform to the new law.

This section must be retained in the bill. It is only fair and equitable that school districts which have already been subjected to harsh and unrealistic busing orders should have the right to enjoy the protection of the new law in the same manner and to the same extent the school districts who have not yet been sued. I think it is important, in this connection, to establish a clear expression of the legislative intent of Congress. I would like to briefly quote from the separate views of Congressmen O'HARA, ESCH, and WILLIAM D. FORD in the report of the Committee on Education and Labor of the House of Representatives on this legislation. These distinguished Members of the House, all from the State of Michigan, state the purpose of this legislation as follows:

The basic thrust of this legislation is to apply the law uniformly; to keep the courts from writing the laws of the land in different forms in various parts of the country. This legislation is certainly a move in that direction.

The rationale of the "reopener provision" is cogently and briefly stated by Congressman RUTH, of North Carolina in his individual views in the House Report. He stated three reasons for the adoption of the "reopener provision":

First of all, the theory behind the legislation is to uniformly apply the law.

Second, it was the intent of the sponsors to remove the confusion and injustice surrounding the schools in all areas of the nation.

Third, the educational agency operating under court orders or desegregation plans under Title VI of the Civil Rights Act of 1964 in effect on the date of the enactment of this Act and intended to end segregation of students on the basis of race, color, or national origin, should be allowed to apply to have the order or plan reopened and modified to comply with the provisions of this Act.

I believe it is of the greatest importance that this section 406, which provides equality and fairness to all the children and school districts of the United States, be retained in this legislation.

Mr. President, if the Senate will seize this opportunity which is being presented to us, we will render a great service to the parents, children, and teachers of America, as well as reaffirming the values of representative government. It is a well estabilshed fact that the vast majority of the American people are completely opposed to this asinine and senseless busing to achieve racial integration. We do not have to read the public opinion polls to know that this is true. Any one of us who reads the great volume of mail received from across the Nation is aware that the great bulk of American people feel that forced busing is a vicious monstrosity.

I say, let us slay the monster by whatever means necessary. Let us now try to do it by the enactment of H.R. 13915.

Mr. KENNEDY. Mr. President, this morning I would like to further express my serious concern about the provisions of H.R. 13915, the Equal Educational Opportunities Act of 1972.

Last Friday when this bill became the pending business of the Senate, there were some Senators who referred to this bill in such a way that may lead observers to believe that the appropriate Senate committees have had an opportunity to review the details of that bill.

During Friday's debate, the distinguished Senator from Alabama referred to title I of H.R. 13915, and stated "as reported by the committee."

I want to make it absolutely clear that no committee of the Senate has ever reported this measure to the floor of the Senate, or reviewed it.

The Senate has never held a day's hearings on this measure. H.R. 13915 has never been the subject of a single executive committee meeting in the Senate. And no committee of this Senate has ever taken a vote on this measure.

H.R. 13915 comes to the Senate after a highly questionable vote in the House of Representatives. The original authors of the President's antibusing legislation in the House felt compelled, after seeing the ultimate result of their actions on the House floor, to vote against the bill.

Congressman QUIE, Congressman ERLENBORN, and Congressman MCCULLOCH, three men who have been intricately involved in the administration's entire strategy, found this measure so repulsive to their sense of what is in the best interest of the Nation that they were forced to vote against the bill on final passage.

And so I would urge my colleagues to consider their actions very carefully. Each Senator must be fully aware that H.R. 13915 contains grave constitutional and educational dangers. It is a measure that was opposed by its own chief sponsors in the House of Representatives. And when it was reported to the Senate, it was not at all handled in a way that would allow Senators to seriously examine its effects.

I find that to be extraordinary and un-

like the traditional proceduces of this body. There is no need for us to feel compelled in any way to act affimatively on legislation of this nature in the heat of an election campaign and at a time when precipitous action can only produce harmful results.

I say harmful results because I believe it is apparent that this legislation merely creates a climate that will produce unrest and agitation across the land. Academic programs in thousands of school districts would be completely disrupted if this bill became effective at this time. For, there could be no change in the enrollment patterns of those schools until next September. The result is that without carefully evaluating the effects of this legislation we would be passing a bill whose impact would merely be to thrust a red hot coal into the heart of the Nation's school system.

No one, not any of the Senators who support this bill, can point an accusing finger at the Senate Labor and Public Welfare Committee and charge it with bottling up legislation of this nature.

For it has never been claimed, nor can it be claimed, that the committee ever has attempted to prevent the Senate from acting—after thorough investigation and inquiry and judgment—on legislation regarding desegregation.

Yet, because of the action taken by the proponents of this measure, it was not referred to the Labor and Public Welfare Committee when it was received from the House of Representatives.

Rather, it remains at the desk, and thereby circumvented the committee's full consideration of this measure.

If there is ever to be Senate action on this bill, I insist that such action take place only after the proper legislative review has been conducted. Until that time, this measure deserves no further consideration by this body. Indeed, the deeper one probes the handling of this issue, the more convincing is the case against premature Senate action.

During the debate on Friday the distinguished Senator from Alabama in a concluding paragraph said:

> 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 of transportation of students in any desegregation process.

Mr. President, I find it difficult to consider that to be all this bill does.

This bill obviously does far more in attempting to provide a mechanism for some 1,500 school districts, to undo everything that has been accomplished since 1954. The reopener provision not only resurrects the sins of the past but it also orders the Justice Department to be the forceful advocate of those who would overturn the very real progress made by thousands of respected school officials to achieve equality of educational opportunity.

But even if it were only as the Senator stated, I wonder truly whether we can view such an action without fear. For what the Senator is really saying is that the bill says—forget about Brown against Board of Education. Forget about Alexander against Holmes, forget about every Supreme Court decision from 1954 to the present.

Secretary of Health, Education, and Welfare, Elliot Richardson, wrote for the Boston University Law Review in 1966:

> Consider, for example, the impact of the decision of the Supreme Court of the United States in *Brown v. Board of Education* . . . it followed from that day forward that any requirement for the attendance of a Negro child in a segregated school amounted to a deprivation of that child's constitutional rights. And that has been true for every Negro child forced to attend any segregated school on any given day from 1954 to the present.

I believe Secretary Richardson was correct in what he said then.

This bill would say that busing may not be used to achieve desegregation. And that provision is contrary to the Court's finding in the Swann case when the Court found that busing can be a tool for seeking to achieve desegregation.

What this bill would do is to override the Court's finding in Brown, that desegregation must take place. And though the Court held that desegregation must take place now, H.R. 13915 proclaims that if busing is required to achieve that goal then the pursuit of a quality education must be foreclosed.

With this bill, the Congress would tie the Federal court's hands in such a way that it could not employ the remedy it felt necessary to achieve the right. As Justice Arthur Goldberg has stated:

> The remedy merges into the right. Any suspension of the remedy is a suspension of the right itself.

I would like to read into the RECORD a short portion of the Justice's article which speaks to this point because I believe it clearly demonstrates the inability of Congress under the Constitution to suspend the remedy in this instance.

I believe the article clearly underlines the constitutional questions raised by this legislation and the questions which prompted some 500 law school professors from across the country to question this legislation and to conclude that 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 constitutional rights for minority students, 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.

This is the kind of bill that we are considering today and these statements by eminent legal authorities should be carefully considered by this body.

Incendiary concerns about busing have unfortunately been debated in a climate of tension that has diverted public attention from the real problems of busing schoolchildren.

Members of all minority groups—not just blacks, but Chicanos, Indians, Puerto Ricans, and many others, are well aware that laws which restrict or limit the resources available to provide for adequate education of their children are direct attacks on their ability to achieve the same benefits and standards of living already enjoyed by those who are not disadvantaged. Any action that we take in this Senate which shuts off resources for delivering the benefits of a decent education to any American child is unfair. To enact legislation that prohibits busing is clearly a slap in the face of deprived citizens. Such legislation effectively removes any initiative by the Federal Government or the courts to seek an end to the inequalities based on bigotry and discrimination in public schools. That is why I have consistently rejected the arguments of those who oppose busing.

When I discussed the provisions of H.R. 13915 on the Senate floor last Monday, I touched on some of the reasons why I firmly oppose the antibusing measure currently under consideration by this Senate. Chief among the reasons that I oppose this bill is the way it has been fraudulently claimed to respond to the demand for educational adequacy on the one hand, but on the other hand it completely fails to even begin to address the problems of education or desegregation.

Let me begin to enumerate further why I find this measure unacceptable, by reciting a phrase from the 14th amendment to the Constitution:

> All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States, and of the State wherein they reside . . . No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.

It is clear from those words that the courts since 1954, have been carrying out their duty to protect this most fundamental tenet of our Constitution.

Reasonable men can surely agree that in a society that values education as highly as we do, all citizens must be able to pursue the benefits of that right, unencumbered by the inane restrictions of segregation. Unconstitutional school segregation, according to the precepts of the 14th amendment, requires effective relief. And indeed, since we know that the phrase "all deliberate speed" points to interminable delay—effective relief means immediate relief. Undoubtedly, therefore, until a new mode of transportation is developed to deliver students to their schools, limited busing probably will continue to serve as an indispensable element of such relief.

Senators are implored to pay particular attention to the record made by Members of the House of Representatives when that body fashioned the flagrant provisions of this legislation.

First, the House rejected an amendment specifying that the bill comply with the 14th amendment to the U.S. Constitution. Then it rejected an amendment which would have excluded any provision of the act which does not comply with the 14th amendment.

In the end—and this deserves special notice—the House voted on an amendment that said

> Nothing in this act is intended to be inconsistent with, or violative of any provision of the Constitution.

You may not believe this, but 197 Members of the House of Representatives who took an oath of office in which they swore to uphold the Constitution of the United States—actually voted to defeat an amendment which states that

nothing in the act is intended to violate the Constitution.

Presumably, therefore, those Members are not at all interested in protecting constitutional guarantees for the constituents.

This bill places seriously restrictive limits on the courts.

H.R. 13915 could not be better calculated to undermine the authority of our courts. It tells the courts they cannot carry out their constitutional duty to remedy violations of the Constitution.

By placing limits on the remedies the courts may invoke, this bill is not only a major threat to the delicate balance of powers prescribed by the Constitution among our three branches of government; it is also a clearcut example of congressional opposition to law-and-order, for it tells the American people that if they really want to break the law, if they really want to ignore the 14th amendment badly enough, well, go ahead and do it. And Congress will even help you.

Last April, when another antibusing bill was under consideration by the House, Congressman McCULLOCH told the Judiciary Committee that while Congress has in the past enacted legislation limiting the remedies the Federal courts might give in particular cases, in all prior instances of limiting legislation, Congress has made certain that other effective remedies were available. H.R. 13915, of course, does no such thing. It limits, or totally eliminates, what is in many places the one and only remedy to a finding that a school system is operating in violation of the law.

Of course, it is clear that Congress has the authority to regulate the jurisdictional growth of the Federal courts, but the Congress cannot use the courts to accomplish unconstitutional ends.

I fear that enactment of H.R. 13915 would precipitate a constitutional crisis in this country.

It would overthrow the 14th amendment guarantee of equal protection for all citizens, it would seek to place limits on the remedies courts may provide; it would distort the balance of powers among the three coequal branches of Government; it is in direct conflict with the constitutional requirements determined by the past 18 years of rulings by the Supreme Court, including last year's finding by the so-called Nixon Court that "desegregation plans cannot be limited to the walk-in school"; it would leave citizens without adequate remedy at law to secure their right to an equal education; it would overthrow the principle that the Federal Government, like the States, cannot frustrate the constitutional mandate of the 14th amendment; and it flies in the face of the Supreme Court rulings that Congress, under section 5 of the 14th amendment, has no power to restrict or dilute that amendment's guarantee of equal protection.

We can study this bill from front to back and find little in it that will equalize educational opportunities in America. On the contrary, this bill perpetuates existing educational inequalities.

The real purpose of H.R. 13915 has nothing to do with its alleged goal of meeting an educational need. The bill's real purpose is to deceive the American people into thinking that their elected representatives are doing something about our Nation's critical educational deficiencies when in fact they are only using busing as a smokescreen to enable the Congress to avoid facing the many real needs of education.

BUSING AND SAFETY

Interestingly, the critics of busing find it useful to cite the risks to health and safety that are imposed upon youngsters who are "forced" to ride buses to school. There are approximately 46 million youngsters in the Nation's public schools. About 20 million or 43 percent of these students use buses to get to school. Of those 20 million, less than 1 million ride them for purposes of desegregation. And two-thirds of those would still ride buses, according to HEW, even if efforts to desegregate were halted.

Thus, if all busing for desegregation were stopped today, 97 percent of all students who ride buses would still be riding them tomorrow. Are the busing critics making an outcry about those youngsters? Or are the critics basically concerned with the safety of the 1 million children who are bused for desegregation?

The National Safety Council reports that school busing is the safest form of transportation in America, and that includes walking to school.

In fact, the accident rate for boys who walk to school is three times higher than for boys who ride buses to school, and more than twice as high for girls who walk. One reason buses came to be used, indeed, was safety: As urban areas became more congested and traffic more reckless, it became safer for children to ride buses than to try to cross dangerous streets.

If the safety issue were anything more than another part of the smokescreen, those who are so concerned about safety might better be spending their time passing antifootball legislation rather than antibusing bills. For, while the accident rate for boys riding a bus to school is .03 per 100,000 student days, the football fatality rate—not just the accident rate, but the fatality rate—from football accidents has averaged 19.1 deaths per year, or 1.41 per 100,000 who play the game. That is roughly 47 times as high as the injury rate on schoolbuses.

But, of course, no one is going to try to ban football, and no one who wants to ban busing really means it when he says it is a safety risk.

This bill also says:

> The risks and harms created by excessive transportation are particularly great for children enrolled in the first six grades.

The bill fails, of course, to define "excessive." Perhaps this is because of findings like the survey of 10 segregated private schools which found that 62 percent of the pupils got there by bus, with an average one-way ride of 17.7 miles. By contrast, public schools in the same eight States where these schools are located, bused less than half their students, and at an average ride of only 10.1 miles.

In other words, the segregated schools bused more pupils, and they bused them an average of 7 miles longer, one way. Perhaps that is why the bill ducks away from defining "excessive."

The bill also fails to support its assertion that busing is harmful for youngsters. There is simply no such evidence. Besides the fact that the accident rate for children walking to school is two to three times higher than for those who ride buses, there is no evidence that busing harms children's psyches or learning ability.

In fact, there is only one scientific study ever made of this subject. Dr. Robert Coles, the world-renowned child psychiatrist, actually rode buses back and forth every day for considerably more than 1 year, to study the affect on the children.

This is Dr. Coles' conclusion:

> I never saw children get sick because they were being bused; I never saw children become emotionally disturbed because they were bused; I never saw children's schoolwork suffer because they were bused. Physically, psychologically, educationally, the experience of busing was, in fact, neutral.

BLACK AMERICANS DEMAND AN END TO TURMOIL OVER BUSING

America has been through enough agony on the issue of race. We have been torn apart, our progress stymied, and the promise of our democracy distorted by the issue of race. The last 18 years have seen progress—slow but painful—away from those ugly myths that have brought us nothing but pain. This is no time, with the possibility of brighter days ahead, to start enacting legislation which will reopen bitter wounds, will tell our minority citizens "we lied to you. We don't want to give you a fair chance after all."

Black Americans are fully aware of the hard reality that whites are not going to pay for things that do not bring direct benefit to themselves or to their children. They never have and they never will. Therefore it is not only a matter of law and morality that requires us to oppose segregated schools, it is, for blacks, a matter of self-defense.

That fact was demonstrated vividly by a black parent from North Carolina who wrote a Washington newspaper. She found it marvelous how quickly funds could be found for schools that were all-black, once those schools begin to include white children:

> Within 1 month, the parents of the white children who were being bused managed to get the black school painted, repairs made, new electric typewriters and sewing machines, and the shelves filled with books. Busing for 1 year will upgrade all our schools quicker than anything the President or the Congress can do.

Some blacks may indeed oppose busing, but their number is surely small in comparison with those blacks who have been willing to make such tremendous sacrifices to get their children into desegregated schools. And it has of course been the blacks who until now have had to make the overwhelming bulk of the sacrifices in this endeavor. Often made to feel like outsiders, cut off from extracurricular activities, insulted, and unable to afford clothes and other extras so important among peer groups, these youngsters have hung on—knowing that a bet-

ter school meant at least a chance—if not a guarantee—for a better life than their parents knew.

Some black people have grown cynical over the idea that whites will ever truly open the doors to the constitutionally guaranteed promise of equal opportunity for all. And they have decided they would rather try to go it alone. They seek what is called "community control" of their schools.

This may sound like a desirable idea, and it is desirable—as an idea. But in reality, what has always happened, whenever whites manage to segregate minorities, or minorities managed to segregate themselves, is that "community control" turns out to mean control over communities with no money. Thus, black parents know well that it makes more sense to remain "plugged in" to the flow of the majority population, than to seek isolation from the source of funds and provisions that can assure the delivery of educational adequacy.

EDUCATIONAL ADVANTAGES OF SCHOOL DESEGREGATION

Probably, no other facet of the busing issue receives as much attention as the question of what good comes from desegregating our public schools

There has never been a definitive study on just how much better or worse students perform under varied conditions. Part of this is due to the fact that there is no universally agreed upon standard for measuring just what "learning" is.

In too many instances, when it is claimed that black students do no better after moving to integrated schools, all that is really being proved is that youngsters from ghetto backgrounds do not fare too well when they take standardized educational measurement tests designed for children from white, middle-class backgrounds.

But overall, the weight of most attempts to measure the rate of learning indicates that black students do slightly better when moved to an integrated school, while whites do about the same.

This is not to contend—as is charged by some antibusing sponsors—that anyone is claiming that blacks learn better just by the magical act of sitting in the same classroom with whites. What it does say is that where white children are present. Those schools will receive their full share of money, equipment, and facilities. Where white children are not present, some of that money due the black school just somehow does not find its way there.

But the quality of an education cannot be measured by test scores alone. We have this on no less authority than the President of the United States.

President Nixon has said that the school "is a place not only of learning but also of living." And the President's Commissioner of Education, Sidney P. Marland, has said "the most important objective of the schools is to help people learn and grow and become developed human beings."

It stands to reason that on the basis of the criteria offered by President Nixon and his Commissioner of Education, we must support the idea of multiracial schools as being beneficial to our multiracial society.

And it would further stand to reason, then, that President Nixon's own criteria for schools would quickly eliminate any proposal which would serve to segregate those schools on the basis of race.

Mr. President, it may be well for the Senate to remember that people do not learn to function very well in a multiracial society when they do all their learning in uniracial schools.

We have heard from other quarters lately on this business of the value of desegregating our schools. A book by a team of Harvard researchers, headed by Prof. Christopher Jencks, has been recently cited as indicating that moving children from ghetto schools to better schools does not guarantee that they will earn more money in later life.

That may or may not be so; yet since when do we measure the quality of our citizens by their bank accounts? What about the nonmonetary benefits that accrue to those who have a chance for exposure to a better education? Do we downgrade teachers, ministers, social workers, carpenters, plumbers, or electricians, because they have less money than bankers? At least one of the recognized results of an adequate education is that educated people are more openminded, less authoritarian, more sensitive to esthetic experiences, better informed, more likely to become leaders, more independent, more confident, more internationally aware, and more likely to have jobs which bring them a fuller measure of satisfaction.

Are not those very characteristics also the criteria by which we judge good citizenship? Do not those characteristics describe what we hold forth as the type of person most valuable to a democratic society?

Then what are we doing considering legislation that will have exactly the opposite effect? Why are we considering legislation that will condemn generations of Americans to a flagrantly distorted system of public education?

Why are we seeking to return this Nation to the unjust practices of the 19th century?

The Senate should have no part of the provisions in H.R. 13915, because this measure seeks to resegregate our schools and to cripple our courts.

CONCLUSION

Obviously the most forthright way for the Senate to conclude the momentum of this distorted issue is simply to drop it and move on to the matter of adjourning the business of the 92d Congress. And I am hopeful that by tomorrow that will have happened. In the meantime it will serve to once again review the several features of H.R. 13915 that commend it as the most extraordinarily deceptive and cruelly fraudulent piece of legislation that has come before the Senate.

This bill is deceptive because it stirs up the belief among working-class white Americans that antibusing bills will protect them from the supposed evil of desegregation.

Yet, the bill actually limits busing to schools closest or next closest to home. In other words, those whites who live in areas closest to the central cities where most minority groups are confined, are the ones whose schools can be reached by the busing provided for in H.R. 13915.

This bill is unwise because it would reopen hundreds of desegregation cases long since settled, reopening old wounds long since healed, giving new opportunities for troublemakers in hundreds of cities and towns where desegregation is now a peaceful fact of life—much to the detriment of the entire community.

By enabling the reopening of these countless hundreds of cases, many of which do not even involve transportation, the bill is a betrayal of the thousands of courageous school administrators and hard-working community leaders who dared to face down the racists and the demagogues, and who calmly and responsibly went about obeying the law.

This bill is bankrupt because it lies about the extra money that ghetto schools allegedly would receive for improving their conditions. Title I of H.R. 13915 sets aside $500 million for that purpose. Yet, these funds are already authorized under the Emergency School Aid Act passed earlier this year by the Congress. And only on Monday of this week has the administration been moved sufficiently to request funds under that authority.

But it hardly surprises anyone that the amount requested by the administration and the amount in the bill is precisely one-thirtieth of the amount educational experts say would be required to make any real improvement in ghetto schools. Thus this money that has been taken from already authorized funds in the Emergency School Aid Act weakens that program while providing mock compensation to ghetto schools.

The $500 million is actually nothing more than a bribe. It would funnel a meaningless amount of money into ghetto schools in exchange for eliminating the opportunity for ghetto students to go to better schools. It tells the poor: "Stay where you are." And that means poor whites as well as poor blacks. The bill has correctly been called antiblack, but it is really antipoor, white and black alike.

H.R. 13915 lists practices which it says constitute denials of equal educational opportunity and are thus prohibited. But the list leaves out many practices already barred by the 14th amendment and title VI of the Civil Rights Act, which can only lead to the implication that those practices which it fails to include would now become permissible.

The bill also says that failure to achieve racial balance is not a denial of equal educational opportunity. This is irrelevant, since the courts themselves have specifically stated that racial balance is not required, and no court rulings have ever sought it.

The courts have ordered desegregation only where they have found dual school systems illegally operating on a segregated basis. It would seem, then, that the only purpose of citing racial balance in the bill is to perpetuate the false myth, energetically advertised by antibusing forces, that the courts have been requiring racial balance.

This long, this incredibly long list of distortions, all employed on behalf of a bill which comprises a radical attack on

our Constitution and our courts, indicates one thing:

There is no need for any national legislation on school desegregation and busing. All the necessary legislation is already on the books.

The antibusing forces know this, so they must resort to hysteria, distortion and demagoguery to press their cause. And their cause, of course, is political. They hope to stir up enough passion to cause their constituents to overlook the real issues in America today, and to deceive them through a false belief that bills like this are accomplishing something.

They ignore many things. They ignore the fact that in many places, bus rides after desegregation are shorter than they were before.

They ignore the fact that there was no such outcry during all the decades when busing was one-way, when it affected only black children, when its only function was to cheat them out of what was rightfully theirs.

They ignore the fact that even today, by far the greater burden of busing is on black children.

They ignore the fact that 15 States today pay the cost of busing children to private and other nonpublic schools. If busing is so evil, why are not all the elected officials in those 15 States being thrown out of office by the voters?

And why is it that H.R. 13915 itself contains no prohibitions against the use of public money to transport pupils to private and parochial schools—including segregated academies?

Or why—if this bill is so vital—did a massive study commissioned by HEW officials conclude that there can be almost complete desegregation of public schools, even in some large cities, within practical limits of traveltime and cost?

There are other important facts that the antibusing advocates choose to ignore. They have tried to paint court-ordered busing as a form of discrimination against the South, for example. Yet the fact is that, for all its State-enforced segregation, which had to be undone to comply with our Constitution—the proportion of children riding buses to school in the Deep South is less than 3 percent above the national average.

Antibusing forces also claim that excessive new sums of money are being spent on schoolbusing. The fact is that the percentage of education money being spent today on schoolbuses is slightly less than it was 30 years ago. Furthermore, it cost more to maintain two school systems under segregation than it does to operate one under integration.

Antibusers say their children are being transferred to unsafe schools. No responsible school board should allow any school to be unsafe. If school boards cannot take measures to insure the safety of all students, whether from the neighborhood or from 10 miles away, the school in question should be closed and the students transferred elsewhere.

Antibusers ignore the fact that almost without exception, desegregation plans are working smoothly and peacefully. In the rare cases where some rides are unnecessarily long, that is an administrative matter to be corrected, lawfully, by local officials. But national legislation to correct a weakness in one community will only create problems in others, where the situation is different.

As for any turmoil created by court-ordered busing, that activity is almost exclusively the result of actions by adults. Experience shows that time after time, as soon as adults stop throwing up picket lines, shouting at children, or the commotion dies down.

Perhaps, parents should step back and learn something from their children. In Pontiac, Mich., for example, after a parent group had made a lawless spectacle of themselves, their youngsters formed a group of students called "We Can Make It Work."

John Kindig, 13 and white, a seventh grader, made this observation about his elders to Time magazine:

All these adults keep telling us we're supposed to be against busing. They tell each other "burn the buses, tear down the schools, beat up the blacks."

Who do they think they are? We're the ones who are going to school. We're the ones who have to live together. We can do it fine if they will let us alone.

Brenda Briscoe, a black student, made a telling observation:

People in my neighborhood think busing is good. Since the white people have come over here, they're putting new stuff in the school. Before it would take three weeks to get a broken window fixed and now they do it the next day.

Another student in Pontiac, April Barr, put it in a nutshell:

The parents are the trouble, and we wish they'd stay out of it.

John Kindig added the finishing touch:

The adults say seventh-graders can't grasp the situation, that we're too young. Well, how can they tell? They're not trying to make it work. We are. We have to live together and grow up together so we can keep this earth going.

But those are not just northern sentiments. A white student in Leon County, Fla., says—

The problem with integration is more of the parents' fault than the students. If they would let the students alone, everything would work out very well.

An elementary school teacher in Alachua County, Fla., says—

Children adjust better than adults. If the grown-ups would leave them alone, they'd adjust.

Proponents of H.R. 13915 know, then, that the bill is a fraud. It is not needed, except for cynical political purposes. This bill presents the issue clearly. One is either against segregation, or one is not. That is the issue here.

We have seen that H.R. 13915 will place the legislative and judicial branches in direct conflict; will impair the Supreme Court's role of final arbiter of constitutional matters; will remove a constitutionally required remedy for the vindication of minority rights; and will reopen nearly two decades of judicial decisions, many having nothing to do with busing whatsoever, thus leading to divisiveness and confusion in the hundreds of communities that were "naive" enough to think that all Americans should obey the law.

The framers of this bill know the courts have never ordered racial balance, and they further know that recent rulings have specifically barred long-distance busing. They know very well that more specific limitations already seem to be on the way through upcoming litigation. Thus the bill is undesirable by any standard.

Mr. TAFT. Mr. President, in considering the busing issue I think it is important for us to understand what the courts have and have not done. I believe that an overview of leading school desegregation cases is not only helpful but essential to an understanding of the issues now before us. This supplements a position statement I made yesterday set out at page 34907.

A. CASES LEADING TO BROWN V. BOARD OF EDUCATION OF TOPEKA

In *Plessy* v. *Ferguson*, 163 U.S. 537 (1896), the Court held that the object of the 14th amendment—

Was undoubtedly to enforce the absolute equality of the two races before the law, but in the nature of things it could not have been intended to abolish distinctions based upon color, or to enforce social, as distinguished from political equality, or a commingling of the two races upon terms unsatisfactory to either. Laws permitting, and even requiring, their separation in places where they are liable to be brought into contact, do not necessarily imply the inferiority of either race to the other.

The Plessy case involved a Louisiana statute providing for separate railway cars for whites and blacks. The Court stated that—

We consider the underlying fallacy of the plaintiff's argument to consist in the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of anything found in that act, but solely because the colored race chooses to put that construction upon it. * * * The argument also assumes that social prejudices may be overcome by legislation and that equal rights cannot be secured to the Negro except by an enforced commingling of the two races. We cannot accept this proposition. If the two races are to meet upon terms of social equality, it must be the result of natural affinities, a mutual agreement of each other's merits and a voluntary consent of individuals.

In a powerful dissent, Mr. Justice Harlan stated that—

Everyone knows that the statute in question had its origin in the purpose, not so much to exclude white persons from railroad cars occupied by blacks, as to exclude colored people from coaches occupied or assigned to white persons. * * * The thing to accomplish was, under the guise of giving equal accommodations for whites and blacks, to compel the latter to keep to themselves while traveling in railroad passenger coaches. No one would be so wanting in candor as to assert the contrary. The fundamental objection, therefore, to the statute, is that it interferes with the personal freedom of citizens * * *. If a white man and a black man choose to occupy the same public conveyance on a public highway, it is their right to do so, and no government, proceeding alone on grounds of race, can prevent it without infringing on the personal liberty of each.

Mr. Justice Harlan also stated that—

If the State can prescribe, as a rule of civil conduct, that whites and blacks shall not travel as passengers in the same railroad coach, why can it not so regulate the use of

the streets of its cities and towns as to compel white citizens to keep on one side of a street and black citizens to keep on the other.

Justice Harlan stated that—

Our Constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law. The humblest is the peer of the most powerful. The law regards man as man, and takes no account of his surroundings or of his color, when his civil rights, as guaranteed by the Supreme law of the land, are involved.

He stated prophetically that—

In my opinion, the judgment this day rendered, will in time, prove to be quite as pernicious as the decision made by this Tribunal in the Dred Scott case.

He added that—

The sure guarantee of the peace and security of each race is the clear, distinct, unconditional recognition by our governments, National and State, of every right that inheres in civil freedom, and of the equality before the law of all citizens of the United States without regard to race. State enactments, regulating the enjoyment of civil rights, upon the basis of race, and cunningly devised to defeat legitimate results of the war, under the pretense of recognizing equality of rights, can have no other result than to render permanent peace impossible and to keep alive a conflict of races, the continuance of which must do harm to all concerned.

He described the arbitrary separation of citizens on the basis of race as—

A badge of servitude, wholly inconsistent with the civil freedom and equality before the law established by the Constitution.

While the separate-but-equal doctrine was not overturned prior to 1954, segregation was made more difficult by a number of important Court decisions. These decisions, for the most part, were based upon the finding that the facilities afforded to blacks were not, in fact, equal to those afforded to whites.

In *Gaines* v. *Canada,* 305 U.S. 337 (1938), the Court rejected Missouri's claim that since it had insufficient blacks to warrant the establishment of its own black law school, it could instead pay tuition at an out-of-State school.

The most important of these cases was *Sweatt* v. *Painter,* 339 U.S. 629 (1950). In that case the plaintiff filed for admission to the University of Texas Law School. His application was rejected solely because he was a Negro. There was at that time no law school in the State of Texas which admitted Negroes.

After the plaintiff's petition was filed, and during the pendency of the litigation, the State of Texas opened a new law school to which the plaintiff was invited to apply. However, the plaintiff refused to register at that school. On remand, the Court found that the new school offered the petitioner, "privileges, advantages, and opportunities for the study of law substantially equivalent to those offered by the State to white students at the University of Texas."

The Supreme Court found that the University of Texas Law School was staffed by a faculty of 16 full-time professors, some of whom were nationally recognized authorities in their fields. The Texas Law School had a law library containing over 65,000 volumes. The law school for Negroes, on the other hand, did not have an independent faculty and no library.

Mr. Chief Justice Vinson delivered the opinion of the Court and held that the plaintiff was entitled to a legal education equivalent to that offered by the State to students of other races:

Such education is not available to him in a separate law school as offered by the State. We cannot, therefore, agree with respondent that the doctrine of *Plessy v. Ferguson* . . . requires affirmations of the judgment held. Nor need we reach petitioner's contention that *Plessy v. Ferguson* should be re-examined in the light of contemporary knowledge reflecting the purposes of the 14th Amendment and the effects of racial segregation.

The Court then ordered that the plaintiff be admitted to the University of Texas Law School.

In a companion case, McLaurin against Oklahoma State Regents for Higher Education, 339 U.S. 637 (1950), the Court held that Oklahoma had denied the appellant, a Negro, the equal protection of its laws by imposing upon him a number of restrictions following his admission for graduate study to the University of Oklahoma. In order to conform to the State's statute requiring racial segregation at institutions of higher education, the university required him to sit apart at a designated desk in an anteroom adjoining the classroom, to sit at a designated desk on the mezzanine floor of the library without the privilege of using the desks in the regular reading room, to sit at a designated table, and to eat at a different time from the other students in the school cafeteria. The Court in this proceeding upheld the appellant's right to have these restrictions removed:

These restrictions were obviously imposed in order to comply, as nearly as could be, with the statutory requirements of Oklahoma. But they signify that the State, in administering the "facilities it affords for professional and graduate study, sets McLaurin apart from the other students. The result is that appellant is handicapped in his pursuit of effective graduate instruction. Such restrictions impair and inhibit his ability to study, to engage in discussions and exchange views with other students, and, in general, to learn his profession. . . . Appellant, having been admitted to a state-supported graduate school, must receive the same treatment at the hands of the state as students of other races."

Finally, in Brown against the Board of Education of Topeka, 347 U.S. 483 (1954), the Court held that—

In the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal.

This decision did not entirely undercut the Plessy doctrine. Instead it was based upon a factual determination that segregated school facilities retarded the educational process of black children. It was this factual finding that led to the conclusion that separate educational facilities are inherently unequal. In other words, the Court found that separate facilities were not equal as required by the Plessy rationale. In making this factual finding, the Court quoted with approval the language of the Kansas court:

Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the Negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of the law, therefore, has a tendency to retard the educational and mental development of Negro children and to deprive them of some of the benefits they would receive in a racially integrated school system.

With the announcement of the Brown decision it was not clear that the Court would strike down other segregated facilities where there was no factual showing that such segregated facilities impeded the ability of blacks to fully participate.

In the companion case of *Bolling* v. *Sharpe,* 347 U.S. 497 (1954), the Court held that—

Compulsory racial segregation in the public schools of the District of Columbia violated the due process clause of the Fifth Amendment.

The Court pointed out that unreasonable discriminations constituted a denial of due process of the law. Since segregation in public education was not reasonably related to any proper governmental objective, it was held to impose on Negro children of the District of Columbia a burden that constituted an arbitrary deprivation of their liberty.

In many areas the Bolling case is more important than the Brown decision, because its doctrine of unreasonable racial classifications invited challenges to the Plessy doctrine in areas where no factual determination could be made as to the retardation of Negro progress in segregated facilities. The very factual determination that supported the Brown decision, was itself a very limiting factor as to the further extension of the equal protection clause in striking down segregated facilities. It was this second doctrine, as stated in the Bolling case, that amounted to a general repeal of the Plessy doctrine in all areas. It was this broader rationale which enabled courts subsequently to strike down segregation by law in public accommodations.

Subsequent to the Brown decision the Supreme Court rendered per curiam decisions striking down racial segregation in other areas. In *Mayor and City Council of Baltimore City* v. *Dawson,* 350 U.S. 877 (1956), the Court confirmed a lower court decision invalidating racial segregation at a public bathing beach.

In *Holmes* v. *City of Atlanta,* 350 U.S. 879 (1956), the Court directed the district court to enter an order banning segregation in the use of a public golf course. These cases were a clear departure from the rationale of the Brown decision. In these cases there was no showing that racially segregated swimming pools impeded the ability of Negroes to swim and there was no showing that the golf game of Negroes was impeded by segregated facilities. Clearly, the Court departed from the rationale of the Brown case. It was relying instead upon the stigma connoted by official separation. The Court did not elaborate on these per curiam decisions, as to the way in which it was shifting its rationale. However, the fact of that shift is of crit-

ical importance in setting the groundwork for the rationale of the subsequent line of cases.

In the Brown decision the Court scheduled further argument on the appropriate remedy for the constitutional harm it had done.

B. DELIBERATE SPEED

In *Brown* v. *Board of Education of Topeka*, 349 U.S. 294 (1955), the Court set guidelines for appropriate relief for Brown and companion cases. The Court recognized that—

> Full implementation of these Constitutional principles may require solution of varied local school problems.

The Court remanded the cases to the district courts and said that in fashioning the decrees, the courts will be guided by equitable principles. The district courts were, however, instructed to "take such proceedings and enter such orders and decrees, consistent with this opinion, as are necessary and proper to admit to public schools on a racially nondiscriminatory basis with all deliberate speed the parties to these cases."

The initial focus after Brown was on making any breakthrough at all in the solid front of segregation by obtaining entry into all white schools for a handful of black children. The Court was confronted with massive resistance and the attempted interposition of State sovereignty as a means of avoiding compliance with the orders. In *Cooper* v. *Aaron*, 358 U.S. 1 (1958), the Court rebuffed Governor Faubus' attempted "interposition" of State law between the Little Rock School Board and the Federal Courts. The Court noted that the lower courts, "should scrutinize the program of the school authorities to make sure that they had developed arrangements pointed toward the earliest practicable completion of desegregation.

The Court stated that delay in any guise in order to deny the Constitutional rights of Negro children, could not be countenanced, and that only a prompt start, diligently and earnestly pursued to eliminate racial segregation from the public schools, could constitute good faith compliance.

In the context of the busing controversy of today, the decision is noteworthy in its rejection of the local board's claim that it was acting in good faith but should be excluded from affording relief because it was thwarted by State action.

Because education is a State function, the Court disregarded the distinction between city and State governments. The Court stated that—

> The Constitutional provision, therefore, must mean that no agency of the State, or of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction, the equal protection of the laws. Whoever by virtue of public position under a state government, . . . denies or takes away the equal protection of the laws, violates the Constitutional inhibition; and as he acts in the name and for the State, and is clothed with the State's power, his act is that of the State. This must be so, or the Constitutional prohibition has no meaning.

The foregoing statement was quoted by the Court from *Ex Parte Virginia*, 100 U.S. 339, (1879).

This decision set the groundwork for the latest Richmond decision where the Court disregarded local jurisdictional boundaries in fashioning an order which that Court believed necessary to eliminate the effects of the unconstitutional system of racial segregation. This jurisdictional problem was not present in the Swann case because in that instance the city of Charlotte and Mecklenburg County had a unified school district.

Despite the Court's efforts at implementing the Brown decision, the lower courts were faced with myriad halfhearted efforts and outright circumventions. By the 1963–64 school term the 11 States of the old Confederacy had only 1.7 percent of their black students in schools with any white students. This was a decade after Brown was decided. It was against this background that the Court began to indicate impatience with the pace of compliance. In *Griffin* v. *County School Board of Prince Edward County*, 377 U.S. 218 (1964), the Court was confronted with a school system which had closed down entirely rather than comply with a desegregation order. A private foundation operated schools for white children only, who in 1960 became eligible for county and State tuition grants. In other parts of Virginia the public schools continued to operate. The Court found that the closing of the Prince Edward County public schools, with the concurrent tuition grants assisting white children in private segregated schools, constituted a denial of equal protection of the laws for black students. The Court found that the tuition grant program was a part of a county—State—program to deprive the petitioners of a public education enjoyed by children in other counties. The Court showed its impatience with the progress which had been obtained under "all deliberate speed." The Court said—

> There has been entirely too much deliberation and not enough speed in enforcing the constitutional rights which, we held in *Brown* v. *Board of Education, supra*, had been denied Prince Edward County Negro children.

C. EFFORTS AT ACHIEVING UNITARY SYSTEMS

As the courts became impatient with the progress under the "all deliberate speed" directive, the courts were confronted with a variety of proposals to defer integration as well as proposals to achieve the unification of black and white school districts.

In *Goss* v. *Board of Education of Knoxville, Tenn.*, 373 U.S. 683 (1963), Negro pupils and their parents had filed suit to desegregate racially segregated public schools. The desegregation plan submitted to the district court by the school board, provided for the rezoning of school districts without reference to race. Each plan, however, contained a transfer provision under which any student, upon request, would be permitted, solely on the basis of his own race and the racial composition of the school to which he was assigned by virtue of the rezoning, to transfer from such school, where he would be in the racial minority, back to his former segregated school, where his race would be in the majority. These plans were approved by the district courts and the court of appeals.

The Court reversed in part, on the basis of the transfer provisions, since they were based on racial factors, which would inevitably lead toward the segregation of students by race, contrary to the ruling in Brown. The Court said that:

> Classifications based on race for purposes of transfers between public schools, as here, violate the Equal Protection Clause of the Fourteenth Amendment. As the Court said in *Steele v. Louisville & Nashville R. Co., 323 U.S. 192,203 (1944)*, racial classifications are 'obviously irrelevant and invidious.' The cases of this Court reflect a variety of instances in which racial classifications have been held to be invalid, e.g., public parks and playgrounds, *Watson v. City of Memphis, ante, p. 526 (1963)*; trespass convictions, where local segregation ordinances pre-empt private choice, *Peterson v. City of Greenville, ante, p. 244 (1963)*; seating in courtrooms, *Johnson v. Virginia, ante, p. 61 (1963)*; restaurants in public buildings, *Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961)*; bus terminals, *Boynton v. Virginia, 364 U.S. 454 (1960)*; public schools, *Brown v. Board of Education, supra;* railroad dining-car facilities, *Henderson v. United States, 339 U.S. 816 (1950)*; state enforcement of restrictive covenants based on race. *Shelley v. Kraemer, 334 U.S. 1 (1948)*; labor unions acting as statutory representatives of a craft, *Steele v. Louisville & Nashville R. Co., supra;* voting *Smith v. Allwright, 321 U.S. 649 (1944)*; and juries, *Strauder v. West Virginia, 100 U.S. 303 (1879)*. The recognition of race as an absolute criterion for granting transfers which operate only in the direction of schools in which the transferee's race is in the majority is no less unconstitutional than its use for original admission or subsequent assignment to public schools.

The Court noted, however, that all transfer provisions are not proscribed. The Court indicated that transfer provisions unrelated to race might be sustained if consistent with sound school administration. The Court even hinted that a freedom of choice plan might be acceptable. At 689 it stated:

> Likewise, we would have a different case here if the transfer provisions were unrestricted, allowing transfers to or from any school regardless of the race of the majority therein. But no official transfer plan or provision of which racial segregation is the inevitable consequent may stand under the Fourteenth Amendment.

The Court's impatience with the speed of desegregation under the "all deliberate speed" formula, was also in evidence in *Rogers* v. *Paul*, 384 U.S. 198 (1965). In that case the Court by per curiam opinion, held that Negro students who had been assigned to a Negro high school on the basis of their race were entitled to immediate relief. The desegregation plan which had been adopted in 1957 in Fort Smith, Ark., provided for desegregation, but only at the rate of one grade a year, and at the time this proceeding arose, the 10th, 11th, and 12th grades were still segregated. The Court held that assignments made in this case were forbidden, not only by the Brown case, but also because the petitioners were prevented thereby from taking certain courses offered only at another high school which was limited to white students. The Court said that, pending desegregation, the petitioners should be allowed immediate transfer to the high school which offered the more extensive

curriculum and from which they were excluded because of their race.

At about the same time the Court was also confronted with the problem of faculty segregation. In *Bradley* v. *The School Board of the City of Richmond*, 382 U.S. 103 (1965), the lower court had approved school desegregation plans for Hopewell and Richmond, Va., without inquiring into the petitioner's contention that faculty allocation on a racial basis invalidated the plans. In a per curiam decision the Court held that the petitioners "were entitled to such full evidentiary hearings upon their contention." This issue of faculty separation was to culminate 4 years later in United States against Montgomery County Board of Education, where the lower court in 1968 provided in its order that the school board must move toward a goal whereby "in each school the ratio of white to Negro faculty members is substantially the same as it is throughout the system."

The Court approved the district judge's order as written. In approving the district court's order, Justice Black stated that:

The record shows that neither Montgomery County nor any other area in Alabama voluntarily took any effective steps to integrate the public schools for about 10 years after our *Brown I* opinion. In fact the record makes clear that the state government and its school officials attempted in every way possible to continue the dual system of racially segregated schools in definance of our repeated unanimous holdings that such a system violated the United States Constitution.

There the matter stood in Alabama in May 1964 when the present action was brought by Negro children and their parents, with participation by the United States as *amicus curiae*. Apparently up to that time Montgomery County, and indeed all other schools in the State, had operated, so far as actual racial integration was concerned, as though our *Brown* cases had never been decided. Obviously voluntary integration by the local school "officials in Montgomery had not proved to be even partially successful. Consequently, if Negro children of school age were to receive their constitutional rights as we had declared them to exist, the coercive assistance of courts was imperatively called for.

The suggestion in Goss that free transfer plans might be acceptable was dampened in *Green* v. *County School Board of New Kent County*, 391 U.S. 430 (1968). In that case the school board had maintained two schools on opposite sides of the county. The county's population was approximately half black and half white and the blacks and whites resided throughout the county. There was apparently no evidence of residential segregation. In the first Brown decision, the Court held that Virginia's constitutional and statutory provisions requiring racial segregation were unconstitutional. The local school board, however, continued to operate segregated schools. In 1965, in order to remain eligible for Federal financial assistance, the school board adopted a "freedom of choice" plan for desegregating the schools. The plan permitted students to choose annually between the two schools and those not making a choice were assigned to the schools previously attended. Students in the first and eighth grades were required to affirmatively choose a school. The freedom-of-choice provisions were approved by the district court and the U.S. court of appeals.

The record indicated that during the 3 years of the plan's operation no white student had ever chosen to attend the all Negro school, although 115 Negro pupils were enrolled in the formerly all white school. Eighty-five percent of the Negro students continued to attend the all Negro school. The Court quoted from Griffin in stating that:

The time for more deliberate speed has run out.

At 439, the Court stated that:

The burden on a School Board to date is to come forward with a plan that promises unrealistically to work, and promises unrealistically to work now.

The Court also noted the variety of local factors which would affect desegregation orders:

The matter must be assessed in light of the circumstances presented and the options available in each instance. It is encumbent upon the School Board to establish that its proposed plan promises meaningful and immediate progress toward disestablishing State-imposed segregation.

This emphasis upon "State-imposed" segregation was a forecast of the distinction the Court would later raise with regard to de facto and de jure segregation. In its holding, the Court stated that:

'Freedom of choice' can have no place in such a plan. We do not hold that a 'freedom of choice' plan might of itself be unconstitutional, although that argument has been urged upon us. Rather, all we decide today is that in desegregating a dual system a plan utilizing freedom of choice' is not an end in itself * * *. The new Kent School Board's 'freedom of choice' plan cannot be accepted as a satisfactory step "to 'effectuate a transition' to a unitary system * * *. In other words, the school system remains a dual system. Rather than further the dismantling of the dual system, the plan has operated simply to burden the children and their parents with a responsibility which *Brown II* placed squarely on the School Board. The Board must be required to formulate a new plan and, in light of other courses which appear open to the Board, such as zoning, fashion steps which promise unrealistically to convert promptly to a system without a 'white' school and a 'Negro' school, but just schools."

On the same day that the Court decided Greene, the Court also struck down a freedom-of-choice plan in *Rainey* v. *Board of Education of the Gould School District*, 931 U.S. 443 (1968), and a "free-transfer" plan in *Monroe* v. *Board of Commissioners of the City of Jackson*, 391 U.S. 450 (1968). In the Monroe case, a "free transfer" plan allowed any student to freely transfer to a school of his choice if space was available. Residents of the local school zone, however, were given priority in the case of overcrowding. No bus service was provided. After 1 year, the Negro elementary schools remained all Negro and 118 Negro pupils were scattered among four formerly all-white schools. The petitioners objected to the local school zones on the grounds that the zones were racially gerrymandered to conform to racial residential patterns. In the Court's opinion, Justice Brennan stated:

This experience with "free transfer" was accurately predicted by the District Court as early as 1963: "In terms of numbers . . . the ratio of Negro to white pupils is approximately 40–60. This figure is, however, somewhat misleading as a measure of the extent to which integration will actually occur under the proposed plan. Because the homes of Negro children are concentrated in certain areas of the city, a plan of unitary zoning, even if prepared without consideration of race, will result in a concentration of Negro children in the zones of heretofore Negro schools and white children in the zones of heretofore white schools. *Moreover, this tendency of concentration in schools will be further accentuated by the exercise of choice of schools* . . ." 221 F. Supp., at 971. (Emphasis supplied.)

Plainly, the plan does not meet respondent's "affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch." *Green* v. *County School Board, supra*, at 437–438. Only by dismantling the state-imposed dual system can that end be achieved.

The Court's impatience with the progress under the "all deliberate speed" formula, reached its apex in *Alexander* v. *Holmes County Board of Education*, 396 U.S. 19 (1969), where the Court in a per curiam opinion stated that:

. . . continued operation of segregated schools under a standard of allowing "all deliberate speed" for desegregation is no longer constitutionally permissible. Under explicit holdings of this Court the obligation of every school district is to terminate dual school systems at once and to operate now and hereafter only unitary schools.

D. BUSING TO ELIMINATE DE JURE SEGREGATION

The question left unanswered until 1971 was how the principles set forth in Green would apply to a large urban school system. For the first 15 years after the Brown decision, the Court had dealt mostly with rural and small town systems in which desegregation plans could be formulated by rezoning. This typically resulted in desegregation of the entire system because there was little residential segregation and generally only two schools in the county, one all black and the other all white. The unitary plans with which the Court had previously dealt were on a countywide basis, because the counties were small, and in most cases resulted in the children going to the schools nearest to their homes.

It should be noted that Southern school districts had historically engaged in busing for the purpose of maintaining segregated schools and orders for unitary schools generally resulted in less busing or shorter distance busing than had been necessary in order to maintain segregated school districts.

In small counties, therefore, truly neutral zoning produced interracial assignments. In the Green case, for example, the entire school system consisted of two schools, one at each end of the county, so that a north-south line would create two attendant zones effectively desegregating both schools.

In the larger southern cities, however, simple zone redrawing, pairing, and transfer policies, had achieved some desegregation, but left many schools with all black, or largely so. In *Swann* v.

Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971), the Court was faced with the question as to how far school boards had to go to eliminate all remaining segregation of students.

This question involved four sub-questions. First, could any one race, or largely one race schools, remain? Second, could truly neutral assignments be made if zones, when imposed upon existing residential segregation, produced one race schools? Third, would each school have to approximate the racial composition of the entire system? Fourth, was the use of substantial busing a reasonable requirement to achieve desegregation?

The Charlotte-Mecklenburg school system included the city of Charlotte, N.C. and the entire surrounding county. Approximately 29 percent of the 24,000 pupils were Negro, about 14,000 of whom attended schools that were at least 99 percent Negro. This resulted from a desegregation plan approved by the district court in 1965 at the commencement of the litigation. In 1968 petitioner Swann moved for further relief based upon Green, supra, which required school boards to "come forward with a plan that promises realistically to work—now—until it is clear that State-imposed segregation has been completely removed."

The opinion written by Justice Burger squarely faced the four questions raised in the litigation.

1. ONE RACE SCHOOLS

The Court held that while the existence of a small number of one race, or largely one race schools, does not in itself denote a system that still practices segregation by law, the Court should scrutinize such schools and require the school authorities to satisfy the Court that the racial composition does not result from present or past discriminatory action. The Court noted that:

An optional majority-to-minority transfer provision has long been recognized as a usual part of every desegregation plan.

In other words, freedom of choice is acceptable so long as it is being used to desegregate schools, but it is not permissible, as the Court has indicated earlier, where its purpose and effect are to maintain school segregation. The Court did not forecast the possibility of one race schools but indicated that there would be a presumption of segregation in such cases:

No per se rule can adequately improve all the difficulties of reconciling the competing interests involved; but in a system with a history of segregation, the need for remedial criteria of sufficient specificity to assure a school authority's compliance with its constitutional duty, warrants a presumption against schools that are substantially disproportioned in their racial composition.

2. RELEVANCE OF RESIDENTIAL SEGREGATION

The Court noted that the map submitted in these cases graphically demonstrated that one of the principal tools employed by school planners and by courts to break up the dual school system has been a frank—and sometimes drastic—gerrymandering of school districts and attendant zones. The Court noted that:

As interim corrective measure, this cannot be said to be beyond the broad remedial powers of a Court.

Beyond a constitutional violation there would be no basis for judicially ordering assignment of students on a racial basis. All things being equal, with no history of discrimination, it might well be desirable to assign pupils to schools nearest their homes. But all things are not equal in a system that has been deliberately constructed and maintained to enforce racial segregation.

The Court then said:

Racially neutral assigned plans proposed by school authorities to a District Court may be inadequate; such plans may fail to counteract the continuing effects of past school segregation resulting from discriminatory location of school sites or destruction of school size in order to achieve and maintain an artifical racial separation. When school authorities present a District Court with a "loaded game board" affirmative action in the form of a remedial altering of attendant zones is proper to achieve truly non-discriminatory assignments. In short, an assignment plan is not acceptable simply because it appears to be neutral.

Consequently, the Court is rejecting the theory that the Constitution must be colorblind where there has been a "loaded game board." Thus the Court treats residential segregation as a part of the overall de jure situation requiring a full remedy. The Court did not decide, and left open, the question as to whether or not such orders will be required where the residential segregation is attributable to the acts of public officials other than school officials. That is, where only housing agencies or housing laws have resulted in residential segregation, it is unclear as to whether the Court will require the school board to act affirmatively in ending the resulting school desegregation. Thus the Court has not held that the burden of undoing the effects of housing segregation must fall upon the school system, where there is no history of segregation policies on the part of the school officials themselves. All the Court is holding in Swann is where school officials, as well as other public officials, are themselves partly responsible for housing segregation, as well as school segregation, they cannot present the Court with a "loaded game board" and expect the Court to be colorblind in accepting a neutral assignment policy.

3. RACIAL QUOTAS

The Court held that:

The Constitutional command to desegregate schools does not mean that every school in the community must always reflect the racial composition of the school system as a whole.

The Court noted, however, that:

The very limited use made of mathematical ratios was within the equitable remedial discretion of the District Court.

4. BUSING

The Court noted that:

Bus transportation has been an integral part of the public education system for years, and was perhaps the single most important factor in the transition from the one-room schoolhouse to the consolidated school. Eighteen million of the Nation's public school children, approximately 39%, were transported to their schools by bus in 1969–1970 in all parts of the country.

In a footnote the Court observed that in the Charlotte-Mecklenburg system, without regard to desegregation plans, the school board planned to bus approximately 23,000 students in 1971 for an average daily round trip of 15 miles. The Court then approved the district court's conclusion that assignment of children to the school nearest their home would not produce an effective dismantling of the dual system. The Court noted that the decree would involve the busing of elementary school pupils for an average of about 7 miles, which compares with the plan previously operated in Charlotte averaging 15 miles each way.

In these circumstances, we find no basis for holding that the local school authorities may not be required to employ bus transportation as one tool of school desegregation. Desegregation plans cannot be limited to the walk-in school. The Court noted that, in fashioning decrees, lower courts may utilize busing provided that the distance and time involved do not harm the student or "impinge" upon the educational process. The Court observed that normally the age of the students would be the most important factor in making those determinations.

Finally, the Court said that—

At some point, these school authorities and others like them should have achieved full compliance with this Court's decision in *Brown I*. The systems will then be "unitary" in the sense required by our decision in *Green* and *Alexander*. * * * Neither school authorities nor District Courts are constitutionally required to make year-by-year adjustments of the racial composition of student bodies once the affirmative duty to desegregate has been accomplished and racial discrimination through official action is eliminated from the system.

The Court observed that at that time the further intervention by district courts should not be necessary.

In *Goss* v. *Board of Education of the City of Knoxville, Tennessee*, 444 F. 2d 632 (6 Cir. 1971), involved a further review of the desegregation plan of the city of Knoxville. The Court was attempting to apply the Swann decision. The Court said that—

The neighborhood style of desegregation no longer can be viewed as *per se* constitutional.

The Court concluded that—

It would appear, therefore, that some disparate treatment in favor of racial minorities must be tolerated until the "vestiges" of *de jure* segregation have been eliminated.

The Court then concluded that though the existence of some black or all white schools will not be struck down per se as intolerable, school authorities must justify the continuance of such schools by something more than accident or cir- to apply the Swann decision. The Court also said that—

Swann (1971) makes clear that the constitutional prohibition against assigning students or teachers on account of race is applicable only to *minority* groups. Even though it has been said that the desiderata of the *Brown* rule are that we have no black or white schools—only schools—and that public officials be "color blind" in discharging their duties, until these desiderata have been accomplished race will have to be considered in arranging today's school society.

Two northern cases involve de jure findings in what might be normally considered de facto situations. In the first of these, *U.S.* v. *School District 151 of Cook County, Illinois,* 286 F. Supp. 786 (N.D. Ill. 1968), aff'd. 432 F. 2d 1147; cert. den. 402 U.S. 943 (1971), Judge Julius Hoffman held that contemporaneous existence, within one school system, of some schools whose facilities and student bodies are almost exclusively white and other schools whose facilities and student bodies are almost exclusively Negro, creates a presumption of discriminatory faculty assignment which requires the school authorities to demonstrate the constitutionality of their procedures. He held that school officials had a constitutional obligation forthwith to take affirmative remedial action to desegregate faculties and staff.

With respect to student segregation, Judge Hoffman ruled that—

"The total absence of Negro pupils from student bodies in regular classes at the Roosevelt, Madison, Taft and Eisenhower schools and the existence of almost exclusively Negro student bodies in regular classes at the Coolidge and Kennedy schools give rise to a presumption of unconstitutionality in the establishment of student attendance zone boundaries, and requires the defendants to show constitutionally permissible bases for the attendance zones.

This ruling was premised upon certain de jure findings which Judge Hoffman stated as follows:

The intended and inevitable effect of the series of policy decisions by the defendants and their predecessors, made with respect to attendance zones, transportation of pupils, school site selection and construction, and organization of the structure of the educational program, as described in the foregoing findings of fact, has been to preserve racial segregation of students in violation of the Fourteenth Amendment. * * * A school board may not consistently with the Fourteenth Amendment, purposefully tailor the components of a neighborhood school attendance policy so as to conform to the racial compositions of the neighborhoods in the school district; nor may it build upon private residential discriminations.

Earlier in the opinion the Court had observed that beginning in the 1940's and continuing until the opening of the Taft School for the 1966–67 school year, white children living in the Harvey Highlands area and other areas, were bused to the Roosevelt School, even though the areas were closer to the Coolidge School which was almost entirely Negro. The Court also noted that with the exception of special education students, district 151 has not bused white students to the Coolidge (Negro) School or Negro children to the Roosevelt, Taft, Madison, and Eisenhower Schools (white).

The Court also found that—

The purpose and effect of the program of school bus transportation . . . has been to segregate the students of School District 151 on the basis of race and color.

The Court also made numerous other detailed findings with respect to de jure segregation on the part of the school board and consequently the decision is entirely consistent with the principles of Swann. The Court ruled that—

In order to remedy the effects of past discrimination, the Constitution requires the defendants to give affirmative consideration to racial factors in allocating faculty and staff members, assigning students, and with respect to decisions on other pertinent matters of educational policy, including the location and construction of schools, transportation of pupils, and the educational structure of the District.

Another instance where the Court has made express findings of de jure segregation was in *Davis* v. *School District of the City of Pontiac,* 443 F. 2d 573 (6 Cir. 1971), appeal pending. Here the Court stated:

The duty to take whatever steps are necessary to achieve the greatest possible degree of desegregation of formerly dual systems by the elimination of racially identifiable schools is not circumscribed by school division boundaries created and maintained by the cooperative efforts of local and central state officials. * * *

The circuit court approved the district court's order requiring the preparation of a plan by the local school board for complete integration. The resulting busing in Pontiac touched off violent community protests.

In a footnote the Court stated that the district's court's order is consistent with the principles set forth in the Swann decision which was rendered by the Supreme Court during the interval between the district court and circuit court rulings.

Finally, in *Bradley* v. *Richmond,* F. Supp. (1972), Judge Merhige was attempting to formulate a plan that would comply with the ruling in Green. The real question was whether metropolitan white rezoning and transportation was available as a remedy. Judge Merhige concluded that the Supreme Court has placed the responsibility for equal educational opportunity upon the State itself. Consequently, he concluded that the boundaries separating school districts, being created by the State, could be disregarded and the various parts of an identifiable urban community should be treated as an entire unit for purposes of effecting a remedy. In his opinion he stated that—

After a thorough review of the record on appeal, and upon consideration, we have concluded that the District Court's findings of purposeful segregation by the school district are supported by substantial evidence and are not clearly erroneous. * * * We observe, as did the District Court, that school location and attendance boundary line decisions, for the past 15 years, more often than not tended to perpetuate segregation. Attempted justification of those decisions in terms of proximity of school buildings, their capacity, and safety of access routes requires inconsistent applications of these criteria. Although, as the District Court stated, each decision considered alone might not compel the conclusion that the Board of Education intended to foster segregation, taken together, they support the conclusion that a purposeful pattern of racial discrimination has existed in the Pontiac school system for at least 15 years.

Judge Merhige took note of the widespread practice in Virginia of changing school district lines and consolidating school districts in order to provide for improved regional facilities. Second, he also noted that Virginia had repeatedly ignored its official jurisdictional lines in various attempts to perpetuate segregated schools. Third, he found that there was no relation between the shape or location of existing school district boundaries and educational needs. He did find, however, that there was a relation between such boundaries and the development of residential and school segregation. It should be noted that Virginia is about the last State that could argue that school district boundaries are sacrosanct. To avoid integration, Virginia's post Brown directive included joint school operations, merged districts, contracts by a district for its students to attend schools in other districts and a State pupil placement law under which the Governor's office superseded all local authorities in pupil assignment.

Judge Merhige found that the existence of physical barriers like the James River, were already being bridged, as students were currently being bused across across that river under the existing plan.

He noted that part of Chesterfield County had recently been annexed by the city of Richmond—allegedly to dilute the black vote in the city.

While these points added support to the court's authority, the basic authority that the court relied upon was the fact that the 14th amendment was addressed to States and not merely local governmental creatures of the States.

On June 5, 1972, the U.S. Court of Appeals for the Fourth Circuit in a 5 to 1 decision reversed, holding that the district court could not compel the joinder of Richmond's unitary school system with two other school districts in order to achieve a greater degree of racial balance.

In its decision the court said that—

We think that the root causes of the concentration of blacks in the inner cities of America are simply not known and that the District Court could not realistically place on the counties the responsibility for the effect that inner city decay has had on the public schools of Richmond. We are convinced that what little action, if any, the counties may seem to have taken to keep blacks out, is slight indeed compared to the myriad reasons, economic, political and social, for the concentration of blacks in Richmond and does not support the conclusion that it has been invidious state action which has resulted in the racial composition of the three school districts * * *. That there has been housing discrimination in all three units is deplorable, but a school case like a vehicle, can carry only a limited amount of baggage.

The court recognized the governmental and budgetary problems that would be involved in the busing of students between school districts. The court said:

But even if we were to ignore Virginia law, as we are urged to do, there are practicalities of budget and finance that would boggle the mind. Each of the three political subdivisions involved here, has a separate tax base and a separate and distinct electorate. The school board of the consolidated district would have to look to the three separate governing bodies for approval and support of school budgets.

The Court concluded that—

The facts of this case do not establish, however, that state establishment and maintenance of school districts coterminous with the political subdivisions of the City of Richmond and the Counties of Chesterfield and Henrico, have been intended to cir-

cumvent any Federally protected right. Nor is there any evidence that the consequence of such State action implies any Federally protected right, for there is no right to racial balance within even a single school district, *Swann* v. *Charlotte-Mecklenburg Board of Education*, . . . but only a right to attend a unitary school system.

The Court also concluded that when it became clear that State-imposed segregation had been completely removed within the school district of the city of Richmond, "further intervention by the district court was neither necessary nor justifiable."

E. BUSING TO ELIMINATE DE FACTO SEGREGATION

It appears that no court in America has ordered busing to eliminate de facto segregation, absent findings that de jure segregation was also present. The cases do not support the widely held belief that the courts are ordering busing for its own sake or ordering busing to promote racial balance where no de jure segregation has been found. The courts simply are not ordering busing to break up racial imbalance in schools created solely by neighborhood housing patterns. While the courts have utilized a number of other tools to eliminate de facto segregation in schools, busing has not been one of them.

The leading case is *Deal* v. *Cincinnati Board of Education*, 369 F. 2d 55 (6 Cir. 1966), cert. denied 389 U.S. 847 (1967). This was a class action to enjoin the operation of allegedly de facto racially segregated schools and to enjoin the construction of new schools on sites which would increase existing patterns of racial segregation. The court stated that—

Here, if there are obstacles or restrictions imposed on the ability of a Negro to take advantage of all the choices offered by the school system, they stem from his individual economic plight, or result from private, not school, prejudice. We need *Brown* as prohibiting only enforced segregation. * * * We hold that there is no constitutional duty on the part of the Board to bus Negro or white children out of their neighborhoods or to transfer classes for the sole purpose of alleviating racial imbalance that it did not cause, nor is there a like duty to select new school sites solely in furtherance of such a purpose. * * * Although boards of education have no constitutional obligation to relieve against racial imbalance which they did not cause or create, it has been held that it is not unconstitutional for them to consider racial factors and take steps to relieve racial imbalance if in their sound judgment such action is the best method of avoiding educational harm.

Some courts, however, have had to strain a great deal to come up with a de jure finding. Illustrative of these cases is *Spangler* v. *Pasadena Board of Education*, 311 F. Supp. 501 (Calif. 1970).* In this case there was a racial imbalance in the student bodies and faculties of the schools of the city of Pasadena, Calif. The Pasadena City Board of Education had used a neighborhood school policy and a policy against cross-town busing. First, the court examined the Brown decision and slightly misstated it as holding that "segregated education deprived Negro children of educational opportunity."

The Court in Spangler did not differentiate between separate but equal, and segregation resulting solely from neighborhood housing patterns. The Court then stated that—

Use of a strict neighborhood school policy and a policy against cross-town busing take on constitutional significance as a violation of the Fourteenth Amendment. . . .

The Court then stated that—

Under the Fourteenth Amendment a public school body has an obligation to act affirmatively to promote integration. . . .

At this point it would have appeared that the Court in Spangler was heading toward a busing order based upon de facto findings. The Court did not cite any authority for the proposition that the school board must act affirmatively to promote integration. In fact, the Supreme Court has never held such a proposition, except where it is necessary to dismantle the effects of a separate but equal educational policy. The Court, however, went on to make certain de jure findings. For example, at 522 the Court stated:

When school officials consistently draw attendance lines so as to increase racial segregation, the presumption arises that they have done so to promote racial segregation of students, in violation of the Constitution.

The Court further stated that—

When school officials have allocated new schools and constructed additions to old schools, and have failed to adjust school enrollments to fit capacities in such a way as to intensify racial segregation, they have the affirmative duty "to seek means to eradicate" the results of their discriminatory acts.

These de jure findings permit one to explain this case in a way which is consistent with the Swann decision. However, there is considerable language in this decision which goes beyond Swann and in fact probably goes beyond the language of any other decision. For example, the Court held that—

When from the evidence it appears that racial discrimination has led to residential segregation and that the residential segregation is reflected in school enrollment figures, school officials have the burden to show that there are no educationally sound and administratively feasible alternatives available to overcome the existence of segregated schools.

For that proposition the Court cited the Cook County case, which as seen earlier, is a clear de jure case and does not stand for that proposition at all.

Finally, the Court held that it is unconstitutional to bus black students to promote integration and not to bus white students for the same purpose, because such a policy would place "an undue share of the burden of desegregation on black children."

In summary, the Spangler case must be considered in the context of the findings of de jure segregation and the broader language and inappropriate case citations are unfortunate as only serving to cloud and confuse the issue. Unquestionably there is language in Spangler which would justify the fears of those who anticipate the broadest and most universal type of school busing orders. Unquestionably, the courts can find some elements of de jure segregation in almost any school system. However, the case can be reconciled with the principles of Swann and in that context the broader language should be considered as dicta.

Two other decisions which have been widely interpreted as de facto busing decisions are in reality nothing more than rulings that there can be no official hurdles to thwart voluntary attempts by school officials to bus for the purpose of achieving racial balance.

In *Bradley* v. *Milliken*, 433 F. 2d 897 (6 Cir. 1970), the Detroit Board of Education attempted to effect a more balanced ratio between black and white students in 12 senior high schools. This effort was thwarted by an act of the Michigan Legislature which would preclude any such attendance provisions. The Michigan attorney general rendered an opinion which stated that the statute would have the effect of rescinding the attempt by the Detroit Board of Education to achieve racial integration in its high schools. The voters then held an election and recalled members of the board of education who had initiated the integration plan. The Court held that the statute was unconstitutional in that it attempted to impede, delay, and frustrate "proceedings to protect the rights guaranteed to members of all races under the 14th amendment." The Court noted that in *Hunter* v. *Erickson*, 393 U.S. 385 (1969), the Court had held that the repeal by referendum of a fair housing ordnance provision adopted by the city council of Akron, Ohio, "discriminates against mi-

* In Keyes v. School District Number One, Denver, Colorado, 303 F. Supp. 279 (D. Colo. 1969), plaintiff's school children sought to enjoin implementation of a resolution adopted by the Denver School Board which rescinded previous resolutions which required positive integration of city schools. The rescinded resolutons changed attendant zones and sought to spread the Negro population of the schools to other schools and achieve a racial balance. Plaintiff's motion for a preliminary injunction was granted. The Court held that there was imposed on the School Board an affirmative duty to take positive steps to remove segregation "which has developed as a result of its prior affirmative acts. In response to this duty the Denver School Board passed Resolutions 1520, 1524, and 1531. In light of *Brown* and *Dowell*, the effort of the Board to renounce its constitutional duty by rescission must be rejected as arbitrary state legislative action." The Court strained in finding prior acts indicative of *de jure* segregation. In February 1970, the case was tried on its merits and after that trial the Court at 313 F. Supp. 61 (1970), held that the action of the School Board did not constitute *de jure* segregation. "It is more like *de facto* segregation, with respect to which the rule is that the Court cannot order desegregation in order to provide a better balance." The Court stated that "in examining the boundary changes and removal of optional zones in connection with the several schools which are discussed above, we do not find any willfull or malicious actions on the part of the Board."

The Court held that in order to support a finding of *de jure* segregation (1) there must be action taken by a school administration with the purpose of singling students by race, (2) the action must have in fact created or aggravated segregation, (3) there must in fact be the condition of segregation, and (4) there must be a causal connection between the acts of the school administration complained of and the condition of segregation.

norities, and constitutes a real, substantial, and invidious denial of the equal protection of the laws." The Court cited *Reitman* v. *Mulkey*, 387 U.S. 369 (1967), which held invalid a California constitutional provision adopted by a statewide referendum, nullifying previously enacted statutes barring racial discrimination in housing. The Court also noted that in *Lee* v. *Nyquist*, 318 F. Supp. 710 (W.D.N.Y. 1970), the Court had held invalid a New York statute prohibiting State education officials and appointed school boards from assigning students, or establishing school zones for the purpose of achieving racial equality in attendance. In the Nyquist case the Court had held—

> But the argument that the state has not discriminated because it has no constitutional obligation to end de facto racial imbalance fails to meet the issue under Hunter v. Erickson. The statute places burdens on the implementation of educational policies designed to deal with race on the local level. Indeed it completely prohibits the implementation of such policies where the local board is not elected. The discrimination is clearly based on race alone, and the distinction created in the political process, based on racial considerations, operates in practice as a racial classification.

Taken together, Milliken and Nyquist do not stand for the proposition that local school officials must bus to eliminate the effects of de facto segregation. These cases merely stand for the proposition that the State cannot erect barriers precluding officials from taking such action.

The erection of such barriers constitutes an unreasonable classification and a denial of equal protection.

It should be noted that the courts are particularly fuzzy on the basis for such rulings and the Supreme Court will some day have to directly face the question as to whether or not public officials can discriminate in favor of minorities where there has been no past de jure discrimination.

In the State of Washington there is an unreported oral decision of considerable significance in the case of De Funis against Odegaard. This decision was rendered by Judge Shorett on September 22, 1971, in the Superior Court of the State of Washington for King County. In this case the University of Washington Law School wished to achieve greater minority representation and to achieve this end adopted an admissions policy giving preference to members of minority races. The court found that—

> Some minority students were admitted whose grades and aptitude test scores were so low that, had they been whites, their applications would have been summarily denied.

The plaintiffs were white students whose grades and test scores were higher than all but one of the 31 minority students admitted. Plaintiffs contended that the admission of less qualified minority members resulted in a denial of the plaintiffs' equal protection of the laws. The courts sustained the plaintiffs in this contention, citing Brown as holding that—

> Public education must be equally available to all regardless of race. After that decision, the Fourteenth Amendment could no longer be stretched to accommodate the needs of any race * * *. In my opinion the only safe rule is to treat all races alike and I feel that is what is required under the equal protection clause.

This approach is coming into collision with a great deal of affirmative action programs, not only in education, but also in other areas, such as the "Philadelphia Plan". In the educational realm the color blind theory is directly counter to the provisions of Milliken and Nyquist and seems to run counter to the "loaded game board" theory used by Chief Justice Burger in Swann. It is not clear, however, if the Chief Justice would apply his "loaded game board" theory in the context of purely de facto segregation. This issue has not been decided and presumably will have to come before the Court for resolution.

F. NONBUSING CASES INVOLVING DE FACTO SEGREGATION

Barksdale v. *Springfield School Committee*, 237 F. Supp. 543 (D. Mass. 1965), is the clearest example of a de facto case with no de jure findings. The Court found that—

> There is no deliberate intent on the part of the school authorities to segregate the races. If segregation exists, it results from a rigid adherence to the neighborhood plan of school attendance.

The Court observed that lines were drawn with reference to the location and capacity of various schools and take into account the safety and convenience of the children. In general, children were required to attend the school nearest their homes. The few exceptions to this policy were not designed or used to segregate the children by race. The Court found, however, that "segregation in the sense of racial imbalance exists in the Springfield school system." The Court found that at least seven elementary schools and one junior high school had a majority of Negro and Puerto Rican students, while other schools were 100 percent white. Of the 3,386 Negroes in 38 elementary schools, all but 595 were enrolled in eight of the schools.

The Court also found that—

> Those schools in which the vast majority of Negro students are enrolled consistently ranked lowest in achievement ratings . . . While it is not possible to determine how much of this is the result of home environment and how much is attributable to schools and teachers, these facts, nevertheless, bear out the testimony . . . that racially imbalanced schools are not conducive to learning . . . Racial concentration in his school communicates to the Negro child that he is different and is expected to be different from white children . . . The opportunity of Negro children in racially concentrated schools to obtain equal educational opportunities is impaired, and I so find.

In its holding, the Court stated:

> The defendants argue, nevertheless, that there is no constitutional mandate to remedy racial imbalance. *Bell v. School City of Gary, Indiana*, 324 F. 2d 209 (7th Cir. 1963). But that is not the question. The question is whether there is a constitutional duty to provide equal educational opportunities for all children within the system. While *Brown* answered that question affirmatively in the context of coerced segregation, the constitutional fact—the inadequacy of segregated education—is the same in this case, and I so find. It is neither just nor sensible to proscribe segregation having its basis in affirmative state action while at the same time failing to provide a remedy for segregation which grows out of discrimination in housing, or other economic or social factors. Education is tax supported and compulsory, and public school educators, therefore, must deal with inadequacies within the educational system as they arise, and it matters not that the inadequacies are not of their making. *This is not to imply that the neighborhood school policy per se is unconstitutional, but that it must be abandoned or modified when it results in segregation in fact.* (Emphasis added.)

The Court ordered the defendants to present a plan to eliminate racial concentration in its elementary and junior high schools and the Court did not specify that busing must be a part of that plan.

This case is one of a line of cases beginning with the *Blocker* v. *Board of Education of Manhasset, New York*, 226 F. Supp. 208 (E.D.N.Y. 1964), which were directly addressed to the de facto problem and had rulings substantially equivalent to that in Barksdale.

In Blocker, the Court found that the maintenance of neighborhood school attendance area lines, coupled with an inflexible transfer policy, was tantamount to State-imposed segregation. With that finding the Court entered a decree directing the school board to permit children to transfer to other elementary schools.

Mr. DOLE. Mr. President, education is one of the most important and deeply felt issues in America today. It touches the lives of perhaps more people than any other domestic concern. Parents, students, teachers, administrators, and taxpayers by the millions are decisively involved in questions of education policy throughout every part of our country. These questions come in every variety and range from methodology to curriculum, classroom discipline, salaries, and teacher-pupil ratios.

These questions have wide-ranging effects for the present and for years to come. And in a very real sense the answers we provide, by shaping our children, will determine the type of country we are to become.

THE BASIC QUESTION

Although there is great diversity in both the questions and the proposed solutions, it seems to me that one fundamental strain runs through most of the discussion, and regardless of most individuals' points of view, the primary consideration is one of quality in educaton. There may be differences over whether one curriculum plan or another should be adopted. There may be dispute over the proper way to maintain decorum in the classroom. There may be opposing beliefs on the way mathematics or spelling or English should be taught. But what people are generally concerned about is: How are we going to provide the best quality education for the children of our district or our State or our Nation?

DIFFERENT WAYS OF ANSWERING

Sometimes these questions are settled on the local level by a teacher or school

principal, or by a board of education. Sometimes they are settled by the State. And in other cases a question comes all the way up to the Federal level in Washington before it is resolved.

One of these decisions was made by the Supreme Court of the United States in 1954 when it handed down its famous opinion in Brown against Board of Education. There has been considerable discussion of this case over the years since it was decided, and many interpretations of it have been put forward. But to my view, the Brown case spoke clearly to the question of quality in education by declaring that segregation of schools by affirmative State action was unconstitutional.

GREAT SUCCESS ACHIEVED

Many years have passed since the Brown case was decided. There has been struggle, conflict, and dissension over its implementation, but great progress has been made—especially under the leadership of the Nixon administration—toward ending deliberate racial segregation under the cloak of official action. The so-called "dual system" of schools has been virtually eliminated and with it nearly every example of de jure school segregation. Thus, the Brown decision with the strong backing of President Nixon is being complied with to the fullest possible extent.

I believe we Americans can take great pride in this accomplishment, for there is no comparable precedent in the history of civilization for the fulfillment of such a mandate for fundamentally improving a society.

PROBLEMS REMAIN

But although a great deal has been done in the elimination of deliberate segregation and the eradication of enforced racial separation in public schools, there remains a considerable challenge to deal with the problems of educational deficiencies which result from other factors.

It is an unfortunate fact that there are many inferior schools in America today. They are found everywhere—in the North, the South, the East, and the West; in areas that are predominantly black or white or Indian or Spanish-speaking. There are many causes and reasons for these difficulties. Some school buildings are old and inadequate, educational materials are in short supply, teachers' pay scales are too low, better educational methods have not been applied. There are many problems with many causes, but it seems important to realize that one cause for these problems is not the deliberate, officially sanctioned segregation of the past.

BASIC QUESTION REMAINS

As I said earlier the primary question is: How are we to provide the best quality education for our children? I believe this has been the question all along and remains so today.

One important answer to this question was provided by the Supreme Court when it said that enforced racial segregation should be eliminated, but with that step taken we must look to other questions and other steps to be made toward the improvement of our children's education.

OPPOSING PROPOSITIONS

At this time there seems to be two competing and incompatible propositions being put forward. One says that, since Brown said officially enforced segregation should be ended, all racial imbalance, however it arises, should also be ended—regardless of other factors such as convenience, safety, pupil preference, and cost—and that educational quality is somehow directly related to the meeting of racial quotas in the schools of individual districts and areas.

The other concept says that quality in education, now that enforced segregation is nearly eliminated, has much more to do with what is offered within the walls of a particular school than the categories and quotas in which the students attending that school happen to fit.

At this time it would appear that those who hold the first view and who think educational quality can be defined and achieved by filling quotas have a majority on the courts of this country. On the other hand, a majority of the parents and children in this country would appear to believe that education should take place in a well-equipped, well-staffed school during regular school hours—rather than in a yellow schoolbus traveling unnecessary extra miles over long, extra hours.

Because we have this conflict, it has become necessary to clarify the law and to express the legitimate and sincere concerns of the people. And because we are a democratic society, the route for expressing those concerns has been through our national political process and its response to the people.

PRESIDENT'S LEADERSHIP

I am proud to say that President Nixon has been in the forefront of the leadership seeking an absolute end to enforced segregation and better education for America's children, especially those from disadvantaged backgrounds. And I fully concur in the clear perspective in which he has placed these questions.

As he said in his extensive statement on elementary and secondary school desegregation in March 1970:

> I am dedicated to continued progress toward a truly desegregated public school system. But, considering the always heavy demands for more school operating funds, I believe it is preferable, when we have to make the choice, to use limited financial resources for the improvement of education—for better teaching facilities, better methods, and advanced educational materials—and for the upgrading of the disadvantaged areas in the community rather than buying buses, tires, and gasoline to transport your children miles away from their neighborhood schools.

Or as the Republican Party stated in its 1972 platform:

> We favor better education for all children, not more transportation for some children.

CITIZEN SUPPORT

I believe the great majority of all Americans—whatever their race, or economic status or part of the country in which they reside—would concur in these statements.

Certainly, a majority in both Houses of Congress share these feelings, and in recognition of this fact President Nixon has sought to clarify the law and at the same time continue our progress toward a better educational system.

Earlier this year President Nixon proposed two highly significant laws to deal with the two major problems in education today. The first problem is that of the courts exceeding the dimensions of the Brown decision by ordering massive forced busing of schoolchildren to achieve arbitrary racial balances in public schools. The second problem is that of providing the assistance required to upgrade the entire American education system—particularly in areas which are chronically deficient and inferior in their educational capabilities.

EQUAL EDUCATIONAL OPPORTUNITIES ACT

The bill before us today embodies many of the major features of the President's proposals. It passed the House by an overwhelming margin, and it is supported by a majority of the Senate. It is a comprehensive and positive approach to these great questions.

It provides major assistance for improving the quality of education in the schools which need help the most, and it focuses on the development of basic educational services which provide the foundation for any learning experience.

It includes strong safeguards for the equal education opportunities and civil rights of all students.

It sets forth detailed guidelines for courts and Federal agencies to follow in fashioning remedies for existing patterns of segregation. The focus is on setting priorities for the application of these remedies and imposing the maximum possible limitations on the use of disruptive busing orders.

I believe this bill offers the American people positive and appropriate means of dealing with today's questions of quality education. It seeks to bring about meaningful and rapid improvements in the education of those children whose needs are the most pressing. It attempts to recognize the legitimate and deep concern that most parents feel for the safety, convenience, and desires of their children. And it also reflects the high value most parents place on their children's attendance at a nearby school which they as parents have chosen through selection of their homes and neighborhoods.

Mr. President, I believe the Equal Educational Opportunities Act of 1972 is a good bill that is designed to achieve positive goals which are supported by the vast majority of Americans. It would be extremely disappointing if the obstructionist tactics of a few Senators deny its passage and thus increase the very serious problems which arise from some schools being in great need of assistance for improving the education their students receive and also prolong the unnecessary and equally serious problems which are created when education is made secondary to quota-filling.

I urge that the Senate invoke cloture on the debate of this bill, so it can be

passed and sent to President Nixon to be signed into law.

Mr. JAVITS. Mr. President, I yield myself all but 1 minute of the remaining time, reserving a minute.

Mr. President, I would like to associate myself with the Senator from Michigan in thanking the many organizations which have seen the emergency and responded to it in an unparalleled way and the Senators whose minds have been opened to the full implications of what is proposed in this bill, and the fact that we compound the evils of Government if we pass a bill patently unconstitutional and then ask the Court to strike it down. That is hardly the path of responsibility.

Mr. President, I have made the argument before about turning back the clock. I ask unanimous consent that a chart of 1971 estimated projections of public school Negro enrollment compared with the fall 1968 and 1970 data be printed in the RECORD as a part of my remarks.

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

DHEW OFFICE FOR CIVIL RIGHTS, FALL 1971 ESTIMATED PROJECTIONS OF PUBLIC SCHOOL NEGRO ENROLLMENT COMPARED WITH FINAL FALL 1968 AND 1970 DATA [1]

Geographic area	Total pupils	Negro pupils		Negro pupils attending schools which are—					
				0–49.9 percent minority		80–100 percent minority		100 percent minority	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent
Continental United States:									
1968	43,353,568	6,282,173	14.5	1,467,291	23.4	4,274,461	68.0	2,493,398	39.7
1970	44,877,547	6,707,411	14.9	2,223,506	33.1	3,311,372	49.4	941,111	14.0
1971 estimate	44,691,675	6,724,956	15.0	2,393,824	35.6	3,084,785	45.9	778,832	11.6
Difference 1970–71	−185,872	17,000	.1	170,318	2.5	−226,587	−3.5	−162,279	−2.4
32 North and West: [2]									
1968	28,579,766	2,703,056	9.5	746,030	27.6	1,550,440	57.4	332,408	12.3
1970	29,451,976	2,889,858	9.8	793,979	27.5	1,665,926	57.6	343,629	11.9
1971 estimate	29,299,586	2,913,047	9.9	810,895	27.8	1,664,771	57.1	325,874	11.2
Difference 1970–71	−152,390	23,189	.1	16,916	.3	−1,155	−.5	−17,755	−.7
11 South: [3]									
1968	11,043,485	2,942,960	26.6	540,692	18.4	2,317,850	78.8	2,000,486	68.0
1970	11,570,351	3,150,192	27.2	1,230,868	39.1	1,241,050	39.4	443,073	14.1
1971 estimate	11,551,697	3,139,436	27.2	1,377,847	43.9	1,010,558	32.2	290,390	9.2
Difference 1970–71	−18,654	−10,756	0	146,979	4.8	−230,492	−7.2	−152,683	−4.9
6 border and District of Columbia: [4]									
1968	3,730,317	636,157	17.1	180,569	28.4	406,171	63.8	160,504	25.2
1970	3,855,221	667,362	17.3	198,659	29.8	404,396	60.6	154,409	23.1
1971 estimate	3,840,392	672,473	17.5	205,082	30.5	409,456	60.9	162,568	24.2
Difference 1970–71	−14,829	5,111	.2	6,423	.7	5,060	.3	8,159	1.1

[1] 1971 figures are estimations based on latest available data and are subject to change upon final compilation.

[2] Alaska, Arizona, California, Colorado, Connecticut, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Utah, Vermont, Washington, Wisconsin, and Wyoming.

[3] Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennesse, Texas, and Virginia.

[4] Delaware, District of Columbia, Kentucky, Maryland, Missouri, Oklahoma, and West Virginia

Mr. JAVITS. When we see what it would mean to turn the clock back and reopen all these decrees, it is absolutely appalling.

Let us read back and remember the case we made against the iniquities of the dual school systems throughout the South, and then let us stand back with admiration and see what has happened. Mind you, the people who are now here for this antibusing bill were, by and large, the same people who told us that you would have a revolution in the South if you had desegregation.

The PRESIDING OFFICER. The Senator has used all his time save 1 minute.

Mr. ALLEN. I yield 1 minute to the Senator.

Mr. JAVITS. I thank the Senator.

In the figures for the South alone in 1968, 78 percent of the pupils were in schools that were 80 to 100 percent minorities.

By the time 1971 had come around, that was estimated to be down to 32 percent. In the category of 100 percent minority, it was down to 9 percent, from 68 percent. And we did worse than that in the North, because of the segregated living patterns.

See the enormous distance we have traveled, Mr. President, and why I consider and so many of us consider that to regress now with this reopener clause is one of the most unwise and improvident actions we could take in terms of American society.

Mr. President, I ask unanimous consent to have printed in the RECORD the report of the Department of Health, Education, and Welfare to which the chart is attached.

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

HEW REPORT

The 11-State South for the first time has a smaller number and percentage of Negro students isolated in 100-percent minority schools than has the North, Secretary of Health, Education, and Welfare Elliot L. Richardson said today.

The South last year surpassed the North in the number of Negro pupils attending majority white public schools and has continued to widen the gap this school year.

Secretary Richardson said:

"The only measure of desegregation enforcement is results. It cannot be measured by a level of rhetoric or the amount of money cut off from financially distressed school systems. It can be measured only by the persistent fulfillment of our legal and educational mandate—the elimination of dual schools based on race. And on that score, this Administration has a documented record of solid performance."

HEW conducted comprehensive national surveys in 1968 and 1970 with more limited surveys in 1969 and 1971. Projections based on the limited survey of 1971 of racial data underscore extensive changes, almost all of them in the South, since 1968.

For example, 2,000,486 Negro pupils were in 100 percent minority schools in the 11-State South in 1968, representing 68 percent of the total Negro pupils in the region. For the current school year, the projection shows that only 290,390 Negro students, representing 9.2 percent of the total in the region, are in all-minority schools.

By way of regional contrast, an estimated 325,874 Negro pupils representing 11.2 percent of the total in 32 Northern and Western States remain in all-minority, substantially unchanged from last year. In the continental United States, 11.6 percent of Negro students, or 778,832, are in all-minority schools compared to 39.7 percent or 2,493,398 in 1968.

In the six border States and District of Columbia, an estimated 24.2 percent or 162,568 Negro students are in all-minority schools, a number showing relatively little change since 1968. With the predominantly black District of Columbia enrollment excluded, the six border States still have approximately 21 percent or 115,052 black students in all-minority schools.

The statistics, collected by HEW's Office for Civil Rights and compiled by an independent contractor, show that an estimated 55.6 percent Negro pupils in the United States are in majority white schools, 27.8 percent in the North and West, 43.9 percent in the 11-State South, and 30.5 percent in the six border States and District of Columbia.

In the South, this figure rose from 18.4 percent in 1968 to 39.1 percent in 1970 and to an estimated 43.9 percent in the current school year.

The South has also progressively reduced the number of Negro pupils in schools 80 to 100 percent minority, down from 78.8 percent in 1968 to 39.4 percent in the 1970–71 school year, to 32.2 percent this year.

Relatively little desegregation change is shown in the past year for minorities other than Negro.

In Southern school systems surveyed where the school population is made up mostly of white students, two thirds (67.9 percent) of all Negro students in those districts attend majority white schools. Conversely, in Southern school districts having mostly minority students, where white students constitute the "local minority," nearly half (48.8 percent) of all white children attend schools more than 50 percent minority in makeup. More dramatically, there are virtually no all-white school enrollments remaining in these districts today. Only 0.3 percent of the white pupils in predominantly minority districts attend all-white schools. More than one third of all Negro students in the South today live in school districts that are predominantly minority in their school enrollment.

EXPLANATION OF REPORT ON NEGRO PUPILS BY GEOGRAPHIC AREA COMPARING FALL 1971 PROJECTIONS WITH FINAL FALL 1968 AND 1970 DATA

The attached table was constructed by using the data provided by 2,698 districts reporting in 1971, and then adding the 1970 data from those districts not reporting in 1971 but surveyed in 1970. All data was then weighted to give national representation.

Of the 43 million pupils represented by our 1970 data, OCR received 1971 data representing 20 million pupils. For the projection, OCR assumed no change in the districts which were represented in the 1970 survey, but not included in the preliminary results of the 1971 survey.

Of the 6.7 million Negroes represented in the data, OCR received 1971 data representing 5.0 million Negroes. A third national survey comparable in scope to those conducted in 1968 and 1970 is planned for 1972.

Mr. ALLEN. Mr. President, I am pleased and honored at this time to yield to the distinguished and—I hope I may be pardoned in saying—lovely junior Senator from Louisiana (Mrs. EDWARDS), for the purpose of making her maiden speech on the floor of the U.S. Senate. I yield her at this time 3 minutes.

Mrs. EDWARDS. I thank the Senator. I do not think I will need 3 minutes.

Mr. President, a bill to curb excessive busing and abuses of judicial discretion in the forced disposition of schoolchildren in the Northern, Eastern, Southern, and Western regions of the United States will likely live or die, depending on the outcome of the votes cast by Senators today.

Mr. President, what is the situation? The President of the United States has announced his support of this bill.

One of the two major national political parties is committed in opposition to excessive busing in its platform.

The House of Representatives has voted overwhelmingly in favor of the bill before us.

There can be no doubt but that a substantial majority of Senators are for it.

A vast majority of the people of the United States insist upon legislative curbs upon excessive busing and crossbusing of their children.

Mr. President, the bill before the Senate seeks a reasonable, just, and adequate remedy at law to help resolve the critical problems which have arisen from the excessive zeal and bad judgments of U.S. district court judges in the exercise of their discretionary powers.

Mr. President, I say, let the Senate work its will.

I urge Senators to vote in support of the will of the people and their elected representatives in Congress. I urge a vote for cloture.

The PRESIDING OFFICER. Who yields time?

Mr. ALLEN. Mr. President, I yield myself 30 seconds in order to commend the distinguished junior Senator from Louisiana for her speech. I am pleased that she chose to speak on this most important issue, which is so important to the people of her State and to the people of the entire Nation.

At this time, I yield 3 minutes to the distinguished Senator from Tennessee (Mr. BAKER).

Mr. BAKER. Mr. President, I thank the distinguished Senator from Alabama for yielding briefly, so that I might do two things: First, to commend the junior Senator from Louisiana for her first and maiden speech on the floor of the U.S. Senate. She has chosen a subject of great importance not only to her State but also to the Union, and I commend her on her perception, her grasp of the situation, and her contribution to this important debate. I have served with Senator EDWARDS in the Committee on Public Works, and I know her to be a Senator of dedication and devotion and great insight. I commend her on this historic occasion.

I recall my own maiden speech. I recall that not this many Members of the Senate were present. Senator PASTORE, I recall, was the only other Senator present, and he said in jest, I suppose, that he was happy that he had found a Member of the Senate with whom he could see eye to eye. I had the fleeting misapprehension for a while that he agreed with me, but he made that remark because we are both less than five-six.

Mr. President, I have just this brief additional comment prior to the effort to invoke cloture in the Senate on this debate. This is an important matter. It has been debated at length. The merits of the controversy have been thoroughly aired in the Senate. The important question here today is whether or not two-thirds of the Senate, of those present and voting, concur in their desire that debate on this measure be terminated and that we turn to the consideration of the merits of the bill itself. I hope we prevail in that respect.

If we do not prevail, I think much still has been accomplished. We have shown that a good majority of the Senate favors control of judicially ordered crosstown busing. As the cigarette commercial used to say on television, before we outlawed cigarette commercials, "You've come a long way."

We have come a long way since only a few of us were trying to point out the evils of crosstown busing.

I hope we get cloture today and that we move on to a debate on the controversy, and, as the President indicated the day before yesterday, that we close the debate and get to a vote on the issue.

I pledge that whether we vote on this bill in this session or whether we vote on it later, one way or the other, I intend to continue my efforts to eliminate what I believe to be a grievous piece of judicial mischief in crosstown busing.

Mr. JAVITS. Mr. President, to close debate, may I say that I have heard the Senator from Tennessee (Mr. BAKER) with great interest. I believe we will be immeasurably helped in fashioning whatever legislation is truly made by the Supreme Court decisions pending in the Detroit, Richmond, and other cases, and in a much more rational atmosphere, when we pass the date of the presidential election.

I hope that the Senate will, again, deny cloture.

CLOTURE MOTION

The PRESIDING OFFICER (Mr. CHILES). The hour of 11 a.m. having arrived, under the unanimous-consent agreement, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion which the clerk will state.

The legislative clerk read 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.

CALL OF THE ROLL

Mr. CHILES. Under rule XXII, the Chair directs the clerk to call the roll to ascertain the presence of a quorum.

The legislative clerk called the roll, and the following Senators answered to their names:

[No. 542 Leg.]

Aiken	Ervin	Muskie
Allen	Fannin	Nelson
Anderson	Fong	Packwood
Baker	Fulbright	Pastore
Bayh	Gambrell	Pearson
Beall	Goldwater	Percy
Bellmon	Gravel	Proxmire
Bennett	Griffin	Randolph
Bentsen	Gurney	Ribicoff
Bible	Hansen	Roth
Boggs	Hart	Saxbe
Brock	Hartke	Schweiker
Brooke	Hollings	Scott
Buckley	Hruska	Smith
Burdick	Hughes	Sparkman
Byrd, Harry F., Jr.	Humphrey	Spong
Byrd, Robert C.	Inouye	Stafford
Cannon	Jackson	Stennis
Case	Javits	Stevens
Chiles	Jordan, N.C.	Stevenson
Church	Jordan, Idaho	Symington
Cooper	Kennedy	Taft
Cotton	Long	Talmadge
Cranston	Magnuson	Thurmond
Dole	Mansfield	Tower
Dominick	Mathias	Tunney
Eagleton	McClellan	Weicker
Eastland	Mondale	Williams
Edwards	Montoya	Young
	Moss	

MR. ROBERT C. BYRD. I announce that the Senator from Oklahoma (Mr. HARRIS), the Senator from South Dakota (Mr. MCGOVERN), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Montana (Mr. METCALF), and the Senator from Rhode Island (Mr. PELL) are necessarily absent.

I further announce that the Senator from Wyoming (Mr. MCGEE) is absent on official business.

Mr. GRIFFIN. I announce that the Senator from Colorado (Mr. ALLOTT), the Senator from Nebraska (Mr. CURTIS), the Senator from Oregon (Mr. HATFIELD), and the Senator from Iowa (Mr. MILLER) are necessarily absent.

The Senator from Kentucky (Mr. COOK) is absent on official business.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The PRESIDING OFFICER (Mr. CHILES). A quorum is present.

VOTE

The PRESIDING OFFICER. Pursuant to rule XXII, a rollcall has been had, and a quorum is present. The question before the Senate is, Is it the sense of the Senate that debate on H.R. 13915, a bill to further the achievement of equal educational opportunities shall be brought to a close? The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. JORDAN of Idaho (when his name was called). On this vote I have a pair with the Senator from Colorado (Mr. ALLOTT) and the Senator from Nebraska (Mr. CURTIS). If they were present and voting, they would vote "yea." If I were permitted to vote, I would vote "nay." I withhold my vote.

Mr. ROBERT C. BYRD. I announce that the Senator from Oklahoma (Mr. HARRIS), the Senator from South Dakota (Mr. MCGOVERN), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Montana (Mr. METCALF), and the Senator from Rhode Island (Mr. PELL) are necessarily absent.

I further announce that the Senator from Wyoming (Mr. MCGEE) is absent on official business.

I further announce that, if present and voting, the Senator from South Dakota (Mr. MCGOVERN) would vote "nay."

Mr. GRIFFIN. I announce that the Senator from Colorado (Mr. ALLOTT), the Senator from Nebraska (Mr. CURTIS), the Senator from Oregon (Mr. HATFIELD), and the Senator from Iowa (Mr. MILLER) are necessarily absent.

The Senator from Kentucky (Mr. COOK) is absent on official business.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

If present and voting, the Senator from Kentucky (Mr. COOK) would vote "yea."

Also, if present and voting, the Senator from Oregon (Mr. HATFIELD), and the Senator from Iowa (Mr. MILLER) would each vote "nay."

The pair of the Senator from Colorado (Mr. ALLOTT), and that of the Senator from Nebraska (Mr. CURTIS) has been previously announced.

The yeas and nays resulted—yeas 49, nays 38, as follows:

[No. 543 Leg.]

YEAS—49

Aiken	Dole	Mathias
Allen	Dominick	McClellan
Anderson	Eastland	Packwood
Baker	Edwards	Proxmire
Beall	Ervin	Randolph
Bellmon	Fannin	Roth
Bennett	Fong	Saxbe
Bentsen	Gambrell	Schweiker
Bible	Goldwater	Smith
Brock	Griffin	Sparkman
Buckley	Gurney	Spong
Byrd, Harry F., Jr.	Hansen	Stennis
	Hollings	Talmadge
Byrd, Robert C.	Hruska	Thurmond
Cannon	Jackson	Tower
Chiles	Jordan, N.C.	Young
Cotton	Long	

NAYS—38

Bayh	Hughes	Pearson
Boggs	Humphrey	Percy
Brooke	Inouye	Ribicoff
Burdick	Javits	Scott
Case	Kennedy	Stafford
Church	Magnuson	Stevens
Cooper	Mansfield	Stevenson
Cranston	Mondale	Symington
Eagleton	Montoya	Taft
Fulbright	Moss	Tunney
Gravel	Muskie	Weicker
Hart	Nelson	Williams
Hartke	Pastore	

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Jordan, Idaho, against.

NOT VOTING—12

Allott	Hatfield	Metcalf
Cook	McGee	Miller
Curtis	McGovern	Mundt
Harris	McIntyre	Pell

The PRESIDING OFFICER. On this vote there are 49 yeas and 38 nays. Two-thirds of the Senators present and voting not having voted in the affirmative, the cloture motion is not agreed to.

CIVILIAN CONTROL OF THE MILITARY AND THE LAVELLE AFFAIR

Mr. ROTH. Mr. President, historically, civil governments have always attempted to keep firm control of their military forces whether such governments were authoritarian regimes or democratic ones. But the question of civilian control over the military assumes special importance in a modern democratic society such as ours.

There are three principal reasons why this is so. In the first place, the military today—armed as they are with nuclear weapons—have almost limitless force at their disposal. It is vital that the freely elected democratic institutions of our country maintain a firm grip on that force, for while the country is democratic, the military is and must be autocratic. Second, in a limited war such as the one in Vietnam, military power should be exercised with political objectives in mind; and specific military actions must be integrated with political and diplomatic strategy. In a world of instantaneous communications, delicate balances of power, and shifting alinements, our Armed Forces cannot be allowed to fight their own independent actions, based on their own interpretations of what is or is not in the interests of the United States. Presumably, we have elected officials to do that.

There is a third reason, one germane to the questions concerning Generals Abrams and Lavelle, why it is imperative to maintain firm civilian control of military operations. In all conflicts, even so-called total wars, delicate orchestrations of military and diplomatic policy can sometimes have a direct bearing upon the rules of engagement for military commanders in the field, and situations may arise which call for their constant revision or reinterpretation. This was as true of our operations during the Korean war, for example, especially when the frontline had become stabilized there, as it is today in Southeast Asia. Revision or reinterpretation of these rules, however, must come from, or at least be approved by, the political leadership of this country, so that diplomacy can be effectively coordinated with military action. It cannot be a purely military activity.

Both my second and third points are applicable to the problem of General Lavelle's alleged disobedience of orders and the extent of General Abrams' knowledge of such actions. In the case of General Lavelle's unauthorized airstrikes, we have an instance of military action taken, according to General Lavelle, for strictly military reasons—a buildup of troops and materiel in North Vietnam—without any apparent consideration for the larger political issue of a negotiated settlement of the war. Again according to General Lavelle's own testimony, he interpreted the rules of engagement to suit his desire to intensify air operations over North Vietnam, without submitting the matter to higher authority for approval. Neither action is consonant with two traditions of the American military—submission to civilian authority and obedience to military supervisors.

The question now before us, however, is the confirmation of General Abrams. Although there is apparently some dispute among the committee members whether further hearings should be held, they agree unanimously that the general's appointment should be confirmed. I was particularly impressed by the comments of the distinguished Senators from Mississippi (Mr. STENNIS), Maine (Mrs. SMITH), and Iowa (Mr. HUGHES).

I particularly agree with the thoughtful statement of the Senator from Maine that troublesome questions remain to be answered, and I hope the Congress will address itself to those issues as early as possible. But I also believe great weight should be given to the conclusions of the able Senators from Iowa (Mr. HUGHES) and Missouri (Mr. SYMINGTON). They originally requested this investigation and were the most critical, but both have stated that they are satisfied that the general's appointment should be confirmed. I joined in requesting this investigation, and I will join now in voting for the confirmation of General Abrams.

I would like to emphasize, however, that regardless of what action we take today, these hearings have cogently pointed out the need for the Congress to insure continued and constant civilian control over the military. Frankly, I believe we may have been lax in this area during the past two decades, thus contributing to any deterioration which has occurred. The time has arrived for the Congress to reassume its constitutonal

responsibilities and reassess its performance in light of what the Lavelle-Abrams hearings have revealed. While there is obviously not enough time to embark upon this project during this Congress, I hope that we will all place this as a first order of business when we reconvene.

Mrs. SMITH. Mr. President, I shall not vote against the confirmation of General Abrams.

While I feel that as the commander he cannot escape some responsibility for what his deputy did, in my opinion he was not sufficiently involved to warrant rejection of his confirmation.

My point of criticism is his ignorance of what was being done, when as commander he should have made it a point to know what was going on in his command.

Mr. CHURCH. Mr. President, I was instructed in the Army that the commanding officer was always responsible for what happened within his command. While General Abrams was commanding general of our forces in Vietnam, insubordination of orders regarding bombing took place. He is said not to have known about it. This might be a legitimate defense against disciplinary action, but it is not a proper basis for promotion.

Unaccountability, both within and without the military, has become the hallmark of the Nixon administration. Unlike Harry Truman, no one in this administration, from the President down, is prepared to say, "The buck stops here."

I do not fault General Abrams as an officer or a gentleman, but the record does not justify his elevation to Chief of Staff of the U.S. Army.

Accordingly, I shall vote against his confirmation.

Mr. DOMINICK. Mr. President, as a member of the Armed Services Committee, I have, of course, been closely associated with the hearings on Gen. Creighton W. Abrams for appointment as Chief of Staff of the U.S. Army. I shall support his nomination.

Everyone, I am sure, is by this time well aware of the issues involved in this confirmation and our committee chairman reviewed everything quite thoroughly yesterday. My purpose in these short remarks is to inform my colleagues of my unqualified support of General Abrams for this appointment. Throughout the hearings there was absolutely nothing, in my opinion, that indicated General Abrams was in any way knowledgeable about the unauthorized bombings. In the one case where he did authorize a single and special raid, he fully reported the results of that raid and upon being advised by the Joint Chiefs of Staff that such raids were outside the standing rules of engagement he made that known to 7th Air Force.

During the hearings, I questioned General Abrams to see if he was aware of the special interpretation made by General Lavelle of the standing rules of engagement. I would like to read this part of the hearings which I believe is very helpful in showing that General Abrams was not informed of General Lavelle's special interpretation:

Senator DOMINICK. According to the testimony of General Lavelle, again from his prepared statement, on page 10, he said, and I quote, in regard to the Moc Chau radar strike:

"JCS responded that they were sympathetic with CinCPac and MACV position but that we could not hit GCI radars unless they could get approval from higher authority. We received this approval approximately 3 weeks later."

Is that accurate?

General ABRAMS. Yes. I don't have the exact wording of the message but I think that is a fair statement. I certainly have no quarrel with it.

Senator DOMINICK. So the rules then, from the time until you did get permission to hit GCI's were that they were off limits, so to speak?

General ABRAMS. That is correct.

Senator DOMINICK. And General Lavelle was aware of that.

Now, it was the 23d of January when the strike was made, as I understand it from his testimony, on Dong Hoi [deleted] and it was at that time that he states publicly, "I told my Director of Operations that we could not report 'no enemy reaction.'"

Do I understand that you did not know of that:

General ABRAMS. I did not know that.

Senator DOMINICK. Did you ever while you were in command during this period that we are dealing with go to U Dorn?

General ABRAMS. Yes, I went to U Dorn sometime—either—I don't remember the date but I went to U Dorn in either the latter part of December or the first part of January.

Senator DOMINICK. At that time did anyone mention to you that they had had instructions of this kind from General Lavelle?

General ABRAMS. No, sir, and if I may say so, all I saw at U Dorn—I got out of one airplane and got into another; I talked briefly with the Commanding General there and we really didn't talk business—well, no, I will take that back. I did talk business with him planeside [deleted] but I didn't get into—and I didn't visit the base; I didn't get any briefing there so it was off one airplane and out to another.

Senator DOMINICK. During this period that was the only time you recall that you were in U Dorn? And I am talking about——

General ABRAMS. Yes.

Senator DOMINICK (continuing). Really, from January to March?

General ABRAMS. Yes, that's right, sir.

Senator DOMINICK. General Slay, as I understand it, was the Chief of Staff for General Lavelle; is that correct?

General ABRAMS. Well, they——

Senator DOMINICK. Or Chief of Operations?

General ABRAMS. They really don't have that term, sir.

Senator DOMINICK. Chief of Operations?

General ABRAMS. He is the Chief of Operations, Deputy for Operations and it is a very responsible position in the Air Force setup.

Senator DOMINICK. Did he sit in with you on your Friday morning briefings that I understand that you had weekly?

General ABRAMS. Our weekly meetings, sir, were on Saturday.

Senator DOMINICK. Saturday?

General ABRAMS. We got into that habit when General Westmoreland was there and never changed it; but then some time in December we began meeting daily to go over the air effort, the intelligence.

Senator DOMINICK. Would General Slay be at those meetings?

General ABRAMS. I would say that General Slay was probably at almost all of them, if not all.

Senator DOMINICK. Did he or anyone else at that time during those meetings report to you on the interpretation that they were making of the rules?

General ABRAMS. No.

Senator DOMINICK. Did they report to you at any time the order that General Lavelle gave saying that "We should not report 'no hostile reaction'"?

General ABRAMS. No, that matter was not discussed.

Senator DOMINICK. Was there anything in the reports, looking back at them now, that would have led you to believe, in the reports that you saw, that this type of interpretation was being used or that the reports were being falsified?

General ABRAMS. No.

Senator DOMINICK. That is all I have.

General ABRAMS. You see, I had—if I could explain that a little further—it is true that the operation was really carried by the 7th Air Force but I did have a targeting group and an operations group in my own headquarters and you also needed specialists on rules. There have been many of them and they are complex and you have got to have people who work at that all the time so that if something shows up they can tell you about it, and I had a very good group there. They went over all these reports: I didn't; they did and they didn't say—then and since this occurred, and even before I left there—they went back and looked at these and they could find nothing in it that would have alerted them.

So I feel reasonably confident it was not oversight.

The CHAIRMAN. By your men?

General ABRAMS. Yes, by my men, yes.

Senator DOMINICK. I think that is all I have, Mr. Chairman. Thank you very much.

Now Mr. President, I also asked General Lavelle about whether he had informed General Abrams of the special interpretation of the standing rules of engagement he was making. I think the following exchange shows he did not.

Senator DOMINICK. For my own clarification, when you talked to General Abrams, which I am sure you must have on a number of occasions, did you ever tell him that it was your interpretation that radar was activated at all times and that you were therefore entitled to strike?

General LAVELLE. In those words, no, sir.

Senator DOMINICK. That is all I have, Mr. Chairman.

Mr. President, there is no question that this entire episode has been most unfortunate and there is probably still more in the command and control area we need to examine. But right now, the Army needs a full time Chief of Staff which it has been without for much too long. I, for one, believe the United States is most fortunate to have a soldier of General Abrams' experience and character to be Chief of Staff of the Army. I, for one, have heard only praise from his Army comrades about his selection by the President to be the Army Chief of Staff. And, I, for one, Mr. President, have not come across a single thing that would indicate he should not be the Chief of Staff of the Army.

Mr. President, I strongly urge my colleagues to vote in favor of the confirmation of General Abrams.

EXECUTIVE SESSION

The PRESIDING OFFICER (Mr. CHILES). Under the previous order, the Senate will now go into executive session to vote on the Abrams nomination.

The Senate proceeded to consider executive business.

U.S. ARMY

The Senate resumed the consideration of the nomination of Gen. Creighton W.

Abrams to be Chief of Staff of the U.S. Army.

Mr. MANSFIELD. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. STENNIS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. STENNIS. Will the Chair now state the issue pending before the Senate?

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Gen. Creighton W. Abrams to be Chief of Staff of the U.S. Army?

Mr. STENNIS. Mr. President, a further parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. STENNIS. As I understand, Senators in favor of the confirmation will, of course, vote "yea." Is that correct?

The PRESIDING OFFICER. The Senator is correct.

The question is, Will the Senate advise and consent to the nomination of Gen. Creighton W. Abrams to be Chief of Staff of the U.S. Army?

The clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Oklahoma (Mr. HARRIS), 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), and the Senator from Virginia (Mr. SPONG) are necessarily absent.

I further announce that the Senator from Wyoming (Mr. MCGEE) is absent on official business.

I further announce that, if present and voting, the Senator from Rhode Island (Mr. PELL), and the Senator from Virginia (Mr. SPONG) would vote "yea."

Mr. GRIFFIN. I announce that the Senator from Colorado (Mr. ALLOTT), the Senator from Nebraska (Mr. CURTIS), the Senator from Oregon (Mr. HATFIELD), and the Senator from Iowa (Mr. MILLER) are necessarily absent.

The Senator from Kentucky (Mr. COOK) is absent on official business.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Kentucky (Mr. COOPER) is detained on official business.

If present and voting, the Senators from Kentucky (Mr. COOPER and Mr. COOK), the Senator from Nebraska (Mr. CURTIS), the Senator from Oregon (Mr. HATFIELD), and the Senator from Iowa (Mr. MILLER) would each vote "yea."

The result was announced—yeas 84, nays 2, as follows:

[No. 544 Ex.]

YEAS—84

Aiken	Buckley	Eastland
Allen	Burdick	Edwards
Anderson	Byrd, Harry F., Jr.	Ervin
Baker	Byrd, Robert C.	Fannin
Bayh	Cannon	Fong
Beall	Case	Fulbright
Bellmon	Chiles	Gambrell
Bennett	Cotton	Goldwater
Bentsen	Cranston	Gravel
Bible	Dole	Griffin
Boggs	Dominick	Gurney
Brock	Eagleton	Hansen
Brooke	Hartke	Hart
Hollings	Mondale	Sparkman
Hruska	Montoya	Stafford
Hughes	Moss	Stennis
Humphrey	Muskie	Stevens
Inouye	Nelson	Stevenson
Jackson	Packwood	Symington
Javits	Pastore	Taft
Jordan, N.C.	Pearson	Talmadge
Jordan, Idaho	Percy	Thurmond
Kennedy	Randolph	Tower
Long	Ribicoff	Tunney
Magnuson	Roth	Weicker
Mansfield	Saxbe	Williams
Mathias	Schweiker	Young
McClellan	Scott	
	Smith	

NAYS—2

Church	Proxmire

NOT VOTING—14

Allott	Hatfield	Miller
Cook	McGee	Mundt
Cooper	McGovern	Pell
Curtis	McIntyre	Spong
Harris	Metcalf	

So the nomination was confirmed.

Mr. STENNIS. Mr. President, I move that the Senate reconsider the vote by which the nomination was confirmed.

Mr. TOWER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. STENNIS. Mr. President, I ask unanimous consent that the President be notified of the confirmation of the nomination.

The PRESIDING OFFICER. Without objection, the President will be notified.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Without objection, the Senate will now return to the consideration of legislative business.

SUPPLEMENTAL APPROPRIATIONS, 1973

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 17034, the Supplemental Appropriation Act of 1973.

Mr. ALLEN. I object.

Mr. MANSFIELD. Mr. President, I move that the Senate proceed to the consideration of H.R. 17034, the Supplemental Appropriation Act of 1973.

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

The legislative clerk read as follows:

H.R. 17034, an act making supplemental appropriations for the fiscal year ending June 30, 1973, and for other purposes.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Montana.

Mr. ALLEN. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Alabama will state it.

Mr. ALLEN. Is the motion debatable?

The PRESIDING OFFICER. The motion to take up the bill is debatable.

Mr. ALLEN. Mr. President, the junior Senator from Alabama was not willing to agree to the unanimous-consent request that the Senate lay aside the unfinished business, nor is he willing to consent to the motion that the bill be laid aside and that another matter be taken up. However, Mr. President, the Senator from Alabama feels that the majority leader has fulfilled the commitment that he made on the Senate floor; namely, that H.R. 13915 would be brought up for consideration, that it would be made the unfinished business, and that the Senate would be given an opportunity to work its will with respect to the bill.

The Senate on three separate occasions—by an ever-widening margin, I might say, however—has voted not to shut off debate. There has been an ever-widening number of votes in favor of shutting off debate, yet the Senate has refused to shut off debate.

The Senator from Alabama has wanted the Senate to have an opportunity to vote up or down on the bill. It would seem that a further extension of debate at this time might not be advisable, might be counterproductive, in the short time that we have remaining, for it is the desire of the leadership and the membership to adjourn sine die. It would seem that another cloture vote at this time might not carry, but at the same time he feels that the bill should stay before the Senate. He does not wish to use the 2 days that would be required to shut off debate on the motion to proceed to another matter. It would take 2 days to bring up a cloture motion, so he does not plan to filibuster the motion, but he wishes to request a yea-and-nay vote on the motion. I now ask for the yeas and nays.

The yeas and nays were ordered.

Mr. GRIFFIN. Mr. President, I should like to associate myself with the remarks made by the distinguished Senator from Alabama (Mr. ALLEN) and point out that the Senate has not had an opportunity to work its will with respect to this legislation. The votes that have taken place have been votes on a motion to invoke cloture. In each instance, a majority—a significant and substantial majority—of Senators have indicated they want the opportunity to vote on the merits of the bill. There is every reason to believe that a majority of Senators would pass this legislation to curb forced busing, if the Senate were allowed to work its will.

It is ironic and deplorable that filibuster tactics have been used, apparently successfully by some who ordinarily and customarily rail against the use of filibuster and so loudly proclaim the abuse of the filibuster as a means of preventing the Senate from working its will.

A filibuster in this instance is particularly inexcusable because the people of the country understand what the Senate is debating. This is not a situation such as was presented when former Justice Fortas was nominated to be Chief Justice of the United States, where an extended debate, if you will, was needed to apprise the people of facts, information, and arguments about the Justice's background and qualifications for the top judicial post in our country so that the people could have an opportunity to form an opinion and consensus on the nomination. In such instances I believe that an extended debate in the Senate serves a very useful purpose.

But this is a situation in which the Senate has already debated the subject a number of times. The people know what we are talking about. A consensus

has been formed in the country. The people expect Congress to act. If ever there was a situation in which Congress is not being responsive to the will of the people by not acting, this is that situation.

Where are the cries of the reformers who have been concerned about Congress not being responsive to the people? Are they going to criticize Congress in this situation as they have in other situations, or are they going to say, "Well, it is all right in this case"?

For my part, I would like to see the bill remain as the pending business of the Senate. I would be willing to stay here every day from now until election, and beyond election day, to get this matter to a vote in the Senate. It is that important to my State, and I think it is that important to the Nation.

I will not participate in any effort to resort to the tactics of filibustering in order to prevent the Senate from working its will on the motion made by the distinguished majority leader. Of course, we could do that. We could filibuster the motion, but then I would be using the tactics that I am criticizing. But I have decided, under the circumstances, to allow the Senate to work its will. I shall vote against the motion before us now, and I hope a majority in the Senate will vote to keep the antibusing bill as the pending business.

Mr. BAKER. Mr. President, I do not intend to debate the matter at length. I do not intend to filibuster. I simply want to say that, insofar as I am concerned, I am willing to stay here and debate this matter until the end of the year and until the convening of the next Congress. I think the matter is that important.

The orderly and desirable way to handle this matter is to let the Senate work its will by voting on whether to set aside the antibusing measure and move on to something else. I shall vote against setting aside the pending business, the antibusing bill, but I will not engage in a filibuster to try to prevent it.

I hope that the motion does not prevail.

Mr. CRANSTON. Mr. President, I ask unanimous consent that Jonathan Steinberg may have the privilege of the floor.

The PRESIDING OFFICER. Is there objection?

Mr. HANSEN. Mr. President, reserving the right to object, what is the order of business for the remainder of the day?

The PRESIDING OFFICER. The pending motion is the motion to take up the appropriation bill.

Mr. HANSEN. I do not object.

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

Mr. TOWER. Mr. President, I rise in support of the Senator from Alabama, the Senator from Michigan, and the Senator from Tennessee in their desire to see the Senate work its will. I do not want to prolong or delay the business of the Senate.

I am fighting a reelection campaign in Texas, myself. I am willing to stay here as long as necessary in order to resolve this issue, even if it is through November 7. I do not think it is the intent of any of us to filibuster here. Nevertheless, I think we should keep the pending business up, in the hope that perhaps we could eventually get to a vote on its merits. I am prepared to stay and work, even though it extends the time of adjournment of this session of Congress.

This is a matter of considerable concern to the people of my State. No State has been more sorely afflicted by busing than the State of Texas. This is a matter of very great social concern. It is appalling to me that the Senate is not being allowed to work its will on a matter of such deep-seated concern, a matter that has resulted in disruption of our educational program in my State, and great divisiveness among people that were becoming united.

Therefore, I hope that the motion to take up the supplemental appropriation bill and set aside the pending business is resoundingly defeated and that we will have the opportunity to try to work toward a successful conclusion of our business by considering this bill on its merits.

Mr. BROCK. Mr. President, I rise in opposition to the proposal to set aside the pending business, the Equal Educational Opportunities Act. I do so with some sense of regret that this matter has been handled as it has; because, while the situation is more vicious in its application and damage to the people of my State and the State of Michigan than some other States, I think the Senator from Michigan has aptly pointed out that the abuse of children can occur in any State and is something which is intolerable and must not be countenanced.

The preservation of the neighborhood school is an objective which is shared by the overwhelming majority of the American people. I find some difficulty in understanding the position of those who oppose this bill without constructive alternative.

I have heard it said several times that no one wants to deny their children an equal opportunity; no one wants to destroy the neighborhood schools of America. But the fact is that they are being destroyed, that children are being selected not on the basis of merit or locale but on the basis of color, and are shifted by judicial whim. The fact is that nothing is being done to safeguard their constitutional rights.

I hope this motion is defeated. If it is not, I pledge that I will not stop my own efforts to resolve this problem until we do so, because I do not think we have a right to ignore the existence of a crisis in this country, a crisis which besets children in communities in Nashville, Charlotte, Chattanooga, Memphis, Detroit, and all around this country. That condition will be placed on other children unless we take action. I do not think we have a right to ignore our responsibilities as legislators in this body.

That is the condition that has been created by this filibuster. It is not an alternative; it is not a constructive response. It is simply a denial of the right of the people to have a voice in the process of government in this country, and I cannot accept that.

Mr. THURMOND. Mr. President, I wish to go on record as opposing the taking down of the busing bill. If there is any one issue in the country that is sensitive today and demands a decision, it is legislation on this subject.

The polls taken over the Nation show conclusively, North, South, East, and West, that the people of this country are opposed to busing schoolchildren just to bring about a racial balance. They do not oppose busing schoolchildren for quality education. If there is a better mathematical center, musical center, athletic center, or some other place where children should be bused, such as to a central high school, where the purpose of busing children is to improve quality education, the people of this country do not object.

But just picking up a child of one race and transporting that child 10, 20, or 30 miles to another school simply to bring about a mix or a racial balance does not make sense.

The people of this Nation have so spoken.

They have indicated this in the polls and in expressions made in surveys, so that there should be no doubt in the minds of those of us in Congress on this subject.

I feel very deeply that the Members of this body are misreading the minds of their constituents. Of course, that is a matter for each Senator to take into consideration when he makes his decision. But I have talked to people all over the country in various places, and from the surveys taken, I am confident that the sentiment is strong all over the Nation not to bus schoolchildren just to bring about a racial balance.

I think that steps should be taken, and taken as soon as possible, to stop busing for purposes of racial balance.

I repeat, no one objects to the busing of schoolchildren to improve their education, to bring about quality education. It is not a matter of race. In these same polls to which I have referred, the people have indicated that it was not because of race but simply because it was not practical and lacked wisdom to make children of one race be bused miles and miles and spend hours a day on a bus so as to bring about a racial balance. That is what they object to. That is what should be terminated.

I hope that Congress will not lay this bill aside. I hope that they will stay here and make a decision on it, because it will be in the interest of the American people. It will also be in the interest of our children that this decision be made by Congress.

Mr. DOMINICK. Mr. President, I have not spoken on this subject in previous debate because I had hoped we could terminate it and get down to the merits. I have no intentions of voting against the motion to set it aside at this point. I will support it because the Senate has had three opportunities to invoke cloture and it has not done it. As a result, I doubt very much that we would ever get to the other important business we have before us until well after the election, in view of the determined filibustering we have had against consideration of the merits of the bill.

Mr. President, we have been holding hearings in our Education Subcommittee of the Committee on Labor and Public Welfare. We have held hearings now for a number of months. We found a divergent series of viewpoints on the

equal educational opportunity bill. The NAACP has been very much against the bill, feeling that it went backward as opposed to going forward. On the other hand, we have had Professor Armor of Harvard come in and say that he has followed the educational status of those who have been forcibly bused by court order or otherwise, and has found that there has been no significant educational improvement, that there has been an increase in racial hostility, and that he can see nothing which would indicate from the record up to date that forced busing improves the quality of education or racial relationships among the people.

We also heard the head of the Dallas School Board who came in to tell us about the innovative work they had done down there, with their opportunity schools, and others; and how, all of a sudden, they found that they were no longer permitted to do it because the larger majority at such school happened to be a racial minority, so that suddenly the court said they could not do it any more, requiring that they close down one of the more important innovative educational opportunity schools that has been seen in a school district in a long time.

We heard from Professor Borh of Yale Law School who came in to talk about the constitutionality of the act. It was his opinion that this act is constitutional, particularly the Senate version of the bill, and that this constitutionality rests largely, in his opinion, on the 14th amendment, as opposed to the other articles in the Constitution, insofar as remedies are concerned, upon which constitutionality would be based in the House bill.

So we have many things we could have discussed on the merits and perhaps taken some votes on.

I put in five amendments in the hope that cloture would be invoked so that we could get down to the merits and have the opportunity to present the amendment to the Senate for their vote. One of them was to preserve the Senate bill differential between sixth grade and seventh grade children. This differential is not contained in the House bill. It seems to me that this is a logical and valid distinction which should have been made.

Another was to increase the amount of compensatory educational funds so that we can concentrate the funds in the areas where the economic situation is lowest, whether for black, white, yellow, or brown students.

Nevertheless, once again, we were not permitted to discuss this amendment. Some five amendments to the House bill were introduced on my behalf by the distinguished Senator from New Hampshire (Mr. COTTON) and I want to express my appreciation to him for doing so, on October 9 of this year, all of which amendment, are important to this issue but none of which can be considered under the action which the Senate has taken.

I am sorry that the Senate saw fit to do this. I wish we had been able to get to the merits. I say, in full feeling and with great conviction, that in the next session of Congress I intend to push vigorously for further hearings on the equal educational opportunity bill which is now before our committee and, hopefully, try to get it to a vote and to the floor of the Senate for action. It is a matter of enormous significance to many States, and along with the distinguished Senator from Michigan (Mr. GRIFFIN), it is my feeling that not only are the States involved by the Senators who have spoken so freely but that the problem will spread rapidly throughout the entire country unless appropriate legislation is enacted.

Mr. MOSS. Mr. President, I concur with the views of the distinguished Senator from Colorado (Mr. DOMINICK). I too, will vote to take up the bill on the motion of the leader. It seems to me that this effort now being made to put us back on the previous bill—on the busing bill—or to keep that as the pending business of the Senate, comes at an inopportune time. We have had three attempts on three separate occasions to invoke cloture and every one has failed by a wide margin.

Today there were 38 votes against it, which, of course, is more than enough to prevent halting debate even if every Senator were in his seat and voting. And the margin is very great.

The other thing that strikes me about it is that we previously had before the Senate a bill, the Consumer Protection Agency, of which the present occupant of the Chair, the Senator from Connecticut (Mr. RIBICOFF), was manager and chief sponsor. That bill, too, was an immensely important bill. It is a matter on which we have been working for a number of years. It is something that was urged by the administration, and, indeed, asked for by the administration, a measure on which we had a lot of time to talk. Yet this bill was subjected to a filibuster so that we could never get to a vote on that measure.

Finally, after having tried three times on the Consumer Protection Agency bill and being unable to halt the filibuster, we laid aside that measure.

It is interesting to note that Senators who were largely responsible for conducting the filibuster on that measure and who caused it to be laid aside are now objecting to a filibuster being conducted against the antibusing bill. This time it is just turned around. They have had their opportunity three times and the Senate has said no. It seems to me, therefore, that we ought to move on and finish the business of the Senate. And, as the Senator from Colorado pointed out, let us apply our efforts to finding solutions to the problems existing in the field of education.

I will certainly vote for the motion of the majority leader to take up other business.

The PRESIDING OFFICER (Mr. RIBICOFF). The Senator from Georgia is recognized.

Mr. GAMBRELL. Mr. President, I join the Senator from Alabama in deploring the motion to take up other business while this matter remains undisposed of.

I was interested in the comments of the Senator from Utah with respect to the consumer protection agency bill. I voted to invoke cloture on that measure. I thought that it had been discussed long enough.

I would say for the opponents of the cloture motion that a great many of them, possibly a majority, had indicated a willingness to vote the bill out and to invoke cloture, if necessary, had the bill been amended by the so-called amicus amendment. I do not say that was necessarily a good amendment. I voted for it myself. However, it would indicate a disposition on the part of the opponents of the bill and those who were, as we say, filibustering that measure, to vote for something. It offered an alternative which would certainly have been an improvement over nothing. We do not have that situation here.

There are plenty of alternatives to the pending busing bill that would offer something a little better to my State and to the State of Texas and to the State of Tennessee and to other States which have this situation existing.

I do not know whether the State of Utah has it or not. However, it is a matter of intense concern and it affects many people, black and white. More people, black and white, are opposed to the busing of schoolchildren than are in favor of a consumer bill in the form in which it was brought to the floor.

I think that to compare this with the consumer filibuster is inappropriate and inept.

I would also like to say that in the minds of those opposed to a motion to take up other legislation, the question of the leadership and our confidence in the leadership is drawn into question. And this, I am sure, will give us all some pause. It does me. I have great respect for the joint leadership, individually and collectively. But I would have to say that their handling of that particular matter during the entire session has not been what we would consider as being even-handed, as their handling of other measures has been.

I recall that when antibusing was an issue last spring, the Republican leader, the Senator from Pennsylvania (Mr. SCOTT) publicly admitted that his approach to it would be what was described as a waffle. And that, in effect, was what took place. The issue was dodged. Both of the leaders approached it in a partisan way. I think their participation in the effort to lead the partisans in watering down the bill that was before the Senate at that time somewhat raises a question as to whether they are in a position to be impartial in the handling of the pending measure.

I would say that if there was impartiality in the handling of the bill, it would have been brought up possibly at a much earlier time than during this closing hour of the session of the Congress and that it would have been permitted to remain pending at least as long as the Consumer Protection Agency bill, and that the leadership would not have been nearly as anxious to get a cloture motion filed and offer another cloture motion before the vote was had on the first cloture motion. Instead of waiting, a new cloture motion was offered.

The effort seemed to me to be one of: "Let us not let this be exposed to the air too long. It is something awful. We can read in the Washington papers every day how awful it is to be against busing. The more we expose this to the light of day, the worse it is for us to be even discussing such a wretched question as this. As to those people who are suffering from it, let them suffer. Let us not seek any reasonable alternatives. Let us not conciliate this matter. Let us just let it be exposed for a little bit of time as near to the end of the session as it can be, and if we can encourage enough Senators to believe that it will be over in 2 or 3 days, they will keep on voting against cloture and we will forget about it for several months."

But it will be back here again if there is a delayed session of this Congress after the election. And if nothing is done here then, it will break out again in January, February, March, and April, and right on until something is done about it.

So I would have to say on every score that I cannot see trying to lay aside this question, because it will not remain laid aside. We might as well settle it now, or we will have to do so later.

The PRESIDING OFFICER. The question is on agreeing to the motion of the majority leader to take up the consideration of the supplemental appropriations bill.

Mr. MANSFIELD. Mr. President, may I say that the motion has been offered on behalf of the distinguished Republican leader and myself.

The PRESIDING OFFICER. The Senator is correct. The motion has been offered on behalf of the majority and minority leaders. 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 Louisiana (Mrs. EDWARDS), the Senator from Oklahoma (Mr. HARRIS), 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), and the Senator from Virginia (Mr. SPONG) are necessarily absent.

I further announce that the Senator from Wyoming (Mr. MCGEE) is absent on official business.

On this vote, the Senator from Rhode Island (Mr. PELL) is paired with the Senator from Virginia (Mr. SPONG). If present and voting, the Senator from Rhode Island would vote "yea" and the Senator from Virginia would vote "nay."

Mr. GRIFFIN. I announce that the Senator from Colorado (Mr. ALLOTT), the Senator from Nebraska (Mr. CURTIS), the Senator from Oregon (Mr. HATFIELD), and the Senator from Iowa (Mr. MILLER) are necessarily absent.

The Senator from Kentucky (Mr. COOK) is absent on official business.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Arizona (Mr. GOLDWATER) is detained on official business.

If present and voting, the Senator from Oregon (Mr. HATFIELD) would vote "yea."

On this vote, the Senator from Iowa (Mr. MILLER) is paired with the Senator from Nebraska (Mr. CURTIS). If present and voting, the Senator from Iowa would vote "yea" and the Senator from Nebraska would vote "nay."

The result was announced—yeas 59, nays 26, as follows:

[No. 545 Leg.]

YEAS—59

Aiken	Fulbright	Pastore
Anderson	Gravel	Pearson
Bayh	Hart	Percy
Beall	Hartke	Proxmire
Bellmon	Hughes	Randolph
Bible	Humphrey	Ribicoff
Boggs	Inouye	Saxbe
Brooke	Jackson	Schweiker
Buckley	Javits	Scott
Burdick	Jordan, Idaho	Smith
Byrd, Robert C.	Kennedy	Stafford
Cannon	Magnuson	Stevens
Case	Mansfield	Stevenson
Church	Mathias	Symington
Cooper	Mondale	Taft
Cotton	Montoya	Tunney
Cranston	Moss	Weicker
Dominick	Muskie	Williams
Eagleton	Nelson	Young
Fong	Packwood	

NAYS—26

Allen	Eastland	Jordan, N.C.
Baker	Ervin	Long
Bennett	Fannin	McClellan
Bentsen	Gambrell	Roth
Brock	Griffin	Sparkman
Byrd, Harry F., Jr.	Gurney	Stennis
	Hansen	Talmadge
Chiles	Hollings	Thurmond
Dole	Hruska	Tower

NOT VOTING—15

Allott	Harris	Metcalf
Cook	Hatfield	Miller
Curtis	McGee	Mundt
Edwards	McGovern	Pell
Goldwater	McIntyre	Spong

So the motion to proceed to the consideration of H.R. 17034 was 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 passed, without amendment, the following bill and joint resolutions of the Senate:

S. 2700. An act to extend diplomatic privileges and immunities to the Mission to the United States of America of the Commission of the European Communities and to members thereof;

S.J. Res. 247. Joint resolution extending the duration of copyright protection in certain cases; and

S.J. Res. 265. Joint resolution to provide grants for Allen J. Ellender fellowships to disadvantaged secondary school students and their teachers to participate in a Washington public affairs program.

The message also announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 3755) to amend the Airport and Airway Development Act of 1970, as amended, to increase the U.S. share of allowable project costs under such act; to amend the Federal Aviation Act of 1958, as amended, to prohibit certain State taxation of persons in air commerce, and for other purposes.

The message further 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. 7117) to amend the Fishermen's Protective Act of 1967 to expedite the reimbursement of U.S. vessel owners for charges paid by them for the release of vessels and crews illegally seized by foreign countries, to strengthen the provisions therein relating to the collection of claims against such foreign countries for amounts so reimbursed and for certain other amounts, and for other purposes.

The message also announced that the House had agreed to the amendment of the Senate to the bill (H.R. 12674) to amend title 38 of the United States Code in order to establish a National Cemetery System within the Veterans' Administration, and for other purposes.

The message further announced that the House had agreed to the report of the committee of conference on the disgreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 15883) to amend title 18, United States Code, to provide for expanded protection of foreign officials, and for other purposes.

ENROLLED BILLS SIGNED

The message also announced that the Speaker had affixed his signature to the following enrolled bills:

H.R. 10420. An act to protect marine mammals; to establish a Marine Mammal Commission; and for other purposes; and

H.R. 15883. An act to amend title 18, United States Code, to provide for expanded protection of foreign officials, and for other purposes.

The enrolled bills were subsequently signed by the President pro tempore.

PUBLIC WORKS AND ECONOMIC DEVELOPMENT ACT OF 1972

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the pending business be laid aside temporarily—very temporarily—and that the Senate proceed to the consideration of Calendar No. 1221, H.R. 16071, an act to amend the Public Works and Economic Development Act of 1965, which I understand will not take much time.

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

The assistant legislative clerk read the bill by title, as follows:

A bill (H.R. 16071) to amend the Public Works and Economic Development Act of 1965.

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

There being no objection, the Senate proceeded to consider the bill.

Mr. MONTOYA. Mr. President, the bill now before the Senate amends the Public Works and Economic Development Act in order to maintain and improve the activity of the Federal Government in programs designed to provide greater opportunities for persons living in the economically distressed areas of our country. The Senate version of H.R. 16071 is similar to the bill passed by the House of Representatives on August 16 by a record vote of 285 yeas to 92 nays.

The main difference is that certain of the House provisions dealing with programs currently under study by our committee have been deleted pending completion of our investigations. The bill was reported from the committee by unanimous vote, with myself and Senators RANDOLPH, COOPER, MUSKIE, JORDAN, EAGLETON, GRAVEL, TUNNEY, BENTSEN, EDWARDS, BOGGS, BAKER, DOLE, and STAFFORD voicing support for the bill.

The overwhelming plurality with which the House passed H.R. 16071 reflects an awareness of the need to improve national economic development efforts—a need further reflected in unemployment statistics. According to the Labor Department, unemployment remained at 5.5 percent in September, with close to 5 million Americans out of work. Unemployment has been at this level or higher for 22 consecutive months. How long will this Nation continue to pay this enormous cost in wasted resources and human despair?

During the Kennedy administration, an unemployment rate of 4 percent was set as the interim objective for economic policy. We must not abandon this target. In fact, the Joint Economic Committee lists an unemployment rate no higher than 3 percent as an appropriate long-run target for the United States. Is this an unattainable goal? Hardly. Industrialized countries such as Japan, Australia, and many European countries consistently maintain unemployment rates of 2 percent or less.

The programs authorized by the Public Works and Economic Development Act address themselves directly to the task of reducing unemployment. They increase aggregate demand through the creation of needed public works; and, just as important, they attack structural barriers to employment, such as inadequate training and geographic isolation. We must not endanger these tools for combating unemployment. Indeed, we must strengthen them.

The Subcommittee on Economic Development did, in fact, hold hearings throughout the country in 1971 with the expressed purpose of improving national responses to unemployment and other socio-economic problems that concern us all. During these hearings, the subcommittee visited 11 communities in seven States and heard from 231 witnesses. As the result of these hearings, I introduced legislation to establish a national development program through public works investment. Hearings on this bill (S. 3381) provided testimony for an additional 38 witnesses.

These hearings, plus the actual experiences of the Appalachian Regional Commission, the title V Regional Commissions, and the Economic Development Administration, lead me to believe that sound and coordinated public works investment programs would go a long way in fostering proper and reasoned social, economic, and environmental development. I know that the Committee on Public Works will continue to pursue ways to improve the development process at the local, State, and Federal levels, but in the interim we cannot risk losing the tools now available. We first must have better tools and better programs at all levels of our society. For this reason, I support the bill before us today (H.R. 16071).

This bill would continue the Federal effort to reduce unemployment and increase economic opportunity in the so-called "lagging" areas of our country by extending existing programs under the Public Works and Economic Development Act for an additional fiscal year, to June 30, 1974. In general terms, these programs include public facility grants and loans, business loans and guarantees, and technical and long-range planning assistance.

In order to improve the administration and clarify the public facility grants, title I has been separated into two distinct programs, each with its own set of criteria and appropriations. First, the bill maintains the original objective of this legislation by providing public works grants to stimulate long-term economic development. This portion of the bill is authorized at $550 million per fiscal year. Second, the bill separates the 1971 "public works impact program," which was developed to provide immediate useful work on an emergency basis. This program will now be authorized at $250 million per fiscal year. Thus, total grant and supplemental grant authorizations remain unchanged under title I at $800 million per fiscal year.

Maintenance of present authorization levels is not to be interpreted as satisfaction with current funding levels for these programs in general or for the public works impact program in particular. Less than $50 million was expended for this program during fiscal year 1972, despite the fact that unemployment has remained virtually unchanged from the 5-million level of April 1971, and the Presidential veto of a large-scale accelerated public works program. Unemployment in the construction industry remains particularly unacceptable at 9.2 percent in September compared with 9.6 percent in April 1971, and 9.7 percent in September 1971. Despite inadequate funding, the impact program created an estimated 11,000 jobs last year.

The only increase in authorizations under the Senate version of H.R. 16071 would be for the title V—Regional Action Planning Commissions. New authorizations for the Commissions would be $407.5 million for fiscal year 1973. Total authorization for the Commissions would thus be $560 million per year for fiscal year 1973 and 1974.

The increase of $407.5 million would increase total authorizations under the act from $1.22 billion per year to $1.63 billion, or $3.26 billion for 2 fiscal years.

Currently, funds are appropriated to the Secretary of Commerce for distribution among the Regional Commissions. The bill would authorize appropriations directly to the Commissions, with $100 million for each of the Commissions that have approved long-range plans and $20 million for each of those that have not. To date, four Commissions have approved plans: Coastal Plains, Four Corners, Ozarks, and Upper Great Lakes. The New England Regional Commission has completed its plan and approval is expected in a matter of days.

The bill authorizes the appropriation of $20 million per year for each of the two new Regional Commissions: the Old West Region and the Pacific Northwest Region. In addition, a new Indian Commission established by this bill would also receive the $20-million per year authorization.

In the past, each of the original five Commissions has operated with a budget in the neighborhood of $6 to $7 million per year. This amount may have been appropriate during the planning stage, but now these Commissions are prepared to be of additional assistance to their regions—regions that would find it extremely difficult if not impossible to implement development plans on their own. Increased appropriations to the title V Commissions would provide tremendous economic leverage for the less fortunate areas of our country.

As mentioned previously, the bill would create a new Indian Development Commission, to be composed of one Federal cochairman and up to 10 designated group representatives. All tribes, bands, and other groups of Indians and Alaska natives—including Indians under State jurisdiction—would be eligible to participate in the activities of the Commission.

I emphasize that this Commission would not replace any existing program for Indians. It would act as a focal point for the planning and coordination of Federal programs to improve their effectiveness to the Indian people. It would provide a mechanism by which Indians from every part of the land could provide their own unique input into developing acceptable methods for solving particular needs.

There is little need to demonstrate the serious economic plight that exists in most of our Indian communities. I am certain that all of my colleagues are aware of this plight. For the record, however, I would like to cite the serious economic conditions that exist in my State of New Mexico. In Acoma Pueblo, the unemployment rate is 28 percent. It is 60 percent at the Alamo Reservation and 50 percent at Canoncito Reservation. Median family income is $2,200 at Isleta Pueblo, located just outside of Albuquerque, and unemployment is 26 percent there. Unemployment is 58 percent at Jemez Pueblo, 47 percent at Laguna Pueblo, and 69 percent at the Mescalero Reservation. Median family income at San Ildefonso Pueblo, near the State capital of Santa Fe, is $1,800. This is the economic picture for Indians in New Mexico. The situation is similar elsewhere. Can there be any question about the need for additional economic assistance for these people?

Three provisions in H.R. 16071 are designed to help the Economic Development Administration provide more equitable support to the local communities that suffer from economic hardship. First, the Secretary of Commerce will be granted the discretion to waive all or any part of the local matching share if he determines that the community in question does not possess the financial capa-

bility to provide matching funds. Second, Indian tribes will no longer have to spend limited tribal funds for the otherwise required 25-percent matching contribution for technical assistance.

A third provision authorizes the Secretary to make grants for the operation of vocational training facilities constructed with EDA funds. Such grants may make up 75 percent of total operating costs for a 2-year period. Funds for this purpose are not to exceed $15 million per year.

Several provisions are set forth to maintain or strengthen EDA's program in areas that have not yet completely reached economic viability. The moratorium on the dedesignation of redevelopment areas is further extended to June 1, 1974, to allow initiated programs to be brought to fruition.

Assistance to nonredevelopment areas within a district will be permitted if such assistance is of substantial direct benefit to a redevelopment area in that district. Finally, to assure consistency in the planning process, districts wholly or partially within a title V Commission or the Appalachian Regional Commission will be required to furnish their long-range development plans to that Commission.

Mr. President, I have discussed the features of the bill before us. It warrants our support, and I urge the Senate to adopt this legislation.

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

Mr. MONTOYA. I yield to the distinguished Senator from West Virginia, the chairman of the Committee on Public Works.

Mr. RANDOLPH. Mr. President, the able chairman of our Subcommittee on Economic Development has, with all the members of the subcommittee as well as all the members of the committee, given very careful attenion to the situation that exists now, as we come to the closing days of the 92d Congress.

I believe that the Senator from Kentucky (Mr. COOPER), who has been intimately involved with this program, wishes, as do all of us, to accept, as the Senator from New Mexico has indicated, those provisions on which the House and the Senate are in agreement. I ask the Senator, is that correct?

Mr. COOPER. Yes. I would like 2 or 3 minutes to state my position, if I may.

Mr. RANDOLPH. Yes. I would simply close by saying I believe we can act here in a way whereby we will preserve and stimulate certain programs without having a difficult time in conference.

Mr. COOPER. Mr. President, I might say that under the able leadership of the Senator from New Mexico (Mr. MONTOYA) chairman of the Economic Development Subcommittee and the chairman of the Public Works Committee (Mr. RANDOLPH) we have been developing, in committee, new comprehensive public works and economic development program and a bill, S. 3381, was introduced in March by Senator MONTOYA, cosponsored by Senator RANDOLPH and myself. As Senators know, it is based somewhat upon the Appalachian Regional Development Act and the title V Regional Commissions and our committee's experience with these programs.

At present there are four regional commissions which have completed comprehensive plans as required under the act and the New England Regional Commission has recently submitted a plan for approval to the Secretary of Commerce. Under the committee bill $100 million a year will be authorized for the activities of these five regional commissions, and for the newly established commissions which do not have comprehensive plans the bill authorizes $20 million per year.

The House of Representatives sent to the Senate a bill which, in addition to extending the Public Works and Development Act, authorized a half-billion dollar accelerated public works program. The committee went through this problem last year when the President vetoed a larger accelerated public works program. After lengthy conferences with the House of Representatives, we agreed upon a smaller program—the public works impact program—which was signed into law August 5, 1971, as part of the Public Works and Economic Development Act. This year we have talked with the members of the House Public Works Committee, particularly the chairman, Representative BLATNIK, and sought his assurances that the House would not seek to increase the funds—$250 million per year authorized in the Senate bill—for accumulated public works and would not try to make the economic development program, which is a good program, a bill for public works employment. In committee, both sides agreed to develop the bill in this fashion.

I want to make it clear, however, that if in conference—if there is a conference—there should be any change from the authorization and programs which are outlined in the bill as brought before us by the distinguished Senator from New Mexico, I would oppose it in the conference, and if it came on the floor as a conference report, I would do my best to see that it was not enacted.

I take this position to protect the work of the committee and in support of the existing programs.

I pay tribute to Senator MONTOYA, who has fostered and developed, chiefly by his own initiative and by hearings throughout the country, a more comprehensive and improved program which I believe will lead to the better development of these regions. I am wholly in accord with that initiative, and therefore I support the reduced Senate amendment to H.R. 16071, extending the EDA another year and giving the committee time to complete work on the new proposal.

I ask unanimous consent to have printed in the RECORD at this point my supplemental views as stated in the committee report.

There being no objection, the excerpt from the report (No. 92–1277) was ordered to be printed in the RECORD, as follows:

SUPPLEMENTAL VIEWS OF MR. COOPER

The House of Representatives passed on August 17, 1972, and sent to the Senate H.R. 16071, a bill extending the Public Works and Economic Development Act of 1965 for an additional year (through fiscal year 1974). The House bill also made susbtantive policy and program changes in existing law; ex-effect, a somewhat smaller version of the accelerated public works program vetoed by the President on June 29, 1971); and authorized increased funding for the Title V Regional Commissions. As the House bill came to the Senate so late in the session, while both bodies were pressed to complete legislation requiring attention this year, the Senate Committee did not have an opportunity to hold hearings on the House proposals. In fact, extension of the EDA act is not urgent, because the existing authorities do not expire until June 30, 1973. And it seemed to me, and others, that these proposals deserved hearings and careful attention, which could only be given to them next year.

Following our discussions in the Committee of the problems involved, and under the guidance of our Chairman, Senator Randolph, the Committee on Public Works has reported a reduced version of the House bill, which I join in recommending to the Senate. I would hope very much that attempts will not be made to expand the bill beyond the amounts and provisions which the Public Works Committee has now agreed to present to the Senate.

The Committee amendment extending EDA authorizations through fiscal year 1974 will permit the continuation of existing programs while new economic development legislation is being considered next year. It omits Title VIII of the House bill; reduces authorizations proposed by the House for the accelerated public works program from $500 million to $250 million; and omits most of the substantive amendments proposed in the House bill. The Senate amendment retains the House provisions for a moratorium on redesignation of redevelopment areas, provides additional funding for the Title V regional commissions, and authorizes the creation of a new Indian Commission under Title V. In my view, a simple extension of existing law would be better, but I have not objected to the several House amendments which were advanced and included in the Senate amendment.

I want to make the observation that several of the amendments proposed by the House may well have merit. However, I oppose basic changes in existing law at this time because I know the efforts and good work of the Senate Subcommittee on Economic Development toward developing more comprehensive and improved legislation. That Subcommittee held 14 days of field hearings last year. Based on the hearing record, Senator Montoya in March introduced S. 3381, a bill cosponsored by the Chairman of the Public Works Committee, Senator Randolph, and myself. Five days of hearings were then held in Washington—and based on this work, I am confident that responsible legislative proposals will be presented by the Committee to the Senate early next year.

A second reason to reject the House version of H.R. 16071, is that it authorized a new and little-considered program to extend unemployment compensation and other forms of assistance to individuals out of work due to the application of Federal environmental quality standards, and to assist businesses in the purchase or modification of facilities necessary to meet environmental standards. The Air and Water Pollution Control Subcommittee, on which I serve, is familiar with this subject, and we are deeply concerned about the possible effects of pollution controls. The Subcommittee last year held three days of hearings on economic dislocations caused by environmental legislation, which the House Public Works Committee has not done. We have found this a difficult, complex problem; legislation dealing with it must be carefully constructed. Further, I do not believe that the Economic Development Administration or an EDA bill is the proper place to deal with this problem. The ED program is a good program, it has assisted many communities in building public works

and creating jobs, and it should not be burdened with unrelated legislation.

Because of my concern with the nature and scope of the proposals sent to us so late in the session by the House, and my desire that any bill enacted by the Senate be helpful and acceptable, I asked the Office of Management and Budget for its views on the House bill. I will request that Mr. Weinberger's response be printed in this Report at the close of my views.

As I have said, I support H.R. 16071 as reduced and reported by the Senate Committee. I strongly support adequate funding for the Regional Commissions, as I know does the Committee as a whole, for we believe they represent a very hopeful structure upon which to build. But I will oppose any attempt to further increase the accelerated public works or other amounts provided in the Committee amendment, to include substantive program or policy changes, or to add any new programs unrelated to the objectives and programs of the Public Works and Economic Development Act. I take this position both in support of the existing program, and to protect the work of the Committee.

JOHN SHERMAN COOPER.

Mr. MONTOYA. Mr. President, I thank the distinguished Senator from Kentucky for his kind references to me. I must say that he has provided a great input into this legislation, and great leadership. As the ranking Republican member of the Committee on Public Works, he has certainly contributed materially to the proposed concept, not only this year but in years past, when we had just a bare skeleton act.

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

Mr. MONTOYA. I am happy to yield to the distinguished Senator from Vermont.

Mr. AIKEN. Has the committee made a thorough and complete study of the operations of the regional commissions, including the use of the funds which have been appropriated for them each year?

The reason I ask is because the Boston Globe has recently published what amounts to four full pages setting forth what it seems to consider a colossal boondoggle in the New England Commission; and I understand that the other commissions are operating in a similar manner.

Does the Senator know how Governors spend the money allocated to them? Does the committee have a report? We ought not to multiply that fund until we know what they have done with what they have had.

Mr. MONTOYA. I might say to the distinguished Senator from Vermont that if that article appeared in the Boston Globe, the amount represented was only about $6 million, because that is all that the Commission received.

The moneys are allocated by the Regional Committee, which is comprised of Governor members of that Regional Commission.

Mr. AIKEN. But if the Governor gets an allocation of so much to do as he pleases with, and one New England Governor, I understand, is now asking for a big increase in the allocation to the Governors——

Mr. MONTOYA. Well, the local members of the Regional Commission, who are the Governors of the member States which are within the geographical area of the particular Commission, are the ones who make the decision, subject to the approval of a Federal watchman who is resident here in Washington.

Mr. AIKEN. That is right; I know about that.

Mr. MONTOYA. I might say to my good friend from Vermont that we spent many hours in hearings trying to elicit from the Commissions how they have spent their funds.

Mr. AIKEN. Did the committee find out?

Mr. MONTOYA. Yes, we found out.

Mr. AIKEN. How can we Members of the Senate find out?

Mr. MONTOYA. We have the hearings record, which is available to the Senator, as to how they spent these funds, and we are also trying to provide that they have meaningful projects and file proper planning reports with the committee and make them available to our staffs, so that we can, in turn, judge the validity of such planning and whether or not it is directed toward economic development.

We will continue, may I say to the Senator from Vermont, to have oversight hearings as to the expenditure of these funds.

Mr. AIKEN. But I understand the official authorizing legislation does not expire until June 30, 1973.

Mr. MONTOYA. That is correct.

Mr. AIKEN. What is the hurry in getting this through now?

Mr. MONTOYA. Well, we are extending the act for 1 more year, and it is customary to do so at this early point, so as to provide for additional lead time.

Mr. AIKEN. The measure is strongly opposed by the administration; is that correct?

Mr. MONTOYA. I do not think it is opposed by the administration.

Mr. AIKEN. I was just reading a letter from Caspar Weinberger on page 13 of the committee report, the last paragraph.

Mr. MONTOYA. No, the administration was opposed to the bill that was passed by the House.

We had these people before our committee, and they indicated no opposition to the bill as the Senate was recommending. We have restricted the House bill considerably.

Mr. AIKEN. I notice that there are several minority reports here—from Senator COOPER, Senator BAKER. I do not understand why the matter should be brought up right now. As the authorization does not expire until June 30, 1973.

Does the Senator understand that a full-scale investigation of the way these commissions are operating is likely to come about in the near future? The Boston Globe certainly indicates that one is in order. The work of the commissions may not be all bad. They may have done some things wrong, but I feel they are not all wrong all the time.

Mr. MONTOYA. I will always welcome an investigation, if anything is wrong.

I might say to the Senator from Vermont that Senator COOPER is not against this bill. He has indicated that he is for it as it came out of the committee.

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

Mr. MONTOYA. I yield.

Mr. COOPER. I know that simply because I am for the bill, does not mean that the Senator from Vermont will be for it.

I point out that on pages 12 and 13 of the committee report, 92–1277, is a letter from Caspar W. Weinberger, Director of the Office of Management and Budget, in response to my request for OMB's comments on the bill which was passed by the House. As I stated earlier, I opposed the House version of the bill in the committee because it included a large accelerated public works program—similar to the program vetoed last year—which would change the whole direction of the EDA and make it a public works employment bill. A second reason I opposed the House bill is that it authorized a new and little-considered program to extend unemployment compensation and other forms of assistance to individuals out of work due to the application of Federal environmental quality standards, and to assist businesses in the purchase or modification of facilities necessary to meet environmental standards.

I said I would oppose the House bill, and I may say that Senator MONTOYA and Senator RANDOLPH agreed to limit the bill to the programs and sums as reported.

It is correct that there are five of these regional commissions. One of them includes the New England States. The commissions are made up of the Governors, with a Federal member who is cochairman and who is responsible to the Secretary of Commerce.

After these comprehensive plans and program recommendations are made by the Commission, they are submitted to the Department of Commerce, and the final decision and approval is made by the Department of Commerce and by the administration and by the Bureau of the Budget.

Our bill authorizes $100 million for commissions with approved plans. We have no assurance that the authorization will be recommended by the administration or that it will be appropriated, but there is a process for examination of the work of these commissions.

Senator MONTOYA said he has held extensive hearings in each of these commissions to ascertain what the plans are and what they have done with the money.

Mr. AIKEN. I was wondering why it was found necessary to give the Governor of each State so many hundreds of thousands of dollars to spend as he wishes and what accounting there is to the Congress for the way these funds are spent?

I understand that the Governor of Vermont—although I have not checked it—has not yet spent a $125,000 allocation which was approved at a recent meeting of the New England Regional Commission. I also understand that the Governor of another New England State is asking for a big increase in the allocation to the Governors. I have not had a chance to check that, either, because I only got the information this morning.

It seems to me that if this bill is passed now and what some of us fear comes to pass, the Senate will be in for an awful lot of justifiable criticism. I do not say the work of the Commission

is all bad. I just say that we cannot be too careful at this time of year.

Mr. MONTOYA. The Governor of Vermont testified before our committee and approved the legislation.

Mr. AIKEN. That is right. He is the State cochairman this year. Next year another State has it, and the next year another State has it.

Mr. MONTOYA. I say to the Senator from Vermont that the subcommittee of which I am chairman has endeavored to have oversight hearings as to expenditure of these funds, and we have even imposed very strict conditions in these hearings so that they will not go overboard in the expenditure of these funds.

Mr. AIKEN. I think they need a little more watching than they have had up to now.

Mr. MONTOYA. Much of the money which has gone into these commissions has been put to good use. In my State, for example, we have been able to build vocational schools through these funds—schools that would not have been built by the local school boards because they were diverting their revenue toward teachers' salaries and administration and conventional education. Because of EDA, we were able to provide substantial moneys for the building of vocational schools; and as a result of the first vocational schools we built, the rest of the State now, through local funding, is building vocational schools.

Mr. AIKEN. There is no question that the money could be used to good advantage, for beneficial purposes, much better than if it is used to pay rather large salaries to a lot of employees who reportedly do not have much to do.

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

Mr. MONTOYA. I yield.

Mr. RANDOLPH. If I might be permitted to comment, I think the able Senator from Vermont correctly calls our attention to the need for a very close scrutiny of these programs within the commissions.

Mr. AIKEN. Better scrutiny.

Mr. RANDOLPH. Yes, better.

Mr. AIKEN. Much better.

Mr. RANDOLPH. I feel that this should be made part of the RECORD: We do know that the projects do not originate in Washington, where the people do not know the need for the projects. The projects originate within the States embraced within a developmental area. For that reason, I think that basically the legislation is good—the regional approach—and I think the caution which the Senator from Vermont has given us today is very much in the thinking of the Senator from New Mexico and other Members of the Senate, as well as the committee.

Mr. AIKEN. I have not seen the House bill. I have only had the committee's report in the last 15 minutes. I have been receiving rather poor reports, however, from different parts of the country as to the operation of these Commissions. I happened to open the report at Caspar Weinberger's letter to Senator COOPER, and there was not much enthusiasm in his comments.

I assume that if a final bill is arrived at with the House and is sent to the President, if he finds it objectionable, he will not sign it. I do think that these Commissions have gone on too far without closer observation.

Mr. MONTOYA. I say to the Senator from Vermont, with respect to his comments about high salaries, and so forth, that I had extensive hearings to make sure that the administrative cost would be in line with frugality and good discretion.

For example, in Appalachia, which is a billion-dollar operation, the administrative cost is a little less than 2 percent. I tried to apply the same principle with respect to the regional commissions and did go into their administrative costs thoroughly. I even issued warnings during the course of the hearings that I was going to monitor their expenditures to make sure that the communities got the money and not these individuals who wanted to place themselves in high salaries.

Mr. AIKEN. As I understand it, the average salary for each Federal cochairmen has been about $36,000 or $37,000 a year, and the cost of his assistant runs $20,000 or $30,000. Is that about right?

Mr. MONTOYA. The Federal cochairmen.

Mr. AIKEN. That is about the same as the staffs in the Senate, so far as that goes. It may be too much; it may be not enough.

As I say, I picked this up 15 minutes ago. Perhaps I opened it at the wrong page. But it tied in with the reports I have been getting in the last 2 or 3 days.

Mr. FANNIN. Mr. President, will the Senator yield for a question?

Mr. MONTOYA. I yield.

Mr. FANNIN. I should like to ask the Senator this question: The bill refers to a report by Senator MONTOYA, with an amendment. Now, as I understand it—and correct me if I am wrong—the amendment offered by the Senator from New Mexico would establish an Indian Development Commission. Is that correct?

Mr. MONTOYA. That is correct.

Mr. FANNIN. I certainly am opposed to that, based on several considerations. First, with the start of the program, I doubt that any benefits would accrue from such a Commission. Second, the proposal has not had any adequate study nor any House hearings, is that right?

Mr. MONTOYA. There have been no House hearings, but the Senate did conduct lengthy hearings.

Mr. FANNIN. We have heard from a cross section of Indian leaders who are opposed to it. As the Senator knows, there are more Indians in Arizona than in any other State and we have had successful operation of programs on the reservations in Arizona.

An attempt to provide a nationwide Indian program as part of a concept which has been operated to date on a regional basis would create an administrative nightmare.

Third, establishment of an all-Indian program would tend to further divide rather than to integrate Indians into the mainstream of American economic life. The all too sharp line between State government and the Indian reservations would become even more rigid.

And finally, in our States of Arizona, Utah, Colorado, and New Mexico, we already have the Four Corners Regional Commission which is doing an excellent job of aiding Indian economic development.

I do not understand why we would establish this new commission when about 40 percent of the planned money will go to Indian reservations.

Mr. MONTOYA. I cannot give the Senator the percentage figure but I might tell him that the Four Corners Commission is administered by the governors, as he knows. The Four Corners Commission does not deal with economic development projects within the Indian reservations. EDA has made grants to Indian reservations but the EDA personnel have dealt with the Indians direct through their regional offices.

Mr. FANNIN. The Commission is very much involved in economic development on the reservations.

Before we consider establishing an Indian Development Commission, we should have a chance to hear from Indian leaders, from State and local officials where reservations are located, and from those people who are operating the development commissions we already have established.

For example, there are more than a dozen large Indian reservations within my State, and I do not recall one Indian leader contacting me personally to urge creation of a separate Indian development commission. This would indicate to me that either the Indian leaders are unaware of the proposal, or else they feel no great enthusiasm for it.

I do know that the Governors of Arizona and New Mexico oppose the proposal.

Gov. Jack Williams sent me the following telegram:

> In our experience the Four Corners Commission has proved to be an excellent vehicle for assisting Indian Reservation Development. The proposed amendment to H.R. 16017 to establish a separate Indian development commission would impede the progress of Arizona Indians toward self-sufficiency and destroy much of the momentum already generated. Rather than aiding the Indians in becoming full fledged citizens, this proposal encourages a separatism that encourages divisiveness. The cost benefit ratio that such a commission would attain would be far below the Four Corners Commission. Will you do what you can to prevent the passage of this amendment.

New Mexico's Governor, Bruce King, made the following statement last April to the Subcommittee on Economic Development of the Committee on Public Works:

> As Governor of the State of New Mexico and State cochairman of the Four Corners Regional Commission, I cannot support the provisions of this act to establish an Indian development commission.

Governor King, in his statement prepared for the subcommittee, went on to say that he saw many potential problems in the creation of a new Indian Development Commission.

One of the problems would be in the administration of such a program which stretches from coast to coast. We established the regional commission concept with the idea that economic problems could be best attacked by decentralized agencies concentrating on improving given areas—such as Appalachia or the Four Corners. Congress recognized the fact that an official sitting in Washington might not have the expertise nor the understanding to help improve the economic conditions in the Far West or elsewhere. It also was decided—very wisely—that State governments should play a very strong role in this program.

Now we are being asked to take this regional concept and stretch it so that we can create a new agency which will deal with economic problems of reservations which differ greatly in geography and resources. We are perverting a concept which, although still in infancy, has had some remarkable success and shows great promise. We are being asked to superimpose another Bureau of Indian Affairs on the country.

I fail to see how this Commission could provide any kind of program which would be viewed as equitably by the many tribes in the Nation.

Mr. President, the Nixon administration has pursued a policy of self-determination without termination for the Indians. This means that our Indians are encouraged to find their own place within our system, but that they are to function as a part of our system. I reject any program, for the Indians or any other minority, which may serve to segregate that minority from the rest of America.

We already have a system whereby State governments and Indian reservations have somewhat the relationship of foreign nations. State governments are powerless to collect certain taxes or to enforce many State laws on reservation lands. State governments are virtually powerless to establish programs which could be beneficial to reservation Indians.

The Regional Commission integrates the economic interests of the States, the Indians, and the Federal Government. It is one of the few mechanisms today where the State government is a coequal with the Federal Government in charting programs which will benefit entire areas.

As a former Governor, I believe this is a giant step forward.

This serves as a catalyst which can lead to the solution of other problems caused by the cloudy relationship of the State and the Indian reservation.

If we suddenly yank the Indian reservations out of the Regional Commissions that are now established and put them in a new Commission, it will serve to fortify rather than diminish the barriers between Indians and the American mainstream.

Mr. President, I think it would be a great mistake to wreck the work of the Four Corners Regional Commission which has accomplished so much. The Commission has shown great initiative in maximizing its relatively modest budget—something which is rare in government.

I would point to the innovative excess/surplus property program which the Four Corners Commission launched this year. The agency found that one way to solve the problems in the area is to locate excess or surplus Government property which can be put to work in poverty areas.

Consequently, the Commission has located and acquired $4.5 million in excess/surplus property for use on Indian reservations. This equipment has included such things as school supplies, desks, drill presses, typewriters, street sweepers, road graders, cranes, and irrigation pipe. This is equipment which was going to waste in Government storage.

As a result of this program, 252 new jobs have been created for Indians since last July 1.

In addition to the direct job benefits, it is estimated that the program produced 200 indirect jobs last year, and that it may produce as many as 1,000 this year.

The total cost to the Commission for this program is only $50,000 per year—the salary and travel costs of two staff persons.

Mr. President, I do not know of any Federal programs where we are creating jobs for less than $300.

The Commission is keenly aware of the problems faced by the Indians. There are 183,000 Indians in the region, most of them on reservations in Arizona and New Mexico. This is about 40 percent of the Indian population in America. This in itself is a large area with about seven persons per square mile on the large reservations. The Navajo Reservation alone is bigger than the entire State of New Jersey. So we already have a vast area involved—an area that is maximum size for really effective administration.

The Commission has a 4-year development program which is aimed largely at improving job opportunities for the Indians and for Spanish Americans. More than 60 percent of the program's money will go toward improving economic conditions for the Indians and Spanish Americans.

The Commission has requested $180 million for Indian projects during its first 4-year development program. This is 36 percent of the Federal program money requested. A large portion of this—$114 million—would be used to build new highways which are essential to the economic future of the vast and remote reservations. There must be a way to get Indians to and from jobs, and a means to get jobs to them.

During the past 5 years the Four Corners Regional Commission has made supplemental grants of just over $1 million to Indians, but this has provided the leverage for more than $15.5 million in total grant funds. Commission grants for technical assistance have totaled just under $1.2 million, but this has provided the leverage for almost $5 million in grants for Indians.

The Commission has done its job with remarkable efficiency and economy. Administration costs as a percentage of program costs have been lowered from about 22 percent in 1969 to 4½ percent at the present. The staff has been cut from 27 to 19 during the past 3 years.

Governor King has stated that although the appropriation level for fiscal 1972 remained approximately constant from the prior year, the service to the region actually doubled.

Mr. President, the staff of the Commission includes two minority development officers who have proven credentials in this area. They are providing innovative and effective programs for the Indians.

The mission of the regional commissions is to help people help themselves so that all may share in the wealth of America. The Commission is performing this task and there are testimonials to this.

The vice chairman of the Navajo Tribe, Mr. Wilson Skeet, made a recent statement which read:

> We have found that the Four Corners Regional Commission has been extremely effective in bridging the gap between the many Federal agencies that we must deal with. Their contracts and working relations with ASC, BIA, Bureau of Reclamation, OEO, and others have been of great assistance to us.

The general manager of the Fort Apache Timber Co., Mr. Hal Butler, has said:

> The Commission's assistance in obtaining excess government property for use of Tribal Enterprises has also been of immeasurable help to this enterprise alone as it has been instrumental in creating many additional jobs for Apache people. It would have been several years before we would have been financially able to purchase this equipment.

Mr. President, there are other testimonials that I could include in the Record, but I believe the point has been made.

In conclusion, I only want to reemphasize that I believe the regional concept to aid underdeveloped areas is a good one. It provides for the integration of the people and the economy of the area. It provides an administrative apparatus that can deal effectively with the problems within that area.

I believe that establishment of a separate Indian development commission is administratively unsound and that it will serve to isolate rather than integrate the Indian reservations as a part of our economic and political system.

I strongly urge defeat of the amendment.

Mr. President, I ask unanimous consent to have printed in the RECORD a telegram from the Governor of Arizona. I am sure that there are many others besides the Governors who feel the same way.

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

PHOENIX, ARIZ., *October 7, 1972.*

HON. PAUL FANNIN,
U.S. Senator,
Senate Office Building,
Washington, D.C.

In our experience the Four Corners Commission has proved to be an excellent vehicle for assisting Indian reservation development. The proposed amendment to H.R. 16071 to establish a separate Indian Development Commission would impede the progress of Arizona Indians toward self-sufficiency and destroy much of the momentum already generated. Rather than aiding the Indians in becoming full fledged citizens, this proposal encourages a separatism that encourages di-

visiveness. The cost benefit ratio that such a commission would attain would be far below the Four Corners Commission.

Will you do what you can to prevent the passage of this amendment?

JACK WILLIAMS,
Governor of Arizona.

Mr. FANNIN. The telegram is from the Governor of Arizona, the Honorable Jack Williams.

Mr. President, I certainly oppose this amendment in its present form. It came over from the House. They had hearings, but they have not had hearings on the establishment of the Indian Development Commission. It certainly would be very unfair to our Indian people, as well as to the Federal Government, if we continue the practice of trying to segregate, rather than integrate. these fine people of this country.

Mr. JAVITS. Mr. President, I ask unanimous consent that Mr. Eugene Mittleman and Mr. John Scales be granted the privilege of the floor during consideration of this bill.

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

Mr. MONTOYA. Mr. President, before I answer the Senator from Arizona, I ask unanimous consent that during the consideration of this bill the following staff members from the Committee on Public Works be permitted on the floor: Mr. M. Barry Meyer, Mr. Philip T. Cummings, Mr. Bailey Guard, Mr. A. David Sandoval, and Mrs. Judy Parente.

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

Mr. MONTOYA. Mr. President, I have consulted with most of the Indian leaders in my State with respect to this subject. They are urging the establishment of a National Commission. I do not recall whether the Navahos testified at the hearings with respect to the establishment of the Indian Development Commission. I cannot answer that question right now. But certainly I have discussed it openly for some months.

Now the Senator from Arizona makes a big point out of an allocation of $50,000 to the Four Corners. That is the first I knew that the Four Corners Commission received an allocation for the Indians.

The point I want to make is that the regional commission in New Mexico, located at Farmington—the Four Corners Regional Commission—was comprised of the Four Corners of the States. They have dealt within the limitations of the $6 million in the communities outside of reservations.

The only projects that I know of for which the Indians have gotten any money are those projects under the EDA granting authority, where they have applied for grants from the Economic Development Administration. They have done this on a separate basis; they have not done it through the regional commission.

Mr. FANNIN. More than 60 percent of the programed money will go toward improving the economic conditions of Indians and Spanish-Americans, and approximately 40 percent—not 60 percent—of programed money will be involved in that program.

Mr. MONTOYA. If the Senator will specify the grants made by the Four Corners Commission, other than the $50,000, I am willing to be elucidated.

Mr. FANNIN. There are many, I will say to the distinguished manager of the bill. I was not notified of what was going to be involved in this matter until just a few days ago, but I know there has been an absolute unanimity of opposition from the tribes in the State of Arizona.

I have the telegram that I just referred to, addressed to me from the White Mountain Apache Tribe. It is the second largest tribe in the State of Arizona. The largest tribe is the Navaho, and it covers a large portion of New Mexico.

Mr. MONTOYA. Half the tribe is in New Mexico.

Mr. FANNIN. That is right, and they are opposed to it.

Mr. MONTOYA. If we are going to speak of the Navaho Tribe, they deal directly with Washington. They actually do not need an Indian commission themselves.

Mr. FANNIN. The Navaho Tribe is opposed to this legislation.

Mr. MONTOYA. They deal directly with Washington. They are receiving over $100 million from the Federal Government right now, because they have a governmental structure of their own and they make applications to different agencies in Washington.

But what about the Pueblos and what about the other reservations in other parts of this country? They have no liaison. They have no internal structure.

Mr. FANNIN. The Senator knows better than that. The Senator knows they have. They certainly do.

Mr. MONTOYA. The Senator did not permit me to finish.

Mr. FANNIN. All reservations in Arizona do.

Mr. MONTOYA. I said they cannot afford the kind of internal structure which would enable them to come to Washington, as the Navahos do.

Mr. FANNIN. I was going to say, I have representatives of four or five tribes in my office every month.

I am sure the Senator knows that they have been coming in. The Hopis have been in; and the Navahos, the Apaches, the Havasupai, the Yavapai were all in my office within the last month.

Mr. MONTOYA. May I say to the Senator from Arizona that for over 200 years we have been saying to the Indians of America, "Let the BIA take care of you. Let the BIA direct you into self-determination and economic independence."

That theory and the theory espoused by the Senator from Arizona have not worked, which is why I want to provide a mechanism for an Indian development commission, so that the Indians themselves may provide the input collectively, with the advice of the Federal Government, with the advice of a Federal cochairman. That is the issue here.

What the Senator is espousing has not worked for the Indians. We must innovate. We must develop new concepts.

We must give them a part in decision-making, and that is what this legislation provides.

Mr. FANNIN. Will the Senator yield?

Mr. MONTOYA. I yield.

Mr. FANNIN. The largest tribe in the State of New Mexico is the Navaho Tribe. Have the Navahos supported this program?

Mr. MONTOYA. Yes, they have.

Mr. FANNIN. I have word from the Navahos that they did not vote for it.

Let me ask: Did Chairman Peter MacDonald support this program?

Mr. MONTOYA. Chairman MacDonald supported it, but Chairman MacDonald testified in the other hearings, concerning S. 3381.

Mr. FANNIN. Well, I have the testimony in which the vice chairman opposed it and the vice chairman was acting for the chairman.

Mr. MONTOYA. I am advised that Chairman MacDonald did approve this concept.

Mr. FANNIN. Did Wilson Skeet testify in behalf of Chairman MacDonald?

Mr. MONTOYA. I do not recall that he did. And I know Mr. Skeet.

Mr. FANNIN. The point is that we have a telegram from the second largest tribe in Arizona. We are talking about numbers of individuals. When we talk about the Navahos and Apaches, we are talking about a good percentage of the Indian people of that area. They are opposed to this.

Mr. MONTOYA. We have 50,000 Pueblos in New Mexico.

Mr. FANNIN. We have some 30,000. The largest tribe in the Nation is the Navaho Tribe.

Mr. MONTOYA. We have 110,000 Indians in New Mexico. I think I am as qualified to speak for the Indians as the Senator from Arizona.

Mr. FANNIN. They give us credit for 90,000. I have never heard that figure. I do not question the Senator. The Indians do not want to be in this program. They do not want this change. This is a duplication. We already have one BIA. Why have another?

Mr. MONTOYA. I disagree with the Senator. The Indians of New Mexico came to see me, and other Indians have said they are for this program.

Mr. FANNIN. I am the ranking member on the Republican side of the Committee on Indian Affairs. Not one single person from New Mexico came into my office and contacted me in support of this program. I realize this is public works. But at the same time if the Senator thinks the Indians favor the program, you would think I would have heard about it, but to date not one single Indian has contacted me favoring the program. I think it is a terrible mistake to impose something on them they do not want. We are trying to bring them forward and instead this would be a step backwards.

Mr. MONTOYA. The Senator from Arizona said the Indians are not for this program. We have testimony in the record that they are for it. Who was right?

Mr. FANNIN. A few tribes in New Mexico. I do not know any who are for it. Where is the record?

Mr. MONTOYA. I have it here.

Mr. FANNIN. I do not have it. Copies are not on our desks, are they? Did the Bureau of Indian Affairs testify in favor of this program?

Mr. MONTOYA. I do not think we asked the Bureau of Indian Affairs to testify.

Mr. FANNIN. Is there any way we could get any information about this? I think to bring it up like this is very unfair. We do not have the hearing record or any information. All we have are contentions from the Governors and the Indian tribes that they do not want the program. That is all the record I have.

Mr. MONTOYA. If the Senator will bear with me, I wish to read from the record of hearings now.

Mr. FANNIN. Fine.

Mr. MONTOYA. I am reading from the testimony of Peter McDonald, chairman, Navaho Tribal Council. I quote from page 258 of the hearings.

Mr. FANNIN. Is there a way additional copies of the hearings can be made available?

I would just say this, as far as the bill is concerned. Chairman McDonald is testifying on the bill. When they understand the full ramifications of such an Indian commission and what it would do, they would start sending more telegrams. They do not want this legislation.

I wish to correct a statement made by the Senator. I do not say he is wrong. He said $50,000 is all the money he knew had been spent. I wish to inform him that during 1972 $708,000 was spent on Indian programs from the Four Corners Commission. Thus this is 22 percent of the program money spent by Arizona and New Mexico in fiscal year 1972.

Mr. MONTOYA. Can the Senator detail what they were spent for?

Mr. FANNIN. I cannot detail on the spur of the moment. I just have this information from Mr. Stan Womer, Federal Cochairman of the Four Corners Regional Commission. He knows what they spend.

Mr. MONTOYA. I might say to the Senator my statement was I was not aware that money beyond the $50,000 was spent. I did not make a positive statement.

Mr. FANNIN. I stated I did not want to question the Senator's statement because I know he was giving it without the figures being available to him. But I do want to say that $50,000 and $708,000 plus the $4.7 million they were able to get in surplus property adds up to a lot of money.

Mr. MONTOYA. That is for 210,000 Indians, the Senator's 100,000 and my 110,000 in New Mexico.

Mr. FANNIN. This is to assist them, and a great deal more than they received before for this purpose.

The Senator will agree the greatest need we have on the reservation is to have adequate roads. We are not going to have schools, businesses, centers where they can be treated medically until we get roads. The Four Corners Commission will provide them assistance in this regard.

Mr. MONTOYA. I might say in conclusion—I do not think we have to belabor the point—to agree to this amendment and deprive the Indians the opportunity for input is to relegate them to the present situation, which is breadcrumbs from the table of the Four Corners Commission. That is what they have been getting.

Mr. FANNIN. Can the Senator show me more figures?

Mr. MONTOYA. This is what the Indian tribes have to go through. I know whereof I speak. Whenever an Indian tribe from the Pueblo makes application for an EDA grant they have to go through the regional office in Texas first and ride that redtape. Many of these tribes do not have the money for traveling expenses. They do not have the money to provide for the proper advice and planning because an application has to be backed up by proper planning and a feasibility study, and sometimes engineering studies. These tribes do not have that kind of input or the resources to provide that kind of advice and counsel when they have to go and ride redtape to the regional office for months, which takes months. Then they have to come to Washington. I am trying to provide a direct link from the Indian to the Chairman of the Indian Commission in Washington so he will, in turn, serve as their spokesman in Washington, and then I want to get direct action from Washington rather than to relegate them to the regional office in Texas.

Mr. FANNIN. It is not necessary to do that. I agree, why should we do that? But why not use the Four Corners facilities which are already available? Where is the main office? In New Mexico. It is the closest office to them. I do not understand why they would not be better served by the office in New Mexico. Three out of the four staff members of the Four Corners Commission spend 75 percent of their time on Indian development.

Mr. MONTOYA. I beg to disagree, most respectfully, with the Senator from Arizona. May I say, just by way of concluding the dialog, that I have read from Chairman McDonald's statement. I want to read this from his statement, which is on page 259 of the hearings:

> The Indian Development Commission's direct responsibility to Indian tribes, providing direct funding to tribal governments, represents the acceptance of the most frequent recommendation made by Indian tribes over the past few years—direct accountability and direct funding.

Mr. FANNIN. I think it is unfair to try to consider legislation when none of the Senators are informed on this bill. How can they be? We do not have the hearings. I learn that copies of the hearings are coming. Should we not have time to study it? The Senator is quoting from the hearings. We have not had access to those hearings.

When the Senator talks about money, the commission has requested $185 million for Indian projects during the first 4 years. This is 36 percent of the Federal program money requested. A large amount of this, $114 million, would be used to build new highways, which are essential to the economic future of the vast and remote reservations. There must be a way, as I stated before, to get Indians back and forth with respect to their jobs. This is the best money we could have spent for that purpose. I think the Senator will admit that nothing can be done until we can transport them or they can transport themselves.

I cannot understand why we are asked to vote on this legislation at this late date, when it is not essential that we go ahead and put this bill through. This is not a crisis program at the present time.

Mr. MONTOYA. Because we have to pass the bill in order to provide leadtime for planning next year, because the Economic Development Act expires in June 1973.

Mr. FANNIN. June 1973 is a long way away.

Mr. MONTOYA. Mr. President, the Senator from New York wanted me to yield to him.

Mr. JAVITS. Mr. President, I did not want to divert the colloquy on the important matter of the Indians, because we have an entirely different matter to ask the Senator about, but with the Senator's indulgence, I would like to ask, just to be sure, if the public works impact program and other elements of this bill tie in to the same extent as the law it would amend appropriately with the new authority for special impact program contained in the new title for community economic development which is established by the Economic Opportunity Amendments of 1972, signed by the President on September 19, 1972.

The fact of the matter is that in the Antipoverty Amendments of 1972, provision was made under section 401(b)(1) to relate the two programs so that areas eligible for assistance under the poverty law will be considered redevelopment areas within the definition of section 401 of the Public Works and Economic Development Act of 1965, which is being here amended.

The question I would like to ask the Senator is whether the provision which is contained in the OEO Act, as amended, would now apply to the Economic Development Act as now amended?

Mr. MONTOYA. Yes. I might say to the Senator from New York that in providing and forging the contents of title VI we went into a very extensive discussion, and it was our intention to coordinate the two sections; namely, 401(b)(1) of the Economic Opportunity Amendments of 1972, to provide coordination under this section with the former sections.

Mr. JAVITS. I thank the Senator. Therefore it follows that a community development corporation under the OEO act recently signed by the President are eligible to qualify within the meaning of "redevelopment area" in respect to assistance under the Public Works and Economic Development Act of 1965, as amended, including the new section 107 public works impact program.

Mr. MONTOYA. That was our intention.

Mr. JAVITS. I thank my colleague.

Mr. MONTOYA. I thank the Senator very much.

Mr. McCLELLAN. Mr. President, I notice the distinguished chairman of the full Public Works Committee is here. I address this to both chairmen.

I understand that the House amendments to the Public Works and Eco-

nomic Development Act of 1965 contains in title IV an authorization for $20 million annually for fiscal year 1973 and fiscal year 1974 to pay up to 75 percent of administrative expenses and up to 100 percent of the planning expenses of economic development districts for a minimum of 5 years. It had been my hope that the Senate Public Works Committee would include title IV of the House bill in the amendments which it reported to the Senate October 6 but I do not believe it was included. It was omitted. Am I correct?

Mr. MONTOYA. Yes, that is correct. I might say to the Senator from Arkansas that we tried to come out with a piece of legislation that would accommodate us until we are able to work our complete will on a bill to be worked on when we come back in January.

Mr. McCLELLAN. I thank the Senator.

As the Senator knows, Arkansas is one of two States in the Nation that has fully developed the economic development district concept and proven that it can provide the kind of grassroots leadership and initiative to assure meaningful economic development. I have worked closely with the eight economic development districts in my State over the past 6 years and I am persuaded that they represent the most effective economic development tool that the Federal Government has created to enhance community development that is planned, controlled, and administered by local public officials and community leaders.

So I am extremely concerned, I may say to both the manager of the bill and the distinguished chairman of the Public Works Committee, that failure to accept title IV of the House amendments of the Public Works and Economic Development Act of 1965 would tend to limit the expansion potential of the economic development districts program nationwide. I can understand why my distinguished colleague from West Virginia, who has so ably chaired the Senate Committee on Public Works, might wish to review the national economic development programs during the next session of Congress. However, I would hope that he would also initiate and provide the leadership to assure inclusion, in any changes which the Senate Public Works Committee might propose to our national economic development program, significant amendments to expand and strengthen the local economic development district program and the retention of the Economic Development Administration. I have seen EDA and the EDD programs in my State create new jobs and a higher standard of living while retaining responsibilities and authority for building economic strength into our economic communities at the local level.

As I understand the distinguished Senator from New Mexico, he stated just a few moments ago that it is the committee's purpose and intention early in the next session of Congress to give these items and suggestions to which I have referred very careful consideration in the processing and study of any legislation to cover this aspect of our economic program. Is that correct?

Mr. MONTOYA. The Senator is correct. In fact, I might go further and say to the Senator that the Senator from West Virginia (Mr. RANDOLPH), the Senator from Kentucky (Mr. COOPER), and I have introduced legislation, which is now pending before the Committee on Public Works, which encompasses the very things about which the Senator is speaking.

We are trying to provide in the new legislation, which we will consider when we return in January, a concept which involves the economic development districts within a State, and also within a region, to work on isolated problems as well as economic problems that are common to the region. In other words, we are providing a better grassroots approach to economic problems than we have at the present time.

Mr. McCLELLAN. I appreciate the Senator's comments. I am very much interested in this subject, and I think it has proved one of the best programs we have had in Arkansas. It has done much for my State in enabling communities to do things which are absolutely essential to their economic progress, and to providing community services that are essential, than almost any other agency. I hate to see this agency crippled and these districts deprived of the opportunity to take responsibility for much of this at the local level to select projects that can best serve the local community. That is something I hope we can retain in our legislation dealing with this problem in the future.

I thank the distinguished Senator for yielding to me. I also wish to commend the distinguished Senator from Kentucky (Mr. COOPER). I know he shares the feeling we all have. Although he may not be here next year to participate in the development of this legislation, it is gratifying to note that he has this interest, and has expressed an interest, as he has related here, in trying to develop appropriate legislation along this line.

Mr. RANDOLPH. Mr. President, will the Senator from New Mexico yield?

Mr. MONTOYA. I yield to the distinguished chairman of the committee.

Mr. RANDOLPH. While the Senator from Arkansas has been asking certain questions and making cogent comments on behalf of his viewpoint about the value of these programs, I have been listening very carefully.

I think the Senator will remember that when I brought the Appalachian Regional Development Commission measure to the floor of the Senate in 1965, there were questions asked by him and other Senators at that time as to whether we envisioned carrying forward programs like the Appalachian program in other parts of the country. I indicated that that would be done.

As the Senator has indicated, in his area of the country worthwhile results are coming about, a little later than from the Appalachian program, but now moving forward to strengthen the economy and the well-being of that part of the country.

Mr. McCLELLAN. I appreciate the Senator's remarks. I might say to him that at that time I was unhappy, as the Senator knows, because I thought there were other regions in the Nation, particularly in Arkansas and some of its sister States, that really needed and deserved comparable treatment to the Appalachian region. That was my concern. I did not feel that other sections of the Nation should be left out.

Since that measure was passed, our purpose has been to try to apply generally the same services and opportunities to other sections of the country that might have a comparable need to that of Appalachia.

I thank the distinguished Senator for the support he has given us in this area.

Mr. MONTOYA. Mr. President, I ask unanimous consent that the committee amendment be agreed to and considered as original text for the purpose of further amendment.

Mr. FANNIN. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

The clerk will state the committee amendment.

The legislative clerk read as follows:

SEC. 2. Section 2 of the Public Works and Economic Development Act of 1965 is amended by inserting at the end thereof the following sentence: "Congress further declares that the aforesaid conditions have caused substantial outmigration from rural to urban areas frustrating orderly national growth and aggravating the economic and social conditions of areas of outmigration as well as central cities. Orderly development of the Nation's economy should anticipate and account for dislocation of jobs due to technological change, shifting trade patterns, environmental adjustments, and the continuing need to make geographical adaptations to economic problems."

SEC. 3. Title I of the Public Works and Economic Development Act of 1965 is amended as follows:

(1) by striking in subsection (a)(1)(D) of section 101 "a redevelopment" and inserting in lieu thereof "an"; and by striking "401(a)(6)" and inserting in lieu thereof "107".

(2) By striking in subsection (c) of section 101 the number "20" and inserting in lieu thereof the number "10".

(3) By striking in subsection (c) of section 101 "a redevelopment area designated as such under section 401(a)(6)" and inserting in lieu thereof "an area designated as such under section 107".

(4) By striking in subsection (c) of section 101 the entire sentence beginning with "Notwithstanding" and ending with "the applicable law.".

(5) By striking in subsection (c) of section 101 the words ", the nature of the project to be assisted" and all that follows down through and including the period at the end of the sentence and inserting in lieu thereof the following: "and the nature of the project to be assisted.".

(6) By striking in subsection (a) of section 102 "In addition to the assistance otherwise authorized," and by capitalizing the word "the" immediately following.

(7) By inserting in section 104 after the words "pursuant to" the words "section 105 of".

(8) By inserting in section 105 after the word "title" the words "(except as provided in section 107)"; by striking in the first sentence the words "and June 30, 1973.", and inserting in lieu thereof the words "June 30, 1973, and June 30, 1974."; by striking in the third sentence the words "years ending June 30, 1972, and June 30, 1973," and inserting in lieu thereof the words "year ending June 30, 1972,"; by striking in the third sentence the words "redevelopment" and "as

such"; and by striking in the third sentence "401(a)(6)" and inserting in lieu thereof "107".

(9) By adding at the end of such title the following new section:

"PUBLIC WORKS IMPACT PROGRAM

"SEC. 107. (a) The Secretary is authorized to designate those communities or neighborhoods (defined without regard to political or other subdivisions or boundaries) which he determines have one of the following conditions:

"(1) a large concentration of low-income persons;

"(2) rural areas having substantial outmigration;

"(3) substantial unemployment; or

"(4) an actual or threatened abrupt rise of unemployment due to the closing or curtailment of a major source of employment.

No area designated under this section shall be subject to the requirements of subparagraphs (A) and (C) of paragraph (1) of subsection (a) of section 101 of this title. No area designated under this section shall be eligible to meet the requirements of section 403(a)(1)(B) of this Act. Each area designated under this section shall be known as a public works impact area.

"(b) The Secretary is authorized to make grants, in accordance with the provisions of this title, to areas designated under this section.

"(c) Areas designated under this section shall be subject to a periodic review of eligibility (but at least annually) and the Secretary shall terminate the designation of any such area whenever it no longer satisfies the requirements of this section.

"(d) There is hereby authorized to be appropriated to carry out this section not to exceed $500,000,000 per fiscal year for the fiscal years ending June 30, 1973, and June 30, 1974."

SEC. 4. Title II of the Public Works and Economic Development Act of 1965 is amended as follows:

(1) By inserting in subsection (c) of section 201 after the words "and guaranteeing loans" the words "and lease rentals"; and by striking "1973" and inserting in lieu thereof "1974".

(2) The catchline for section 202 is amended by striking the words "LOANS AND GUARANTEES" and inserting in lieu thereof the words "FINANCIAL ASSISTANCE FOR BUSINESS DEVELOPMENT".

(3) By striking all of subsection (a) of section 202 and inserting in lieu thereof the following new subsection:

"SEC. 202. (a)(1) The Secretary is authorized to aid in financing, within a redevelopment area, the purchase or development of land and facilities (including machinery and equipment) for industrial or commercial usage, including the construction of new buildings, the rehabilitation of abandoned or unoccupied buildings, and the alteration, conversion, or enlargement of existing buildings by (A) purchasing evidences if indebtedness, (B) making loans (which for purposes of this section shall include participation in loans), (C) guaranteeing loans made to private borrowers by private lending institutions, for any of the purposes referred to in this paragraph upon application of such institution and upon such terms and conditions as the Secretary may prescribe, except that no such guarantee shall at any time exceed 90 per centum of the amount of the outstanding unpaid balance of such loan.

"(2) The Secretary is authorized to aid in financing any industrial or commercial activity within a redevelopment area by (A) making working capital loans, (B) guaranteeing working capital loans made to private borrowers by private lending institutions upon application of such institution and upon such terms and conditions as the Secretary may prescribe, except that no such guarantee shall at any time exceed 90 per centum of the amount of the outstanding unpaid balance of such loan, (C) guaranteeing rental payment of leases, except that no such guarantee shall exceed 90 per centum of the remaining rental payments required by the lease.".

(4) By inserting in subsection (b)(6) of section 202 after the word "repayment." the following sentence: "No lease guarantee shall be made unless the Secretary determines that there is a reasonable assurance of payment of the rentals required by the lease.".

(5) By striking in subsection (b)(7) of section 202 the comma after the words "no loan" and inserting immediately thereafter the words "or guarantee,".

(6) By striking in subsection (b)(9) of section 202 the number "65" and inserting in lieu thereof the number "75".

SEC. 5. Title III of the Public Works and Economic Development Act of 1965 is amended to read as follows:

(1) By inserting after the second sentence in subsection (a) of section 301 the following: "Such assistance shall include aiding an applicant in applying for assistance under this Act if such applicant does not possess the expertise and does not possess the ability to obtain the expertise necessary to perform the technical aspects of application. The Secretary shall not establish any system of priorities for the kinds of assistance authorized by this section."

(2) By inserting in subsection (b) of section 301 immediately after the word "thereof" the following: ", except that in the case of a grant under this subsection to an Indian tribe the Secretary is authorized to defray up to 100 per centum of such expenses".

(3) By striking out in subsection (b) of section 304 the following: "the Federal Aid Highway Act of 1962," and inserting in lieu thereof "title 23, United States Code,".

(4) By adding new subsections (g) and (h) to section 301 as follows:

"(g) The Secretary is authorized to provide assistance under subsection (a) of this section to any State for the purpose of such State—

"(1) preparing an overall State economic development program;

"(2) providing technical assistance by use of State employees to economic development districts and proposed districts;

"(3) reviewing overall economic development programs prepared by an economic development district or a proposed economic development district.

"(h) The Secretary is authorized to provide assistance under subsection (a) of this section to economic development districts for the purpose of such district:

"(1) providing technical assistance (other than by grant) to local governments within the district;

"(2) carrying out any review procedure required pursuant to title IV of the Intergovernmental Cooperation Act of 1968 if such district has been designated as the agency to conduct such review.".

(5) Section 302 is redesignated as section 303 and immediately following section 301 a new section 302 is inserted as follows:

"SEC. 302. In the case of a vocational training facility constructed with a direct grant under title I of this Act, the Secretary is authorized to make grants for the operation of such facility. Such grants may be made for up to 75 per centum of the operating costs of such facility for any two-year period during the five-year period beginning on the date of enactment of the Public Works and Economic Development Act Amendments of 1972. Not to exceed $15,000,000 per fiscal year of the funds authorized in section 303 of this title shall be available to carry out this section.".

(6) By striking in redesignated section 303 "and June 30, 1973.", and inserting in lieu thereof: "June 30, 1973, and June 30, 1974.".

SEC. 6. Title IV of the Public Works and Economic Development Act of 1965 is amended as follows:

(1) By amending section 401(a)(6) to read as follows:

"(6) those urban and rural communities or neighborhoods (defined without regard to political or other subdivisions or boundaries) which the Secretary determines have one of the following conditions:

"(A) a large concentration of low income persons;

"(B) substantial unemployment; or

"(C) an actual or threatened abrupt rise of unemployment due to the closing or curtailment of a major source of employment. No redevelopment area established under this paragraph shall be eligible to meet the requirements of section 403(a)(1)(B) of this Act;".

(2) By striking in section 403(a)(1)(B) the words "two or more redevelopment areas" and inserting in lieu thereof "at least one redevelopment area".

(3) By amending section 403(a)(1)(D) to read as follows:

"(D) the proposed district has a district overall economic development program which—

"(i) includes adequate land use and transportation planning;

"(ii) contains a specific program for district cooperation, self-help, and public investment;

"(iii) is approved by each affected State as consistent with the goals and objectives of each applicable State plan and any overall State economic development program;

"(iv) is approved by the Secretary; and

"(v) provides that a copy be furnished to the appropriate regional commission established under title V of this Act if any part of such proposed district is within such a region, or to the Appalachian Regional Commission established under the Appalachian Regional Development Act of 1965 if any part of such proposed district is within the Appalachian region;".

(4) By striking out in section 403(a)(2)(C) "two hundred and fifty thousand" and inserting in lieu thereof "five hundred thousand".

(5) By amending subsections (d), (e), and (f) of section 403 to read as follows:

"(d) As used in this Act the term—

"(1) 'economic development district' refers to any area within the United States composed of a cooperating redevelopment area or areas and, where appropriate, designated economic growth centers and neighboring counties or communities, which has been designated by the Secretary as an economic development district;

"(2) 'economic growth center' refers to any area within the United States which has been identified as an economic growth center in an approved district overall economic development program and which has been designated by the Secretary as eligible for financial assistance under sections 101, 201, and 202 of this Act in accordance with the provisions of this section; and

"(3) 'local government' means any city, county, town, parish, village, or other general purpose political subdivision of a State.

"(e) The Secretary is authorized to provide, in accordance with the applicable requirements of this Act, financial assistance to those parts of an economic development district which are not within a redevelopment area when such assistance will be of significant direct benefit to a redevelopment area within such district. Such financial assistance shall be provided in the same manner and to the same extent as is provided in this Act for a redevelopment area, except that nothing in this subsection shall be construed to permit such parts to receive the increase

in the amount of grant assistance authorized in paragraph (4) of subsection (a) of this section.

"(f) In addition to technical assistance under section 301(a) of this Act, the Secretary is authorized to make grants to an economic development district to pay not to exceed 75 per centum of the administrative expenses, and not to exceed 100 per centum of planning expenses, of such district. In any case where the designation of an economic development district is terminated under subsection (c) of this section before the expiration of the five-year period which begins on the date of designation of such district, grants may be made under this subsection for such additional time as may be necessary to insure that such former district will receive administrative and planning grants during such five-year period. In determining the amount of the non-Federal share of such expenses, the Secretary shall give due consideration of all contributions both in cash and in kind, fairly evaluated, including but not limited to space, equipment, and services. Where practicable, planning grants authorized by this subsection shall be used in conjunction with other available planning grants, such as urban planning grants, authorized under the Housing Act of 1954, as amended, and highway planning and research grants authorized by title 23, United States Code, to assure adequate and effective planning and economical use of funds. For the purposes of this subsection there is hereby authorized to be appropriated not to exceed $20,000,000 per fiscal year for the fiscal years ending June 30, 1973, and June 30, 1974.".

(6) By striking in subsection (g) of section 403 "1973" and inserting in lieu thereof "1974".

SEC. 7. (a) Title V of the Public Works and Economic Development Act of 1965 is amended as follows:

(1) By inserting in clause (7) of subsection 503(a) after the words "other Federal, State," the following: "district,".

(2) By amending section 503 by adding at the end thereof the following new subsection:

"(f) Each Commission shall provide for public participation in the development and revision of any plan or program developed or prepared by such Commission.".

(3) By striking out in the first sentence of section 505(a)(2) the phrase "and training programs" and inserting in lieu thereof: "training programs, and the payment of administrative expenses".

(4) By amending section 505(c) to read as follows:

"(c) In carrying out subsection (a)(1) and subsection (b) of this section there may be expended in any fiscal year out of funds appropriated under authority of section 509(d) of this title, such sums as are necessary up to a maximum of 10 per centum of the funds appropriated for each regional commission."

(5) By inserting in section 509(d) "(1)" immediately after "(d)".

(6) By striking out in the first sentence of section 509(d) "two-fiscal-year period ending June 30, 1973, to be available until expended, not to exceed $305,000,000." and inserting in lieu thereof "fiscal year ending June 30, 1972, to remain available until expended, $152,500,000.".

(7) By striking out in the third sentence of section 509(d) "authorization" and inserting in lieu thereof "paragraph".

(8) By adding in section 509(d) at the end thereof the following:

"(2) There is authorized to be appropriated to the Secretary to carry out this title, for the fiscal years ending June 30, 1973, and June 30, 1974, not to exceed $100,000,000 per fiscal year for each regional commission which has a comprehensive long-range economic plan approved under section 503(a)(2) of this Act, and not to exceed $20,000,000 per fiscal year for each regional commission which does not have such an approved plan.".

(9) Section 511 is amended to read as follows:

"SEC. 511. (a) The Secretary shall coordinate his activities in making grants and loans under titles I and II of the Act and in providing technical assistance under title III of this Act, with those of each of the Federal Cochairmen under this title, and each Federal Cochairman shall coordinate his activities under this title with those of the Secretary in making grants and loans under titles I and II of this Act and in providing technical assistance under title III of this Act.

"(b) Each regional commission shall coordinate its activities under paragraphs (2) and (7) of subsection (a) of section 503 of this Act with the economic development districts in such region."

(b) The amendments made by paragraph (2) of subsection (a) of this section shall not be construed as affecting the validity of any plan or program which has been developed or revised prior to the date of enactment of this Act.

SEC. 8. Title VII of the Public Works and Economic Development Act of 1965, as amended, is amended as follows:

(1) Section 701(4) is amended by inserting immediately after "with loans" the following: "or guarantees", and by inserting after "such loans" the following: ", guarantees,".

(2) Section 701(5) is amended by inserting after "maturity" the following: "or term"; and by inserting after "any loan" the following: "or guarantee"; by inserting after "in such loan" the following: ", guarantee,"; and by inserting after "of such loan" the following: ", guaranteed obligation,".

(3) Section 701(6) is amended by inserting after "loans" the following: "or guarantees".

(4) Section 701(7) is amended by inserting after "loans" each of the two places it appears the following: "or guarantees".

(5) Section 701(9) is amended by inserting after "loans" the following: "or guarantees".

SEC. 9. The Public Works and Economic Development Act of 1965 is amended by adding at the end thereof the following new title:

"TITLE VIII—ENVIRONMENTAL EFFECTS

"SEC. 801. (a) The Administrator of the Environmental Protection Agency shall on his own motion or not later than thirty days from the date he receives a written request of an employee of an affected plant or industry, or his representative, initiate an investigation of any employment loss which results or may result from the issuance of a standard or order under the Federal Water Pollution Control Act, the Clean Air Act, or any other Federal law having for its primary purpose the improvement of environmental quality. Such investigation shall be completed and a report of employment loss submitted to the Secretary of Labor not later than the sixtieth day after the date of initiation of investigation. The Secretary of Labor, upon receipt of such report, shall certify as unemployed as a result of such standard or order all employees who are unemployed as a result of such standard or order with respect to which the Administrator has conducted an investigation under this subsection. An individual to be eligible for certification for assistance under this section shall have had in the seventy-eight weeks immediately preceding his unemployment at least twenty-six weeks of employment in the plant or industry affected.

"(b) The Secretary is authorized to provide to any individual certified as unemployed under subsection (a) unemployment compensation. Such unemployment compensation shall equal 60 per centum of the individual's former weekly wage or the maximum payable to him under the unemployment compensation law of the State in which his employment loss occurs, whichever is the greater amount, except that no such individual shall be paid more than the highest amount of unemployment compensation payable to any individual by any State under any unemployment compensation law other than this section. Such unemployment compensation shall be paid so long as such individual is unemployed, or until he retires from the labor force, whichever period is the lesser, except that no unemployment compensation shall be paid to any individual under this subsection for a period of more than seventy-eight weeks.

"(c) The Secretary is authorized to provide assistance on a temporary basis in the form of mortgage or rental payments to or on behalf of an individual certified under this section as unemployed who, as a result of financial hardship caused by such unemployment has received written notice of dispossession or eviction from his principal place of residence by reason of foreclosure of any mortgage or lien, cancellation of any contract or sale, or termination of any lease, entered into prior to such unemployment. Such assistance shall be provided for a period not to exceed one year or for the duration of the period of financial hardship, whichever is lesser.

"(d) The Secretary is authorized to provide reemployment assistance services under other laws to individuals who are certified under this section as unemployed.

"(e) The Secretary is authorized to pay the actual reasonable moving expenses of any individual (including his family and his household effects) certified under this section as unemployed who is unable to find employment a reasonable distance from his principal place of residence at the time of such unemployment and who finds employment beyond such distance.

"(f) There is authorized to be appropriated, not to exceed $100,000,000 for carrying out this section.

"POLLUTION CONTROL FACILITIES LOANS

"SEC. 802. (a) The Secretary is authorized to make loans (which for purposes of this section shall include participations in loans) to aid in financing any project in the United States for the acquisition, construction, or alteration of pollution control facilities (including machinery and equipment) for industrial or commercial usage.

"(b) Financial assistance under this section shall be on such terms and conditions as the Secretary determines, subject, however, to the following restrictions and limitations:

"(1) Such financial assistance shall not be extended to assist establishments relocating from one part of the United States to another or to assist subcontractors whose purpose is to divest, or whose economic success is dependent upon divesting, other contractors or subcontractors of contracts theretofore customarily performed by them; except that such limitations shall not be construed to prohibit assistance for the expansion of an existing business entity through the establishment of a new branch, affiliate, or subsidiary of such entity if the Secretary finds that the establishment of such branch, affiliate, or subsidiary will not result in an increase in unemployment of the area of original location or in any other area where such entity conducts business operations, unless the Secretary has reason to believe that such branch, affiliate, or subsidiary is being established with the intention of closing down the operations of the existing business entity in the area of its original location or in any other area where it conducts such operations.

"(2) Such assistance shall be extended only to applicants both private and public (including Indian tribes), which have been

approved for such assistance by an agency or instrumentality of the State or political subdivision thereof in which the project to be financed is located, and which agency or instrumentality is directly concerned with problems of economic development in such State or subdivision, and which have been certified by such agency or instrumentality as requiring the loan successfully to remain in operation.

"(3) No loan shall be made unless it is determined that there is reasonable assurance of repayment.

"(4) Subject to section 701(5) of this Act, no loan, including renewals or extension thereof, may be made hereunder for a period exceeding thirty years.

"(5) Loans made shall bear interest at a rate determined by the Secretary of the Treasury but not more than 3 per centum per annum.

"(6) Loans shall not exceed the aggregate cost to the applicant (excluding all other Federal aid in connection with such pollution control facilities) of acquiring, constructing, or altering the pollution control facility.

"(7) The pollution control facility for which a loan is requested must be—

"(A) a facility or equipment used, or

"(B) a modification of methods, processes, or operations where the primary purpose of such modification is to abate or control water or atmospheric pollution or contamination by removing, altering, recycling, disposing, or storing of pollutants, contaminants, wastes, or heat and which—

"(i) the State certifying authority having jurisdiction with respect to such facility has certified to the Administrator of the Environmental Protection Agency as having been acquired, constructed, or altered in conformity with State requirements for abatement or control of water or atmospheric pollution or contamination; or

"(ii) the Administrator of the Environmental Protection Agency has certified to the Secretary—

"(aa) as being in compliance with the applicable regulations of the Environmental Protection Agency and of all other Federal agencies, and

"(bb) as being in furtherance of the general policy of the United States for cooperation with the States in the prevention and abatement of water pollution under the Federal Water Pollution Control Act, or in the prevention and abatement of atmospheric pollution and contamination under the Clean Air Act.

"(c) As used in this section, the term 'State certifying authority' means, in the case of water pollution, the State water pollution control agency as defined in the Federal Water Pollution Control Act and, in the case of air pollution, the air pollution control agency as defined in the Clean Air Act. The term 'State certifying authority' includes any interstate agency authorized to act in place of a certifying authority of the State.

"(d) There is hereby authorized to be appropriated not to exceed $100,000,000 per fiscal year for the fiscal years ending June 30, 1973, and June 30, 1974, to carry out this section."

SEC. 10. Section 2 of the Act of July 6, 1970 (Public Law 91-304) as amended, is amended by striking out "1972" and inserting in lieu thereof "1974".

SEC. 11. The Public Works and Economic Development Act of 1965, as amended, is amended by striking the words "economic development center" wherever they appear and inserting in lieu thereof "economic growth center"; and by striking the words "economic development centers" wherever they appear and inserting in lieu thereof "economic growth centers".

After line 4, on page 1, strike out:

SEC. 2. Section 2 of the Public Works and Economic Development Act of 1965, as amended, is amended by inserting at the end thereof the following sentence: "Congress further declares that substantial outmigration from rural to urban areas is aggravating the economic and social conditions of areas of outmigration as well as central cities. National economy policy should anticipate and take into account the dislocation of jobs due to technological change, shifting trade patterns, environmental adjustments, and the continuing need to make geographical adaptations to economic problems."

SEC. 3. (a) Section 101 of the Public Works and Economic Development Act of 1965, as amended, is amended

(1) by striking in subsection (a)(1)(D) the words "a redevelopment" and inserting in lieu thereof "an", and by striking "401(a)(6)" and inserting in lieu thereof "107"; and

(2) by striking in subsection (c) "a project in a redevelopment area designated as such under section 401(a)(b)" and inserting in lieu thereof "any project, including projects in an area designated as such under section 107".

(b) Section 104 of the Public Works and Economic Development Act of 1965, as amended, is amended by inserting after the words "pursuant to" the words "section 105 of".

(c) Section 105 of the Public Works and Economic Development Act of 1965, as amended, is amended (1) by inserting after the word "title" the words "(except as provided in section 107)"; (2) by striking the words "$800,000,000 per fiscal year for the fiscal years ending June 30, 1972, and June 30, 1973.", and inserting in lieu thereof the words "$800,000,000 for the fiscal year ending June 30, 1972, and $550,000,000 per fiscal year for the fiscal years ending June 30, 1973, and June 30, 1974."; (3) by striking in the third sentence the words "years ending June 30, 1972, and June 30, 1973," and inserting in lieu thereof the words "year ending June 30, 1972,"; (4) by striking in the third sentence the words "redevelopment" and "as such"; and (5) by striking in the third sentence "401(a)(6)" and inserting in lieu thereof "107".

(d) Title I of the Public Works and Economic Development Act of 1965, as amended, is amended by adding at the end of such title the following new section:

"PUBLIC WORKS IMPACT PROGRAM

"SEC. 107. (a) The Secretary is authorized to designate those communities or neighborhoods (defined without regard to political or other subdivisions or boundaries) which he determines have one of the following conditions:

"(1) a large concentration of low-income persons;

"(2) rural areas having substantial outmigration;

"(3) substantial unemployment; or

"(4) an actual or threatened abrupt rise of unemployment due to the closing or curtailment of a major source of employment.

No area designated under this section shall be subject to the requirements of subparagraphs (A) and (C) of paragraph (1) of subsection (a) of section 101 of this title. No area designated under this section shall be eligible to meet the requirements of section 403(a)(1)(B) of this Act. Each area designated under this section shall be known as a public works impact area.

"(b) The Secretary is authorized to make grants, in accordance with the provisions of this title, to areas designated under this section.

"(c) Areas designated under this section shall be subject to a periodic review of eligibility (but at least annually) and the Secretary shall terminate the designation of any such area whenever it no longer satisfies the requirements of this section.

"(d) There is hereby authorized to be appropriated to carry out this section not to exceed $250,000,000 per fiscal year for the fiscal years ending June 30, 1973 and June 30, 1974."

SEC. 4. Subsection (c) of section 201 of the Public Works and Economic Development Act of 1965, as amended, is amended by striking "1973" and inserting in lieu thereof "1974'.

SEC. 5. (a) Subsection (b) of section 301 of the Public Works and Economic Development Act of 1965, as amended, is amended—

(1) by inserting immediately after the word "hereof" the following: ", except that in the case of a grant under this subsection to an Indian tribe the Secretary is to defray up to 100 per centum of such expenses"; and

(2) by striking out the words "the Federal-Aid Highway Act of 1962" and inserting in lieu thereof "title 23, United States Code".

(b) Section 302 of the Public Works and Economic Development Act, as amended, is redesignated as section 303 and immediately following section 301 a new section 302 is inserted as follows:

"SEC. 302. In the case of a vocational training facility constructed with a direct grant under title I of this Act, the Secretary is authorized to make grants for the operation of such facility. Such grants may be made for up to 75 per centum of the operating costs of such facility for the initial two years of the operating costs of such facility constructed after the enactment of this section or for any two-year period during the first five years of operation of any facility constructed previously. Not to exceed $15,000,000 per fiscal year of the funds authorized in section 303 of this title shall be available to carry out this section."

(c) Section 303 of the Public Works and Economic Development Act of 1965, as amended, as redesignated by subsection (b) of this section, is amended by striking "and June 30, 1973.", and inserting in lieu thereof: "June 30, 1973, and June 30, 1974.".

SEC. 6. (a) Section 401(a)(6) of the Public Works and Economic Development Act of 1965, as amended, is amended to read as follows:

"(6) those urban and rural communities or neighborhoods (defined without regard to political or other subdivisions or boundaries) which the Secretary determines have one of the following conditions:

"(A) a large concentration of low-income persons;

"(B) substantial unemployment; or

"(C) an actual or threatened abrupt rise of unemployment due to the closing or curtailment of a major source of employment.

No redevelopment area established under this paragraph shall be eligible to meet the requirements of section 403(a)(1)(B) of this Act;".

(b) Section 403(a)(1)(D) of the Public Works and Economic Development Act of 1965, as amended, is amended to read as follows:

"(D) the proposed district has a district overall economic development program which—

"(i) includes adequate land use and transportation planning;

"(ii) contains a specific program for district cooperation, self-help, and public investment;

"(iii) is approved by each affected State as consistent with the goals and objectives of each applicable State plan and any overall State economic development program;

"(iv) is approved by the Secretary; and

"(v) provides that a copy be furnished to the appropriate regional commission established under title V of this Act if any part of such proposed district is within such a region, or to the Appalachian Regional Commission established under the Appalachian Regional Development Act of 1965 if any

part of such proposed district is within the Appalachian region;".

(c) Subparagraph (C) of section 403(a)(2) of the Public Works and Economic Development Act of 1965, as amended, is amended by striking the period at the end thereof and adding the following: "; *Provided*, That no area designated as an economic development center under the provisions of this paragraph shall have such designation terminated or modified due to an increase in population."

(d) Section 403 of the Public Works and Economic Development Act of 1965, as amended, is amended by adding at the end thereof the following new subsection:

"(i) The Secretary is authorized to provide, in accordance with the applicable requirements of this Act, financial assistance, to those parts of an economic development district which are not within a redevelopment area when such assistance will be of substantial direct benefit to a redevelopment area within such district. Such financial assistance shall be provided in the same manner and to the same extent as is provided in this Act for a redevelopment area, except that nothing in this subsection shall be construed to permit such parts to receive the increase in the amount of grant assistance authorized in paragraph (4) of subsection (a) of this section."

(e) Subsection (g) of section 403 of the Public Works and Economic Development Act of 1965, as amended, is amended by striking "1973" and inserting in lieu thereof "1974".

SEC. 7. (a) Section 502(b) of the Public Works and Economic Development Act of 1965, as amended, is redesignated as section 502(c)(1) and immediately following section 502(a) a new subsection (b) is inserted as follows:

"(b) Notwithstanding any requirements set forth in section 501(a) of this Act, the Secretary shall designate an Indian Development Commission representing all tribes, bands, other groups of Indians, and Alaska Natives."

(b) Subsection (c) of section 502 of the Public Works and Economic Development Act of 1965, as amended, as redesignated by subsection (a) of this section, is amended by adding a new paragraph (2) as follows:

"(2) In the case of the Indian Development Commission, the term 'State' means a group of Indians or Alaska natives or a combination thereof within the United States which the Secretary, after consultation with the Secretary of the Interior, finds to have a cultural, historical, or geographical identity or relationship. There shall be no more than ten Indian development groups. The term 'State member' means the representative of an Indian development group designated by the Secretary after consultation with the Secretary of the Interior and the tribes, intertribal councils, tribal organizations or organizations of natives in such group. The Secretary shall assure representation for each major tribal or native organization."

(c) Subsection (c), (d), (e), and (f) of section 502 of the Public Works and Economic Development Act of 1965, as amended, are redesignated as subsections (d), (e), (f), and (g) respectively.

(d) Subsection (f) of section 502 of the Public Works and Economic Development Act of 1965, as amended, as redesignated by subsection (c) of this section, is amended by adding the following sentence at the end thereof: "In the case of the Indian Development Commission, each State member and his alternate shall be compensated by the Federal Government".

(e) Section 502 of the Public Works and Economic Development Act of 1965, as amended, is amended at the end thereof the following **new subsection:**

"(h) All assistance to the Indian Development Commission authorized under title V of this Act shall be in addition to any Federal assistance previously authorized, and no provision hereof shall be construed as authorizing or permitting any reduction or diminution in the proportional amount of Federal assistance to which any tribe, band, other group of Indians, or Alaska Natives is entitled under the provisions of this Act or any other Act."

(f) Subsection (b) of section 505 of the Public Works and Economic Development Act of 1965, as amended, is amended by inserting after the words "except that the administrative expenses of the Federal cochairman, his alternate, and his staff" the following: "and the administrative expenses of the Indian Development Commission".

(g) Subsection (c) of section 505 of the Public Works and Economic Development Act of 1965, as amended, is amended to read as follows:

"(c) In carrying out subsection (a)(1) and subsection (b) of this section there may be expended in any fiscal year out of funds appropriated under authority of section 509 (d) of this title, such sums as are necessary up to a maximum of 10 per centum of the funds appropriated for each regional commission."

(h)(1) Subsection (d) of section 509 of the Public Works and Economic Development Act of 1965, as amended, is redesignated as paragraph (d)(1).

(2) Redesignated paragraph (d)(1) of section 509 of the Public Works and Economic Development Act of 1965, as amended, is amended by striking out in the first sentence the words "two-fiscal-year period ending June 30, 1973, to be available until expended, not to exceed $305,000,000." and inserting in lieu thereof "fiscal year ending June 30, 1972, to remain available until expended, $152,500,000."; and by striking out in the third sentence the word "authorization" and inserting in lieu thereof "paragraph".

(3) Subsection (d) of section 509 of the Public Works and Economic Development Act of 1965, as amended, is amended by adding at the end thereof the following new paragraph:

"(2) There is authorized to be appropriated to the Secretary to carry out this title, for the fiscal years ending June 30, 1973, and June 30, 1974, not to exceed $100,000,000 per fiscal year for the Coastal Plains Regional Commission, not to exceed $100,000,000 per fiscal year for the Four Corners Regional Commission, not to exceed $100,000,000 per fiscal year for the New England Regional Commission, not to exceed $100,000,000 per fiscal year for the Ozarks Regional Commission, not to exceed $100,000,000 per fiscal year for the Upper Great Lakes Regional Commission, and not to exceed $20,000,000 per fiscal year for each regional commission which does not have a comprehensive long-range economic plan approved under section 503(a)(2) of this Act."

SEC. 8. Section 2 of the Act of July 6, 1970, as amended, (Public Law 91-304), is amended by striking out "1972" and inserting in lieu thereof "1974".

And, in lieu thereof, insert:

Mr. ROBERT C. BYRD. Mr. President, would the distinguished Senator from Arizona object to a unanimous-consent request that I be permitted to offer an amendment to the bill, notwithstanding the fact that the committee amendment has not yet been agreed to?

Mr. FANNIN. I have no objection.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that I may be permitted to offer an amendment to the bill, notwithstanding the fact that the committee amendment has not yet been agreed to.

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

Mr. ROBERT C. BYRD. I send to the desk an amendment and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk proceeded to read the amendment.

Mr. ROBERT C. BYRD. I ask unanimous consent that further reading of the amendment be dispensed with.

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

Mr. ROBERT C. BYRD's amendment is as follows:

At the end of the bill, add a new section as follows:

The Appalachian Regional Hospitals, Incorporated (hereinafter referred to as the "corporation"), a nonprofit, nonsectarian corporation organized under the laws of the State of Kentucky, is hereby relieved of all liability for repayment to the United States of the sum of $3,607,590, together with all interest accrued thereon, representing the amount owed by the corporation to the United States under the terms of a loan made to the corporation by the Area Redevelopment Administration on June 26, 1964, the forgiveness of such loan being necessary to the provision of needed hospital facilities in the Appalachian region of Kentucky, West Virginia, and Virginia.

Mr. ROBERT C. BYRD. Mr. President, I offer this amendment on behalf of the distinguished Senators from Kentucky (Mr. COOPER and Mr. COOK), my distinguished senior colleague from West Virginia (Mr. RANDOLPH), the distinguished junior Senator from Virginia (Mr. SPONG), and myself.

This amendment was originally introduced in the form of a bill (S. 3326) by the Senator from Kentucky (Mr. COOPER) in March of this year, on behalf of himself, Mr. ROBERT C. BYRD, Mr. COOK, Mr. RANDOLPH, and Mr. SPONG, for the relief of the Appalachian Regional Hospitals, Inc.

That bill was referred to the Committee on the Judiciary. Earlier this week, with the approval of the chairman, I was able to poll the members of the Judiciary Committee, and as a result thereof, the bill was reported from the Committee on the Judiciary unanimously. The bill now appears on the calendar under Order No. 1231.

I am offering that bill in the form of an amendment to the pending legislation because of the fact that the pending legislation is a House bill, and it is hoped that if this amendment is accepted by the Senate it can then go to conference and possibly be enacted into law within the next 2 or 3 days, or as soon thereafter as the President can sign the bill.

The purpose of this legislation is to relieve Appalachian Regional Hospitals, Inc., a nonprofit nonsectarian corporation organized under the laws of the State of Kentucky of all liability for repayment to the United States of the sum of $3,607,590, together with all interest accrued thereon, representing the amount owed by the corporation to the United States under the terms of a loan made to the corporation by the Area Redevelopment Administration on June 26, 1964.

The hospitals which make up the chain taken over by the Appalachian Regional Hospitals, Inc., have constituted a nonprofit, nonsectarian health care system of hospitals located in West Virginia, Virginia, and Kentucky. The hospitals were constructed originally as a part of a 10-hospital chain. They were built in 1955 and 1956 by the Miners Memorial Hospital Association, a subsidiary of the United Mine Workers Welfare and Retirement Fund. The hospitals were built originally to serve UMW Union members and pensioners, but because of a critical need for all residents in the areas served by the hospitals, the doors of the hospitals were opened to the public, and this decision to open the hospitals to the public, compelled by human need, was financially disastrous, in that a large number of patients were indigent, and the system began to experience substantial operating losses. The only source of moneys to cover these losses was the Welfare and Retirement Fund, and for a time the fund underwrote medical care expenses incurred by the general public. But in 1962, the trustees of the welfare and retirement fund announced that the fund would have to divest itself of the hospitals or close the facilities if a suitable sponsor could not be found.

As a result, a nonprofit, nonsectarian corporation, Appalachian Regional Hospitals, Inc., was organized to own and operate the system.

Because of the limited funds available for Area Redevelopment Administration public facility grants—no funds were appropriated for this purpose in fiscal year 1965—the maximum grant available which would be approved was $3.9 million, which was slightly less than half the amount to cover even the substantially discounted price for the 10 hospitals.

These funds were accepted by ARH, Inc., and used to acquire five of the 10 hospitals.

After several attempts were made to secure additional grant funds during the spring of 1964, and as a last resort, ARH, Inc., accepted a loan from the Area Redevelopment Administration in the amount of $4.1 million to cover the transfer of the remaining five hospitals, these five hospitals being located at Pikeville and South Williamson, Ky.; Wise, Va.; and Man and Beckley, W. Va. The loan was made on June 26, 1964.

The acceptance of a loan was regarded by the trustees of the hospital system as an expedient. There was a clear understanding on the part of the ARH management and board that the loan would be converted to a grant when additional appropriations were made for ARA public facility grants. But the ARA did not receive additional grant funds in fiscal year 1965, and the loan therefore remained in existence.

The Judiciary Committee contacted the Department of Commerce for its views on the bill S. 3326—which I am now offering as an amendment to the pending measure—and Mr. William N. Letson, General Counsel of the Department of Commerce, on September 22 of this year, responded to Chairman EASTLAND by saying, in part, as follows:

The evidence submitted with respect to current and future programs and flows of funds shows that repayment of the ARA loan will greatly impair the hospitals' ability to meet the demands on them. Along with the social costs which would result if this occurs, there would also be serious economic development costs. The continuation of accessible hospital care is a necessity for existing local industries as well as for attracting new industries.

While it is easy to look back 10 years and be critical of actions taken at that time, nonetheless, the record does not indicate that this ARA loan to an extremely deprived area for a critically needed purpose ever enjoyed any reasonable prospects for repayment. It was therefore administratively inappropriate as a semi-substitute for a grant.

What is more important, however, is that EDA's legal authority and administrative guidelines presently prevent loans without reasonable prospects for repayment. Therefore, while we believe relief should be granted in this case, enactment of S. 3326 should not and will not serve as a precedent for forgiveness of any other existing or future EDA loans.

We have been advised by the Office of Management and Budget that there would be no objection to the submission of this report to your committee from the standpoint of the administration's program.

So, there we have it, Mr. President. The Department of Commerce has stated that relief should be granted in this case. The Department has also stated that such relief would not be a precedent for forgiveness of any other existing or future economic development administration loans, because EDA's real authorization and administrative guidelines presently prevent loans without reasonable prospects for repayment; and the record has indicated that the ARA loan, which was EDA's predecessor, never enjoyed any reasonable prospect for repayment.

Mr. President, that explains the amendment I am offering on behalf of myself and the other cosponsors.

I hope the Senate will adopt the amendment.

I would hope that the distinguished manager of the bill, the Senator from New Mexico (Mr. MONTOYA) with whom I have discussed the amendment, would see his way clear to accept it. I believe that my colleague, Mr. RANDOLPH, and the distinguished Senator from Kentucky (Mr. COOPER) undoubtedly will wish to address themselves to the support of this matter.

ECONOMIC DEVELOPMENT ACT OF 1972

Mr. COOPER. Mr. President, on March 9 of this year, I introduced with Senator RANDOLPH, Senator ROBERT C. BYRD, Senator SPONG and Senator COOK, S. 3326, a bill to relieve the Appalachian Regional Hospitals, Inc., of their indebtedness to the Economic Development Administration. The principal amount of the loan is $3,607,590; the total amount of the loan and accrued interest as of March 31, 1972 is $4,635,673.

The Appalachian Regional Hospitals, Inc., is a nonprofit, nonsectarian corporation organized in 1962 to own and operate the chain of 10 hospitals—constructed by the United Mine Workers in 1956 in West Virginia, Virginia and Kentucky—when they went broke and were going to close their doors.

The only source of funds for the purchase of the hospitals was the Area Redevelopment Administration in the Department of Commerce and the corporation applied for a $8 million grant to cover the purchase of the 10 facilities. Due to the lack of grant moneys, the maximum grant that could be made at that time, October 1963, was $3.9 million which covered purchase of five of the 10 hospitals.

ARA was approached for a second grant to purchase the remaining hospitals but because of a lack of grant moneys, a $4.1 million loan was made with the understanding by ARA and the corporation that the loan would be converted to a grant when the additional moneys were appropriated. However, ARA did not receive any grant funds and the loan remained.

The loan indebtedness of the hospitals was passed to the Economic Development Administration when it replaced the ARA.

By serving all the medically indigent in the areas where the hospitals are located, the corporation has never amassed the capital necessary to repay the loan. Seventy-four percent of the patients treated are under medicare, medicaid, public assistance or the UMWA retirement fund.

In 1970 the Economic Development Administration was first approached to forgive the loan as there was little hope of repayment. However, EDA did not believe they could do so administratively but did refinance the loan and defer repayment until 1975.

These hospitals are the primary source of health care in many of these areas and are being used by the Appalachian Regional Commission and other Federal agencies to provide additional health services. The facilities are 15 years old and in need of major renovation. As the Judiciary Committee report points out, the normal difficulties to raising funds are further hindered by the hospitals' debt to EDA.

The bill, S. 3326, has been reviewed by the Department of Commerce, the facts of the situation submitted to the Judiciary Committee have been attested to by the Department and the bill has been cleared by Commerce Department and OMB. The Department's letter to the Judiciary Committee states that repayment of the loan will greatly impair the hospitals ability to meet the demands on them and that relief should be granted.

I hope this amendment can be accepted.

Mr. MONTOYA. Mr. President, I have just consulted Senator COOPER, and I know Senator RANDOLPH is agreeable to this. I am willing to accept the amendment.

Mr. RANDOLPH. Mr. President, I should like to just add my support for the committee, as well as my personal support for the amendment just offered by my able colleague, Senator BYRD, because, with Senator COOPER, we have had intimate knowledge of this program and the problems from the program during the years. Because of the need to move this important legislation, I will just reinforce what Senator BYRD has said.

I am pleased that Senator COOPER, Senator ROBERT C. BYRD, Senator SPONG,

and others who have been concerned with these matters can agree at this time.

I thank the chairman.

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

The amendment was agreed to.

EXECUTIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider nominations at the desk which were reported earlier today. The nominations have been cleared on both sides.

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

The PRESIDING OFFICER. The nominations will be stated.

U.S. CIRCUIT COURT

The second assistant legislative clerk read the nomination of H. Emory Widener, Jr., of Virginia, to be a U.S. circuit judge, fourth circuit.

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

U.S. DISTRICT COURT

The second assistant legislative clerk read the following nominations:

Frank H. Freedman, of Massachusetts, to be a U.S. district judge for the district of Massachusetts.

Hernan G. Pesquera, of Puerto Rico, to be U.S. district judge for the district of Puerto Rico.

Joseph L. Tauro, of Massachusetts, to be a U.S. district judge for the district of Massachusetts.

Kevin Thomas Duffy, of New York, to be U.S. district Judge for the southern district of New York.

Robert J. Ward, of New York, to be a U.S. district judge for the southern district of New York.

James C. Turk, of Virginia, to be a U.S. district judge for the western district of Virginia.

Donald D. Forsht, of Florida, to be U.S. marshal for the southern district of Florida.

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

The PRESIDING OFFICER. Without objection, the nominations are considered and confirmed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of the nominations.

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

Mr. JAVITS. Mr. President, I just want to express to the majority leader our appreciation, because of our shortage of judges in New York.

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.

PUBLIC WORKS AND ECONOMIC DEVELOPMENT ACT OF 1972

The Senate resumed the consideration of the bill (H.R. 16071) to amend the Public Works and Economic Development Act of 1965.

Mr. WILLIAMS. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. WILLIAMS. 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 is as follows:

At the end of the bill, insert the following:

SEC. 801. (a) (1) The Administrator of the Environmental Protection Agency shall on his own motion or not later than thirty days from the date he receives a written request of an employee of an affected plant or industry, or his representative, initiate an investigation of any employment loss or alleged employment loss which results or may result from the issuance of a standard or order under the Federal Water Pollution Control Act, the Clean Air Act, or any other Federal law having for its primary purpose the improvement of environmental quality.

(2) Such an investigation shall include an evaluation of the action necessary for compliance, the costs of compliance, the social or external costs of non-compliance, the extent to which the community would be dislocated by such an employment loss, possible alternatives to the employment loss and the economic circumstances of the particular facility involved and its owner or operator, including present profitability or marginal economic position.

(3) Whenever feasible, such investigation shall commence six months in advance of any anticipated employment loss, or at the earliest possible time. In any event, such investigation shall begin within ten days of any allegation of employment loss due to the enforcement of an order or standard for the protection of environmental quality which the Administrator is requested to investigate by any person.

(4) For the purpose of assisting in any investigation under this section, the Administrator may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and he may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpena served upon any person under this section, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Administrator to appear and produce papers, books, and documents before the Administrator, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(5) The owner or operator of any commercial or industrial facility seeking assistance under section 802 of this Act or alleging that an employment loss at any facility under his control will result from the enforcement of an order or standard for the protection of environmental quality, shall submit to the Administrator within 30 days a report disclosing:

(A) the nature of the enforcement action;

(B) his plans to comply, including a description of the technology necessary for compliance and its cost;

(C) the extent of potential employment loss;

(D) alternatives to the potential employment loss;

(E) his plans to alleviate the effect of the potential employment loss on the individuals and communities involved;

(F) the economic circumstances of the affected facility, including present profitability or marginality, and future investment plans in the absence of such enforcement; and

(G) the economic circumstances of his total enterprises (including domestic and foreign subsidiaries or parent corporations), including present profitability, market (and any changes in market patterns), the effect of foreign competition, changes in the availability of transportation, opportunity for transfer personnel, capitalization, and capital availability, and future investment plans in the absence of such enforcement.

(6) Such investigation shall be completed and a report of employment loss submitted to the Secretary of Labor not later than the sixtieth day after the date of initiation of investigation. The Secretary of Labor, upon receipt of such report, shall certify as unemployed as a result of such standard or order all employees who are unemployed as a result of such standard or order with respect to which the Administrator has conducted an investigation under this subsection. An individual to be eligible for certification for assistance under this section shall have had in the seventy-eight weeks immediately preceding his unemployment at least twenty-six weeks of employment in the plant or industry affected.

(b) The Secretary is authorized to provide to any individual certified as unemployed under subsection (a) unemployment compensation. Such unemployment compensation shall equal 60 per centum of the individual's former weekly wage or the maximum payable to him under the unemployment compensation law of the State in which his employment loss occurs, whichever is the greater amount, except that no such individual shall be paid more than the highest amount of unemployment compensation payable to any individual by any State under any unemployment compensation law other than this section. Such unemployment compensation shall be paid so long as such individual is unemployed or until he retires from the labor force, whichever period is the lesser, except that no unemployment compensation shall be paid to any individual under this subsection for a period of more than seventy eight weeks.

(c) The Secretary is authorized to provide assistance on a temporary basis in the form of mortgage or rental payments to or on behalf of an individual certified under this section as unemployed who, as a result of financial hardship caused by such unemployment has received written notice of dispossession or eviction from his principal place of residence by reason of foreclosure of any mortgage or lien, cancellation of any contract or sale, or termination of any lease, entered into prior to such unemployment. Such assistance shall be provided for a period not to exceed one year or for the duration of the period of financial hardship, whichever is lesser.

(d) The Secretary is authorized to provide reemployment assistance services under other laws to individuals who are certified under this section as unemployed.

(e) The Secretary is authorized to pay the

actual reasonable moving expenses of any individual (including his family and his household effects) certified under this section as unemployed who is unable to find employment at reasonable distance from his principal place of residence at the time of such unemployment and who finds employment beyond such distance.

(f) There is authorized to be appropriated, not to exceed $100,000,000 for carrying out this section.

SEC. 801. (g) (1) No person shall discharge or in any other way discriminate against or cause to be discharged or discriminated against any employee or any authorized representative of employees of any commercial or industrial facility at which employment may be reduced due to, or alleged to be due to, the enforcement of an order of standard for the protection of environmental quality, (1) by reason of the fact that such employee or representative has filed, instituted, or caused to be filed or instituted any proceeding under this title, has provided information concerning any matter within the scope of this title, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions in this title, or (2) in any case where the Administrator has determined an employment loss to be unjustified.

(2) Any employee or a representative of employees who believes that he has been discharged or otherwise discriminated against by any person in violation of paragraph (1) of this subsection may, within thirty days after such violation occurs, apply to the Secretary of Labor for a review of such alleged discharge or discrimination. A copy of the application shall be sent to such person who shall be the respondent. Upon receipt of such application, the Secretary of Labor shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to enable the parties to present information relating to such violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5 of the United States Code. Upon receiving the report of such investigation, the Secretary of Labor shall make findings of fact. If he finds that such violation did occur, he shall issue a decision, incorporating an order therein, requiring the person committing such violation to take such affirmative action to abate the violation as the Secretary of Labor deems appropriate, including, but not limited to, the rehiring or reinstatement of the employee or representative of employees to his former position with compensation. If he finds that there was no such violation, he shall issue an order denying the application. Such order issued by the Secretary of Labor under this subsection shall be subject to judicial review. Violations by any person of paragraph (1) of this subsection or such an order shall be subject to a fine of $10,000 per day of violation.

(3) Whenever an order is issued under this section, at the request of the applicant, a sum equal to the aggregate amount of all costs and expenses (including the attorney's fees) as determined by the Secretary of Labor to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the person committing the violation.

POLLUTION CONTROL FACILITIES LOANS

SEC. 802. (a) The Secretary is authorized to make loans (which for purposes of this section shall include participations in loans) to aid in financing any project in the United States for the acquisition, construction, or alteration of pollution control facilities (including machinery and equipment) for industrial or commercial usage.

(b) Financial assistance under this section shall be on such terms and conditions as the Secretary determines, subject, however, to the following restrictions and limitations:

(1) Such financial assistance shall not be extended to assist establishments relocating from one part of the United States to another or to assist subcontractors whose purpose is to divest, or whose economic success is dependent upon divesting, other contractors or subcontractors of contracts theretofore customarily performed by them; except that such limitations shall not be construed to prohibit assistance for the expansion of an existing business entity through the establishment of a new branch, affiliate, or subsidiary of such entity if the Secretary finds that the establishment of such branch, affiliate, or subsidiary will not result in an increase in unemployment of the area of original location or in any other area where such entity conducts business operations, unless the Secretary has reason to believe that such branch, affiliate, or subsidiary is being established with the intention of closing down the operations of the existing business entity in the area of its original location or in any other area where it conducts such operations.

"(2) Such assistance shall be extended only to applicants both private and public (including Indian tribes), which have been approved for such assistance by an agency or instrumentality of the State or political subdivision thereof in which the project to be financed is located, and which agency or instrumentality is directly concerned with problems of economic development in such State or subdivision, and which have been certified by such agency or instrumentality as requiring the loan successfully to remain in operation.

SEC. 802. (b) (3) No loan shall be made under this section unless the financial assistance applied for is not otherwise available from private lenders or from other Federal agencies on terms which in the judgment of the Administrator will permit compliance with such an order or standard, and unless the Administrator finds that funds necessary for compliance are not available from within the corporate structure of the owner or operator of the affected facility, or from any domestic or foreign subsidiary or parent corporation and unless it is determined that there is reasonable assurance of repayment.

"(4) Subject to section 701(5) of this Act, no loan, including renewals or extension thereof, may be made hereunder for a period exceeding thirty years.

"(5) Loans made shall bear interest at a rate determined by the Secretary of the Treasury but not more than 3 per centum per annum.

"(6) Loans shall not exceed the aggregate cost to the applicant (excluding all other Federal aid in connection with such pollution control facilities) of acquiring, constructing, or altering the pollution control facility.

"(7) The pollution control facility for which a loan is requested must be

"(A) a facility or equipment used, or

"(B) a modification of methods, processes, or operation where the primary purpose of such modification is to abate or control water or atmospheric pollution or contamination by removing, altering, recycling, disposing, or storing of pollutants, contaminants, wastes, or heat and which

"(i) the State certifying authority having jurisdiction with respect to such facility has certified to the Administrator of the Environmental Protection Agency as having been acquired, constructed, or altered in conformity with State requirements for abatement or control of water or atmospheric pollution or contamination; or

"(ii) the Administrator of the Environmental Protection Agency has certified to the Secretary

"(aa) as being in compliance with the applicable regulations of the Environmental Protection Agency and of all other Federal agencies, and

"(bb) as being in furtherance of the general policy of the United States for cooperation with the States in the prevention and abatement of water pollution under the Federal Water Pollution Control Act, or in the prevention and abatement of atmospheric pollution and contamination under the Clean Air Act."

(c) As used in this section, the term "State certifying authority" means, in the case of water pollution, the State water pollution control agency as defined in the Federal Water Pollution Control Act and, in the case of air pollution, the pollution control agency as defined in the Clean Air Act. The term "State certifying authority" includes any interstate agency authorized to act in place of a certifying authority of the State.

(d) There is hereby authorized to be appropriated not to exceed $100,000,000 per fiscal year for the fiscal years ending June 30, 1973, and June 30, 1974, to carry out this section.

Mr. WILLIAMS. Mr. President, this amendment is offered for Senator RANDOLPH, Senator MUSKIE, Senator JAVITS, and myself.

Basically, this amendment would restore to the committee amendments title 8 of the House-passed bill. The amendment would provide dislocation assistance to those workers affected by the Government's environmental orders and would offer assistance in carefully delineated instances to employers in need of financial aid to comply with environmental standards.

The amendment contains two sections. Section 801 will provide assistance to individuals who suffer employment loss as a result of Federal actions to improve the environment. It would provide for an investigation by the Administrator of the Environmental Protection Agency and certification by the Secretary of Labor of unemployment resulting from Federal environmental improvement legislation.

Individuals found to have lost their jobs because of the issuance of a standard or order under Federal environmental laws and who have worked at least 26 of the 78 preceding weeks in the plant or industry affected will be eligible for certain benefits. Duplication of unemployment compensation payments are not authorized by this section.

Such an individual may receive unemployment compensation payments equal to 60 percent of his former weekly wage until he is reemployed or retires, except that no individual may receive assistance for a period of more than 78 weeks.

Mr. DOMINICK. Mr. President, if the Senator will yield, is this the amendment which the Senator from Kentucky (Mr. COOPER) opposed and which Caspar Weinberger wrote the letter on?

Mr. MONTOYA. The Senator from Kentucky can answer that better than I can.

The PRESIDING OFFICER (Mr. STAFFORD). The Chair would inquire of the Senator from New Jersey (Mr. WILLIAMS) if he would ask unanimous consent that his amendment be considered before the committee amendment is agreed.

Mr. WILLIAMS. I so request, and——

Mr. COOPER. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. COOPER. Mr. President, I understand that if some agreement has been reached between the distinguished Senator from Arizona (Mr. FANNIN) and the distinguished Senator from New Mexico (Mr. MONTOYA) and if this agreement is carried out, then the committee amendments will be agreed to en bloc and we can proceed with the other amendments.

Mr. WILLIAMS. I would be pleased to yield for that purpose, with the understanding that I would regain the floor to have my amendment considered.

Mr. COOPER. I understand that would be correct. It would just delay the Senator's amendment a few minutes.

Mr. MONTOYA. Mr. President, to clarify the parliamentary situation, I ask unanimous consent that the committee amendments be considered and agreed to en bloc, and that they be considered as original text for purposes of further amendment.

The PRESIDING OFFICER. Without objection, the committee amendment is considered and agreed to.

The Chair now recognizes the Senator from New Jersey (Mr. WILLIAMS).

Mr. FANNIN. Mr. President, would the Senator from New Jersey mind if I sent an amendment to the desk to clarify the arrangement as to this matter?

Mr. WILLIAMS. That is certainly agreeable with me.

Mr. FANNIN. Mr. President, I send to the desk an amendment and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read the amendment:

Intended to be proposed by Mr. FANNIN to the amendment offered by the Senator from New Mexico on H.R. 16071.

On page 30, line 7, after "Sec. 7" strike all through line 9, page 32, and redesignate subsections (g) and (h) as subsections (a) and (b).

Mr. MONTOYA. Mr. President, I should like to develop a little legislative history before I say to the Senator from Arizona that I have no objection at this time to his amendment. In view of the fact that the hour is late and we are imposing in these last 2 days of the session on the Senate to get this bill through Congress, and the fact that the Senator from Arizona has indicated he will speak at length against a provision that was already in the bill, I have no alternative now but to abandon this amendment in the bill and accept the floor amendment which deletes it.

But I want to say to the Senator from Arizona that I shall press on in the new bill that we intend to bring up before the Senate next year, and after I consult with Indian leaders of the Nation again, I am hopeful that they will consent to this amendment. I will also have a fuller legislative history to give to the Senate of acceptance on the part of the Indian leaders of this Nation.

Mr. FANNIN. I certainly thank the distinguished manager of the bill for his consideration, and assure him that I desire to cooperate in every way to make it possible to bring a better program to the Indian people all over the Nation.

At the same time, I do feel that it is essential we establish the feeling among the Indian tribes and establish what their opinions are, including those of the Governors. I do thank the Senator from New Mexico and I will work with him to try to resolve this problem.

Mr. MONTOYA. I hope that the Senator from Arizona, when the majority of the Indian leaders endorse the Indian development commission concept, will be alined with me in sponsoring it.

Mr. FANNIN. I cannot give the Senator that promise, but I will certainly investigate and determine just how we feel about this legislation and what they will feel is best for their own interests. I am vitally interested in doing what will help accomplish the objective that the Senator from New Mexico has mentioned and, that is, to better the economic development of all Indian tribes. I must say we have to consider the important role of road development on the reservations. This is one of the primary problems we have at this moment.

Mr. MONTOYA. Mr. President, in view of the lateness of the hour and our desire to get this bill through to conference, I reluctantly accept the amendment offered by the Senator from Arizona.

The PRESIDING OFFICER (Mr. STAFFORD). The question is on agreeing to the amendment of the Senator from Arizona.

The amendment was agreed to.

The PRESIDING OFFICER. The Chair now recognizes the Senator from New Jersey.

Mr. WILLIAMS. Mr. President, a parliamentary inquiry. We are returning now to consideration of my amendment, the one I have offered on behalf of myself, and Senators JAVITS, RANDOLPH, and MUSKIE?

The PRESIDING OFFICER. That is correct. If the Senator will call up his amendment again, now that the committee amendments have been agreed to, it will be received and considered.

Mr. WILLIAMS. Mr. President, I send my amendment to the desk and ask that it be restated.

The PRESIDING OFFICER. The amendment will be restated.

The assistant legislative clerk read as follows:

At the end of the bill, insert the following:

SEC. 801. (a)(1) The Administrator of the Environmental Protection Agency shall on his own motion or not later than thirty days from the date he receives a written request of an employee of an affected plant or industry, or his representative, initiate an investigation of any employment loss or alleged employment loss which results or may result from the issuance of a standard or order under the Federal Water Pollution Control Act, the Clean Air Act, or any other Federal law having for its primary purpose the improvement of environmental quality.

(2) Such an investigation shall include an evaluation of the action necessary for compliance, the costs of compliance, the social or external costs of non-compliance, the extent to which the community would be dislocated by such an employment loss, possible alternatives to the employment loss and the economic circumstances of the particular facility involved and its owner or operator, including present profitability or marginal economic position.

(3) Whenever feasible, such investigation shall commence 6 months in advance of any anticipated employment loss, or at the earliest possible time. In any event, such investigation shall begin within 10 days of any allegation of employment loss due to the enforcement of an order or standard for the protection of environmental quality which the Administrator is requested to investigate by any person.

(4) For the purpose of assisting in any investigation under this section, the Administrator may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and he may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpena served upon any person under this section, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Administrator to appear and produce papers, books, and documents before the Administrator, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(5) The owner or operator of any commercial or industrial facility seeking assistance under section 802 of this Act or alleging that an employment loss at any facility under his control will result from the enforcement of an order or standard for the protection of environmental quality, shall submit to the Administrator within 30 days a report disclosing:

(A) the nature of the enforcement action;

(B) his plans to comply, including a description of the technology necessary for compliance and its cost;

(C) the extent of potential employment loss;

(D) alternatives to the potential employment loss;

(E) his plans to alleviate the effect of the potential employment loss on the individuals and communities involved;

(F) the economic circumstances of the affected facility, including present profitability or marginality, and future investment plans in the absence of such enforcement; and

(G) the economic circumstances of his total enterprises (including domestic and foreign subsidiaries or parent corporations), including present profitability, market (and any changes in market patterns), the effect of foreign competition, changes in the availability of transportation, opportunity for transfer personnel, capitalization, and capital availability, and future investment plans in the absence of such enforcement.

(6) Such investigation shall be completed and a report of employment loss submitted to the Secretary of Labor not later than the sixtieth day after the date of initiation of investigation. The Secretary of Labor, upon receipt of such report, shall certify as unemployed as a result of such standard or order all employees who are unemployed as a result of such standard or order with respect to which the Administrator has conducted an investigation under this subsection. An individual to be eligible for certification for assistance under this section shall have had in the seventy-eight weeks immediately preceding his unemployment at least twenty-six weeks of employment in the plant or industry affected.

(b) The Secretary is authorized to provide to any individual certified as unemployed under subsection (a) unemployment compensation. Such unemployment compen-

sation shall equal 60 per centum of the individual's former weekly wage or the maximum payable to him under the unemployment compensation law of the State in which his employment loss occurs, whichever is the greater amount, except that no such individual shall be paid more than the highest amount of unemployment compensation payable to any individual by any State under any unemployment compensation law other than this section. Such unemployment compensation shall be paid so long as such individual is unemployed or until he retires from the labor force, whichever period is the lesser, except that no unemployment compensation shall be paid to any individual under this subsection for a period of more than seventy eight weeks.

(c) The Secretary is authorized to provide assistance on a temporary basis in the form of mortgage or rental payments to or on behalf of an individual certified under this section as unemployed who, as a result of financial hardship caused by such unemployment has received written notice of dispossession or eviction from his principal place of residence by reason of foreclosure of any mortgage or lien, cancellation of any contract or sale, or termination of any lease, entered into prior to such unemployment. Such assistance shall be provided for a period not to exceed one year or for the duration of the period of financial hardship, whichever is lesser.

(d) The Secretary is authorized to provide reemployment assistance services under other laws to individuals who are certified under this section as unemployed.

(e) The Secretary is authorized to pay the actual reasonable moving expenses of any individual (including his family and his household effects) certified under this section as unemployed who is unable to find employment at reasonable distance from his principal place of residence at the time of such unemployment and who finds employment beyond such distance.

(f) There is authorized to be appropriated, not to exceed $100,000,000 for carrying out this section.

SEC. 801. (g) (1) No person shall discharge or in any other way discriminate against or cause to be discharged or discriminated against any employee or any authorized representative of employees of any commercial or industrial facility at which employment may be reduced due to, or alleged to be due to, the enforcement of an order of standard for the protection of environmental quality, (1) by reason of the fact that such employee or representative has filed, instituted, or caused to be filed or instituted any proceeding under this Title, has provided information concerning any matter within the scope of this Title, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions in this Title, or (2) in any case where the Administrator has determined an employment loss to be unjustified.

(2) Any employee or a representative of employees who believes that he has been discharged or otherwise discriminated against by any person in violation of paragraph (1) of this subsection may, within thirty days after such violation occurs, apply to the Secretary of Labor for a review of such alleged discharge or discrimination. A copy of the application shall be sent to such person who shall be the respondent. Upon receipt of such application, the Secretary of Labor shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to enable the parties to present information relating to such violation. The parties shall be given written notice of the time and place of the sharing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5 of the United States Code. Upon receiving the report of such investigation, the Secretary of Labor shall make findings of fact. If he finds that such violation did occur, he shall issue a decision, incorporating an order therein, requiring the person committing such violation to take such affirmative action to abate the violation as the Secretary of Labor deems appropriate, including but not limited to, the rehiring or reinstatement of the employee or representative of employees to his former position with compensation. If he finds that there was no such violation, he shall issue an order denying the application. Such order issued by the Secretary of Labor under this subsection shall be subject to judicial review. Violations by any person of paragraph (1) of this subsection or such an order shall be subject to a fine of $10,000 per day of violation.

(3) Whenever an order is issued under this section, at the request of the applicant, a sum equal to the aggregate amount of all costs and expenses (including the attorney's fees) as determined by the Secretary of Labor to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the person committing the violation.

POLLUTION CONTROL FACILITIES LOANS

SEC. 802. (a) The Secretary is authorized to make loans (which for purposes of this section shall include participations in loans) to aid in financing any project in the United States for the acquisition, construction, or alteration of pollution control facilities (including machinery and equipment) for industrial or commercial usage.

(b) Financial assistance under this section shall be on such terms and conditions as the Secretary determines, subject, however, to the following restrictions and limitations:

(1) Such financial assistance shall not be extended to assist establishments relocating from one part of the United States to another or to assist subcontractors whose purpose is to divest, or whose economic success is dependent upon divesting, other contractors or subcontractors of contracts theretofore customarily performed by them; except that such limitations shall not be construed to prohibit assistance for the expansion of an existing business entity through the establishment of a new branch, affiliate, or subsidiary of such entity. If the Secretary finds that the establishment of such branch affiliate, or subsidiary will not result in an increase in unemployment of the area of original location or in any other area where such entity conducts business operations, unless the Secretary has reason to believe that such branch, affiliate, or subsidiary is being established with the intention of closing down the operations of the existing business entity in the area of its original location or in any other area where it conducts such operations.

"(2) Such assistance shall be extended only to applicants both private and public (including Indian tribes), which have been approved for such assistance by an agency or instrumentality of the State or political subdivision thereof in which the project to be financed is located, and which agency or instrumentality is directly concerned with problems of economic development in such State or subdivision, and which have been certified by such agency or instrumentality as requiring the loan successfully to remain in operation.

SEC. 802. (b) (3) No loan shall be made under this section unless the financial assistance applied for is not otherwise available from private lenders or from other Federal agencies on terms which in the judgment of the Administrator will permit compliance with such an order or standard, and unless the Administrator finds that funds necessary for compliance are not available from within the corporate structure of the owner or operator of the affected facility, or from any domestic or foreign subsidiary or parent corporation and unless it is determined that there is reasonable assurance of repayment.

"(4) Subject to section 701(5) of this Act, no loan, including renewals or extension thereof, may be made hereunder for a period exceeding thirty years.

"(5) Loans made shall bear interest at a rate determined by the Secretary of the Treasury but not more than 3 per centum per annum.

"(6) Loans shall not exceed the aggregate cost to the applicant (excluding all other Federal aid in connection with such pollution control facilities) of acquiring, constructing, or altering the pollution control facility.

"(7) The pollution control facility for which a loan is requested must be

"(A) a facility or equipment used, or

"(B) a modification of methods, processes, or operations where the primary purpose of such modification is to abate or control water or atmospheric pollution or contamination by removing, altering, recycling, disposing, or storing of pollutants, contaminants, wastes, or heat and which

"(1) the State certifying authority having jurisdiction with respect to such facility has certified to the Administrator of the Environmental Protection Agency as having been acquired, constructed, or altered in conformity with State requirements for abatement or control of water or atmospheric pollution or contamination; or

"(ii) the Administrator of the Environmental Protection Agency has certified to the Secretary

"(aa) as being in compliance with the applicable regulations of the Environmental Protection Agency and of all other Federal agencies, and

(bb) as being in furtherance of the general policy of the United States for cooperation with the States in the prevention and abatement of water pollution under the Federal Water Pollution Control Act, or in the prevention and abatement of atmospheric pollution and contamination under the Clean Air Act.

(c) As used in this section, the term "State certifying authority" means, in the case of water pollution, the State water pollution control agency as defined in the Federal Water Pollution Control Act and, in the case of air pollution, the air pollution control agency as defined in the Clean Air Act. The term "State certifying authority" includes any interstate agency authorized to act in place of a certifying authority of the State.

(d) There is hereby authorized to be appropriated not to exceed $100,000,000 per fiscal year for the fiscal years ending June 30, 1973, and June 30, 1974, to carry out this section.

Mr. WILLIAMS. Mr. President, basically this amendment would restore to the committee amendments title 8 of the House-passed bill. The amendment would provide dislocation assistance to those workers affected by the Government's environmental orders and would offer assistance in carefully delineated instances to employers in need of financial aid to comply with environmental standards.

The amendment contains two sections. Section 801 will provide assistance to individuals who suffer employment loss as a result of Federal actions to improve the environment. It would provide for an investigation by the Administrator of the Environmental Protection Agency and certification by the Secretary of Labor of unemployment resulting from Fed-

eral environmental improvement legislation.

Individuals found to have lost their jobs because of the issuance of a standard or order under Federal environmental laws and who have worked at least 26 of the 78 preceding weeks in the plant or industry affected will be eligible for certain benefits. Duplication of unemployment compensation payments are not authorized by this section.

Such an individual may receive unemployment compensation payments equal to 60 percent of his former weekly wage until he is reemployed or retires, except that no individual may receive assistance for a period of more than 78 weeks.

Temporary mortgage or rental payment assistance is provided to individuals unemployed because of Federal environmental improvement laws. Such assistance would be limited to individuals who, as a result of financial hardship caused by unemployment, have received notice of mortgage foreclosure, lease termination, or contract of sale cancellation entered into prior to the loss of employment. Such assistance would be available for the duration of the period of hardship, but not for more than 1 year.

Reemployment assistance services under other laws may be offered by the Secretary to individuals unemployed because of Federal environmental improvement laws.

Such individuals may also receive payment of actual reasonable moving expenses to a new job if he is unable to find work in the vicinity of his previous home but does find a job elsewhere.

The section also specifies the procedures and the investigative authority to insure that the employment loss would in fact result from an environmental order or standard.

To insure that employees will freely participate in this investigative process without fear of retaliation, the amendment provides protection against such retaliation or other discrimination similar to provisions in other laws relating to employee protection.

Section 802 of the amendment recognizes that in certain cases plant closings or cutbacks may in fact be caused by environmental orders. Where this is the case, this section would authorize financial assistance to such enterprises where they would otherwise have to close their doors or reduce the number of their employees. The financial assistance authorized are long term, 30-year, low-interest loans—3 percent. To insure that the Federal Government is not providing unnecessary financial assistance the amendment requires explicit showing that the funds are not otherwise available to the enterprise. The amendment also requires assurances of repayment of such loans.

Mr. President, it is necessary for this country to reverse the trend of environmental damage to our society. We are beginning to recognize that responsibility. But in protecting future life for our children and grandchildren, we owe an immediate obligation to our current work force. We have no right to force upon them the exclusive costs of redeeming our environment for future generations.

I believe that this amendment will bring justice to those immediately affected by the necessary actions we take to clean up our water and our air.

Before I conclude my remarks, Mr. President, I want to commend the Committee on Public Works and its Subcommittee on Air and Water Pollution, particularly the respective chairmen, the distinguished Senator from West Virginia (Mr. RANDOLPH) and the distinguished Senator from Maine (Mr. MUSKIE), for their bringing to light the potential impact of environmental orders on employees.

I hope that the floor manager, the Senator from New Mexico (Mr. MONTOYA), who has for so long been in the forefront of protecting the interest of this Nation's workers, will find this amendment agreeable and urge its adoption.

Mr. JAVITS. Mr. President, if the Senator would yield briefly, I would like to express my accord with the amendment of the Senator from New Jersey (Mr. WILLIAMS), in which I have joined. As a business matter, it is highly desirable in my opinion.

The PRESIDING OFFICER (Mr. STAFFORD). The question is on agreeing to the amendment of the Senator from New Jersey.

Mr. COOPER. Mr. President, I rise to oppose the amendment offered by the Senator from New Jersey (Mr. WILLIAMS) and I would like to present my reasons for my opposition to the Senate.

I accept the humane interest of the sponsors to provide assistance to those who are employed in industries, small or large, who may be forced out of employment because of the orders issued at some time or other by the Environmental Protection Administration.

I oppose the amendment for several reasons. The first is the simple reason that we are considering a rather limited bill. It is a bill which continues the Economic Development Administration and the title V regional development commissions. We have great difficulty year after year in securing the continuation of these programs.

The present administration has thus far gone along with the committee on Public Works. The regional commissions are now beginning to take effect and they have been able to complete their comprehensive development plans. The continuation and funding of these commissions and the EDA programs are jeopardized by these costly amendments which I believe require further consideration.

We are in the last days of the session. The Congress may adjourn this week or next week. We do not know when. We have this bill on the floor, and our only possibility of obtaining its passage and having it agreed to in conference is, in my view, by accepting the bill as it came from the committee.

Mr. President, the House went far beyond the concept of a bill dealing with the Economic Development Administration and the regional commissions.

There is a vast amendment in the amount of $500 million each year for accelerated public works. After discussions with Chairman BLATNIK of the Public Works Committee of the House, I think I can say that I was assured by him, as far as he could give his assurance, that if we would pass this limited bill, he would do his best to see that it was accepted in the House without a conference. And I have said that if this should be changed in the House or on the floor, I do not intend to vote for it, and I would oppose it in the conference. And if it comes back here, I would do everything in my power to resist the adoption of the conference report in the short time that remains.

Mr. President, getting down to the merits of the pending amendment, I have already said that it is humane in its objective. However, as there have been no hearings at all on the specific legislation and on the question of what will occur when the orders of the Environmental Protection Administration come into effect, and some will be coming into effect already under the Clean Air Act. And under the Refuse Act of 1899 and the present Federal Water Pollution Control Act, some are coming into effect. As far as the Federal Water Pollution Control Act Amendments of 1972, now before the President, are concerned, we considered them for more than 1½ years—in the Public Works Committee. The Senate-House conference held 39 sessions. We just completed that work a few weeks ago. The conference report was just adopted. The President has not yet signed the bill. We do not know yet whether he will. I hope that he will, and I have urged him to do so. However, that act provides as a first phase for 5 years, until 1977, to get industries to come into compliance with the standard calling for them to apply best practicable technology; and the second phase, calling for application of best available technology, until 1983. We do not know what the effects will be. Suppose one of the smaller automobile companies goes out of business, and some claim that they will. How do we know, without any hearings at all, how much money would be needed, and how we would allocate the money to American Motors, for example, or to some other automobile company or to some small steel company which is in financial difficulty? How would we apportion the money to these companies or their employees?

I am only arguing that, without question, this kind of legislation will be required. However, the committee which should pass upon it is the Senate Public Works Subcommittee on Air and Water Pollution headed by the Senator from Maine (Mr. MUSKIE), unless there is a change in the composition of the Senate, and then it would be the ranking Republican member. And I will not be here next year. With the assistance of the experienced members of the staff, they will have to find out what all of the needs will be in this area.

There has been no testimony from the Environmental Protection Administration, and we have no idea as to their views about this. Therefore, providing that in advance of any evidence that we spend $100 million for unemployment compensation—78 weeks, at 60 percent of their weekly wage—for moving ex-

penses and payment of mortgages, and $100 million to industries—and one or two or three industries might use all of that—seems to me unreasonable.

I have no doubt—and I cannot speak for the President of the United States because I have not talked to him about this—that upon the basis of letters from the executive branch, including one written to me by the Director of the Office of Management and Budget in response to my request to him for comments on the House bill, which has this provision in it in a similar form, which letter said they would oppose it. I think it should be vetoed because I think the investigation should be made by the subcommittee which knows something about it. If there is no objection, I would like to have these letters in opposition to the bill and to this provision inserted in the RECORD at this point.

U.S. DEPARTMENT OF LABOR,
Washington, D.C., September 14, 1972.

Hon. JENNINGS RANDOLPH,
Chairman, Committee on Public Works, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I would like to take this opportunity to express my views on H.R. 16071.

H.R. 16071, which was passed by the House of Representatives on August 16, 1972, extends the economic programs for an additional year—to June 30, 1974. There is an authorization for a FY 1973 increase of $1,027.5 million and an authorization of $2,150 million for 1974. Changes are made in a number of areas including: grants and supplementary grants for public facilities, the public works impact program, business development, technical assistance, vocational training facilities, coordination, and special impact programs in urban and rural areas. However, we are primarily concerned with the addition of section 107 of Title I, changes made in subsection 401(a)(6) of Title IV, and the addition of new Title VIII.

Section 801 of Title VIII is designated to provide assistance to individuals who are unemployed because of Federal action to improve the environment. It provides for investigation by the Administrator of the Environmental Protection Agency and certification by the Secretary of Labor of unemployment of a person who has worked at least 26 of the 78 preceding weeks in a plant or industry affected by Federal environmental legislation. Qualified individuals would receive unemployment compensation payments until reemployment, retirement or for 78 weeks. The program, it appears, would be administered by the Secretary of Commerce.

Section 801 also authorizes temporary mortgage or rental payment assistance, and moving expenses to a new job. One hundred million dollars is authorized to be appropriated for this program.

I strongly oppose section 801 for several reasons. The Department of Labor, which traditionally has administered this type of program, has always favored having only one unemployment insurance program, rather than a series of programs tailored to specific workers "adversely affected" through a particular circumstance. A proliferation of special programs fragments and undermines our basic Federal-State unemployment insurance system. If the basic system is inadequate, the remedy is to improve the system, not to create special programs for a few.

In addition, the provisions contained in section 801 are inadequate. Unlike present unemployment compensation programs, section 801 does not require a claimant to be able to work and available for work as a requirement for receiving benefits. There is no disqualification for refusal of suitable work without good cause. Also, the term "affected plant or industry" is a broad term which needs clarification before becoming a criterion to determine which individuals are eligible for benefits. Definitions of "a week of employment," "unemployment," and "former weekly wage" are also necessary to the administration of section 801. There are no provisions authorizing the Secretary to enter into agreements with State employment security agencies for the administration of the program; nor are there any express provisions for fair hearings for an individual whose application is denied; or provisions to prevent the duplication of benefits. Clarification is also needed to determine whether an individual gets the same compensation for total and partial unemployment and to ascertain if the 78-week duration for benefits must be for continuous weeks of unemployment. No benefit period is provided within which the provided unemployment compensation must be paid.

Finally, although the amount authorized to be appropriated for carrying out section 801 is $100 million, the level of expenditures are not ascertainable since anyone unemployed under the given circumstances is eligible for benefits.

Section 107(a) of Title I and subsection 401(a)(6) of Title IV specify the use of certain criteria in classifying urban and rural communities and neighborhoods as redevelopment areas. The proposed legislation appears to incorrectly assume that the classifications can be made with existing data. Data on low-income persons and outmigration come only from the decennial census. Special surveys or a mid-decade census which the Administration has opposed, would have to be taken to cover the intervening non-census year.

In view of the problems discussed above, I oppose the enactment of this bill.

The Office of Management and Budget has advised that enactment of H.R. 16071 would not be in accord with the program of the President.

Sincerely,

J. D. HODGSON,
Secretary of Labor.

DEPARTMENT OF COMMERCE,
Washington, D.C., September 14, 1972.

Hon. JENNINGS RANDOLPH,
Chairman, Committee on Public Works, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This represents the views of the Department of Commerce on H.R. 16071, the "Public Works and Economic Development Act Amendments of 1972".

The President's revenue sharing proposals meet the objectives of this bill in a more effective and responsive manner. Revenue sharing, in contrast to H.R. 16071, would provide funds directly to the States without the approval of other States, a Federal Cochairman, or a Federal staff. Revenue sharing would fold-in direct Federal programs rather than continuing the categorical grant system with its resulting distortion of local priorities. Interstate commissions would be at the Governors' option rather than a new funding level of government.

The Department believes that the proposed accelerated public works program in H.R. 16071 is not in accord with the President's 1973 budget recommendations which are designed to move the economy toward full employment without increasing inflationary pressures.

The bill would add a new Section 801 to the Public Works and Economic Development Act of 1965, granting authority for the Economic Development Administration to provide financial and other assistance to individuals who, as the result of the implementation of a Federal law related to the improvement of environmental quality, become unemployed. The Department feels strongly that the proposed Section 801 is inconsistent with the mission of EDA and should not be part of this legislation.

Proposed Section 801 also raises questions of interpretation. It is unclear whether the unemployment compensation contemplated will be in addition to other unemployment compensation already available. Moreover, the section is, in a sense, "openended", becauses it seems to pledge 78 weeks of compensation to employees displaced by environmental laws irrespective of authorization limits. In addition, Section 801(b) generally provides benefits for a displaced worker which may exceed wages currently being paid to the worker.

Accordingly the Department strongly recommends against favorable consideration of H.R. 16071.

The Office of Management and Budget has advised that enactment of H.R. 16071 would not be in accord with the program of the President.

Sincerely,

KARL E. BAKKE,
Deputy General Counsel.

GENERAL COUNSEL
OF THE TREASURY,
Washington, D.C.,
September 14, 1972.

Hon. JENNINGS RANDOLPH,
Chairman, Committee on Public Works,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: The Department would like to take this opportunity to present its views on H.R. 16071, the "Public Works and Economic Development Act Amendments of 1972," as passed by the House.

Section 201 of the Public Works and Economic Development Act of 1965 authorizes the Secretary of Commerce to purchase evidences of indebtedness, make loans to aid in financing any project within a redevelopment area for the purpose or development of land and facilities, and guarantee loans for working capital made to private borrowers for such projects. The bill would expand this authority by authorizing the Secretary to guarantee loans made for the purchase or development of land and facilities, make working capital loans directly, and guarantee rental payments of leases.

The bill would also authorize the Secretary to make loans to aid in financing any project in the United States for the acquisition, construction or alteration of pollution control facilities for industrial or commercial usage. Such loans would bear interest at a rate determined by the Secretary of the Treasury but not to exceed 3 percent per year.

The credit program provisions of the bill are deficient in several important respects. There would be no provision for the Secretary to determine the maximum interest rates on guaranteed loans taking into account the range of interest rates prevailing in the private market for similar loans and the risk assumed by the Government, as prescribed by Budget Circular No. A–70; no requirement for the Secretary to prescribe a fee for loan and lease guarantees adequate to cover administrative expenses and probable losses; no limitation on the maximum amount of individual loans and leases which could be guaranteed under the bill; and no requirement that credit be not otherwise available from private lenders under reasonable terms and conditions to effectively limit Federal credit assistance to cases of demonstrated need and preclude duplication of the activities of private lenders. The proposed lease guarantee authority would overlap the Small Business Administration lease guarantee program.

Experience with Federal credit programs indicates that fixed interest rates such as the 3 percent rate contained in the bill produce perverse and unintended variations in interest rate subsidies as market rates vary, which

result in inequities among borrowers using the program at different times and extraordinary demands for Federal loan and related grant funds at times of greatest inflationary pressures and overall budget tightness.

It is not clear that the financial assistance contemplated by the bill would contribute significantly to area redevelopment. The proposed Federal guarantees could add substantially to the Government's administrative costs and contingent liabilities but would lower interest rates very little for well-established businesses with good credit standing—i.e., those borrowers most likely to be in a position to provide needed training services in order to convert the unemployed into productive employees—and thus would not significantly affect their decision to locate in redevelopment areas. On the other hand, while Federal guarantees of business loans may be necessary and useful for many small businesses and certain hard pressed industries, such assistance could be counterproductive to the redevelopment effort by encouraging uneconomic ventures unable to provide stable employment.

In view of the foregoing, the Department would be opposed to the bill.

The Department has been advised by the Office of Management and Budget that enactment of H.R. 16071 would not be in accord with the program of the President.

Sincerely yours,

SAMUEL R. PIERCE, Jr.,
General Counsel.

SECRETARY OF HOUSING AND URBAN DEVELOPMENT,
Washington, D.C., September 15, 1972.

Subject: H.R. 16071, a bill "To amend the Public Works and Economic Development Act of 1965", as passed by the House.

Hon. JENNINGS RANDOLPH,
Chairman, Committee on Public Works, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This will provide you with the views of the Department of Housing and Urban Development on H.R. 16071, a bill "To amend the Public Works and Economic Development Act of 1965", as passed by the House of Representatives.

The bill would provide for continuation of the so-called Public Works Impact program under a new and separate authority and at a $500 million annual authorized program level. The bill would also provide for continuation of authority to designate smaller urban and rural areas or neighborhoods as redevelopment areas but would make projects in these areas subject to the regular employment opportunity and economic plan requirements of section 101(a)(1)(A) and (C) of the Act. These requirements would not apply to the Public Works Impact program authority that would be created by the bill.

This Department has previously stated its objection to the kind of Federal facilities grant assistance that this bill apparently contemplates. Such an authority necessarily overlaps many other existing programs. It puts the Federal Government in the position of making more project reviews—reviews extending to countless local concerns better left to local elected officials.

It raises major problems of equity and fairness among communities competing for Federal favor in the distribution of funds. It is likely to generate growing demands for Federal funds, with no offsetting inducements to better or more responsible planning of programming at the local level. It tends to weaken the prospects for early enactment of needed basic reforms in Federal assistance mechanisms, particularly rural community development special revenue sharing.

The bill also contains several new authorizations for grants to States or local districts for planning or plannning related activities. These activities would include preparation of State economic development programs, State review of local district programs, and district review of proposed projects pursuant to the OMB A-95 procedures. We are sympathetic to the stated purpose of these provisions—better coordination of Economic Development Act undertakings. Nevertheless, these features of the bill represent a further proliferation of Federal planning assistance authorities and may add to the overall problem of coordination among those authorities and the activities they support.

Also included in H.R. 16071 is an "Environmental Effects" title that would provide various forms of Federal assistance to persons and businesses adversely affected by enforcement of orders or requirements under Federal environmental protection laws. Among other things, the title would authorize the Secretary of Commerce to make mortgage or rental payments for up to one year on behalf of persons who are experiencing financial hardship because of unemployment resulting from an environmental order or standard.

This provision is based upon an authorization for temporary mortgage or rent assistance appearing in the Disaster Relief Act of 1970. We strongly question the desirability of extending the Disaster Relief Act precedent without a careful consideration of its long-term implications, since that extension is almost certain to be cited in support of future similar proposals to aid other categories of persons whose unemployment is or is alleged to be connected to some Federal action, inaction or policy.

The Office of Management and Budget has advised that enactment of H.R. 16071 would not be in accord with the program of the President.

Sincerely,

RICHARD C. VAN DUSEN,
(For George Romney).

OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., September 8, 1972.

Hon. JENNINGS RANDOLPH,
Chairman, Committee on Public Works, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This represents the views of the Office of Management and Budget on H.R. 16071, the "Public Works and Economic Development Act Amendments of 1972".

The President's revenue sharing proposals meet the objectives of this bill in a more effective and responsive manner. Revenue sharing, in contrast to H.R. 16071, would provide funds directly to the States without the approval of other States, a Federal Co-chairman, or a Federal staff. Revenue sharing would fold-in direct Federal programs rather than continuing the categorical grant system with its resulting distortion of local priorities. Interstate commissions would be at the Governors' option rather than a new funding level of government. The Administration believes that the proposed accelerated public works program is not necessary because the 1973 budget recommendations are designed to move the economy toward full employment without increasing inflationary pressures. Furthermore, accelerated public works is a costly and time-consuming method to reduce unemployment that would fuel future inflation.

Therefore, we strongly recommend against favorable consideration of H.R. 16071, enactment of which would not be in accord with the program of the President.

Sincerely,

CASPER W. WEINBERGER,
Director.

Mr. COOPER. Mr. President, in these closing hours I would hate to see a good bill lost by this amendment or similar amendments, and what for? If there is a veto, of course, one can go out and say the President vetoed the bill based on an amendment which was a humane amendment, but what good does it do anyone? It loses a bill which holds hope for many over this country. But I have no authority to say he would veto it. I do not say this as a threat. I just say it is not reasonable to pass a bill with these implications without any hearings. In executive session they testified against it. There is no information on it.

I say with all due respect for the concerns of my friend from New Jersey to provide some help to these individuals. I do not think it is logical or advisable to add this amendment to this bill at this time.

Mr. WILLIAMS. Mr. President, I am somewhat confused at the statement of the Senator from Kentucky who suggested this properly should be considered by the subcommittee of which the Senator from Maine is chairman. I have before me the hearings that were held dealing with economic dislocations resulting from environmental controls. Certainly the Senator from Kentucky is a member of that committee. I would like to read from the hearings a part of the testimony of A. F. Grospiron, president, Oil, Chemical, and Atomic Workers International Union. He said:

Mr. Chairman, the purification of the American share of the world environment is not just a mechanical or technical matter. The problem is interlaced with our whole socioeconomic structure, involving the economic health of industrial corporations, the job security of workers, the survival and prosperity of merchants and other businessmen whose trade depends on industrial payrolls, and the prosperity or decline of whole communities.

We cannot effectively separate environmental health from social health or economic health. But please do not misunderstand that statement; I do not suggest that economic arguments should prevail over anti-pollution regulations. What I suggest is that economic dislocation is one potential cost of cleaning the environment and we must be prepared for that cost.

Mr. President, I do not wish to delay the Senate. I ask unanimous consent to have printed in the RECORD the testimony of Mr. A. F. Grospiron, president, Oil Chemical, and Atomic Workers International Union.

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

STATEMENT OF A. F. GROSPIRON, PRESIDENT, OIL, CHEMICAL & ATOMIC WORKERS INTERNATIONAL UNION, ACCOMPANIED BY ANTHONY MAZZOCCHI, CITIZENSHIP-LEGISLATIVE DIRECTOR, AND STEVE WODKA, LEGISLATIVE ASSISTANT

Mr. GROSPIRON. Thank you, Mr. Chairman and members of the subcommittee. I would like to introduce my assistants, Mr. Anthony Mazzocchi, the director of the Citizenship-Legislative Department of the Oil, Chemical & Atomic Workers International Union, and Mr. Steve Wodka, Mr. Mazzocchi's assistant.

I have some testimony I would like to present this morning regarding the environmental questions that we have facing this country.

As you know, I am the president of the Oil, Chemical & Atomic Workers International Union, which represents approximately 185,000 workers in chemical, oil, and re-

lated industries in nearly all of the United States and Puerto Rico, and somewhat more than 15,000 in Canada.

Our union has a strong commitment to improving the quality of the environment as an essential part of the general enhancement of the quality of life.

We have consistently supported effective legislation to protect the environment in general and the health environment inside the plants where our members work in particular.

Our commitment is shared and carried forward by thousands of individual members. These members, by their militant action in their hometowns and States, have demonstrated their concern and commitment. Many of our members serve as members of pollution control boards of their cities and counties.

Pollution begins as a community problem and extends outward, becoming a world problem. The filth that drifts around the world in air and water respects no national boundaries.

I have seen personally the strong and effective measures taken to keep a clean environment in Sweden, a small country with problems less complex and less burdensome than those of our vast Nation.

I have observed the rapid buildup of pollution in Japan and I know that people there are deeply concerned and are doing much soul searching.

At this point I would like to depart from my prepared statement and state that in visiting Japan, which is said to be the No. 1 industrial power of the future, I have grave doubts about this because of some of the problems facing Japan. That is, the heavy industrialization of industry there in that small country places natural restrictions upon the furtherance and expansion of that industry.

I think there is a natural roadblock. I think it is one that we should take heed of and recognize that in this country we absolutely have to do something, regardless of cost.

Mr. Chairman, the purification of the Amercan share of the world environment is not just a mechanical or technical matter. The problem is interlaced with our whole socioeconomic structure, involving the economic health of industrial corporations, the job security of workers, the survival and prosperity of merchants and other businessmen whose trade depends on industrial payrolls, and the prosperity or recline of whole communities.

We cannot effectively separate environmental health from social health or economic health. But please do not misunderstand that statement; I do not suggest that economic arguments should prevail over antipollution regulations. What I suggest is that economic dislocation is one potential cost of cleaning the environment and we must be prepared for that cost.

We want strong Federal legislation providing environmental protection. We want strong executive action enforcing regulations.

I might interject here that it appears to me that Mr. William Ruckelshaus of the Environmental Protection Agency has made a good start in this direction.

We want specific rules, regulations, and codes to be drawn up on a scientific and technical basis—not on an emotional basis.

We want engineers and scientists assisted by knowledgeable laymen with practical on-the-scene knowhow, to diagnose our environmental ills and to recommend cures on the same compassionate but scientific basis that a physician diagnoses and prescribes treatment for a sick person.

We are concerned not only with industrial pollution, although most of my remarks today will involve industrial problems, but also with pollution by automobiles, by the mounting volume of solid wastes, by the overloaded municipal sewer systems and all those other factors which damage our environment.

Government always has exercised great power over private property whenever necessary to protect the people. This power extends even to the right to confiscate property with due process of law—the right of eminent domain—when such action is necessary to serve a public purpose.

In the protection of the environment, I suggest that Government may have to go so far on some occasions as to exercise the right of eminent domain. There will be occasions—hopefully, not very many occasions, but some—when to stop pollution the Government will have to take actions so damaging to private property and private employment that the action will amount to confiscation of property or jobs.

In such cases, those private citizens must be compensated by the taxpayers, just as a property owner is compensated when his factory or his home is taken from him for road, school, or other public construction.

The owner of property taken for public purposes is compensated not only for the market value of that property but also, where appropriate, for the inconvenience, intangible losses, and hardships caused. This principle must be applied in the case of environmental controls.

I am not suggesting that the taxpayer must undertake to pay all the costs of stopping industrial pollution. In most cases private industry can make the necessary corrections without undue economic hardship, applying in many situations technology already known and used by competing companies or even in other facilities of the same company.

As for the effect on employment, we believe that on balance more stringent pollution controls will provide increased job opportunities. Workmen will have to design, build, and install and thereafter maintain and service the various devices which reduce or eliminate harmful emissions from stacks and sewers.

But there will be dislocations of employment. In the case of industrial facilities already approaching obsolescence and nonprofitability, owners may elect to shut down rather than to make the alterations necessary to abate pollution.

The effect of such shutdowns usually will be more severe on workers than on owners. If a corporation owns 100 factories, the closing down of one or two or a few of these plants, already old and fully depreciated, causes it no great hardship. The company presumably can continue to profit through operation of its remaining, more modern facilities.

The individual workman in the plant being closed faces a far more serious problem. He has only one job to lose. He cannot be 1 percent or 5 percent laid off. His job is his only source of income. If he is not relatively young, he will find new employment very hard to find, for it is the practice of industry to hire young men, men under 30 years of age where possible.

Highly developed skills applicable in a particular plant more often than not are not marketable in another plant, even a plant of similar nature.

For these reasons, I submit hardship more often will be faced by individual workmen than by employers in cases where pollution controls cause plant closures. These individual workmen must be protected and/or compensated, by the employer where feasible, by the taxpayer when it is not feasible for the employer to do so.

I acknowledge that there may be cases of hardship to the owner of a facility, especially in the case of a company owning only one or a few factories of obsolete character. When such hardship can be demonstrated, such an owner may be entitled to compensation. Such cases ought to be very rare and it must be clearly shown that the weakness is not due to bad or selfish management.

In those cases—and I think they are relatively few in number—where the elimination of pollution brings economic hardship—to the owner, the workmen, or the community—the public should assume responsibility for compensation. We must maintain economic health along with environmental health. Maintenance of economic health should not be used as an excuse for not correcting the environment, but rather should be recognized as one of the legitimate costs of correcting the environment.

Here are some principles we believe should be applied in preserving economic health while improving environmental health:

1. No new industrial facility should be built unless its operation is beneficial from the standpoint of environment, the economy, the needs of the people in the community and the general social welfare. This concept can be expanded to provide for the location of new facilities where they are needed most and where they will not contribute to overcrowding or undue demands on such resources as water.

To further this concept, we urge that national emission standards be set on all stationary sources of both air and water pollution.

Although the Clean Air Act Amendments of 1970 do provide such standards on new stationary facilities constructed after 1972, they do not go far enough in covering present stationary emitters.

We also encourage efforts to include national effluent standards for old and new plants in the current water pollution control legislation. Such comprehensive nationwide regulation is needed to effectively stop polluting companies from moving from a strict standard area to one with less strict standards.

2. In the elimination of pollution by existing plants, most companies can pay the cost from their own resources. Whenever a company clearly proves hardship and economic inability to meet pollution regulations, such proof should not be used as a reason to evade the regulations, but rather, the regulations must be enforced and the company and affected employees should be compensated from public funds.

3. Company responsibility for eliminating pollution must not be limited to taking the necessary mechanical and technical steps, but must also include responsibility to employees. In most cases companies can continue the productive employment of all employees. When a company cannot do so, it should be primarily responsible for protecting the individual's economic security.

The degree of this responsibility varies depending on length of service to the company and age and reemployment opportunity of the individual. Older employees with long service need and are entitled to more assistance than younger, short-term employees.

4. Assistance to dislocated workmen can take these forms: (*a*) early retirement opportunities with adequate pensions for older, long-service employees; (*b*) offer of transfer to jobs in other company facilities in multiplant companies, with moving expenses paid; (*c*) extended severance pay, based on length of service, for employees for which options (*a*) and (*b*) are not applicable; (*d*) retraining opportunities.

5. We caution enforcement agencies against yielding to threats by management of layoffs of workmen as the price of meeting pollution control standards. Such threats bring highly emotional reactions not only from the workers but also from the communities in which they live.

Employers voicing such threats should be enjoined immediately against terminating the employment of any employees until the necessity of such layoffs has been proven and the inability of the company to protect

the employees by such means as those listed in point (4) above has been demonstrated.

Burden of proof should be on the employer in appropriate open hearings in which employee representatives and representatives of the community are given opportunity to testify and cross-examine.

I have spoken of the responsibility of employers and of Government. Let me make clear now that we believe that labor unions, too, have a responsibility in this area.

Organized labor must emphatically support environmental cleanup efforts and must never get into the position of opposing such efforts on the grounds of economic hardship. Rather, unions must support prompt measures for cleaning up the environment with adequate provision for preservation of economic health.

Our position must be that nearly all polluting facilities can be corrected without hardship to the workers and that in those few cases where corrections are not possible new job opportunities or compensation must be provided for the workers.

Unions must bargain militantly with their employers for labor-management contract provisions protecting workers facing job losses due to plant closures.

My own union made a small start in this direction in recent contracts negotiated with the oil industry. Much more must be done.

However, Government and the public must recognize that the power of labor unions to negotiate job security is limited. While most labor contracts are negotiated by persuasion and reason, the ultimate strength of any union lies in its power to strike and thereby to stop production. This power is virtually eliminated in the face of threatened plant closures.

It is pointless to strike or threaten to strike a facility which is scheduled for shutdown in any case. Because of this, even the strongest union has limited power to protect its members against plant closures. This is an area in which Government assistance is required.

All of us must concentrate on the alternatives to economic dislocations. We must adhere to the goal of cleaning up, not shutting down, our factories.

There is a reservoir of ability and experience among workingmen which can be used in meeting this goal. Workmen have a vested interest in the continued operation of plants where they make their living while cleaning up the communities where they live.

I urge all those interested in environmental health to take working people into partnership, for they can contribute much.

Mr. Chairman, I pledge to you that the Oil, Chemical & Atomic Workers International Union will work with Government and with industry toward the restoration of a healthful environment. We will do our part. We will try to be constructive and cooperative.

We will try to be good citizens. No doubt we will have to make some sacrifices, just as industry must make sacrifices and all of us as consumers likely will make sacrifices in the form of higher prices.

We will, however, fulfill our primary union responsibility of protecting the incomes and the security of our members. We will oppose those theoretical environmentalists who would make the air and water pure without regard to whether or not people have food on their tables.

We will oppose any efforts by wealthy corporations to make others—workers, taxpayers, or consumers—shoulder all the costs of antipollution efforts.

We say this because we know that nearly all of the power and the decisionmaking in our economy today is in the hands of the directors of the large corporations which have brought about much of the pollution we suffer today.

We hope to be able to protect ourselves with a minimum of assistance. We ask only that the rules be so written that workers are not victimized between the pressure of environmental cleanup on the one side and the economic power of corporations on the other side.

In closing, Mr. Chairman, I wish to thank you and the other members of the committee for providing us this opportunity to express our viewpoint.

Mr. WILLIAMS. Mr. President, I would like to say further that this whole subject is not new. I am disappointed that evidently this administration takes a different attitude than another administration took where a comparable subject was before us, where Government policy was adversely affecting industry and jobs.

Back in the 1950's the administration of President Eisenhower strongly supported this kind of cushion for people whose jobs were adversely affected by necessary policy. The same principle President Eisenhower understood and expressed we are expressing here at this time. It is distressing to see a Republican administration regressing from a prior and I think more enlightened Republican administration of President Eisenhower.

Mr. COOPER. Mr. President, reference has been made by the Senator to the hearings held last year by the Air and Water Pollution Control Subcommittee. I recall those hearings as I participated in them. The hearings were held on this general question but no specific legislation was considered and the subcommittee did not believe it had enough evidence to act upon. I know with this water quality bill, if it is signed, and I hope it is, and the clean air bill, and we have another bill coming up soon—if they become effective I am sure the Senator from Maine (Mr. MUSKIE) and his committee will go to work on this problem. I would say the chairman of the Committee on Labor could not be prevented from holding similar hearings. But as to the humanity of the different administrations, there is nothing to indicate this administration does not want to deal with this problem. I know they will.

I serve on the Pollution Subcommittee and we had a long running discussion of the impact of the environmental standards in the water quality bill on communities and industries. We had 50 or so meetings of the committee on the bill and 39 conference meetings with the House.

The question of cost to industries came up, as well as the human cost. We felt we did not have enough evidence to write these amendments in the bill.

In the supplemental views of Mr. RANDOLPH, Mr. MUSKIE, Mr. MONTOYA, and Mr. GRAVEL it is slated:

Although adequate unemployment benefits will be a key element in the legislation we are developing, much more will be required to deal effectively with the problem of economic dislocation associated with environmental control requirements. The comprehensive program required to meet this problem will be introduced in the next Congress. It is not sufficiently developed to be presented as of this date.

That is the statement. I am going to ask for a rollcall vote on this matter.

Mr. MONTOYA. Mr. President, I fully appreciate the very determined opposition of the Senator from Kentucky to this amendment. I was for it in committee because I believe it is right that we enact this amendment. The committee, in view of the Senator's opposition, was willing to forgo any position on the amendment at that time so we could come to the floor and let the Senate work its will with respect to this amendment.

The section in the House bill is almost the same as the section that the amendment seeks to place in the bill at the present time. In other words, it is a restoration of the House amendment with some minor changes, or perhaps they are substantial. I believe that the amendment is in order. I believe that the House worked its will properly when it included the amendment in the legislation.

I certainly want to endorse it, as far as I am concerned, because I think it will help a lot of unfortunate people who might be dislocated, might become unemployed because of decisions made by the National Environmental Protection Agency, EPA.

In view of that, Mr. President, I want to say that I strongly endorse this amendment.

Mr. President, the amendment offered by the enator from New Jersey (Mr. WILLIAMS) addresses a problem that is of great concern to me personally, and to the Committee on Public Works.

We have, in the United States, a rapidly changing society in which the Congress frequently is called upon to legislate sweeping changes in our traditional way of doing business. Many of these changes are properly undertaken in the name of improving the quality of life in the United States and protecting the environment in which we live.

We must be aware, however, that many of our actions taken with desirable objectives in mind have the potential to inflict hardships on groups of our citizens.

If Congress is to execute its responsibilities properly, it must also provide for the relief of these hardships that come about during the achievement of goals and objectives for the benefit of the general public.

The amendment offered by the Senator from New Jersey (Mr. WILLIAMS) is similar to that which was adopted by the House of Representative as title VIII of H.R. 16071. It also contains provisions which were considered in the hearings on S. 3381, the Public Works and Economic Development Act of 1972, which I introduced early this year and which would establish nationwide economic development programs. Title VIII of the House bill was considered by the Committee on Public Works, but was not included in the bill as reported because of indications that it would stimulate a Presidential veto of the entire bill and thus end all of the programs which depend on this measure for continued authorization.

I believe, however, that the acceptance of this amendment by the full Senate would greatly strengthen this bill. Its adoption at this time is made more rel-

evant by the recent congressional passage of the Federal Water Quality Act Amendments of 1972. The programs authorized by that act, as well as the Clean Air Act Amendments of 1970, are likely to cause some temporary dislocation as adjustments are made to comply with their provisions. Therefore, we would be remiss in our duties if we failed to ease the way through the transition period for those who are adversely affected by these programs designed to improve the environment.

Mr. President, we can discharge our duties in this respect by approving the amendment of the Senator from New Jersey.

Mr. RANDOLPH. Mr. President, for more than 10 years the Committee on Public Works has been engaged in developing legislation to protect the environment of the United States. During this period, we have seen enacted a number of measures that will, when fully implemented, sharply reduce the levels of pollution from all sources. As the Senator from New Mexico (Mr. MONTOYA) has properly noted, such actions can have undesirable side effects as adjustments are made to reach compliance with new pollution requirements. I believe that we should compensate those whose lives are adversely affected by the loss of employment as the result of our actions.

I endorse and am a cosponsor of the amendment of the Senator from New Jersey (Mr. WILLIAMS), as a measure that would strengthen existing statutes aimed at environmental improvement. As chairman of the Committee on Labor and Public Welfare and of its Subcommittee on Labor, Senator WILLIAMS has long experience in dealing with the many factors involved with changes in the American working force. He is sensitive to the problems of workers and has, in the past, sponsored important legislation to improve working conditions and to protect their rights. The amendment he offers today is given added stature because of its sponsorship by Senator WILLIAMS.

Senator MONTOYA has observed that similar provisions are included in S. 3381, which I joined him in introducing earlier this year. The provisions in that bill are designed to aid persons who become unemployed because of adverse economic conditions.

It is my intention to introduce similar legislation as an amendment to any bill to regulate the surface mining of coal that may come before the Senate. As Members of the Senate know, production of coal is the largest single industry in my State, employing approximately 44,000 people. This industry is essential to the capacity of our country to meet the growing demands for energy. At the same time, I fully recognize that the unrestricted surface mining of coal cannot be permitted to continue. In recent years, we have witnessed an upsurge in the application of surface mining techniques to produce coal. In 1969, surface mining accounted for 38 percent of all coal production. In 1970, that proportion had risen to 44 percent and this year approximately half of all coal produced in the United States will come from surface mines.

Regrettably, this upsurge in surface mining has too frequently been accompanied by a reckless emphasis on production that resulted in extensive uncorrected damage to the countryside and deterioration in the quality of life of many people who live near surface mining operations. It is to bring the activities of those irresponsible surface mine operators under control and make them compatible with their more conscientious compatriots that legislation has been introduced in the Congress.

While I support the regulation of surface mining, I know that many people in my State would be likely to lose their jobs under any program of strict controls. It has been estimated that the total abolition of surface mining in West Virginia would result in the direct loss of 8,000 mining jobs. Although I do not believe that total abolition is desirable or necessary at this time, we could realistically anticipate some loss of employment under surface mining control programs such as that passed this week by the House of Representatives, or that established by S. 630, which is now pending before the Senate.

It would seem to me that the provisions of the amendment offered by the distinguished Senator from New Jersey (Mr. WILLIAMS) would also apply to the adverse effects to surface mine control programs. It could also provide relief to underground miners whose jobs are eliminated because of the adoption and enforcement of air pollution control standards. Severe restrictions on the sulfur content of coal used by electric generating plants is having widespread impact on the coal mining industry. The low sulfur coal necessary to comply with these regulations is not available in sufficient quantities. As a result, many electric utility companies are shifting to other fuels, particularly oil, and the production of high sulfur coal is declining in West Virginia and elsewhere.

Loss of coal mining jobs because of air pollution control regulations may be interpreted as a secondary effect of the Clean Air Act, but it is a very real result of this legislation and one to which the provisions of Senator WILLIAMS' amendment would properly apply.

In developing environmental protection legislation, the committee has in all instances worked to produce measures that are reasonable. The maintenance of a clean and healthful environment is of critical importance for the American people, but the human aspects of our work are of equal concern. In every one of our environmental bills, the committee has been diligent in its efforts not to place greater emphasis on one than on the other.

Mr. President, this amendment is properly offered to H.R. 16071. I hope that it will be approved by the Senate by a wide margin.

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

Mr. COOPER. 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. COOPER. 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. DOMINICK. Mr. President, will the Senator from Kentucky yield to me?

Mr. COOPER. I yield.

Mr. DOMINICK. Mr. President, I am not sure I am totally clear on this, and I take this time in order to clarify my own thinking, and perhaps, hopefully, clarify the record. Do I understand that under the amendment there would be a provision for compensation for those who lose their jobs because of environmental controls, or businesses which would be in an economic position of loss because of environmental controls? Is that correct?

Mr. COOPER. Yes. There would be unemployment benefits for 78 weeks at 60 percent of their weekly wages, and it would involve moving expenses, relocation, and mortgage payments.

Mr. DOMINICK. Is there anything in the bill which would indicate how a determination is made that a business is closed because of added expenses of environmental control or simply because it was due to inefficient management?

Mr. COOPER. It would be certified by the Administrator of EPA.

Of course, the author of the amendment should be the one to explain it, but it would have to be certified by the Administrator of EPA.

Mr. DOMINICK. I understand that, but are any standards established under the bill to assist the Administrator of the EPA in making such a determination?

Mr. COOPER. No. As I discussed this amendment a few moments ago, I said no one knows what is going to happen under the orders of EPA, under the vast Clean Air Act and the Federal Water Pollution Control Act, sweeping amendments to which have not yet become law. The water law covers every industry in the United States and every city and every community that has municipal sewage plants. No one has the slightest comprehension or idea what is going to happen, except we know the problem is going to occur.

There have been no hearings on this question. There may have been one or two witnesses who refered to it in the Subcommittee on Air and Water Pollution of which the Senator from Maine (Mr. MUSKIE) is chairman. That is the proper subcommittee to consider this matter, or else the Labor and Public Welfare Committee.

The chairman of the subcommittee, the distinguished Senator from Maine (Mr. MUSKIE), said in his supplemental views that they did not have the evidence upon which to base such a judgment, and that he intends to offer comprehensive legislation on it. That is in the report on this bill.

I do not see why the amendment is offered at this time. Any Senator can offer any amendment he wants to, but I see no practical sense in it when it could result in the defeat or loss of the bill before us.

Mr. DOMINICK. Will the Senator an-

swer one more question? Is it true that this provision was put in by the House with no hearings at all on this particular aspect?

Mr. COOPER. It is my understanding that the House had no hearings on this subject.

Mr. DOMINICK. For the life of me, I will just say, for the purposes of the RECORD, I cannot understand why at this point in the session we take this type of action. Obviously, if it is adopted, it will not be in the conference, so there will not be any final conference on it—at least nothing but final language. I think it has been very well expressed by Mr. Weinberger. Certainly, it is going to give an added incentive for vetoing the bill. Perhaps that is what the sponsors want. I do not know. If so, I think it is kind of too bad.

The other thing that is worthwhile saying here is that I find a certain logic in providing that when the Government is requiring the doing of something which results either in unemployment or losses, some type of compensation should be provided. I gather this is what the Senator from Kentucky and the Senator from Maine have been holding hearings on at some length. Is that correct?

Mr. COOPER. I can only speak for myself. I believe that we will have to have some legislation on this subject. I think it would be humane. I think it would be helpful. I do not think anybody yet knows the scope of the problem involved, the standards that may be fixed, the limits, the kind of industries, the size of industries that may be involved. Some automobile companies have said they could not meet the emissions standards and might have to go out of business.

Should they be held to some standards which would affect many or all of the residents of a community in which a small industry was located?

One of the difficult subjects was trying to write into the water quality bill standards which would take into account the cost and the impact of the act upon communities.

I would not want to be misunderstood when I say this, but as best we could, without lowering the standards for clean water that must be achieved, there were some provisions which took into account, by classes of industry, the impact on the communities.

This is a vast subject. All I can say is that I think it is untimely. I myself, for whatever that is worth, am going to vote against it.

Mr. DOMINICK. Mr. President, as one who has supported all the environmental acts that have been placed before us here, I can understand the concern of those responsible for this amendment not to create standards under which we cannot live. At the same time I find it somewhat difficult to determine why we should pick on these particular pieces of legislation to give compensation to workers and businesses, when many other pieces of legislation which we have also passed have created decided problems for businesses, including, I may say, the occupational health and safety act, and a host of others, in which we did not provide for compensation.

It may be we are going to have to go into all that and say that where the Federal Government has gotten someone's nose into the ground and rubbed it in, it has to give him something to wipe it off with. We have not gotten into that yet. To get into it at this time without a rather large sum being added to the supplemental bill will be rather difficult to stomach.

It is to me, even though I can understand the principle.

Also, I gather that under this particular provision, the Administrator of the EPA is given subpena powers to pick up almost any type of books and records that he wants to, and I would presume that that is still in the amendment that the Senator from New Jersey is offering.

If it is, here we go again in giving the Administrator of an executive agency powers to treat any records, confidential or otherwise, in such a way as he may deem proper, on his own say so, without any particular review. For the life of me, I do not see why we should complicate this bill with that type of amendment; so I shall certainly oppose it.

The PRESIDING OFFICER (Mr. STAFFORD). The question is on agreeing to the amendment of the Senator from New Jersey.

The amendment was agreed to.

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

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. JAVITS. 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:

At the end of the Act add the following new sections:

SEC. 9. (a) the heading of section 28 of the Occupational Safety and Health Act of 1970 is amended to read as follows:

"ASSISTANCE TO SMALL EMPLOYERS

"(b) Section 28(a) of such Act is amended by inserting "(1)" immediately after the subsection designation, by striking out "(1)" and inserting in lieu thereof "(A)" and by striking out "(2)" and inserting in lieu thereof "(B)".

"(c) Subsections (b), (c), and (d) of section 28 of such Act are redesignated as paragraphs (2), (3), and (4), respectively.

SEC. 10. Section 28 of the Occupational Safety and Health Act of 1970, as amended by this Act, is further amended by inserting at the end thereof the following:

"(b)(1) In order to further carry out his responsibilities under subsections (c) and (d) of section 21 as amended regarding additional assistance to small employers, the Secretary may visit the workplace of any small employer which has twenty-five or fewer employees for the purpose of affording consultation and advice for such employer. Such visit (A) may be conducted only upon a valid request of an employer for consultation and advice at the workplace on the interpretation or applicability of standards or on possible alternative ways of complying with applicable standards, and (B) shall be limited to the matters specified in the request affecting conditions, structures, machines, apparatus, devices, equipment, or materials in the workplace. The Secretary shall evaluate a request by an employer pursuant to this subsection and, if appropriate, may provide for an alternative means of affording consultation and advice other than onsite consultation.

"(2) The Secretary may make recommendations regarding the elimination of any hazards disclosed within the scope of the onsite consultation. No visit authorized by this subsection shall be regarded as an inspection or investigation under section 8 of the Act and no citations shall be issued nor shall any civil penalties be proposed by the Secretary upon such visit, except that nothing in this subsection shall affect in any manner any provision of this Act the purpose of which is to eliminate imminent dangers.

"(3) For the purpose of carrying out the provisions of this subsection, there is authorized to be appropriated the sum of $1,000,000 for the fiscal year ending June 30, 1973, $1,500,000 for the fiscal year ending June 30, 1974, and $1,500,000 for the fiscal year ending June 30, 1975.

"(c)(1) When, in the course of any visit carried on under subsection (b), there is discovered an apparent serious violation (as defined in section 17(k)) of the requirements of section 5, of any standard, rule, or order promulgated pursuant to section 6, or of any regulations prescribed pursuant to this Act, the Secretary shall issue a written notice to the employer describing with particularity the nature of the violation, and the action which must be taken within a reasonable period of time specified by the Secretary for the abatement of the violation. Within such reasonable period of time specified by the Secretary, the employer shall certify that he has complied with the abatement instructions. Where an employer fails to make the certification required by the preceding sentence within the prescribed period, the Secretary shall, without further notice, conduct an inspection under section 8 of this Act.

"(2) In the event of a subsequent inspection, the Secretary shall take into consideration any information obtained during the consultation visit of that workplace in determining the nature of an alleged violation and the amount of the penalties to be proposed, if any. The failure of the Secretary to give consultation and advice regarding any specific matter during the consultation visit shall not preclude the issuance of appropriate citations and proposed penalties with respect to that matter.

"(d) In prescribing rules and regulations pursuant to subsection (b) of this section, the Secretary shall provide for the separation of functions between officers, employees, or agents who conduct visits pursuant to subsection (b) of this section and officers, employees, or agents who conduct inspections or investigations under this Act".

SEC. 11. Section 21 of the Occupational Safety and Health Act of 1970 is amended by adding a new subsection as follows:

"(d) In order to provide additional assistance to small employers the Secretary may conduct onsite consultations pursuant to the provisions of subsection (b), (c), and (d) of section 28".

SEC. 12. The previous three sctions shall take effect 30 days after the date of their enactment."

Mr. JAVITS. Mr. President, this amendment would provide that the Department of Labor would have authority to visit worksites of employers having 25 or fewer employees for the purpose of advising or consulting with the small employer on his obligations under the Occupational Safety and Health Act.

It will be remembered that when the discussion took place here on the HEW

bill respecting whether there should be 15 exempted, or down to three, which the Senate ultimately decided on, I stated on behalf of myself and the Senator from New Jersey (Mr. WILLIAMS) that we were very much in favor of simplifying and accelerating the aid which the small businessman could receive from the Occupational Health and Safety Administration in respect to the problems he might have with the administration of that act.

This amendment is favored by the Occupational Health and Safety Administration. It would expressly provide that a visit may take place only if requested by the small employer for the purpose of discussing the interpretation or application of standards, or possible alternative ways of complying with standards.

The amendment limits the visit to appropriate matters set forth in the employer's request, but within the scope of the business. Jobsite consultation would not be considered as an inspection under the OSHA law, and would not result in citations and civil penalties. If hazardous conditions are disclosed during the visit, notwithstanding that the visit would not be subject to the statutory incidence of an exception, then further proceedings will be undertaken with the particular small business affected, without, however, using that particular visit as the basis for an inspection.

If a situation constituting an imminent danger comes to the attention of the official consultant, he will immediately bring the matter to the attention of the employer, who, we hope, will abate the danger. The consultant will then contact the area director of safety and health, who will then take whatever enforcement action is necessary. Therefore, the only time when the visit can have more connotations than just a consultation visit is if a condition is found which is truly one of imminent danger. Other than that, it is strictly for purposes of consultation and helping the employer to meet the requirements of the law.

Mr. President, we do not see how to get out of that dilemma. If they find something which is an imminent danger, the employer has got to do something about it right away; but every care is taken in the provisions which have been submitted to see that the visit is truly one for consultation and in no way prejudices the employer who is being consulted with, unless something is found which is of imminent danger.

Naturally, the fact of the visit does not constitute a hold harmless clause. The Secretary may proceed in the normal course to enforce the law by issuing citations imposing penalties, et cetera. But the visit itself will not represent an item of prejudice to the individual businessman.

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

Mr. JAVITS. I yield.

Mr. MONTOYA. I would like to clear up for the record what the present provision of the law is, and how the amendment before us would change that provision, if in any way.

Mr. JAVITS. The way the law reads today, if the Department of Labor goes out and visits a place of business, it is an inspection, and if they find violations, they have to act with respect to those violations.

The way we have changed it, the consultation would not constitute an inspection.

Mr. MONTOYA. Do I understand correctly that the amendment would provide for consultation only upon the invitation of the small businessman?

Mr. JAVITS. That is exactly correct. Only upon that basis. And also, that if he finds a violation which is not one of imminent danger, then he goes away and normal procedures have to be gone through to redress the violation. It is assumed that he will inform the small businessman.

Mr. MONTOYA. Is there any limitation on the number of employees?

Mr. JAVITS. Twenty-five employees is the definition of a small businessman.

The only reason we suggest that this proposal go on the pending bill is that the bill will probably result in some arrangement with the House of Representatives, in view of the number of complaints received here of small businesses being involved with difficulty under the Occupational Health and Safety Act.

Mr. MONTOYA. In other words, the amendment is designed to more or less do away with the rigidity of the previous procedure?

Mr. JAVITS. That is true. I would not wish, by saying that, to make the concession that the previous procedures were rigid.

Mr. MONTOYA. Well, let us say the rigidity alleged by those who were trying to put a ceiling on inspections.

Mr. JAVITS. I think that is fair, but I think it is even fairer to say that here is an additional source of help to the small business as it seeks to comply with the occupational health and safety law, the kind of help the Department of Labor would like to give, but which is inhibited by the present state of the law.

Mr. MONTOYA. I would like to state that I have no objection to the amendment.

Mr. JAVITS. I thank my colleague.

Mr. DOMINICK. Mr. President, will the Senator from New York yield?

Mr. JAVITS. I yield.

Mr. DOMINICK. I congratulate the Senator for bringing this matter up. Having been the sponsor of several ideas to try to help out people afflicted by the OSHA Act, which has created so many complaints about the act, I think this will be helpful, and I would appreciate being made a cosponsor.

Mr. JAVITS. I would like that very much. The Senator from Colorado has always been very cooperative and helpful in these matters, and I ask unanimous consent that his name be added to the amendment as a cosponsor.

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

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

Mr. JAVITS. I yield.

Mr. COOPER. I have quickly read the amendment. I think it is a very fair amendment to the Occupational Health and Safety Act. I ask the Senator, why has this not been acted upon by the Senator's Committee on Labor and Public Welfare before, during this session of Congress?

Mr. JAVITS. We have not had time to consider it. The question is perfectly fair. The amendment I propose was drafted by Representative STEIGER, with quite a number of cosponsors, of which I can furnish the Senator a list.

Mr. COOPER. I understand. That is not necessary.

Mr. JAVITS. The reason we did it was because we had held some hearings which turned up these complaints. Those hearings extended into the part of the session when we found it extremely difficult to have any further executive sessions of the committee. As the Senator will remember, the matter came to white heat with the series of amendments proposed by the Senator from Nebraska (Mr. CURTIS). In the course of that debate, we promised that we would do something about this matter if we were allowed to do so by Congress before we went home. We are endeavoring, at a moment when it is very difficult to get a committee together for any action, to redeem that promise.

Mr. COOPER. I think it is very good legislation. For the reasons that I have stated before in opposition to the other amendment offered to this bill I shall be forced to vote against it myself, but let me say I hope that at some point such legislation will be approved by Congress.

Mr. JAVITS. I understand.

Mr. COOPER. I did not vote for Senator CURTIS' amendments to the Occupational Health and Safety Act with the exception of the last one, with respect to three or less employees, although I recognized the problems small businesses have. I could not bring myself to believe that we would have safety standards that were any less valuable to a person employed by a company with five, six, or seven employees than by one with 500 or 600.

Now that I have the Senator before me, and he has raised the subject, and this is the first time I have had a chance to talk with him for a long time—I shall be brief, because I know that the majority leader is eager to get through with this measure—more and more I have noticed, in the last 2 or 3 years, that Congress is writing into legislation mandatory penalties against employees, and in some cases without due process of law. Under the act to which the Senator has referred, I think there is provision for citation of the employer. That is correct, is it not?

Mr. JAVITS. And a hearing.

Mr. COOPER. And that is prior to the imposition of a fine?

Mr. JAVITS. That is correct.

Mr. COOPER. I may say that in the Committee on Public Works, in several environmental bills which were developed by the staff and others—and we have a fine staff—we would find these mandatory penalties. But in discussion in the committee, when it appeared that there was not due process and no chance for a hearing before the imposition of the penalties, the committee would strike them out.

I am going to return to a subject which has been very much on my mind, and that is the Mine Safety Act. In that act are a number of provisions for the mandatory imposition of fines without any hearing at all, with no due process of law. It is left to the arbitrary judgment of an inspector to impose fines, unequally, as they would have to be, and perhaps arbitrarily among different operations—and I may say coercive, too—because in some cases, when the size of the fine has been objected to, the suggestion was made, "If you don't take this, a larger fine can be imposed upon you."

I will not be here next year, but I hope the Senator will follow the principle he has just spoken of in this amendment, that there should be a consultation; and if there is a situation of imminent danger, then the mine should be closed down.

I do contend that this is a situation in which there is no due process of law. Knowing the Senator as well as I do and knowing his judicial temperament, I appeal to him to think of this next year. It is an awful situation.

Mr. JAVITS. I will consider myself, with deep feeling, a trustee of the great principles for which this very distinguished and famous Kentuckian has stood.

There are many explanations about coal mine safety. They can get a jury trial, and so forth. I will insert those in the RECORD immediately after what we have discussed.

I assure the Senator that I hold these principles very dear, that I fought for them in my committee, that I will continue to fight for them, and that I will make every effort to use legislative oversight in that process.

May I also say to the Senator that he knows I am unbelievably busy. I am unofficial ombudsman for Kentucky, at the request of the Senator from Kentucky—the present Senator—at any time.

Mr. COOPER. I thank the Senator.

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

The amendment was agreed to.

Mr. RANDOLPH. Mr. President, the development and refinement of legislation under which economic development programs are carried out in the United States is a matter for which I have a great personal concern. As chairman of the Committee on Public Works, which has jurisdiction over legislation in this area, my concern is nationwide in scope. I believe that we must provide programs that will enable States and local communities throughout the country to build the kind of facilities on which sound economic and social growth can be based. This has been our overriding goal since 1965 when the committee first began working on legislation concerning economic development.

My personal involvement, however, goes far beyond that time. As a Senator from a State which has been held up as the example of what can happen to a region in which a single industry is predominant, I know the value of diversity. It has now been two decades since West Virginia began to feel the impact of substantial changes in the coal mining industry. We were, quite frankly, unprepared for the great upheaval that resulted when the coal industry became highly mechanized. Employment in our major industry dropped rapidly, and today the number of men mining coal in West Virginia is only approximately one-third of what it was in 1950. This situation quickly focused national attention on West Virginia and I believe that our experience, painful as it was, helped to stimulate interest and legislation not only to help us recover, but to forestall the recurrence of similar situations in the future.

In 1965, the committee proposed and the Congress passed the Public Works and Economic Development Act. This program helped to provide supplementary Federal assistance in areas where it was most needed. Since that time we have learned much about economic development programs and we have modified our efforts accordingly. The bill now before the Senate represents a further refinement of the Public Works and Economic Development Act.

The bill has been explained in detail by the very able and dedicated chairman of our Subcommittee on Economic Development, Senator MONTOYA. Under his direction, the subcommittee, during the 92d Congress, has conducted a very thorough examination of contemporary issues in economic development. Earlier this year, Senator MONTOYA introduced and held hearings on legislation (S. 3381) to create a comprehensive nationwide economic development program. As he has said, such a program will again be the major concern of the subcommittee during the 93d Congress and work in this area will begin early in the new year. I was a cosponsor of S. 3381 and intend to be deeply involved in the continuation of this work next year.

The bill we consider today (H.R. 16071), is intended to provide for the continued functioning of existing programs until new legislation is completed and passed. At the same time, it makes several changes that the committee feels are necessary in the operation of the programs carried out by the Economic Development Administration.

One of these changes is of special concern to me because of its relevance to my State and its impact in States with similar unemployment problems. In recent years we have assisted many States in strengthening their programs of vocational and technical education. It is essential that in any area where unemployment is a severe and persistent problem that we provide facilities for training in job skills. As a result of our efforts in this and other legislation, the number of vocational and technical schools throughout the United States has expanded.

We have found, however, that just the building of new vocational schools is not enough. These schools must be staffed and operated if they are to fulfill their function of training young people and adults in skills that they can utilize to earn a living. In many cases these schools are in communities with high unemployment rates. Many of these communities, however, are also suffering from shortages of public revenues. Consequently, it has been very difficult for many of them to provide the operating funds necessary for the new vocational schools to function effectively.

This bill, therefore, authorizes the Federal Government to provide grants for the operation of vocational training schools constructed under this program. A maximum of 75 percent of the operating costs of new vocational schools will be available for the first 2 years of their operation. This will permit local government to adjust itself gradually to the added expense of a new vocational school so that the shock to what already may be a shaky financial structure will not be severe.

Our efforts would be self-defeating if we provided facilities that, while they may be needed, impose a financial burden that communities were unable to bear.

Mr. President, I am greatly encouraged by the recent creation of new regional commissions under the Public Works and Economic Development Act. The concept of regionalism, first enunciated in the Appalachian development program, has proven itself to be valid. The work of the five commissions created earlier under the Economic Development Act is well advanced. In recent months, new commissions, the old West and the Pacific Northwest, have been created to further extend the scope of regional planning. The Committee on Public Works believes firmly in the regional approach to economic development and will utilize this approach in legislation on the national economic development program next year.

The bill now before the Senate extends for 1 year the operation of programs that have enabled many communities to greatly improve the lives of their citizens. It is a program whose impact is widespread and it is one that is effective at the grassroots level. There must be no pause in this important work, and I urge the Senate to give its endorsement by passing this bill.

Mr. MUSKIE. Mr. President, blackmail is a hard word, a tough word. More than 400 years ago, it had a precise meaning: the tribute exacted by pirates from small property owners. Later, blackmail came to mean any payment extorted by intimidation.

As I say, it is a hard word, a tough word. Hard enough, tough enough, you would think, for any purpose. But during the past year, blackmail took on a companion. Together, they describe a new cause for concern. Americans now speak of environmental blackmail.

What does it mean? Let me give you an example: A pollution control order is issued to a polluter. If he is required to comply, the polluter replies, he will have to lay off some of his workers or close down a part, or all, of his plant.

The polluter's reply is environmental blackmail in its simplest form. His reply also is an illustration of how our way of living, our way of doing business, collide head on with our growing concern for a cleaner environment.

As chairman of the Subcommittee on Air and Water Pollution, I am familiar with the process. Nearly 10 years ago, we

began our work with little more than an uneasy feeling that our way of living, our way of doing business was damaging the air, water, and land. We took some short steps to clean up the pollution that we could see increasing around us.

From those first steps, we learned something else: New products, new ways of producing goods, new habits in our way of living put new strains upon our environment, created new dangers to public health, caused new kinds of economic loss.

And so, in the mid-1960's, we agreed to take some longer steps. We set out to do a better job of protecting our natural resources. We set out to do a better job of protecting public health. We set out to do a better job of counting economic gain and environmental loss.

What we found shocked us. We had been too intent upon our way of living. Now, we learned the hard way that the supplies of clean air, clean water, unspoiled land in this country, on this planet, are strictly limited.

We had been too intent upon the prosperous smoke rising from the stacks. Now, we learned the hard way that the rights to clean air, clean water, unspoiled land in this country, on this planet, belong not to just a few, but to us all.

Most of us could recover from the shock. Most of us could recognize the need for a broader national policy, a broader national effort to clean up our environment. Most of us could see ways to get the job done without crippling either our way of living or our way of doing business. The President himself said it would be now or never in the 1970's.

But what none of us foresaw were the effects of 3 years of the President's stand-back-and-do-nothing economic policy. In 3 years, the jobs of 3 million workers were lost. In 3 years, 17 percent of the value of the dollar was lost. In 3 years, the number of unemployed workers rose to 5 million.

It was all too easy for some to find a scapegoat. Inflation they had come to know and admire. Recession they had lived through before. But a national policy for a cleaner environment? Now there was something to jump up and down about.

No one should have been surprised by what happened next. Reports of economic dislocation, plant shutdowns, and worker layoffs resulting from pollution control orders began to arrive in Washington. Environmental blackmail began to bite.

Last year, the Subcommittee on Air and Water Pollution held its first series of public hearings on these problems. In those hearings, we began to look for ways to protect workers, communities, and plants; to crack down on environmental backmail.

Let me discuss some of our findings. During 1970, business failures in this country increased by 17 percent to a 3-year high of more than 10,500. The dollar liabilities of these firms increased to a record high of nearly $1.9 billion.

Manufacturing failures during 1970 increased by 36 percent to the highest total in 5 years. To maximize the return on their investments, some companies apparently chose to close down their older and more marginal plants.

Other companies apparently elected to produce only goods for which market demand was higher, profits greater. The plants producing goods for which market demand was lower and profits lesser were shut down or production was reduced.

In many cases there was a direct link between the age of the plant, the goods produced, the market demand for the product, and the decision to shut down. What is more important is this:

In case after case presented to the subcommittee, the companies had faced tough pollution control requirements. But in not one of those cases did a company use the control requirements to justify a shutdown or a layoff.

I think a recent case from a Midwestern State is particularly interesting. The record shows that the company involved had planned to build a settling pond as part of the waste treatment works at one of its plants located in the State. The plan had been submitted for State approval in early 1967.

Eighteen months later, the company applied for a permit to operate the settling pond and waste treatment works. The State agency urged the company to comply with the State's standards for water quality. The company declined, saying it would ask for a variance, an exception, from the standards.

In the spring of 1969, more than 2 years after the settling pond plan had been submitted, the company began to play with environmental blackmail. The plant, said the company to the State agency, was marginal; it could not stay in busines if it was required to meet the standards.

The State agency was patient. It asked the company to produce by Christmastime a program that would meet the standards. The company, however, was still reluctant. Just before Christmas, the company told the State agency that the plant probably would be closed within 5 years. Even so, the company agreed to submit in early 1970 a plan for compliance.

Well, the company's plan failed to arrive until the summer of 1970. The State agency promptly issued an interim permit to the company for operation of the existing waste treatment works. And within 2 months, the State agency found the effluent from the plant failed even to meet the terms of the interim permit.

I will spare you all the details of this 5-year saga. Negotiations between the company and the State agency apparently were broken off in 1971. The company then announced that a portion of the plant will be permanently shut down.

My point is this: The State's standards for water quality had no bearing on the company's decision to shut down. The company, in its announcement, did not so much as mention the State's standards. To the contrary, the company's board chairman explained carefully that—

First. Only a fifth of the plant's production actually resulted in finished products; the remaining four-fifths were shipped to others of the company's plants for processing into finished products sold in other market areas.

Second. The company's studies indicated no way in which four-fifths of the plant's output could be produced at costs as low as those of the company's other plants located more closely to the market areas.

Third. Of the more than 2,500 employees affected, new jobs at other operations of the company in the area will be available to 1,300 workers. All employees affected will receive the benefits to which they are entitled under the company's personnel programs.

Obviously, this is a large company with many plants, many kinds of operations. But the classic cases of environmental blackmail occur in small towns or medium-sized cities where there may be only one or two major industrial plants. When pollution controls are imposed, or when tougher controls are considered, the word is spread that a shutdown or layoff may result.

Let us look at this threat for a moment. Every national index suggests that pollution control will have little impact upon the total economy. Studies commissioned by the Council of Economic Advisers indicate, for example, that the cost of pollution control will depress the gross national product by less than 1 percent a year between now and 1976.

Similarly, a White House study of 11 major industries, estimates that pollution controls may result in the loss of 50,000 to 125,000 jobs between now and the close of 1976. These figures amount to between 1 and 4 percent of the workers in the 11 industries, yet no more than five hundredths of 1 percent of this country's labor force in 1970. The study does not say how many jobs may be created by pollution controls.

But in a particular small town or medium-sized city, a major employer's threat to shut down or to lay off is potent. In these days of high Nixon unemployment—5 to 12 percent—the threat to one town or to one city is devastating. Workers believe they must choose between jobs and a clean environment; they do not believe they can have both.

This is environmental blackmail in its worst form. Of course, all Americans are troubled. After all, the economy is suffering from inflation and recession, from unemployment and underemployment. After all, the President is offering no real remedies; he says the workers of this country must choose.

I reject the President's approach. I say we can have a clean environment and a healthy economy. And I believe we must have both. Without both, we cannot survive in this country; we cannot survive on this planet.

To obtain both, we must have a broader policy, a broader effort. Only a strong economy can provide the necessary investment in environmental controls. Only a strong economy can at the same time produce the jobs and goods we require.

Thus, I support the amendment proposed by the Senator from New Jersey (Mr. WILLIAMS) to protect employees from victimization by environmental blackmail.

These amendments will:

Direct the Environmental Protection Agency on its own, or on the request of an affected employee, to investigate any real or alleged employment losses due to enforcement of Federal environmental laws;

Require disclosure of the facts and economic circumstances involved in the proposed closing of any facility due to environmental controls;

Direct the Secretary of Labor to certify as unemployed any persons who are thrown out of work as a result of environmental control regulations who have worked at the plant at least 26 weeks during the previous 78 work weeks.

Prohibit the firing or other discrimination against any person who requests an investigation of employers' actions relating to environmental blackmail;

Provide loans to employers to aid them in meeting environmental standards; and

Authorize grants to local governments which suffer substantial losses of tax revenue as a result of closing any facility due to environmental regulations.

Adoption of this amendment is vital to assure that decisions relating to plant closures because of environmental impact are made in a responsible manner and in full view of the workers, the local community or communities affected, and those responsible for enforcing environmental control regulations. Only with such open, above board, decision making and the authority of the Environmental Protection Agency to investigate the facts, can we be assured that the jobs and livelihoods of workers, their families, and their communities are not used as pawns in industry efforts to undercut pollution control regulations.

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 of the amendments and third reading of the bill.

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

The bill was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

The bill (H.R. 16071) was passed.

Mr. JAVITS. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. MONTOYA. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

S. 3598—THE RETIREMENT INCOME SECURITY FOR EMPLOYEES ACT OF 1972

Mr. JAVITS. Mr. President, in view of the tremendous interest that has been generated with respect to the Williams-Javits pension reform bill, S. 3598, the Retirement Income Security for Employees Act of 1972, which was unanimously approved by the Committee on Labor and Public Welfare on September 15, 1972, I ask unanimous consent that the full text of the bill as reported by the Committee on Labor and Public Welfare, together with a list of all its present cosponsors, be printed in the RECORD.

Mr. MANSFIELD. Mr. President, will the Senator add my name as a cosponsor of the bill reported by the Committee on Labor and Public Welfare?

Mr. JAVITS. That is a great honor.

Mr. President, I ask unanimous consent that that be done.

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

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

COSPONSORS OF S. 3598

Senator Harrison A. Williams, Jr. of New Jersey.
Senator Jacob K. Javits of New York.
Senator Birch Bayh of Indiana.
Senator Alan Bible of Nevada.
Senator Quentin N. Burdick of North Dakota.
Senator Lawton Chiles of Florida.
Senator Frank Church of Idaho.
Senator Alan Cranston of California.
Senator Thomas F. Eagleton of Missouri.
Senator Mike Gravel of Alaska.
Senator Fred R. Harris of Oklahoma.
Senator Philip A. Hart of Michigan.
Senator Vance Hartke of Indiana.
Senator Harold E. Hughes of Iowa.
Senator Hubert H. Humphrey of Minnesota.
Senator Daniel K. Inouye of Hawaii.
Senator Henry M. Jackson of Washington.
Senator Edward M. Kennedy of Massachusetts.
Senator Warren G. Magnuson of Washington.
Senator Mike Mansfield of Montana.
Senator Gale W. McGee of Wyoming.
Senator George S. McGovern of South Dakota.
Senator Thomas J. McIntyre of New Hampshire.
Senator Walter F. Mondale of Minnesota.
Senator Joseph M. Montoya of New Mexico.
Senator Frank E. Moss of Utah.
Senator Edmund S. Muskie of Maine.
Senator Gaylord Nelson of Wisconsin.
Senator John O. Pastore of Rhode Island.
Senator Claiborne Pell of Rhode Island.
Senator Jennings Randolph of West Virginia.
Senator Abraham Ribicoff of Connecticut.
Senator John Sparkman of Alabama.
Senator Adlai E. Stevenson III of Illinois.
Senator John V. Tunney of California.
Senator J. Glenn Beall, Jr. of Maryland.
Senator J. Caleb Boggs of Delaware.
Senator Edward W. Brooke of Massachusetts.
Senator Clifford P. Case of New Jersey.
Senator John Sherman Cooper of Kentucky.
Senator Robert P. Griffin of Michigan.
Senator Charles McC. Mathias, Jr. of Maryland.
Senator Charles H. Percy of Illinois.
Senator Richard S. Schweiker of Pennsylvania.
Senator Robert T. Stafford of Vermont.
Senator Robert Taft, Jr. of Ohio.

S. 3598

A bill to strengthen and improve the protections and interests of participants and beneficiaries of employee pension and welfare benefit plans

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 "Retirement Income Security for Employees Act".

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FINDINGS AND DECLARATION OF POLICY

SEC. 2. (a) The Congress finds that private pension and other employee benefit plans and programs in the United States are intrinsically woven into the working and retirement lives of American men and women; that such plans and programs have become firmly rooted into our economic and social economic impact is interstate and increas- structure; that their operational scope and ingly affecting more than thirty million worker participants throughout the United States; that the pension assets of approximately $150,000,000,000 accelerating at more than $10,000,000,000 annually, represent the largest fund of virtually unregulated assets in the United States; that the growth in size, scope, and numbers of employee benefit plans is continuing rapidly and substantially; that Federal authority over the establishment, administration, and operations of these plans is fragmented and ineffective to secure adequate protection of retirement and welfare benefits due to the workers covered and affected; that deficient and inadequate provisions contained in a number of such plans are directly responsible for hardships upon working men and women who are not realizing their expectations of pension benefits upon retirement; that there have been found to be serious consequences to such workers covered by these plans directly attributable to inadequate or nonexistent vesting provisions, lack of portability to permit the transfer of earned credits by

employees from one employment to another; that terminations of plans beyond the control of employees, without necessary and adequate funding for benefit payments, has deprived employees and their dependents of earned benefits; that employee participants have not had sufficient information concerning their rights and responsibilities under the plans, resulting in loss of benefits without knowledge of same; that the lack of uniform minimum standards of conduct required of fiduciaries, administrators, and trustees has jeopardized the security of employee benefits; and that it is therefore desirable, in the interests of employees and their beneficiaries, and in the interest of the free flow of commerce, that minimum standards be prescribed to assure that private pension and employee benefit plans be equitable in character and financially sound and properly administered.

(b) It is the declared policy of this Act to protect interstate commerce, and the equitable interests of participants in private pension plans and their beneficiaries, by improving the scope, administration, and operation of such plans, by requiring pension plans to vest benefits in employees after equitable periods of service; to meet adequate minimum standards of funding; to prevent the losses of employees' earned credits resulting from change of or separation from employment; to protect vested benefits of employees against loss due to plan termination; and to require more adequate disclosure and reports to participants and beneficiaries of plan administration and operations, including financial information by the plan to the participant, as may be necessary for the employees to have a comprehensive and better understanding of their rights and obligations to receive benefits from the plans in which they are participants; to establish minimum standards of fiduciary conduct, and to provide for more appropriate and adequate remedies, sanctions, and ready access to the courts.

DEFINITIONS

SEC. 3. As used in this Act—

(1) "Secretary" means the Secretary of Labor.

(2) "Office" means the Office of Pension and Welfare Plans Administration.

(3) "Assistant Secretary" means the Assistant Secretary of Labor in charge of the Office of Pension and Welfare Plans Administration.

(4) "State" means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331–1343).

(5) "Commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between any foreign country and any State, or between any State and any place outside thereof.

(6) "Industry or activity affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry affecting commerce within the meaning of the Labor-Management Relations Act, 1947, as amended, or the Railway Labor Act, as amended.

(7) "Employer" means any person acting directly as an employer or indirectly in the interest of an employer in relation to a pension or profit-sharing-retirement plan, and includes a group or association of employers acting for an employer in such capacity.

(8) "Employee" means any individual employed by an employer.

(9) "Participant" means any employee or former employee of an employer or any member or former member of an employee organization who is or may become eligible to receive a benefit of any type from a pension or profit-sharing-retirement plan, or whose beneficiaries may be eligible to receive any such benefit.

(10) "Beneficiary" means a person designated by a participant or by the terms of a pension or profit-sharing-retirement plan who is or may become entitled to a benefit thereunder.

(11) "Person" means an individual, partnership, corporation, mutual company, joint-stock company, trust, unincorporated organization, association, or employee organization.

(12) "Employee organization" means any labor union or any organization of any kind, or any agency or employee representation committee, association, group, or program, in which employees participate and which exists for the purpose in whole or in part, of dealing with employers concerning a pension or profit-sharing-retirement plan, or other matters incidental to employment relationships; or any employees' beneficiary association organized for the purpose, in whole or in part, of establishing or maintaining such a plan.

(13) The term "fund" means a fund of money or other assets maintained pursuant to or in connection with a pension or profit-sharing-retirement plan, and includes employee contributions withheld but not yet paid to the plan by the employer, or a contractual agreement with an insurance carrier. The term does not include any assets of an investment company subject to regulation under the Investment Company Act of 1940.

(14) "Pension plan" means any plan, fund, or program, other than a profit-sharing-retirement plan, which is communicated or its benefits described in writing to employees and which is established or maintained for the purpose of providing for its participants, or their beneficiaries, by the purchase of insurance or annuity contracts or otherwise, retirement benefits.

(15) "Profit-sharing-retirement plan" means a plan established or maintained by an employer to provide for the participation by the employees in the current or accumulated profits, or both the current and accumulated profits of the employer in accordance with a definite predetermined formula for allocating the contributions made to the plan among the participants and for distributing the funds accumulated under the plan upon retirement or death. Such plan may include provisions permitting the withdrawal or distribution of the funds accumulated upon contingencies other than, and in addition to, retirement and death.

(16) "Registered plan" means a pension plan or profit-sharing-retirement plan registered and certified by the Secretary as a plan established and operated in accordance with title I of this Act.

(17) "Money purchase plan" refers to a pension plan in which contributions of the employer and employee (if any) are accumulated, with interest, or other income, to provide at retirement whatever pension benefits the resulting sum will buy.

(18) The term "administrator" means—

(A) the person specifically so designated by the terms of the pension or profit-sharing-retirement plan, collective bargaining agreement, trust agreement, contract, or other instrument, under which the plan is established or operated; or

(B) in the absence of such designation, (i) the employer in the case of a pension or profit-sharing-retirement plan established or maintained by a single employer, (ii) the employee organization in the case of such plan established or maintained by an employee organization, or (iii) the association, committee, joint board of trustees, or other similar group of representatives of the parties who have established or maintain such plan, in the case of a plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations.

(19) "Initial unfunded liability" means the amount (on the effective date of title II, or the effective date of the establishment of a pension plan or any amendment thereto, whichever is later), by which the assets of the plan are required to be augmented to insure that the plan is and will remain fully funded.

(20) "Unfunded liability" means the amount on the date when such liability is actuarially computed, by which the assets of the plan are required to be augmented to insure that the plan is and will remain fully funded.

(21) "Fully funded" with respect to any pension plan means that such plan at any particular time has assets determined, by a person authorized under section 101(b)(1), to be sufficient to provide for the payment of all pension and other benefits to participants then entitled or who may become entitled under the terms of the plan to an immediate or deferred benefit in respect to service rendered by such participants.

(22) "Experience deficiency" with respect to a pension plan means any actuarial deficit, determined at the time of a review of the plan, that is attributable to factors other than the existence of an initial unfunded liability or the failure of any employer to make any contribution required by the terms of the plan or by section 210, except insofar as such failure to make a required contribution is treated as an experience deficiency under 217(a)(1).

(23) "Funding" shall mean payment or transfer of assets into a fund, and shall also include payment to an insurance carrier to secure a contractual right pursuant to an agreement with such carrier.

(24) "Normal service cost" means the annual cost assigned to a pension plan, under the actuarial cost method in use (as of the effective date of title II or the date of establishment of a pension plan after such date), exclusive of any element representing any initial unfunded liability or interest thereon.

(25) "Special payment" means a payment made to a pension plan for the purpose of liquidating an initial unfunded liability or experience deficiency.

"(26) "Nonforfeitable right" or "vested right" means a legal claim obtained to that part of an immediate or deferred life annuity which notwithstanding any conditions subsequent which could affect receipt of any benefit flowing from such right, arises from the participant's covered service under the plan, and is no longer contingent on the participant remaining covered by the plan.

(27) "Covered service" means that period of service performed by a participant for an employer or as a member of an employee organization which is recognized under the terms of the plan or the collective bargaining agreement (subject to the requirements of part A of title II) for purposes of determining a participant's eligibility to receive pension benefits or for determining the amount of such benefits.

(28) "Normal retirement benefit" means that benefit payable under a pension or profit-sharing-retirement plan in the event of retirement at the normal retirement age.

(29) "Normal retirement age" means the normal retirement age, specified under the plan but not later than age 65 or, in the absence of plan provisions specifying the normal retirement age, age 65.

(30) "Pension benefit" means the aggregate, annual, monthly, or other amounts to which a participant will become entitled upon retirement or to which any other person is entitled by virtue of such participant's death.

(31) "Accrued portion of normal retirement benefit" means that amount of benefit which, irrespective of whether the right to such benefit is nonforfeitable, is equal to—

(A) in the case of a profit-sharing-retirement plan or money purchase plan, the total amount (including all interest held in the plan) credited to the account of a participant;

(B) in the case of a unit benefit-type pension plan, the benefit units credited to a participant; or

(C) in the case of other types of pension plans, that portion of the prospective normal retirement benefit of a participant, which under rule or regulation of the Secretary is determined to constitute the participant's accrued portion of the normal retirement benefit under the terms of the appropriate plan.

(32) "Multi-employer plan" means a collectively bargained pension plan to which a substantial number of unaffiliated employers are required to contribute and which covers a substantial portion of the industry in terms of employees or a substantial number of employees in the industry in a particular geographic area.

(33) "Unaffiliated employers" means employers other than those under common ownership or control, or having the relationship of parent-subsidiary, or directly or indirectly controlling or controlled by another employer.

(34) "Qualified insurance carrier" means an insurance carrier subject to regulation and examination by the government of any State, which is determined by rule or regulation of the Secretary to be suitable for the purchase of the single premium life annuity or the annuity with survivorship options authorized under section 305(2).

(35) "Vested liabilities" means the present value of the immediate or deferred pension benefits for participants and their beneficiaries which are nonforfeitable and for which all conditions of eligibility have been fulfilled under the provisions of the plan prior to its termination.

(36) "Unfunded vested liabilities" means that amount of vested liabilities that cannot be satisfied by the assets of the plan, at fair market value, as determined by rule or regulation of the Secretary.

TITLE I—ORGANIZATION

PART A—ORGANIZATIONAL STRUCTURE

POWERS AND DUTIES OF THE SECRETARY

SEC. 101. (a) It shall be the duty of the Secretary—

(1) to promote programs and plans for the establishment, administration, and operations of pension, profit-sharing-retirement, and other employee benefit plans in furtherance of the findings and policies set forth in this Act;

(2) to determine, upon application by a pension or profit-sharing-retirement plan, such plan's eligibility for registration with the Secretary under section 105 and, upon qualification, to register such plan and issue appropriate certificates of registration;

(3) to cancel certificates of registration of pension and profit-sharing-retirement plans registered under section 105, upon determination by the Secretary that such plans are not qualified for such registration;

(4)(A) to direct, administer, and enforce the provisions and requirements of this Act and the Welfare and Pension Plans Disclosure Act, except where such provisions are only enforceable by a private party;

(B) to make appropriate and necessary inquiries to determine violations of the provisions of this Act, or the Welfare and Pension Plans Disclosure Act, or any rule or regulation issued thereunder: *Provided, however,* That no periodic examination of the books and records of any plan or fund shall be conducted more than once annually unless the Secretary has reasonable cause to believe there may exist a violation of this Act or the Welfare and Pension Plans Disclosure Act or any rule or regulation thereunder;

(C) for the purpose of any inquiry provided for in subparagraph (B), the provisions of sections 9 and 10 (relating to the attendance of witnesses and the production of books, papers, and documents) of the Federal Trade Commission Act of September 1, 1914, are hereby made applicable to the jurisdiction, powers, and duties of the Secretary.

(5) to bring civil actions authorized by this Act subject to control and direction of the Attorney General;

(6) to appoint and fix the compensation of such employees as may be necessary for the conduct of his business under this Act in accordance with the provisions of title 5, United States Code, governing appointment in the competitive service, and chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, and to obtain the services of experts and consultants as necessary in accordance with section 3109 of title 5, United States Code, at rates for individuals not to exceed the per diem equivalent for GS–18;

(7) to perform such other functions as may be necessary to carry out the purposes of this Act.

(b) The Secretary is authorized to prescribe rules and regulations—

(1) establishing standards and qualifications for persons responsible for performing services under this Act as actuaries and upon application of any such person, to certify whether such person meets the standards and qualifications prescribed;

(2) establishing reasonable fees for the registration of pension and profit-sharing-retirement plans and other services to be performed by him in implementing the provisions of this Act, and all fees collected by the Secretary shall be paid into the general fund of the Treasury;

(3) establishing reasonable limitations on actuarial assumptions, based upon appropriate experience, including, but not limited to, interest rates, mortality, and turnover rates;

(4) such as may be necessary or appropriate to carry out the purposes of this Act, including but not limited to definitions of actuarial, accounting, technical, and other trade terms in common use in the subject matter of this Act and the Welfare and Pension Plans Disclosure Act; and

(5) governing the form, detail, and inspection of all required records, reports, and documents, the maintenance of books and records, and the inspection of such books and records, as may be required under this Act.

(c)(1) The Secretary is authorized and directed to undertake appropriate studies relating to pension and profit-sharing-retirement plans including but not limited to the effects of this Act upon the provisions and costs of pension and profit-sharing-retirement plans, the role of private pensions in meeting retirement security needs of the Nation, the administration and operation of pension plans, including types and levels of benefits, degree of reciprocity or portability financial characteristics and practices, methods of encouraging the growth of the private pension system, and advisability of additional coverage under this Act.

(2) The Secretary shall submit annually a report to the Congress covering his activities under this Act during the preceding fiscal year, together with the results of such studies as are conducted pursuant to this Act, or, from time to time, pursuant to other Acts of Congress, and recommendations for such further legislation as may be advisable.

(d) Prior to promulgating rules or regulations, the Secretary shall consult with appropriate departments or agencies of the Federal Government to avoid unnecessary conflicts, duplications, or inconsistency with rules and regulations which may be applicable to such plans under other laws of the United States.

(e) In order to avoid unnecessary expense and duplication of functions among Government agencies, the Secretary may make such arrangements or agreements for cooperation or mutual assistance in the performance of his functions under this Act and the functions of any agency, Federal or State, as he may find to be practicable and consistent with law. The Secretary may utilize on a reimbursable basis the facilities or services of any department, agency, or establishment of the United States, or of any State, including services of any of its employees, with the lawful consent of such department, agency, or establishment; and each department, agency, or establishment of the United States is authorized and directed to cooperate with the Secretary, and to the extent permitted by law, to provide such information and facilities as the Secretary may request for his assistance in the performance of his functions under this Act.

APPROPRIATIONS

SEC. 102. There are authorized to be appropriated such sums as may be necessary to enable the Secretary to carry out his functions and duties.

OFFICE OF ADMINISTRATION

SEC. 103. (a) There is hereby established within the Department of Labor an office to be known as the Office of Pension and Welfare Plan Administration. Such Office shall be headed by an Assistant Secretary of Labor who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) It shall be the duty of the Assistant Secretary of Labor under the supervision of the Secretary to exercise such power and authority as may be delegated to him by the Secretary for the administration and enforcement of this Act.

(c) Paragraph 20, of section 5315, title 5, United States Code, is amended by striking "(5) and inserting in lieu thereof "(6)".

(d) Such functions, books, records, and personnel of the Labor Management Services Administration as the Secretary determines are related to the administration of the Welfare and Pension Plans Disclosure Act are hereby transferred to the Office of Pension and Welfare Plan Administration.

PART B—COVERAGE, EXEMPTIONS, AND REGISTRATION

COVERAGE AND EXEMPTIONS

SEC. 104. (a) Except as provided in subsections (b) and (c), titles II, III, and IV of this Act shall apply to any pension plan and any profit-sharing-retirement plan established or maintained by any employer engaged in interstate commerce or any industry or activity affecting interstate commerce or by any employer together with any employee organization representing employees engaged in commerce or in any industry or activity affecting such commerce or by any employee organization representing employees engaged in commerce or in any industry or activity affecting commerce.

(b) Titles II, III, and IV of this Act shall not apply to any pension plan or any profit-sharing-retirement plan if—

(1) such plan is established or maintained by the Federal Government or by the government of a State or by a political subdivision of the same or by any agency or instrumentality thereof;

(2) such plan is established or maintained by a religious organization described under section 501(c) of the Internal Revenue Code of 1954 which is exempt from taxation under the provisions of section 501(a) of such Code;

(3) such plan is established or maintained by a self-employed individual exclusively for his own benefit or for the benefit of his survivors or established or maintained by one or more owner-employers exclusively for his or

their benefit or for the benefit of his or their survivors;

(4) such plan covers not more than twenty-five participants;

(5) such plan is established or maintained outside the United States primarily for the benefit of employees who are not citizens of the United States and the situs of the employee benefit plan fund established or maintained pursuant to such plan is maintained outside the United States;

(6) such plan is unfunded and is established or maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management employees and is declared by the employer as not intended to meet the requirements of section 401(a) of the Internal Revenue Code; or

(7) such plan is established or maintained by an employee organization and is administered and financed solely by contributions from its members.

(c) Title IV and part B of title II shall not apply to profit-sharing-retirement plans or money purchase plans.

(d) Titles V and VI shall apply to any plan covered by the Welfare and Pension Plans Disclosure Act and any pension plan or profit-sharing-retirement plan covered by this Act.

REGISTRATION OF PLANS

SEC. 105. (a) Every administrator of a pension or profit-sharing-retirement plan to which titles II, III, or IV apply shall file with the Secretary an application for registration of such plan. Such application shall be in such form and shall be accompanied by such documents as shall be prescribed by regulation of the Secretary. After qualification under subsection (c), the administrator of such plan shall comply with such requirements as may be prescribed by the Secretary to maintain the plan's qualification under this title.

(b) In the case of plans established on or after the effective date of this title, the filing required by subsection (a) shall be made within six months after such plan is established. In the case of plans established prior to the effective date of this title, such filing shall be made within six months after the effective date of regulations promulgated by the Secretary to implement this section but in no event later than twelve months after the date of enactment of this Act.

(c) Upon the filing required by subsection (a), the Secretary shall determine whether such plan is qualified for registration under this title, and if the Secretary finds it qualified, he shall issue a certificate of registration with respect to such plan.

(d) If at any time the Secretary determines that a plan required to qualify under this title is not qualified or is no longer qualified for registration under this title, he shall notify the administrator, setting forth the deficiency or deficiencies in the plan or in its administration or operations which is the basis for the notification given, and he shall further provide the administrator, the employer of the employees covered by the plan (if not the administrator), and the employee organization representing such employees, if any, a reasonable time within which to remove such deficiency or deficiencies. If the Secretary thereafter determines that the deficiency or deficiencies have been removed, he shall issue or continue in effect the certificate, as the case may be. If he determines that the deficiency or deficiencies have not been removed, he shall enter an order denying or canceling the certificate of registration, and take such further action as maybe appropriate under title VI.

(e) A pension or profit-sharing-retirement plan shall be qualified for registration under this section if it conforms to, and is administered in accordance with this Act, the Welfare and Pension Plans Disclosure Act, and in the case of a pension plan subject to title IV of this Act, applies for and maintains plan termination insurance and pays the required assessments and premiums.

REPORTS ON REGISTERED PLANS

SEC. 106. The Secretary may, by regulations, provide for the filing of a single report satisfying the reporting requirements of this Act, and the Welfare and Pension Plans Disclosure Act.

AMENDMENTS OF REGISTERED PLANS

SEC. 107. Where a pension or profit-sharing-retirement plan filed for registration under this title is amended subsequent to such filing, the administrator shall (pursuant to regulations promulgated by the Secretary) file with the Secretary a copy of the amendment and such additional information and reports as the Secretary by regulation may require, to determine the amount of any initial unfunded liability created by the amendment, if any, and the special payments required to remove such liability.

CERTIFICATE OF RIGHTS

SEC. 108. The Secretary shall, by regulation, require each pension and profit-sharing-retirement plan to furnish or make available, whichever is the most practicable, to each participant, upon termination of service with a vested right to an immediate or a deferred pension benefit or other vested interest, with a certificate setting forth the benefits to which he is entitled, including, but not liimted to, the name and location of the entity responsible for payment, the amount of benefits, and the date when payment shall begin. A copy of each such certificate shall be filed with the Secretary. Such certificate shall be deemed prima facie evidence of the facts and rights set forth in such certificate.

TITLE II—VESTING AND FUNDING REQUIREMENTS

PART A—VESTING REQUIREMENTS

ELIGIBILITY

SEC. 201. No pension or profit-sharing-retirement plan filed for registration under this Act shall require as a condition for eligibility to participate in such a plan a period of service longer than one year or an age greater than twenty-five, whichever occurs later: *Provided, however,* That in the case of any plan which provides for immediate vesting of 100 per centum of earned benefits of participants, such plan may require as a condition for eligibility to participate in the plan, a period of service no longer than three years or an age greater than thirty, whichever occurs later.

VESTING SCHEDULE

SEC. 202. (a) All pension or profit-sharing-retirement plans filed for registration under this Act, except as provided for in paragraphs (2) and (3) herein, shall provide under the terms of the plan with respect to covered service both before and after the effective date of the title, that:

(1) a plan participant who has been in covered service under the plan for a period of eight years is entitled upon termination of service prior to attaining normal retirement age—

(A) in the case of a pension plan, to a deferred pension benefit commencing at his normal retirement age; or

(B) in the case of a profit-sharing-retirement plan, to a nonforfeitable right to his interest in such plan

equal to 30 per centum of the accrued portion of the normal retirement benefit as provided by the plan in respect of such service, or of such interest, respectively, and such entitlement shall increase by 10 per centum per year thereafter of covered service until the completion of fifteen years of covered service after which such participant shall be entitled upon termination of service prior to attaining normal retirement age to a deferred pension benefit commencing at his normal retirement age equal to 100 per centum of the accrued portion of the normal retirement benefit as provided by the plan with respect to such service, or to the full amount of such interest in the profit-sharing-retirement plan;

(2) the requirements of paragraph (1) of this subsection need not apply with respect to accrued portions of normal retirement benefits attributable to covered service rendered prior to the effective date of this title by any plan participant who has not attained forty-five years of age on the effective date of this title and, in the event a plan is established or amendment after the effective date of this title, the requirements of paragraph (1) of this subsection need only apply to service rendered after the date of the plan's establishment or the date of such plan amendment with respect to any improvement in benefits made by such amendment.

(3) if the plan is a class year plan, then such plan shall provide that the participant shall acquire a nonforfeitable right to 100 per centum of the employer's contribution on his behalf with respect to any given year, not later than the end of the fifth year following the year for which such contribution was made. For the purposes of this paragraph, the term "class year plan" means a profit-sharing-retirement plan which provides for the separate vesting of each annual contribution made by the employer on behalf of a participant.

(4) the pension benefits provided under the terms of a pension plan, and the interest in a profit-sharing-retirement plan referred to in subparagraph (B) of paragraph (1) shall not be capable of assignment or alienation and shall not confer upon an employee, personal representative, or dependent, or any other person, any right or interest in such pension benefits or profit-sharing-retirement plan, capable of being assigned or otherwise alienated; except that where a plan fails to make appropriate provision therefor, the Secretary shall, by regulation, provide for the final disposition of plan benefits or interests when beneficiaries cannot be located or ascertained within a reasonable time.

(b) Any participant covered under a plan, for the number of years required for a vested right under this section, shall be entitled to such vested right regardless of whether his years of covered service are continuous, except that a plan may provide that—

(1) three of the eight years to qualify for the 30 per centum vested right under subsection (a) shall be continuous under standards prescribed under subsection (c),

(2) service by a participant prior to the age of twenty-five may be ignored in determining eligibility for a vested right under this section, unless such participant or an employer has contributed to the plan with respect to such service, and

(3) in the event a participant has attained a vested right equal to 100 per centum of the accrued portion of the normal retirement benefit as provided by the plan with respect to such service, or to the full amount of such interest in a profit-sharing-retirement plan, and such participant has been separated permanently from coverage under the plan and subsequently returns to coverage under the same plan, such participant may be treated as a new participant for purposes of the vesting requirements set forth in section 202(a)(1) without regard to his prior service.

(c) The Secretary shall prescribe standards, consistent with the purposes of this Act, governing the maximum number of working hours, days, weeks, or months, which shall constitute a year of covered service, or a break in service for purposes of this Act. In no case shall a participant's time worked

in any period in which he is credited for a period of service for the purposes of this section, be credited to any other period of time unless the plan so provides.

(d) Notwithstanding any other provision of this Act, a pension or profit-sharing-retirement plan may allow for vesting of pension benefits after a lesser period than is required by this section.

(e) Notwithstanding any other provision of this Act where upon application and notice to affected or interested parties by the plan Administrator, the Secretary determines that the plan contains vesting provisions which are as liberal as the vesting schedule set forth in section 202(a)(1), the Secretary may waive the requirements therein as long as the vesting schedule contained in the plan remains unchanged. For the purposes of this subsection, the term "liberal" refers to a vesting formula which provides vested benefits comparable to or greater than those provided under section 202(a)(1) to the majority of the participants in the plan as indicated by the plan's actuarial experience.

PART B—FUNDING

FUNDING REQUIREMENTS

SEC. 210. (a) Unless a waiver is granted pursuant to part C of this title, every pension plan filed for registration under this Act shall provide for funding, in accordance with the provisions of this part, which is adequate to provide for payment of all pension benefits which may be payable under the terms of the plan.

(b) Provisions in the plan for funding shall set forth the obligation of the employer or employers to contribute both in respect of the normal service cost of the plan and in respect of any initial unfunded liability and experience deficiency. The contribution of the employer, including any contributions made by employees, shall consist of the payment into the plan or fund of—

(1) all normal service costs; and

(2) where the plan has an initial unfunded liability, special payments consisting of no less than equal amounts sufficient to amortize such unfunded liabilities over a term not exceeding:

(A) in the case of an initial unfunded liability existing on the effective date of this title, in any plan established before that date, thirty years from such date;

(B) in the case of an initial unfunded liability resulting from the establishment of a pension plan, or an amendment thereto, or on after the effective date of this title, thirty years from the date of such establishment or amendment, except that in the event that any such amendment after the effective date of this title results in a substantial increase to any unfunded liability of the plan, as determined by the Secretary, such increase shall be regarded as a new plan for purposes of the funding schedule imposed by this subsection and the plan termination insurance requirements imposed by title IV.

(3) special payments, where the plan has an experience deficiency, consisting of no less than equal annual amounts sufficient to remove such experience deficiency over a term not exceeding five years from the date on which the experience deficiency was determined, except where the experience deficiency cannot be removed over a five-year period without the amounts required to remove such deficiency exceeding the allowable limits for a tax deduction under the Internal Revenue Code of 1954 for any particular year during which such payments must be made, the Secretary shall, consistent with the purposes of this subsection, prescribe such additional time as may be necessary to remove such deficiency within allowable tax deduction limitations.

(c) Within six months after the effective date of rules promulgated by the Secretary to implement this title (but in no event more than 12 months after the effective date of this title) or within six months after the date of plan establishment, whichever is later, the plan administrator shall submit a report of an actuary (certified under section 101(b)) stating—

(1) the estimated cost of benefits in respect of service for the first plan year for which such plan is required to register and the formula for computing such cost in subsequent years up to the date of the following report;

(2) the initial unfunded liability, if any, for benefits under the pension plan as of the date on which the plan is required to be registered;

(3) the special payments required to remove such unfunded liability and experience deficiencies in accordance with subsection (b);

(4) the actuarial assumptions used and the basis for using such actuarial assumptions; and

(5) such other pertinent actuarial information required by the Secretary.

(d) The administrator of a registered pension plan shall cause the plan to be reviewed not less than once every five years by a certified actuary and shall submit a report of such actuary stating—

(1) the estimated cost of benefits in respect of service in the next succeeding five-year period and the formula for computing such cost for such subsequent five-year period;

(2) the surplus or the experience deficiency in the pension plan after making allowance for the present value of all special payments required to be made in the future by the employer as determined by previous reports;

(3) the special payments which will remove any such experience deficiency over a term not exceeding five years;

(4) the actuarial assumptions used and the basis for using such actuarial assumptions; and

(5) such other pertinent actuarial information required by the Secretary.

If any such report discloses a surplus in a pension plan, the amount of any future payments required to be made to the fund or plan may be reduced or the amount of benefits may be increased by the amount of such surplus, subject to the provisions of the Internal Revenue Code of 1954 and regulations promulgated thereunder. The reports under this subsection shall be filed with the Secretary by the administrator as part of the annual report required by section 7 of the Welfare and Pension Plans Disclosure Act, at such time that the report under such section 7 is due with respect to the last year of such five-year period.

(e) Where an insured pension plan is funded exclusively by the purchase of insurance contracts which—

(1) require level annual premium payments to be paid extending not beyond the retirement age for each individual participant in the plan, and commencing with the participant's entry into the plan (or, in the case of an increase in benefits, commencing at the time such increase becomes effective), and

(2) benefits provided by the plan are equal to the benefits provided under each contract, and are guaranteed by the insurance carrier to the extent premiums have been paid,

such plan shall be exempt from the requirements imposed by subsections (b) (2) and (3), (c), and (d) of this section.

(f) The Secretary may exempt and plan, in whole or in part, from the requirement that such reports be filed where the Secretary finds such filing to be unnecessary.

DISCONTINUANCE OF PLANS

SEC. 211. (a) Subject to the authority of the Secretary to provide exemptions or variances where necessary to avoid substantial hardship to participants or beneficiaries, upon complete termination or substantial termination (as determined by the Secretary), of a pension plan, and subject to the provisions of the Internal Revenue Code and regulations promgulated thereunder, relating to limitations applicable to the twenty-five highest paid employees of an employeer, all assets of the plan shall be applied under the terms of the plan, as follows—

(1) first, to refund to nonretired participants in the plan the amount of contributions made by them;

(2) second, to participants in the plan who have retired prior to the date of such termination and have been receiving benefits under the plan;

(3) third, to those participants in the plan who, on the date of such termination had the right to retire and receive benefits under the plan;

(4) fourth, to those participants in the plan who had acquired vested rights under the plan prior to termination of the plan but had not reached normal retirement age on the date of such termination; and

(5) fifth, to any other participants in the plan who are entitled to benefits under the plan pursuant to the requirer ents of section 401(a)(7) of the Internal Revenue Code of 1954.

(b) Upon complete termination, or substantial termination (as determined by the Secretary), any party obligated to contribute to the plan pursuant to section 210(b), or to contribute on behalf of employees pursuant to a withholding or similar arrangement, shall be liable to pay all amounts that would otherwise have been required to be paid to meet the funding requirements prescribed by section 210 up to the date of such termination to the insuror, trustee, or administrator of the plan.

(c) Upon complete termination, or substantial termination (as determined by the Secretary), of a profit-sharing-retirement plan, the interests of all participants in such plan shall fully vest.

(d) In any case, the Secretary may approve payment of survivor benefits with priorities equal to those of the employees or former employees on whose service such benefits are based.

PART C—VARIANCES

DEFERRED APPLICABILITY OF VESTING STANDARDS

SEC. 216. (a) The Secretary may defer, in whole or in part, applicability of the requirements of part A of this title for a period not to exceed five years from the effective date of title II, upon a showing that compliance with the requirements of part A on the part of a plan in existence on the date of enactment of this Act would result in increasing the costs of the employer or employers contributing to the plan to such an extent that substantial economic injury would be caused to such employer or employers and to the interests of the participants or beneficiaries in the plan.

(b) For purposes of subsection (a), the term "substantial economic injury" includes, but is not limited to, a showing that (1) a substantial risk to the capability of voluntarily continuing the plan exists, (2) the plan will be unable to discharge its existing contractual obligations for benefits, (3) a substantial curtailment of pension or other benefit levels or the levels of employees' compensation would result, or (4) there will be an adverse effect on the levels of employment with respect to the work force employed by the employer or employers contributing to the plan.

(c)(1) In the case of any plan established or maintained pursuant to a collective bargaining agreement, no application for the granting of the variance provided for under subsection (a) shall be considered by the Secretary unless it is submitted by the parties to the collective bargaining agreement or their duly authorized representatives.

(2) As to any application for a variance under subsection (a) submitted by the parties to a collective bargaining agreement or their duly authorized representatives, the Secretary shall accord due weight to the experience, technical competence, and specialized knowledge of the parties with respect to the particular circumstances affecting the plan, industry, or other pertinent factors forming the basis for the application.

VARIANCES FROM FUNDING REQUIREMENTS

SEC. 217. (a) Where, upon application and notice to affected or interested parties by the plan administrator, the Secretary determines that—

(1) any employer or employers are unable to make annual contributions to the plan in compliance with the funding requirements of section 210(b) (2) or (3), and he has reason to believe that such required payment for that annual period cannot be made by such employer or employers, the Secretary may waive the annual contribution otherwise required to be paid, and prescribe an additional period of not more than five years for the amortization of such annual funding deficiency, during which period the funding deficiency shall be removed by no less than equal annual payments. Any funding deficiency permitted under this section shall be treated for the purposes of any actuarial report required under this Act as an experience deficiency under section 210;

(2) no waiver shall be granted unless the Secretary is satisfied after a review of the financial condition of the plan and other related matters that—

(A) such waiver will not adversely affect the interests of participants or beneficiaries of such plan; or

(B) will not impair the capability of the Pension Benefit Insurance Fund to equitably underwrite vested benefit losses in accordance with title IV,

(3) waivers granted pursuant to this provision shall not exceed five consecutive annual waivers.

(b) Where a plan has been granted five consecutive waivers pursuant to subsection (a), the Secretary may—

(1) order the merger or consolidation of the deficiently funded plan with such other plan or plans or the contributing employer or employers in a manner that will result in future compliance with the funding requirements of part B of title II of this Act without adversely affecting the interests of participants and beneficiaries in all plans which may be involved;

(2) where necessary to protect the interests of participants or beneficiaries, or to safeguard the capability of the Pension Benefit Insurance Fund to equitably underwrite vested benefit losses, under title IV, order plan termination in accordance with such conditions as the Secretary may prescribe; or

(3) take such other action as may be necessary to fulfill the purposes of this Act.

(c) No amendments increasing plan benefits be permitted during any period in which a funding waiver is in effect.

(d) (1) Notwithstanding the requirements of part B of title II of this Act the Secretary shall by rule or regulation prescribe alternative funding requirements for multiemployer plans which will give reasonable assurances that the plan's benefit commitments will be met.

(2) The period of time provided to fund such multiemployer plans shall be a period which will give reasonable assurances that the plan's benefit commitments will be met and which reflects the particular circumstances affecting the plan, industry, or other pertinent factors, except that no period prescribed by the Secretary shall be less than thirty years.

(3) No multiemployer plan shall increase benefits beyond a level for which the contributions made to the plan would be determined to be adequate unless the contribution rate is commensurately increased.

(e) Upon a showing by the plan administrator of a multiemployer plan that the withdrawal from the plan by any employer or employers has or will result in a significant reduction in the rate of aggregate contributions to the plan, the Secretary may take the following steps:

(1) require the plan fund to be equitably allocated between those participants no longer working in covered service under the plan as a result of their employer's withdrawal, and those participants who remain in covered service under the plan;

(2) treat that portion of the plan fund allocable under (1) to participants no longer in covered service, as a terminated plan for the purposes of the plan termination insurance provisions of title IV; and

(3) treat that portion of the plan fund allocable to participants remaining in covered service as a new plan for purposes of the funding standards imposed by part B of title II of this Act, any variance granted by this section, and the plan termination insurance provisions of title IV.

TITLE III—VOLUNTARY PORTABILITY PROGRAM FOR VESTED PENSIONS

PROGRAM ESTABLISHED

SEC. 301. (a) There is hereby established a program to be known as the Voluntary Portability Program for Vested Pensions (hereinafter referred to as the "Portability Program"), which shall be administered by and under the direction of the Secretary. The Portability Program shall facilitate the voluntary transfer of vested credits between registered pension or profit-sharing-retirement plans. Nothing in this title or in the regulations issued by the Secretary hereunder shall be construed to require participation in such Portability Program by a plan as a condition of registration under this Act.

(b) Pursuant to regulations issued by the Secretary, plans registered under this Act may apply for membership in the Portability Program, and, upon approval of such application by the Secretary, shall be issued a certificate of membership in the Portability Program (plans so accepted shall be hereinafter referred to as "member plans").

ACCEPTANCE OF DEPOSITS

SEC. 302. A member plan shall, pursuant to regulations prescribed by the Secretary, pay, upon request of the participant, to the fund established by section 303, a sum of money equal to the current discounted value of the participant's vested rights under the plan, which are in settlement of such vested rights, when such participant is separated from employment covered by the plan before the time prescribed for payments to be made to him or to his beneficiaries under the plan. The fund is authorized to receive such payments, on such terms as the Secretary may prescribe.

SPECIAL FUND

SEC. 303. (a) There is hereby created a fund to be known as the Voluntary Portability Program Fund (hereinafter referred to as the "Fund"). The Secretary shall be the trustee of the Fund. Payments made into the Fund in accordance with regulations prescribed by the Secretary under section 302 shall be held and administered in accordance with this title.

(b) With respect to such Fund, it shall be the duty of the Secretary to—

(1) administer the Fund;

(2) report to the Congress not later than the first day of April of each year on the operation and the status of the Fund during the preceding fiscal year and on its expected operation and status during the current fiscal year and the next two fiscal years and review the general policies followed in managing the Fund and recommend changes in such policies, including the necessary changes in the provisions of law which govern the way in which the Fund is to be managed; and

(3) after amounts needed to meet current and anticipated withdrawals are set aside, deposit the surplus in interest-bearing accounts in any bank the deposits of which are insured by the Federal Deposit Insurance Corporation or savings and loan association in which the accounts are insured by the Federal Savings and Loan Insurance Corporation. In no case shall such deposits exceed 10 per centum of the total of such surplus, in any one bank, or savings and loan association.

INDIVIDUAL ACCOUNTS

SEC. 304. The Secretary shall establish and maintain an account in the Fund for each participant for whom the Secretary receives payment under section 302. The amount credited to each account shall be adjusted periodically, as provided by the Secretary pursuant to regulations to reflect changes in the financial condition of the Fund.

PAYMENTS FROM INDIVIDUAL ACCOUNTS

SEC. 305. Amounts credited to the account of any participant under this title shall be paid by the Secretary to—

(1) a member plan, for the purchase of credits having at least an equivalent actuarial value under such plan, on the request of such participant when he becomes a participant in such member plans;

(2) a qualified insurance carrier selected by a participant who has attained the age of sixty-five, for the purchase of a single premium life annuity in an amount having a present value equivalent to the amount credited to such participant's account, or in the event the participant selects an annuity with survivorship options, an amount determined by the Secretary to be fair and reasonable based on the amount in such participant's account; or

(3) to the designated beneficiary of a participant in accordance with regulations promulgated by the Secretary.

TECHNICAL ASSISTANCE

SEC. 306. The Secretary shall provide technical assistance to employers, employee organizations, trustees, and administrators of pension and profit-sharing-retirement plans in their efforts to provide greater retirement protection for individuals who are separated from employment covered under such plans. Such assistance may include, but is not limited to (1) the development of reciprocity arrangements between plans in the same industry or area, and (2) the development of special arrangements for portability of credits within a particular industry or area.

TITLE IV—PLAN TERMINATION INSURANCE

ESTABLISHMENT AND APPLICABILITY OF PROGRAM

SEC. 401. (a) There is hereby established a program to be known as the Private Pension Plan Termination Insurance Program hereinafter referred to as the "Insurance Program", which shall be administered by and under the direction of the Secretary.

(b) Every plan subject to this title shall obtain and maintain plan termination insurance to cover unfunded vested liabilities incurred prior to enactment of the Act as well as after enactment of the Act.

CONDITIONS OF INSURANCE

SEC. 402. (a) The insurance program shall insure participants and beneficiaries of those plans registered under this Act against loss of benefits derived from vested rights which arise from the complete or the substantial termination of such plans, as determined by the Secretary.

(b) The rights of participants and beneficiaries of a registered pension plan shall

be insured under the insurance program only to the extent that—

(1) such rights as provided for in the plan do not exceed: (A) in the case of a right to a monthly retirement or disability benefit for the employee himself, the lesser of 50 per centum of the average monthly wage he received from the contributing employer in the five-year period after the registration date of the plan for which his earnings were its greatest, or $500 a month; (B) in the case of a right of one or more dependents or members of the participant's family, or in the case of a right to a lump-sum survivor benefit on account of the death of a participant, an amount no greater than the amount determined under clause (A);

(2) the plan is terminated more than three years after the date of its establishment or its initial registration with the Secretary, except that the Secretary may in his discretion authorize insurance payments in such amounts as may be reasonable to any plan terminated in less than three years after the date of its initial registration with the Secretary where (A) such plan has been established and maintained for more than three years prior to its termination, (B) the Secretary is satisfied that during the period the plan was unregistered, it was in substantial compliance with the provisions of this Act, and (C) such payments will not prevent equitable underwriting of losses of vested benefits arising from plan terminations otherwise covered by this title;

(3) such rights were created by a plan amendment which took effect more than three years immediately preceding termination of such plan; and

(4) such rights do not accrue to the interest of a participant who is the owner of 10 per centum or more of the voting stock of the employer contributing to the plan, or of the same percentage interest in a partnership contributing to the plan.

ASSESSMENTS AND PREMIUMS

SEC. 403. (a) Upon registration with the Secretary, each plan shall pay a uniform assessment to the insurance program as prescribed by the Secretary to cover the administrative costs of the insurance program.

(b) (1) Each registered pension plan shall pay an annual premium for insurance at uniform rates established by the Secretary based upon the amount of unfunded vested liabilities subject to insurance under section 402.

(2) For the three-year period immediately following the effective date of this title such premium shall—

(A) not exceed 0.2 per centum of a plan's unfunded vested liabilities with respect to such unfunded vested liabilities incurred after the date of enactment of this Act;

(B) not exceed 0.2 per centum of a plan's unfunded vested liabilities incurred prior to the date of enactment of this Act, where such plan's median ratio of plan assets to unfunded vested liabilities was 75 per centum during the five-year period immediately preceding the enactment of this Act, or in the event of a plan established within the five-year period immediately preceeding the date of enactment of this Act, where the plan has reduced the amount of such unfunded vested liabilities at the rate of at least 5 per centum each year since the plan's date of establishment;

(C) not exceed 0.4 per centum or be less than 0.2 per centum of a plan's unfunded vested liabilities incurred prior to the date of enactment of this Act where such plan does not meet the standards set forth in subparagraph (B);

(D) not exceed 0.2 per centum of a plan's unfunded vested liabilities regardless of whether such liabilities were incurred prior to or subsequent to the date of enactment of this Act with respect to multiemployer plans.

(3) (A) The Secretary is authorized to prescribe different uniform premium rates after the initial three-year period based upon experience and other relevant factors.

(B) Any new rates proposed by the Secretary shall be effective at the end of the first period of ninety calendar days of continuous session of the Congress after the date on which the proposed rates are published in the Federal Register.

(C) For the purpose of subparagraph (B)—

(i) continuity of a session is broken only by an adjournment sine die; and

(ii) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the ninety day period.

(c) Assessments and premiums referred to in this section shall be prescribed by the Secretary only after consultation with appropriate Government agencies and private persons with expertise on matters relating to assessment and premium structures in insurance and related matters, and after notice to all interested persons and parties.

PAYMENT OF INSURANCE

SEC. 404. (a) No plan insured under this title shall terminate without approval of the Secretary. The Secretary shall not approve a plan termination unless he is satisfied that the requirements of this Act and those of the Welfare and Pension Plans Disclosure Act have been complied with and that such termination is not designed to avoid or circumvent the purposes of this Act.

(b) As determined by the Secretary, subject to the conditions specified in section 402, the amount of insurance payable under the insurance program shall be the difference between the realized value of the plan's assets and the amount of vested liabilities under the plan.

(c) The Secretary shall, by regulation, prescribe the procedures under which the funds of terminated plans shall be wound-up and liquidated and the proceeds therefrom applied to payment of the vested benefits of participants and beneficiaries. In implementing this paragraph, the Secretary shall have authority to:

(1) transfer the terminated fund to the Pension Benefit Insurance Fund for purposes of liquidation and payment of benefits to participants and beneficiaries;

(2) purchase single-premium life annuities from qualified insurance carriers from the proceeds of the terminated plan on terms determined by the Secretary to be fair and reasonable; or

(3) take such other action as may be appropriate to assure equitable arrangements for the payment of vested benefits to participants and beneficiaries under the plan.

RECOVERY

SEC. 405. (a) Where the employer or employers contributing to the terminating plan or who terminated the plan are not insolvent (within the meaning of section 1 (19) of the Bankruptcy Act), such employer or employers (or any successor in interest to such employer or employers) shall be liable to reimburse the insurance program for any insurance benefits paid by the program to the beneficiaries of such terminated plan to the extent provided in this section.

(b) An employer, determined by the Secretary to be liable for reimbursement under subsection (a), shall be liable to pay a percentage of the terminated plan's unfunded vested liabilities equal to 100 per centum less the percentage of the ratio of the plan's unfunded vested liabilities to the net worth of the employer: Provided, however, That if the ratio of the terminated plan's unfunded vested liabilities is less than 50 per centum of the employer's net worth the employer shall be liable to pay the total amount of insurance benefits paid by the insurance program.

(c) The Secretary is authorized to make arrangements with employers, liable under subsection (a), for reimbursement of insurance paid by the Secretary, including arrangements for deferred payment on such terms and for such periods as are deemed equitable and appropriate.

(d) (1) If any employer or employers liable for any amount due under subsection (a) of this section neglects or refuses to pay the same after demand, the amount (including interest) shall be a lien in favor of the United States upon all property and rights in property, whether real or personal, belonging to such employer or employers.

(2) The lien imposed by paragraph (1) of this subsection shall not be valid as against a lien created under section 6321 of the Internal Revenue Code of 1954.

(3) Notice to the lien imposed by paragraph (1) of this subsection shall be filed in a manner and form prescribed by the Secretary. Such notice shall be valid notwithstanding any other provision of law regarding the form and content of a notice of lien.

(4) The Secretary shall promulgate rules and regulations with regard to the release of any lien imposed by paragraph (1) of this subsection.

PENSION BENEFIT INSURANCE FUND

SEC. 406. (a) There is hereby created a separate fund for pension benefit insurance to be known as the Pension Benefit Insurance Fund (hereafter in this section called the insurance fund) which shall be available to the Secretary without fiscal year limitation for the purposes of this title. The Secretary shall be the trustee of the insurance fund.

(b) All amounts received as premiums, assessments, or fees, and any other moneys, property, or assets derived from operations in connection with this title shall be deposited in the insurance fund.

(c) All claims, expenses, and payments pursuant to operation of the program under this title shall be paid from the insurance fund.

(d) All moneys of the insurance fund, may be invested in obligations of the United States or in obligations guaranteed as to principal and interest by the United States.

(e) With respect to such insurance fund, it shall be the duty of the Secretary to—

(1) administer the insurance fund; and

(2) report to the Congress not later than the first day of April of each year on the operation and the status of the insurance fund during the preceding fiscal year and on its expected operation and status during the current fiscal year and the next two fiscal years and review the general policies followed in managing the insurance fund and recommend changes in such policies, including the necessary changes in the provisions of law which govern the way in which the insurance fund is to be managed.

TITLE V—DISCLOSURE AND FIDUCIARY STANDARDS

SEC. 501. In addition to the filing requirements of the Welfare and Pension Plans Disclosure Act, it shall be a condition of compliance with section 7 of such Act that each annual report hereinafter filed under that section shall be accompanied by a certificate or certificates in the name of and on behalf of the plan, the administrator, and any employer or employee organization participating in the establishment of the plan, designating the Secretary as agent for service of process on the persons and entities executing such certificate or certificates in any action arising under the Welfare and Pension Plans Disclosure Act or this Act.

SEC. 502. (a) Section 3 of the Welfare and Pension Plans Disclosure Act (72 Stat. 997)

is amended by adding at the end thereof the following new paragraphs:

"(14) The term 'relative' means a spouse, ancester, descendent, brother, sister, son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law.

"(15) The term 'administrator' means—

"(A) the person specifically so designated by the terms of the plan, collective-bargaining agreement, trust agreement, contract, or other instrument, under which the plan is operated; or

"(B) in the absence of such designation (i) the employer in the case of an employee benefit plan established or maintained by a single employer, (ii) the employee organization in the case of a plan established or maintained by an employee organization, or (iii) the association, committee, joint board of trustees, or other similar group of representatives of the parties who established or maintained the plan, in the case of a plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations.

"(16) The term 'employee benefit plan' or 'plan' means an employee welfare benefit plan or an employee pension benefit plan or a plan providing both welfare and pension benefits.

"(17) The term 'employee benefit fund' or 'fund' means a fund of money or other assets maintained pursuant to or in connection with an employee benefit plan and includes employee contributions withheld but not yet paid to the plan by the employer. The term does not include: (A) any assets of an investment company subject to regulation under the Investment Company Act of 1940; (B) premium, subscription charges, or deposits received and retained by an insurance carrier or service or other organization, except for any separate account established or maintained by an insurance carrier.

"(18) The term 'separate account' means an account established or maintained by an insurance company under which income, gains, and losses, whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account without regard to other income, gains, or losses of the insurance company.

"(19) The term 'adequate consideration' when used in section 15 means either (A) at the price of the security prevailing on a national securities exchange which is registered with the Securities and Exchange Commission, or (B) if the security is not traded on such a national securities exchange, at a price not less favorable to the fund than the offering price for the security as established by the current bid and asked prices quoted by persons independent of the issuer or (C) if the price of the security is not quoted by persons independent of the issuer, at a price determined to be the fair value of the security.

"(20) The term 'nonforfeitable pension benefit' means a legal claim obtained by a participant or his beneficiary to that part of an immediate or deferred pension benefit which, notwithstanding any conditions subsequent which would affect receipt of any benefit flowing from such right arises from the participant's covered service under the plan and is no longer contingent on the participant remaining covered by the plan.

"(21) The term 'covered service' means that period of service performed by a participant for an employer or as a member of an employee organization which is recognized under the terms of the plan or the collective bargaining agreement (subject to the requirements of the Retirement Income Security for Employees Act), for purposes of determining a participant's eligibility to receive pension benefits or for determining the amount of such benefits.

"(22) The term 'pension benefit' means the aggregate, annual, monthly, or other amounts to which a participant will become entitled upon retirement or to which any other person is entitled by virtue of such participant's death.

"(23) The term 'accrued portion of normal retirement benefit' means that amount of such benefit which, irrespective of whether the right to such benefit is nonforfeitable, is equal to—

"(A) in the case of a profit-sharing-retirement plan or money purchase plan, the total amount credited to the account of a participant;

"(B) in the case of a unit benefit-type pension plan, the benefit units credited to a participant; or

"(C) in the case of other types of pension plans, that portion of the prospective normal retirement benefit of a participant that pursuant to rule or regulation, under the Retirement Income Security for Employees Act, is determined to constitute the participant's accrued portion of the normal retirement benefit under the terms of the appropriate plan.

"(24) The term 'security' means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in, or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

"(25) The term 'fiduciary' means any person who exercises any power of control, management, or disposition with respect to any moneys or other property of any employee benefit fund, or has authority or responsibility to do so.

"(26) The term 'market value' or 'value' when used in this Act means fair market value where available, and otherwise the fair value as determined pursuant to rule or regulation under this Act."

(b) Paragraph (1) of section 3 of such Act is amended by inserting the words "or maintained" after the word "established".

(c) Paragraph (2) of section 3 of such Act is amended by inserting the words "or maintained" after the word "established".

(d) Paragraph (3) of section 3 of such Act is amended by striking out the word "plan" the first time it appears and inserting in lieu thereof the word "program".

(e) Paragraphs (3), (4), (6), and (7) of section 3 of such Act are amended by striking out the words "welfare or pension" wherever they appear.

(f) Paragraph (13) of section 3 of such Act is amended to read as follows:

"(13) The term 'party in interest' means as to an employee benefit plan or fund, any administrator, officer, fiduciary, trustee, custodian, counsel, or employee of any employee benefit plan, or a person providing benefit plan services to any such plan, or an employer, any of whose employees are covered by such a plan or any person controlling, controlled by, or under common control with, such employer or officer or employee or agent of such employer or such person, or an employee organization having members covered by such plan, or an officer or employee or agent of such an employee organization, or a relative, partner, or joint venturer or any of the above-described persons. Whenever the term 'party in interest' is used in this Act, it shall mean a person known to be a party in interest.

"(14) If any moneys or other property of an employee benefit fund are invested in shares of an investment company registered under the Investment Company Act of 1940, such investment shall not cause such investment company or such investment company's investment adviser or principal underwriter to be deemed to be a 'fiduciary' or a 'party in pany or its investment adviser or principal underwriter acts in connection with an employee benefit fund established or maintained pursuant to an employee benefit plan covering employees of the investment company, the investment adviser, or its principal underwriter. Nothing contained herein shall limit the duties imposed on such investment company, investment adviser, or principal underwriter by any other provision of law."

SEC. 503. (a) Section 4(a) of the Welfare and Pension Plans Disclosure Act is amended by striking out the words "welfare or pension", "or employers", and "or organizations" wherever they appear.

(b) Paragraph (3) of section 4(b) of such Act is amended to read as follows:

"(3) Such plan is administered by a religious organization described under section 501(c) of the Internal Revenue Code of 1954 which is exempt from taxation under the provisions of section 501(a) of such Code;"

(c) Paragraph (4) of section 4(b) of such Act is amended by inserting before the period the following: ", except that participants and beneficiaries of such plan shall be entitled to maintain an action to recover benefits or to clarify their rights to future benefits as provided in section 604 of the Retirement Income Security for Employees Act".

(d) Section 4(b) of such Act is further amended by adding at the end thereof the following new paragraph:

"(5) such plan is established or maintained outside the United States primarily for the benefit of employees who are not citizens of the United States and the situs of the employee benefit plan fund established or maintained pursuant to such plan is maintained outside the United States."

SEC. 504. (a) Section 5(b) of the Welfare and Pension Plans Disclosure Act is amended to read as follows:

"(b) The Secretary may require the filing of special terminal reports on behalf of an employee benefit plan which is winding up its affairs, so long as moneys or other assets remain in the plan. Such reports may be required to be filed regardless of the number of participants remaining in the plan and shall be in such form and filed in such manner as the Secretary may prescribe."

(b) Section 5 of such Act is further amended by adding at the end thereof the following new subsection:

"(c) The Secretary may by regulation provide for the exemption from all or part of the reporting and disclosure requirements of this Act of any class or type of employee benefit plans if the Secretary finds that the application of such requirements to such plans is not required in order to implement the purposes of this Act."

SEC. 505. Section 6 of the Welfare and Pension Plans Disclousre Act is amended to read as follows:

"SEC. 6. (a) A description of any employee benefit plan shall be published as required herein within ninety days after the establishment of such plan or when such plan becomes subject to this Act.

"(b) The description of the plan shall be comprehensive and shall include the name and type of administration of the plan; the name and address of the administrator; the names and addresses of any person or persons responsible for the management or investment of plan funds; the schedule of benefits; a description of the provisions providing for vested benefits written in a manner calculated to be understood by the average participant; the source of the financing of the plan and identity of any organization through which benefits are provided; whether records of the plan are kept on a calendar year basis, or on a policy or other fiscal year basis, and if on the latter basis,

the date of the end of such policy or fiscal year; the procedures to be followed in presenting claims for benefits under the plan and the remedies available under the plan for the redress of claims which are denied in whole or in part. Amendments to the plan reflecting changes in the data and information included in the original plan, other than data and information also required to be included in annual reports under section 7, shall be included in the description on and after the effective date of such amendments. Any change in the information required by this subsection shall be reported in accordance with regulations prescribed by the Secretary."

SEC. 506. (a) Subsection (a) of section 7 of the Welfare and Pension Plans Disclosure Act is amended by adding the number "(1)" after the letter "(a)", and by striking out that part of the first sentence which precedes the word "if" the first time it appears and inserting in lieu thereof the words "An annual report shall be published with respect to any employee benefit plan if the plan provides for an employee benefit fund subject to section 15 of this Act or".

(b) Section 7(a)(1) of such Act is further amended by striking out the word "investigation" and inserting in lieu thereof the words "notice and opportunity to be heard", by striking out the words "year (or if" and inserting in lieu thereof the words "policy or fiscal year on which", adding a period after the word "kept", and striking out all the words following the word "kept".

(c) Section 7(a) of such Act is further amended by adding the following paragraphs:

"(2) If some or all of the benefits under the plan are provided by an insurance carrier or service or other organization, such carrier or organization shall certify to the administrator of such plan, within one hundred and twenty days after the end of each calendar, policy, or other fiscal year, as the case may be, such information as determined by the Secretary to be necessary to enable such administrator to comply with the requirements of this Act.

"(3) The administrator of an employee benefit plan shall cause an audit to be made annually of the employee benefit fund established in connection with or pursuant to the provisions of the plan. Such audit shall be conducted in accordance with accepted standards of auditing by an independent certified or licensed public accountant, but nothing herein shall be construed to require such an audit of the books or records of any bank, insurance company, or other institution providing insurance, investment, or related function for the plan, if such books or records are subject to periodic examination by any agency of the Federal Government or the government of any State. The auditor's opinion and comments with respect to the financial information required to be furnished in the annual report by the plan administrator shall form a part of such report."

(d) Sections 7 (b) and (c) of such Act are amended to read as follows:

"(b) A report under this section shall include—

"(1) the amount contributed by each employer; the amount contributed by the employees; the amount of benefits paid or otherwise furnished; the number of employees covered; a statement of assets, liabilities, receipts, and disbursements of the plan; a detailed statement of the salaries and fees and commissions charged to the plan, to whom paid, in what amount, and for what purposes; the name and address of each fiduciary, his official position with respect to the plan, his relationship to the employer of the employees covered by the plan, or the employee organization, and any other office, position, or employment he holds with any party in interest;

"(2) a schedule of all investments of the fund showing as of the end of the fiscal year;

"(A) the aggregate cost and aggregate value of each security, by issuer,

"(B) the aggregate cost and aggregate value, by type or category, of all other investments, and separately identifying (i) each investment, the value of which exceeds 3 per centum of the value of the fund and (ii) each investment in securities or properties of any person known to be a party in interest;

"(3) a schedule showing the aggregate amount, by type or security, of all purchases, sales, redemptions, and exchanges of securities made during the reporting period; a list of the issuers of such securities; and in addition, a schedule showing, as to each separate transaction with or without respect to securities issued by any person known to be a party in interest, the issuer, the type and class of security, the quantity involved in the transaction, the gross purchase price, and in the case of a sale, redemption, or exchange, the gross and net proceeds (including a description and the value of any consideration other than money) and the net gain or loss, except that such schedule shall not include distribution of stock or other distributions in kind from profitsharing or similar plans to participants separated from the plan;

"(4) a schedule of purchases, sales, or exchanges during the year covered by the report of investment assets other than securities—

"(A) by type or category of asset the aggregate amount of purchases, sales, and exchanges; the aggregate expenses incurred in connection therewith; and the aggregate net gain (or loss) on sales, and

"(B) for each transaction involving a person known to be a party in interest and for each transaction involving over 3 per centum of the fund, an indication of each asset purchased, sold, or exchanged (and, in the case of fixed assets such as land, buildings, and leaseholds, the location of the asset); the purchase or selling price; expenses incurred in connection with the purchase, sale, or exchange; the cost of the asset and the net gain (or loss) on each sale; the identity of the seller in the case of a purchase, or the identity of the purchaser in the case of a sale, and his relationship to the plan, the employer, or any employee organization;

"(5) a schedule of all loans made from the fund during the reporting year or outstanding at the end of the year, and a schedule of principal and interest payments received by the fund during the reporting year, aggregated in each case by type of loan, and in addition, a separate schedule showing as to each loan which—

"(A) was made to a party in interest, or

"(B) was in default, or

"(C) was written off during the year as uncollectable, or

"(D) exceeded 3 per centum of the value of the fund,

the original principal amount of the loan, the amount of principal and interest received during the reporting year, the unpaid balance, the identity and address of the loan obligor, a detailed description of the loan (including date of making and maturity, interest rate, the type and value of collateral and other material terms), the amount of principal and interest overdue (if any) and as to loans written off as uncollectable an explanation thereof;

"(6) a list of all leases with—

"(A) persons other than parties in interest who are in default, and

"(B) any party in interest,

including information as to the type of property leased (and, in the case of fixed assets such as land, buildings, leaseholds, and so forth, the location of the property), the identity of the lessor or lessee from or to whom the plan is leasing, the relationship of such lessors and lessees, if any, to the plan, the employer, employee organization, or any other party in interest, the terms of the lease regarding rent, taxes, insurance, repairs, expenses, and renewal options; if property is leased from persons described in (B) the amount of rental and other expenses paid during the reporting year; and if property is leased to persons described in (A) or (B), the date the leased property was purchased and its cost, the date the property was leased and its approximate value at such date, the gross rental receipts during the reporting period, the expenses paid for the leased property during the reporting period, the net receipts from the lease, and with respect to any such leases in default, their identity, the amounts in arrears, and a statement as to what steps have been taken to collect amounts due or otherwise remedy the default;

"(7) a detailed list of purchases, sales, exchanges, or any other transactions with any party in interest made during the year, including information as to the asset involved, the price, any expenses connected with the transaction, the cost of the asset, the proceeds, the net gain or loss, the identity of the other party to the transaction and his relationship to the plan;

"(8) subject to rules of the Secretary designed to preclude the filing of duplicate or unnecessary statements if some or all of the assets of a plan or plans are held in a common or collective trust maintained by a bank or similar institution or in a separate account maintained by an insurance carrier, the report shall include a statement of assets and liabilities and a statement of receipts and disbursements of such common or collective trust or separate account and such of the information required under paragraphs (2), (3), (4), (5), (6), and (7) of section 7(b) with respect to such common or collective trust or separate account as the Secretary may determine appropriate by regulation. In such case the bank or similar institution or insurance carrier shall certify to the administrator of such plan or plans, within one hundred and twenty days after the end of each calendar, policy, or other fiscal year, as the case may be, the information determined by the Secretary to be necessary to enable the plan administrator to comply with the requirements of this Act; and

"(9) in addition to reporting the information called for by this subsection, the administrator may elect to furnish other information as to investment or reinvestment of the fund as additional disclosures to the Secretary.

"(c) If the only assets from which claims against an employee benefit plan may be paid are the general assets of the employer or the employee organization, the report shall include (for each of the past five years) the benefits paid and the average number of employees eligible for participation.

(e) Section 7(d) of such Act is amended by striking out the capital "T" in the word "The" the first time it appears in paragraphs (1) and (2) and inserting in lieu thereof a lowercase "t".

(f) Section 7(e) of such Act is amended to read as follows:

"(e) Every employee pension benefit plan shall include with its annual report (to the extent applicable) the following information:

"(1) the type and basis of funding,

"(2) the number of participants, both retired and nonretired, covered by the plan,

"(3) the amount of all reserves or net assets accumulated under the plan,

"(4) the present value of all liabilities for all nonforfeitable pension benefits and the present value of all other accrued liabilities,

"(5) the ratios of the market value of the reserves and asset described in (3) above to the liabilities described in (4) above.

"(6) a copy of the most recent actuarial report, and

"(A) (i) the actuarial assumptions used in computing the contributions to a trust or payments under an insurance contract, (ii) the actuarial assumptions used in determining the level of benefits, and (iii) the actuarial assumptions used in connection with the other information required to be furnished under this subsection, insofar as any such actuarial assumptions are not included in the most recent actuarial report,

"(B) (i) if there is no such report, or (ii) if any of the actuarial assumptions employed in the annual report differ from those in the most recent actuarial report, or (iii) if different actuarial assumptions are used for computing contributions or payments then are used for any other purpose, a statement explaining same; and

"(7) such other reasonable information pertinent to disclosure under this subsection as the Secretary may by regulation prescribe."

(g) Section 7 of such Act is further amended by striking out in their entirety subsections (f), (g), and (h).

SEC. 507. (a) Section 8 of the Welfare and Pension Plans Disclosure Act is amended by striking out subsections (a) and (b) in their entirety and by redesignating subsection (c) as subsection (a). The subsection redesignated as subsection (a) is further amended by striking out the words "of plans" after the word "descriptions", striking out the word "the" before the word "annual", and adding the word "plan" before the word "descriptions".

(b) Such section is further amended by adding subsections (b), (c), and (d), to read as follows:

"(b) The administrator of any employee benefit plan subject to this Act shall file with the Secretary a copy of the plan description and each annual report. The Secretary shall make copies of such descriptions and annual reports available for public inspection.

"(c) Publication of the plan descriptions and annual reports required by this Act shall be made to participants and beneficiaries of the particular plan as follows:

"(1) the administrator shall make copies of the plan description (including all amendments or modifications thereto) and the latest annual report and the bargaining agreement, trust agreement, contract, or other instrument under which the plan was established or is operated available for examination by any plan participant or beneficiary in the principal office of the administrator;

"(2) the administrator shall furnish to any plan participant or beneficiary so requesting in writing a fair summary of the latest annual report;

"(3) the administrator shall furnish or make available, whichever is most practicable: (i) to every participant upon his enrollment in the plan and within one hundred and twenty days after each major amendment to the plan, a summary of the plan's important provisions, including the names and addresses of any person or persons responsible for the management or investment of plan funds, and requirements of the amendment, whichever is applicable, written in a manner calculated to be understood by the average participant; such explanation shall include a description of the benefits available to the participant under the plan and circumstances which may result in disqualification or ineligibility, and the requirements of the Welfare and Pension Plans Disclosure Act with respect to the availability of copies of the plan bargaining agreement, trust agreement, contract or other instrument under which the plan is established or operated; and (ii) to every participant every three years (commencing January 1, 1975), a revised, up-to-date summary of the plan's important provisions and major amendments thereto, written in a manner calculated to be understood by the average participant; and (iii) to each plan participant or beneficiary so requesting in writing a complete copy of the plan description (including all amendments or modifications thereto) or a complete copy of the latest annual report, or both. He shall in the same way furnish a complete copy of any bargaining agreement, trust agreement, contract, or other instrument under which the plan is established or operated. In accordance with regulations of the Secretary, an administrator may make a reasonable charge to cover the cost of furnishing such complete copies.

"(d) In the event a plan is provided a variance with respect to standards of vesting, funding, or both, pursuant to title II of the Retirement Income Security for Employees Act, the Administrator shall furnish or make available, whichever is most practicable, notice of such action to each participant in a manner calculated to be understood by the average participant, and in such form and detail and for such periods as may be prescribed by the Secretary."

SEC. 508. Section 9(d) of such Act is amended to eliminate the words "after first requiring certification in accordance with section 7(b)".

SEC. 509. Section 14 of such Act is amended to read as follows:

"SEC. 14. (a) (1) There is hereby established an Advisory Council on Employee Welfare and Pension Benefit Plans (hereinafter referred to as the 'Council') consisting of twenty-one members appointed by the Secretary. Not more than ten members of the Council shall be members of the same political party.

"(2) Members shall be appointed from among persons recommended by groups or organizations which they shall represent and shall be persons qualified to appraise the programs instituted under this Act and the Retirement Income Security for Employees Act.

"(3) Of the members appointed, five shall be representatives of labor organizations; five shall be representatives of management; one representative each from the fields of insurance, corporate trust, actuarial counseling, investment counseling, and the accounting field; and six representatives shall be appointed from the general public.

"(4) Members shall serve for terms of three years, except that of those first appointed, six shall be appointed for terms of one year, seven shall be appointed for terms of two years, and eight shall be appointed for terms of three years. A member may be reappointed, and a member appointed to fill a vacancy shall be appointed only for the remainder of such term. A majority of members shall constitute a quorum and action shall be taken only by a majority vote of those present.

"(5) Members shall be paid compensation at the rate of $150 per day when engaged in the actual performance of their duties except that any such member who holds another office or position under the Federal Government shall serve without additional compensation. Any member shall receive travel expenses, including per diem in lieu of subsistence as authorized by section 5703 of title 5, United States Code, for persons in the Government employed intermittently.

"(b) It shall be the duty of the Council to advise the Secretary with respect to the carrying out of their functions under this Act, and to submit to the Secretary recommendations with respect thereto. The Council shall meet at least four times each year and at such other times as the Secretary requests. At the beginning of each regular session of the Congress, the Secretary shall transmit to the Senate and House of Representatives each recommendation which he has received from the Council during the preceding calendar year and a report covering his activities under the Act for the preceding fiscal year, including full information as to the number of plans and their size, the results of any studies he may have made of such plans and the operation of this Act and such other information and data as he may deem desirable in connection with employee welfare and pension benefit plans.

"(c) The Secretary shall furnish to the Council an executive secretary and such secretarial, clerical, and other services as are deemed necessary to conduct its business. The Secretary may call upon other agencies of the Government for statistical data, reports, and other information which will assist the Council in the performance of its duties."

SEC. 510. The Welfare and Pension Plans Disclosure Act is further amended by renumbering sections 15, 16, 17, and 18 as sections 16, 17, 18, and 19, respectively, and by inserting the following new section immediately after section 14:

"FIDUCIARY STANDARDS

"SEC. 15. (a) Every employee benefit fund established to provide for the payment of benefits under an employee's benefit plan shall be established or maintained pursuant to a duly executed written document which shall set forth the purpose or purposes for which such fund is established and the detailed basis on which payments are to be made into and out of such fund. Such fund shall be deemed to be a trust and shall be held for the exclusive purpose of (1) providing benefits to participants in the plan and their beneficiaries and (2) defraying reasonable expenses of administering the plan.

"(b) (1) A fiduciary shall discharge his duties with respect to the fund—

"(A) with the care under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; and

"(B) subject to the standards in subsection (a) and in accordance with the documents and instruments governing the fund insofar as is consistent with this Act, except that (i) any assets of the fund remaining upon dissolution or termination of the fund shall, after complete satisfaction of the rights of all beneficiaries to benefits accrued to the date of dissolution or termination, be distributed ratably to the beneficiaries thereof or, if the trust agreement so provides, to the contributors thereto; and (ii) that in the case of a registered pension or profit-sharing-retirement plan, such distribution shall be subject to the requirements of the Retirement Income Security for Employees Act.

"(2) Except as permitted hereunder, a fiduciary shall not——

"(A) rent or sell property of the fund to any person known to be a party in interest of the fund;

"(B) rent or purchase on behalf of the fund any property known to be owned by a party in interest of the fund;

"(C) deal with such fund in his own interest or for his own account;

"(D) represent any other party with such fund, or in any way act on behalf of a party adverse to the fund or adverse to the interests of its participants or beneficiaries;

"(E) receive any consideration from any party dealing with such fund in connection with a transaction involving the fund for the fiduciary's personal interest or for the personal interest of any party in interest;

"(F) loan money or other assets of the fund to any party in interest of the fund;

"(G) furnish goods, services, or facilities of the fund to any party in interest of the fund;

"(H) permit the transfer of any assets or property of the fund to, or its use by or for the benefit of, any party in interest of the fund; or

"(I) permit any of the assets of the fund to be held, deposited, or invested outside the United States unless the indicia of ownership remain within the jurisdiction of a United States District Court, except as authorized by the Secretary by rule or regulation. The Secretary, by rules or regulations or upon application of any fiduciary or party in interest, by order, shall provide for the exemption conditionally or unconditionally of any fiduciary or class of fiduciaries or transaction or class of transactions from all or part of the proscriptions contained in this subsection 15(b)(2) when the Secretary finds that to do so is consistent with the purposes of this Act and is in the interest of the fund or class of funds and the participants and beneficiaries: *Provided, however,* That any such exemption shall not relieve a fiduciary from any other applicable provisions of this Act.

"(c) Nothing in this section shall be construed to prohibit the fiduciary from—

"(1) receiving any benefit to which he may be entitled as a participant or beneficiary in the plan under which the fund was established;

"(2) receiving any reasonable compensation for services rendered, or for the reimbursement of expenses properly and actually incurred, in the performance of his duties with the fund, or receiving in a fiduciary capacity proceeds from any transaction involving plan funds, except that no person so serving who already receives full-time pay from an employer or an association of employers whose employees are participants in the plan under which the fund was established, or from an employee organization whose members are participants in such plan shall receive compensation from such fund, except for reimbursement of expenses properly and actually incurred and not otherwise reimbursed;

"(3) serving in such position in addition to being an officer, employee, agent, or other representative of a party in interest;

"(4) *engaging in the following transactions:*

"(A) holding or purchasing on behalf of the fund any security which has been issued by an employer whose employees are participants in the plan, under which the fund was established or a corporation controlling, controlled by, or under common control with such employer, except that (i) the purchase of any security is for no more than adequate consideration in money or money's worth, and (ii) that if an employee benefit fund is one which provides primarily for benefits of a stated amount, or an amount determined by an employee's compensation, an employee's period of service, or a combination of both, or money purchase type benefits based on fixed contributions which are not geared to the employer's profits, no investment shall be held or made by a fiduciary of such a fund in securities of such employer or of a corporation controlling, controlled by, or under common control with such employer, if such investment, when added to such securities already held, exceeds 10 per centum of the fair market value of the assets of the fund. Notwithstanding the foregoing, such 10 per centum limitation shall not apply to profit sharing, stock bonus, thrift and savings or other similar plans which explicitly provide that some or all of the plan funds may be invested in securities of such employer or a corporation controlling, controlled by, or under common control with such employer, nor shall said plans be deemed to be limited by any diversification rule as to the percentage of plan funds which may be invested in such securities. Profit sharing, stock bonus, thrift or other similar plans, which are in existence on the date of enactment and which allow investment in such securities without explicit provision in the plan, shall remain exempt from the 10 per centum limitation until the expiration of one year from the date of enactment of Retirement Income Security for Employees Act. Nothing contained in this subparagraph shall be construed to relieve profit sharing, stock bonus, thrift and savings or other similar plans from any other applicable requirements of this section;

"(B) purchasing on behalf of the fund any security or selling on behalf of the fund any security which is acquired or held by the fund, to or from a party in interest if (i) at the time of such purchase or sale the security is of a class of securities which is listed on a national securities exchange registered under the Securities Exchange Act of 1934 or which has been listed for more than one month (after the date of enactment of this Act) on an electronic quotation system administered by a national securities association registered under the Securities Exchange Act of 1934, (ii) no brokerage commission, fee (except for customary transfer fees), or other remuneration is paid in connection with such transaction, (iii) adequate consideration is paid, and (iv) that in the event the security is one described in subparagraph (A), the transaction has received the prior approval of the Secretary;

"(5) making any loan to participants or beneficiaries of the plan under which the fund was established where such loans are available to all participants or beneficiaries on a nondiscriminatory basis and are made in accordance with specific provisions regarding such loans set forth in the plan;

"(6) contracting or making reasonable arrangements with a party in interest for office space and other services necessary for the operation of the plan and paying reasonable compensation therefor;

"(7) following the specific instructions in the trust instrument or other document governing the fund insofar as consistent with the specific prohibitions listed in subsection (b)(2);

"(8) taking action pursuant to an authorization in the trust instrument or other document governing the fund, provided such action is consistent with the provisions of subsection (b).

"(d) Nothing in this section shall be construed to prohibit a person who is a party in interest by reason of providing benefit plan services to a plan, from providing any other services ordinarily and customarily furnished at arm's length by such person, to any fiduciary or any other party in interest to the plan, and nothing in this section shall be construed to preclude any fiduciary or party in interest in the plan from purchasing such services or contracting or making reasonable arrangements for the receipt of such services on such terms as are fair and reasonable.

"(e) Any fiduciary who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this Act shall be personally liable to such fund for any losses to the fund resulting from such breach, and to pay to such fund any profits which have inured to such fiduciary through use of assets of the fund.

"(f) When two or more fiduciaries undertake jointly the performance of a duty or the exercise of a power, or where two or more fiduciaries are required by an instrument governing the fund to undertake jointly the performance of a duty or the exercise of power, but not otherwise, each of such fiduciaries shall have the duty to prevent any other such cofiduciary from committing a breach of responsibility, obligation, or duty of a fiduciary or to compel such other cofiduciary to redress such a breach, except that no fiduciary shall be liable for any consequence of any act or failure to act of a cofiduciary who is undertaking or is required to undertake jointly any duty or power if he shall object in writing to the specific action and promptly file a copy of his objection with the Secretary.

"(g) No fiduciary may be relieved from any responsibility obligation, or duty imposed by law, agreement, or otherwise. Nothing herein shall preclude any agreement allocating specific duties or responsibilities among fiduciaries, or bar any agreement of insurance coverage or indemnification affecting fiduciaries, unless specifically disapproved by the Secretary.

"(h) A fiduciary shall not be liable for a violation of this Act committed before he became a fiduciary or after he ceased to be a fiduciary.

"(i) No individual who has been convicted of, or has been imprisoned as a result of his conviction of: robbery, bribery, extortion, embezzlement, grand larceny, burglary, arson, violation of narcotics laws murder, rape, kidnaping, perjury, assault with intent to kill, assault which inflicts grievous bodily injury any crime described in section 9(a)(1) of the Investment Company Act of 1940, or a violation of any provision of the Welfare and Pension Plans Disclosure Act, or a violation of section 302 of the Labor-Management Relations Act of 1947 (61 Stat. 157, as amended), or a violation of chapter 63 of title 18, United States Code, or a violation of section 874, 1027, 1503, 1505, 1506, 1510, 1951, or 1954 of title 18, United States Code, or a violation of the Labor-Management Reporting and Disclosure Act of 1959 (73 Stat. 519, as amended), or conspiracy to commit any such crimes or attempt to commit any such crimes or a crime in which any of the foregoing crimes is an element, shall serve—

"(1) as an administrator, officer, trustee, custodian, counsel, agent, employee (other than as an employee performing exclusive clerical or janitorial duties) or other fiduciary position of any employee benefit plan; or

"(2) as a consultant to any employee benefit plan, during or for five years after such conviction or after the end of such imprisonment, unless prior to the end of such five-year period, in the case of a person so convicted or imprisoned, (A) his citizenship rights having been revoked as a result of such conviction, have been fully restored, or (B) the Secretary determines that such person's service in any capacity referred to in clause (1) or (2) would not be contrary to the purposes of this Act. No person shall knowingly permit any other person to serve in any capacity referred to in clause (1) or (2) in violation of this subsection. Any person who willfully violates this subsection shall be fined not more than $10,000 or imprisoned for not more than one year, or both. For the purposes of this subsection, any person shall be deemed to have been 'convicted' and under the disability of 'conviction' from the date of the judgment of the trial court or the date of the final sustaining of such judgment on appeal, whichever is the later event, regardless of whether such conviction occurred before or after the date of enactment of this section. For the purposes of this subsection, the term 'consultant' means any person who, for compensation, advises or represents an employee benefit plan or who provides other assistance to such plan, concerning the establishment or operation of such plan.

"(j) All investments and deposits of the funds of an employee benefit fund and all loans made out of any such fund shall be made in the name of the fund or its nominee, and no employer or officer or employee thereof, and no labor organization, or officer or employee thereof, shall either directly or indirectly accept or be the beneficiary of any fee, brokerage, commission, gift, or other consideration for or on account of any loan,

deposit, purchase, sale, payment, or exchange made by or on behalf of the fund.

"(k) In order to provide for an orderly disposition of any investment, the retention of which would be deemed to be prohibited by this Act, and in order to protect the interest of the fund and its participants and its beneficiaries, the fiduciary may in his discretion effect the disposition of such investment within three years after the date of enactment of this Act, or within such additional time as the Secretary may by rule or regulation allow, and such action shall be deemed to be in compliance with this Act."

(l) In accordance with regulations of the Secretary, every employee benefit plan subject to this Act shall—

(1) provide adequate notice in writing to any participant or beneficiary whose claim for benefits from the plan has been denied, setting forth the specific reasons for such denial, written in a manner calculated to be understood by the participant, and

(2) afford a reasonable opportunity to any participant whose claim for benefits has been denied for a full and fair review by the plan administrator of the decision denying the claim.

TITLE VI— ENFORCEMENT

SEC. 601. Whenever the Secretary—

(1) determines, in the case of a pension or profit-sharing-retirement plan required to be registered under this Act, that no application for registration has been filed in accordance with section 102, or

(2) issues an order under section 107 denying or canceling the certificate of registration of a pension or profit-sharing-retirement plan, or

(3) determines, in the case of a pension plan subject to title II, that there has been a failure to make required contributions to the plan in accordance with the provisions of this Act or to pay required assessments or premiums under title III, or to pay such other fees or moneys as may be required under this Act,

the Secretary may petition any district court of the United States having jurisdiction of the parties, or the United States District Court for the District of Columbia, for an order requiring the employer or other person responsible for the administration of such plan to comply with the requirements of this Act as will qualify such plan for registration or compel or recover the payment of required contributions, assessments, premiums, fees, or other moneys.

SEC. 602. Whenever the Secretary has reasonable cause to believe that an employees' benefit fund is being or has been administered in violation of the requirements of the Welfare and Pension Plans Disclosure Act or the documents governing the establishment or operation of the fund, the Secretary may petition any district court of the United States having jurisdiction of the parties or the United States District Court for the District of Columbia for an order (1) requiring return to such fund of assets transferred from such fund in violation of the requirements of such Act, (2) requiring payment of benefits denied to any participant or beneficiary due to violation of the requirements of such Act, and (3) restraining any conduct in violation of the fiduciary requirements of such Act, and granting such other relief as may be appropriate to effectuate the purposes of this Act, including, but not limited to, removal of a fiduciary who has failed to carry out his duties and the removal of any person who is serving in violation of the requirements of section 15(1) of the Welfare and Pension Plans Disclosure Act.

SEC. 603. Civil actions for appropriate relief, legal or equitable, to redress or restrain a breach of any responsibility, obligation or duty of a fiduciary, including but not limited to, the removal of a fiduciary who has failed to carry out his duties and the removal of any person who is serving in violation of the requirements of section 15(i) of the Welfare and Pension Plans Disclosure Act or against any person who has transferred or received any of the assets of a plan or fund in violation of the fiduciary requirements of the Welfare and Pension Plans Disclosure Act or in violation of the document or documents governing the establishment or operation of the fund, may be brought by any participant or beneficiary of any employee benefit plan or fund subject to the Welfare and Pension Plans Disclosure Act in any court of competent jurisdiction, State or Federal, or the United States District Court for the District of Columbia, without respect to the amount in controversy and without regard to the citizenship of the parties. Where such action is brought in a district court of the United States, it may be brought in the district where the plan is administered, where the breach took place, or where a defendant resides or may be found, and process may be served in any other district where a defendant resides or may be found.

SEC. 604. Suits by a participant or beneficiary entitled, or who may become entitled, to benefits from an employee benefit plan or fund, subject to the Welfare and Pension Plans Disclosure Act, as amended by this Act may be brought in any court of competent jurisdiction, State or Federal, or the United States District Court for the District of Columbia, without respect to the amount in controversy and without regard to the citizenship of the parties, against any such plan or fund to recover benefits due him required to be paid from such plan or fund pursuant to the document or documents governing the establishment or operation of the plan or fund, or to clarify his rights to future benefits under the terms of the plan. Where such action is brought in a district court of the United States, it may be brought in the district where the plan is administered, or where a defendant resides or may be found, and process may be served in any other district where a defendant resides or may be found. Such actions may also be brought by a participant or beneficiary as a representative party on behalf of all participants or beneficiaries similarly situated.

SEC. 605. (a) In any action brought under section 603 or 604, the court in its discretion may—

(1) allow a reasonable attorney's fee and costs of the action to any party;

(2) require the plaintiff to post security for payment of costs of the action and reasonable attorney's fees.

(b) A copy of the complaint in any action brought under section 603 or 604 shall be served upon the Secretary by certified mail, who shall have the right, in his discretion, to intervene in the action.

(c) Notwithstanding any other law, the Secretary shall have the right to remove an action brought under section 603 or 604 from a State court to a district court of the United States, if the action is one seeking relief of the kind the Secretary is authorized to sue for under this Act. Any such removal shall be prior to the trial of the action and shall be to a district court where the Secretary could have initiated the action.

SEC. 606. The provisions of the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", approved March 23, 1932, shall not be applicable with respect to suits brought under this title.

SEC. 607. Suits by an administrator or fiduciary of a pension plan, a profit-sharing-retirement plan, or an employees' benefit fund subject to the Welfare and Pension Plans Disclosure Act, to review final order of the Secretary, to restrain the Secretary from taking any action contrary to the provisions of this Act, or to compel action required under this Act, may be brought in the name of the plan or fund in the district court of the United States for the district where the fund has its principal office, or in the United States District Court for the District of Columbia.

SEC. 608. Any action, suit, or proceeding based upon a violation of this Act or the Welfare and Pension Plans Disclosure Act shall be commenced within five years after the violation occurs. In the case of fraud or concealment, such action, suit or proceeding shall be commenced within five years of the date of discovery of such violation.

SEC. 609. (a) It is hereby declared to be the express intent of Congress that, except for actions authorized by section 604 of this title, the provisions of this Act or the Welfare and Pension Plans Disclosure Act shall supersede any and all laws of the States and of political subdivisions thereof insofar as they may now or hereafter relate to the subject matters regulated by this Act or the Welfare and Pension Plans Disclosure Act, except that nothing herein shall be construed—

(1) to exempt or relieve any employee benefit plan not subject to this Act or the Welfare and Pension Plans Disclosure Act from any law of any State;

(2) to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities or to prohibit a State from requiring that there be filed with a State agency copies of reports required by this Act to be filed with the Secretary; or

(3) to alter, amend, modify, invalidate, impair, or supersede any law of the United States other than the Welfare and Pension Plans Disclosure Act or any rule or regulation issued under any law except as specifically provided in this Act.

(b) Subsection (a) of this section shall not be deemed to prevent any State court from asserting jurisdiction in any action requiring or permitting accounting by a fiduciary during the operation of an employee benefit fund subject to the Welfare and Pension Plans Disclosure Act or upon the termination thereof or from asserting jurisdiction in any action by a fiduciary requesting instructions from the court or seeking an interpretation of the trust instrument or other document governing the fund. In any such action—

(1) the provisions of this Act and the Welfare and Pension Plans Disclosure Act shall supersede any and all laws of the State and of political subdivisions thereof, insofar as they may now or hereafter relate to the fiduciary, reporting, and disclosure responsibilities of persons acting for or on behalf of employee benefit plans or on behalf of employee benefit funds subject to the Welfare and Pension Plans Disclosure Act except insofar as they may relate to the amount of benefits due beneficiaries under the terms of the plan;

(2) notwithstanding any other law, the Secretary or, in the absence of action by the Secretary, a participant or beneficiary of the employee benefit plan or fund affected by this subsection, shall have the right to remove such action from a State court to a district court of the United States if the action involves an interpretation of the fiduciary, or reporting, and disclosure responsibilities of persons acting on behalf of employee benefit plans subject to the Welfare and Pension Plans Disclosure Act;

(3) the jurisdiction of the State court shall be conditioned upon—

(A) written notification, sent to the Secretary by registered mail at the time such action is filed, identifying the parties to the action, the nature of the action, and the plan involved; and satisfactory evidence presented to the court that the participants and beneficiaries have been adequately notified with respect to the action; and

(B) the right of the Secretary or of a participant or beneficiary to intervene in the action as an interested party.

TITLE VII—EFFECTIVE DATES

SEC. 701. (a) Sections 101, 102, 103, and 104, title V, and title VI of this Act shall become effective upon the date of enactment of this Act.

(b) Title II of this Act shall become effective three years after the date of enactment of this Act, and titles III and IV of this Act shall become effective one year after the date of enactment of this Act.

RESCISSION OF ACTION ON PUBLIC WORKS AND ECONOMIC DEVELOPMENT ACT OF 1972

Mr. MANSFIELD. Mr. President, despite the fact that there was a motion to table the reconsideration of the vote, I ask unanimous consent that the action of the Senate in passing the bill be vitiated and that the bill be made the pending business, after third reading.

The PRESIDING OFFICER. Without objection, the action will be rescinded.

EQUAL EDUCATIONAL OPPORTUNITIES ACT, 1972

Mr. JAVITS. Mr. President, with the permission of the Senator from Colorado—I am sorry he has left the Chamber—I asked him if I might put in the RECORD, after his observations, a report called the Armor report relating to the use of busing in public school desegregation, and insert my remarks respecting an answer to the Armor report by Prof. Thomas Pettigrew of the department of social relations of Harvard University, in which Professor Pettigrew concludes that the report is not to be taken for the proposition that was alleged by the Senator from Colorado and others who have referred to it, for the many reasons which he set forth in a very eloquent study and letter to me and to Senator MONDALE, as, respectively, ranking member and chairman of the Senate Select Committee on Equal Education Opportunity.

I am not going to insert all the data, because Senator DOMINICK did not insert his. But I believe that anyone who reads the reports should immediately be referred to Professor Pettigrew's study, as they were referred by Senator DOMINICK to the so-called Armor study.

The PRESIDING OFFICER. Without objection the request is agreed to.

CORRECTION IN THE ENROLLMENT OF H.R. 7117

Mr. MANSFIELD. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on House Concurrent Resolution 719.

The PRESIDING OFFICER (Mr. STAFFORD) laid before the Senate House Concurrent Resolution 719, which was read as follows:

H. CON. RES. 719

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. 7117) to amend the Fishermen's Protective Act of 1967 to expedite the reimbursement of United States vessel owners for charges paid by them for the release of vessels and crews illegally seized by foreign countries, to strengthen the provisions therein relating to the collection of claims against such foreign countries for amounts so reimbursed and for certain other amounts, and for other purposes, is authorized and directed to strike out "lieu of" on page 1, line 6, of the House engrossed bill and insert the following: "lieu thereof".

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

There being no objection, the concurrent resolution (H. Con. Res. 719) was considered and agreed to.

UNANIMOUS-CONSENT AGREEMENT

Mr. MANSFIELD. Mr. President, I ask unanimous consent that on the disposition of the pending business, the unfinished business be laid aside temporarily, and that the Senate then proceed to the consideration of Calendar No. 1105, S. 3342, for a very limited period of time, after which the Senate will return to the consideration of the supplemental appropriations.

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

PUBLIC WORKS AND ECONOMIC DEVELOPMENT ACT OF 1972

The Senate continued with the consideration of H.R. 16071, to amend the Public Works and Economic Development Act of 1962.

Mr. MANSFIELD. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative cerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Florida (Mr. CHILES), the Senator from Louisiana (Mrs. EDWARDS), the Senator from Oklahoma (Mr. HARRIS), the Senator from Massachusetts (Mr. KENNEDY), 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 Virginia (Mr. SPONG), and the Senator from North Carolina (Mr. JORDAN) are necessarily absent.

I further announce that the Senator from Wyoming (Mr. McGEE) is absent on official business.

I further announce that, if present and voting, the Senator from Rhode Island (Mr. PELL) and the Senator from New Hampshire (Mr. McINTYRE) would vote "yea."

Mr. GRIFFIN. I announce that the Senator from Colorado (Mr. ALLOTT), the Senator from Nebraska (Mr. CURTIS), the Senator from Arizona (Mr. GOLDWATER), the Senator from Oregon (Mr. HATFIELD), the Senator from Iowa (Mr. MILLER), and the Senator from South Carolina (Mr. THURMOND) are necessarily absent.

The Senator from Kentucky (Mr. COOK) is absent on official business.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

If present and voting, the Senator from Kentucky (Mr. COOK) would vote "yea."

On this vote, the Senator from Oregon (Mr. HATFIELD) is paired with the Senator from Nebraska (Mr. CURTIS). If present and voting, the Senator from Oregon would vote "yea" and the Senator from Nebraska would vote "nay."

The result was announced—yeas 65, nays 16, as follows:

[No. 546 Leg.]

YEAS—65

Allen	Fulbright	Nelson
Anderson	Gambrell	Packwood
Baker	Gravel	Pastore
Bayh	Griffin	Pearson
Beall	Hart	Percy
Bellmon	Hartke	Proxmire
Bentsen	Hollings	Randolph
Bible	Hughes	Ribicoff
Boggs	Humphrey	Schweiker
Brooke	Inouye	Smith
Burdick	Jackson	Sparkman
Byrd, Harry F., Jr.	Javits	Stafford
Byrd, Robert C.	Jordan, Idaho	Stennis
Cannon	Long	Stevens
Case	Magnuson	Stevenson
Church	Mansfield	Symington
Cranston	Mathias	Taft
Eagleton	McClellan	Talmadge
Eastland	Mondale	Tower
Ervin	Montoya	Tunney
Fong	Moss	Weicker
	Muskie	Williams

NAYS—16

Aiken	Dole	Roth
Bennett	Dominick	Saxbe
Brock	Fannin	Scott
Buckley	Gurney	Young
Cooper	Hansen	
Cotton	Hruska	

NOT VOTING—19

Allott	Hatfield	Miller
Chiles	Jordan, N.C.	Mundt
Cook	Kennedy	Pell
Curtis	McGee	Spong
Edwards	McGovern	Thurmond
Goldwater	McIntyre	
Harris	Metcalf	

So the bill (H.R. 16071) was passed.

Mr. MONTOYA. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. RANDOLPH. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ORDER TO PRINT H.R. 16071 AS PASSED IN SENATE TODAY

Mr. MONTOYA. Mr. President, I ask unanimous consent that H.R. 16071, which just passed the Senate, be printed as it passed the Senate today.

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

ORDER FOR TIME LIMITATION ON MUSKIE AMENDMENTS TO THE CLEAN AIR ACT

Mr. MANSFIELD. Mr. President, I ask unanimous consent that, on the two Muskie amendments which will be offered to the Clean Air Act—and there will only be two offered and the bill will then go over until tomorrow or the next day—there be a time limitation of 1 hour on each of the two amendments, the time to be equally divided between the spon-

sor of the amendments and the distinguished manager of the bill, the Senator from California (Mr. TUNNEY).

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

ORDER TO LAY ASIDE TEMPORARILY THE UNFINISHED BUSINESS, THE CLEAN AIR ACT (S. 3342)

Mr. MANSFIELD. Mr. President, I ask unanimous consent, as I believe I did once before, that the unfinished business be laid aside temporarily and that it be laid down again as soon as we are finished with other business.

The PRESIDING OFFICER. Without objection, the Senate will temporarily lay aside the consideration of S. 3342, in order to lay before the Senate a message from the House of Representatives.

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Hackney, one of its reading clerks, announced that the House had passed the following bills of the Senate, severally with an amendment, in which it requested the concurrence of the Senate:

S. 2087. An act to amend the Omnibus Crime Control and Safe Streets Act of 1968 to provide a Federal minimum death and dismemberment benefit to public safety officers or their surviving dependents;

S. 2454. An act to amend the Youth Conservation Corps Act of 1970 (Public Law 91-378, 84 Stat. 794) to expand the Youth Conservation Corps pilot program and for other purposes;

S. 3240. An act to amend the Transportation Act of 1940, as amended, to facilitate the payment of transportation charges;

S. 3337. An act to amend the Small Business Investment Act of 1958, and for other purposes;

S. 3358. An act to prohibit the use of certain small vessels in United States fisheries; and

S. 3524. An act to extend the provisions of the Commercial Fisheries Research and Development Act of 1964, as amended.

The message also announced that the House had agreed to the amendments of the Senate to the bill (H.R. 14542) to amend the act of September 26, 1966, Public Law 89-606, to extend for 4 years the period during which the authorized numbers for the grades of major, lieutenant colonel, and colonel in the Air Force may be increased, and for other purposes.

The message further announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 15641) to authorize certain construction at military installations, and for other purposes.

The message also announced that the House had passed the following bills, in which it requested the concurrence of the Senate:

H.R. 15280. An act to amend the Act of August 16, 1971, which established the National Advisory Committee on Oceans and Atmosphere, to increase the appropriation authorization thereunder;

H.R. 15462. An act to remove certain limitations on annual operation and maintenance expenditures applicable to the United States section of the International Boundary and Water Commission, United States and Mexico, and for other purposes;

H.R. 15627. An act to amend the Oil Pollution Act, 1961 (75 Stat. 402), as amended, to implement the 1969 amendments to the International Convention for the Prevention of the Pollution of the Sea by Oil, 1954, as amended; and for other purposes;

H.R. 16074. An act to authorize appropriations to carry out jellyfish control programs until the close of fiscal year 1977;

H.R. 16182. An act to amend section 8(b) of the Soil Conservation and Domestic Allotment Act to extend the eligibility of county committee members to succeed themselves;

H.R. 16675. An act to amend the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 to extend for one year the program of grants for State and local prevention, treatment, and rehabilitation programs for alcohol abuse and alcoholism;

H.R. 16883. An act relating to compensation of members of the National Commission on the Financing of Postsecondary Education;

H.R. 16924. An act to amend chapter 5 of title 37, United States Code, to revise the special pay structure relating to members of the uniformed services, and for other purposes; and

H.R. 16925. An act to amend title 37, United States Code, to extend the authority for special pay for nuclear-qualified naval submarine officers, authorize special pay for nuclear-qualified naval surface officers, and provide special pay to certain nuclear-trained and qualified enlisted members of the naval service who agree to reenlist, and for other purposes.

The message further announced that the House had agreed to a concurrent resolution (H. Con. Res. 719) directing the Clerk of the House of Representatives to make a correction in the enrollment of H.R. 7117, 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. 15462. An act to remove certain limitations on annual operation and maintenance expenditures applicable to the United States section of the International Boundary and Water Commission, United States and Mexico, and for other purposes; to the Committee on Foreign Relations.

H.R. 15627. An act to amend the Oil Pollution Act, 1961 (75 Stat. 402), as amended, to implement the 1969 amendments to the International Convention for the Prevention of the Pollution of the Sea by Oil, 1954, as amended; and for other purposes; to the Committee on Commerce.

H.R. 16182. An act to amend section 8(b) of the Soil Conservation and Domestic Allotment Act to extend the eligibility of county committee members to succeed themselves; to the Committee on Agriculture and Forestry.

H.R. 16924. An act to amend chapter 5 of title 37, United States Code, to revise the special pay structure relating to members of the uniformed services, and for other purposes; and

H.R. 16925. An act to amend title 37, United States Code, to extend the authority for special pay for nuclear-qualified naval submarine officers, authorize special pay for nuclear-qualified naval surface officers, and provide special pay to certain nuclear-trained and qualified enlisted members of the naval service who agree to reenlist, and for other purposes; to the Committee on Armed Services.

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, may we have order? Will the Chair direct the distinguished Senators to clear the well and the aisles and ask Senators and aides to take their seats if they are going to stay in the Chamber.

The PRESIDING OFFICER. Senators will please take their seats, and aides will take their seats and refrain from audible conversation or retire to the cloakroom.

AMENDMENT OF SMALL BUSINESS INVESTMENT ACT OF 1958

Mr. SPARKMAN. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 3337.

The PRESIDING OFFICER (Mr. STAFFORD) laid before the Senate the amendment of the House of Representatives to the bill (S. 3337) to amend the Small Business Investment Act of 1958, and for other purposes, which was to strike out all after the enacting clause and insert:

That this Act may be cited as the "Small Business Investment Act Amendments of 1972".

SEC. 2. The Small Business Investment Act of 1958, as amended, is further amended as follows:

(a) Sections 103 (3) and (7) are amended by striking "(c)" after "Section 301" at the end thereof.

(b) Section 301 is amended by adding the following new subsection:

"(d) Notwithstanding any other provision of this Act, a small business investment company, the investment policy of which is that its investments will be made solely in small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages may be organized and chartered under State business or nonprofit corporation statutes, and may be licensed by the Administration to operate under the provisions of this Act."

(c) Section 303 is amended—

(1) by inserting the word "private" in the first sentence of paragraph (1) of subsection (b), to read "combined private paid-in capital and paid-in surplus";

(2) by striking the figure "$7,500,000" in the last sentence of paragraph (1) of subsection (b), and inserting the figure "$15,000,000";

(3) by amending paragraph (2) of said subsection (b) to read as follows:

"(2) The total amount of debentures which may be purchased or guaranteed and outstanding at any one time from a company not complying with section 301(d) of this Act, which has investments or legal commitments of 65 per centum or more of its total funds available for investment in small business concerns invested or committed in venture capital, and which has combined private paid-in capital and paid-in surplus of $500,000 or more shall not exceed 300 per centum of its combined private paid-in capital and paid-in surplus. In no event shall the debentures of any such company purchased or guaranteed and outstanding under this paragraph exceed $20,000,000. Such additional purchases or guarantees which the Administration makes under this paragraph shall contain conditions to insure

appropriate maintenance by the company receiving such assistance of the described ratio during the period in which debentures under this paragraph are outstanding."

(d) Section 303 is amended by adding the following new subsection:

"(c) Subject to the following conditions, the Administration is authorized to purchase preferred securities, and to purchase, or to guarantee the timely payment of all principal and interest payments as scheduled, on debentures issued by small business investment companies operating under authority of section 301(d) of this Act. The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under any guarantee under this subsection.

"The Administration may purchase—

"(1) shares of nonvoting stock (or other securities having similar characteristics), provided—

"(i) dividends are preferred and cumulative to the extent of 3 per centum of par value per annum;

"(ii) on liquidation or redemption, the Administration is entitled to the preferred payment of the par value of such securities; and prior to any distribution (other than to the Administration) the Administration may require the preferred payment of the difference between dividends paid thereon and cumulative dividends payable at a rate equal to the interest rate determined pursuant to section 303(b) for debentures with a term of fifteen years, without interest on such difference;

"(iii) the purchase price shall be at par value and, in any one sale, $50,000 or more; and

"(iv) the amount of such securities purchased and outstanding at any one time shall not exceed (A) from a company having combined private paid-in capital and paid-in surplus of less than $300,000 and licensed on or before October 13, 1971, the amount of combined private paid-in capital and paid-in surplus invested after such date, nor (B) from any company having combined private paid-in capital and paid-in surplus of $300,000 or more but less than $500,000, the amount of its combined private paid-in capital and paid-in surplus in excess of $300,000, nor (C) from any company having combined private paid-in capital and paid-in surplus of $500,000 or more, the amount of its combined private paid-in capital and paid-in surplus.

"The Administration may purchase or guarantee—

"(2) debentures subordinated pursuant to subsection (b) of this section (other than securities purchased under paragraph (1) of this subsection (c)), provided—

"(i) such debentures are issued for a term of not to exceed fifteen years;

"(ii) the interest rate is determined pursuant to sections 303(b) and 317; and

"(iii) the amount of debentures purchased or guaranteed and outstanding at any one time pursuant to this paragraph (2) from a company having combined private paid-in capital and paid-in surplus of less than $500,000 shall not exceed 200 per centum of its combined private paid-in capital and paid-in surplus less the amount of preferred securities outstanding under paragraph (1) of this subsection, nor from a company having combined private paid-in capital and paid-in surplus of $500,000 or more, 300 per centum of its combined private paid-in capital and paid-in surplus less the amount of such preferred securities.

"(3) debentures purchased and outstanding pursuant to section 303(b) of this section may be retired simultaneously with the issuance of preferred securities to meet the requirements of subparagraph (2)(iii) of this subsection (c).

"(4) the Administration may require, as a condition of the purchase or guarantee of any securities in excess of 200 per centum of the combined private paid-in capital and paid-in surplus of a company, that the company maintains a percentage of its total funds available for investment in small business concerns invested or legally committed in venture capital (as defined in subsection (b) of this section) determined by the Administration to be reasonable and appropriate."

(e) Subsection 304(a) of the Small Business Investment Act of 1958 is amended by inserting "and unincorporated" after "incorporated".

(f) Section 306 is amended (1) by inserting the word "private" in subsection (a) thereof to read "combined private paid-in capital and paid-in surplus" and (2) by repealing subsection (b) thereof.

(g) Title III is further amended by adding thereto new sections to read as follows:

"SEC. 317. Notwithstanding section 303(b), the effective rate of interest after October 13, 1971, during the first five years thereafter of the term of any debenture purchased by the Administration from a small business investment company under authority of section 303(c), shall be the greater of 3 per centum or 3 percentage points below the interest rate determined pursuant to section 303(b). The Administration is authorized to apply interest paid to it by such company for the period from October 13, 1971, to the effective date of this section, without interest thereon, to interest payable after such effective date. No company which has received the benefit of this section may make a distribution (other than to the Administration) unless it has first paid to the Administration an amount equal to the difference between the rate of interest payable to the Administration pursuant to the previous sentence, and the rate of interest which would have been payable pursuant to section 303(b).

"SEC. 318. The Administration is authorized to extend the benefits of sections 303(c) and 317 to any small business investment company operating under authority of section 310(d) of this Act, and which is owned, in whole or in part, by one or more small business investment companies, in accordance with regulations promulgated by the Administration.

"SEC. 319. Section 18 of the Investment Company Act of 1940, as amended (15 U.S.C. 80a–18), is further amended by amending subsection (k) to read as follows:

"'(k) The provisions of subparagraphs (A) and (B) of paragraph (1) of subsection (a) of this section shall not apply to investment companies operating under the Small Business Investment Act of 1958, and the provisions of paragraph (2) of said subsection shall not apply to such companies so long as such class of senior security shall be held or guaranteed by the Small Business Administration.'"

SEC. 3. The Small Business Act is amended as follows:

(a) Subsection (c) of section 4 of the Small Business Act (15 U.S.C. 633(c)) is amended by inserting "7(g)," immediately after "7(e)," in each of paragraphs (1), (2), and (4) thereof.

(b) Section 7 of the Small Business Act (15 U.S.C. 636) is amended by adding at the end thereof the following new subsection:

"(g)(1) The Administration also is empowered, where other financial assistance is not available on reasonable terms, to make such loans (either directly or in cooperation with Banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary or appropriate—

"(A) to assist any public or private organization—

"(i) which is organized under the laws of the United States or of any State, operated in the interest of handicapped individuals, the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual;

"(ii) which complies with any applicable occupational health and safety standard prescribed by the Secretary of Labor; and

"(iii) which, in the production of commodities and in the provision of services during any fiscal year in which it receives financial assistance under this subsection, employs handicapped individuals for not less than 75 per centum of the man-hours required for the production or provision of the commodities or services; or

"(B) to assist any handicapped individual in establishing, acquiring, or operating a small business concern.

"(2) The Administration's share of any loan made under this subsection shall not exceed $350,000, nor may any such loan be made if the total amount outstanding and committed (by participation or otherwise) to the borrower from the business loan and investment fund established by section 4(c)(1)(B) of this Act would exceed $350,000. In agreements to participate in loans on a deferred basis under this subsection, the Administration's participation may total 100 per centum of the balance of the loan at the time of disbursement. Any loan made under this subsection shall bear interest at the rate of 3 per centum per annum. The maximum term of any such loan, including extensions and renewals thereof, may not exceed fifteen years. All loans made under this subsection shall be of such sound value or so secured as reasonably to assure repayment: *Provided, however*, That any reasonable doubt shall be resolved in favor of the applicant.

"(3) For purposes of this subsection, the term 'handicapped individual' means a person who has a physical, mental, or emotional impairment, defect, ailment, disease, or disability of a permanent nature which in any way limits the selection of any type of employment for which the person would otherwise be qualified or qualifiable."

Mr. SPARKMAN. Mr. President, I ask unanimous consent that during the consideration of this measure Michael Burns and Reginald Barnes, members of our staff, be allowed the privilege of the floor.

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

Mr. SPARKMAN. Mr. President, on September 13, the Senate passed by voice vote this legislation amending the Small Business Investment Act to give statutory recognition to new types of small business investment companies which had been established for the sole purpose of assisting members of minority races and other persons whose participation in our free-enterprise economy has been hampered by social or economic disadvantages.

On October 11, the House of Representatives passed its version of the same legislation and has sent the amended S. 3337 back to the Senate. At the conclusion of these brief remarks, Mr. President, I shall move that the Senate accede to the House amendments and send the legislation to the President for his signature.

In every major respect, the Senate and House versions of this measure are identical. Both authorize the licensing of limited SBIC's which will lend to and invest in businesses owned by disadvantaged persons. These special SBIC's can be chartered under State nonprofit corpo-

ration statutes, under both versions. Language covering the funding which limited SBIC's will receive from the Small Business Administration, is identical. The provision of additonal leverage for regular SBIC's is identical in the two versions. These sections represent the heart of the legislation before us.

There are, however, five differences which I shall explain.

First, S. 3337, as it passed the Senate, would have called these limited SBIC's, "minority enterprise small business investment companies." The House eliminated any reference to "MESBIC's," but retained the exact definitions approved by the Senate. I do not believe it is important whether or not this bill carry any specific name for the special class of SBIC's.

Second, the Senate version of S. 3337 would have permitted commercial banks to own up to 100 percent of a MESBIC. Banks may not own 50 percent or more of a regular SBIC under present law. The House turned down this additional authority for the banks.

Third, the House version of S. 3337 specifically authorizes existing SBIC's to own all, or part, of a limited SBIC organized under the new law. The Senate bill did not include that provision, but SBA has administratively promulgated a regulation permitting such ownership.

Fourth, the House bill gives all SBIC's authority to invest in unincorporated businesses. Present law does not allow SBIC's to take a proprietary interest in such firms. This power was not included in our version of S. 3337, but the Senate has voted in favor of this exact authority on two occasions when it passed earlier bills dealing with MESBIC's.

Fifth, the House bill amends the Small Business Act, in an action unrelated to the SBIC or MESBIC program. This amendment permits SBA to add a new dimension to its regular financial assistance programs for the purpose of making business loans to handicapped persons or to any organization operating in the interest of handicapped persons. The terms would be the same as those on loans to other applicants and no additional appropriation or monetary authorization is necessary for SBA to begin this new program.

Mr. TOWER. Mr. President, I am pleased that the House has agreed basically with the Senate on my bill, S. 3337, to provide improved assistance to minority business firms. I feel that the best way to overcome the poverty cycle of the various disadvantaged groups in this country is through the encouragement of capital formation among these groups, so that they can eventually become self-supporting and not have to rely on welfare payments for the basic income flow through the community. This bill will help stimulate the private sector to invest more heavily in promising business situations where minority individuals have good business ideas and the will to undertake the tribulations of running a business, but lack adequate access to equity and debt capital to get the business successfully operating or expanded to its full potential. Our goal is not permanent reliance upon Federal assistance for minority business success, but to give the capital push needed to get business formations and successes going in minority communities, so that they can have the chance to become self-sufficient and to develop the capital within the minority communities to develop their own financing resources in the future.

It should also be noted that the bill provides for increased assistance to the normal small business investment company, which is not limited to minority or disadvantaged groups, but can help small businesses everywhere get "off the ground" with financial aid. The goal, again, is self-sufficiency, not permanent subsidization.

Mr. President, I therefore recommend this bill as passed by the House to my colleagues for approval.

Mr. SPARKMAN. Mr. President, I move that the Senate agree to the amendment of the House of Representatives to S. 3337 and that the bill, as amended, be passed.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Alabama.

The motion was agreed to.

Mr. SPARKMAN. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. TOWER. Mr. President, I move to lay that motion on the table.

Mr. PASTORE. Mr. President, I move to lay that motion on the table.

The motion was agreed to.

ENVIRONMENTAL NOISE AIR CONTROL ACT OF 1972

The PRESIDING OFFICER (Mr. STAFFORD). Under the previous order, the Senate will proceed to the consideration of S. 3342, which the clerk will report.

The legislative clerk read as follows:

Calendar No. 1105 (S. 3342) a bill to amend title IV of the Clean Air Act, and for other purposes.

The Senate proceeded to the consideration of the bill which had been reported from the Committee on Public Works with an amendment to strike out all after the enacting clause and insert:

SECTION 1. This Act may be cited as the "Environmental Noise Control Act of 1972".

SEC. 2. Title IV of the Clean Air Act Amendments of 1970 is amended to read as follows:

"SHORT TITLE; TABLE OF CONTENTS

"SEC. 401. This Act, including the following table of contents, may be cited as the 'Environmental Noise Control Act'.

"TABLE OF CONTENTS

"Sec. 401. Short title; table of contents.
"Sec. 402. Findings and policy.
"Sec. 403. Office of Noise Abatement and Control.
"Sec. 404. Definitions.
"Sec. 405. Research, investigation, training, and other activities.
"Sec. 406. Federal programs.
"Sec. 407. Noise criteria and control technology.
"Sec. 408. Noise emission standards for new products.
"Sec. 409. Labeling.
"Sec. 410. Imports.
"Sec. 411. Prohibited acts.
"Sec. 412. Enforcement.
"Sec. 413. Citizen suits.
"Sec. 414. Emergency situations.
"Sec. 415. Judicial review.
"Sec. 416. Records, reports, and information.
"Sec. 417. Federal procurement.
"Sec. 418. Grants for support of environmental noise planning and control programs.
"Sec. 419. Development of low-noise-emission products.
"Sec. 420. Authorization of appropriations.

"FINDINGS AND POLICY

"SEC. 402. (a) The Congress finds—

"(1) that environmental noise presents a growing danger to the health and welfare of the Nation's population, particularly in urban areas;

"(2) that the major sources of noise emissions include aircraft, vehicles, machinery, appliances, and other products in commerce; and

"(3) that, while primary responsibility for control of environmental noise rests with State and local governments, Federal regulatory action is essential to deal with major noise emission sources, and Federal assistance is necessary to encourage and support programs for the control of environmental noise.

"(b) The Congress declares that it is the policy of the United States to promote an environment for all Americans free from noise that jeopardizes their public health or welfare. To that end, it is the purpose of this Act to establish a means for effective coordination of Federal research and activities in environmental noise control, to authorize the establishment of Federal noise emission standards for new products, to provide information to the public of the noise emission and noise reduction characteristics of new products, to encourage and support State and municipal programs for the control of environmental noise through planning and program grants to State and local environmental noise control agencies, and to provide information to the public on the control of environmental noise through regulation of use of products and other methods and procedures to reduce environmental noise.

"(c) Public participation in the development, revision, and enforcement of any regulation, noise emission standard, program or plan established by the Administrator or any State or municipality under this Act shall be provided for, encouraged, and assisted by the Administrator and the States and municipalities. The Administrator, in cooperation with the States and municipalities, within ninety days after enactment of this section, shall develop and publish regulations specifying minimum guidelines for public participation in such processes.

"OFFICE OF NOISE ABATEMENT AND CONTROL

"SEC. 403. (a) The Administrator shall establish within the Environmental Protection Agency an Office of Noise Abatement and Control, and shall carry out through such Office a full and complete investigation and study of noise and its effect on the public health and welfare and administer the provisions of this Act.

"(b) The Administrator is authorized to prescribe such regulations as are necessary to carry out his function under this Act. The Administrator may delegate to any officer or employee of the Environmental Protection Agency such of his powers and duties under this Act, except the making of regulations, as he may deem necessary or expedient.

"(c) Upon the request of an environmental noise control agency, personnel of the Environmental Protection Agency may be detailed to such agency for the purpose of carrying out the provisions of this Act.

"(d) Payments under grants made under this Act may be made in installments, and in advance or by way of reimbursement, as may be determined by the Administrator.

"DEFINITIONS

"SEC. 404. For purposes of this title and title V of this Act:

"(a) The term 'Administrator' means the Administrator of the Environmental Protection Agency.

"(b) The term 'person' means an individual, corporation, partnership, or association, and (except as provided in section 413 (a)(1) of this Act) includes any officer, employee, department, agency, or instrumentality of the United States, a State, or any political subdivision of a State.

"(c) The term 'product' means any manufactured article or goods or component thereof; except that such term does not include—

"(1) any aircraft, aircraft engine, propeller, or appliance, as such terms are defined in section 101 of the Federal Aviation Act, as amended (49 U.S.C. 1431); or

"(2)(A) any military aircraft, rockets, weapons, or equipment which are designed for combat use; or (B) any aircraft, rockets, launch vehicles, spacecraft, or equipment which are designed for research, experimental, or developmental work to be performed by the National Aeronautics and Space Administration, as determined by the President under section 406 of this Act.

"(d) The term 'ultimate purchaser' means the first person who in good faith purchases a product for purposes other than resale.

"(e) The term 'new product' means a product the equitable or legal title to which has never been transferred to an ultimate purchaser. Products remanufactured or rebuilt by a manufacturer from used products to restore original functions shall be considered to be new products for the purposes of this title and title V of this Act.

"(f) The term 'manufacturer' means any person engaged in the manufacturing, assembling, or importing of new products, or who acts for, and is controlled by, any such person in connection with the distribution of such products, but shall not include any dealer with respect to any new product received by him in commerce.

"(g) The term 'dealer' means any person engaged in the sale or the distribution of new products to the ultimate purchaser who may prepare a product for sale or distribution to the ultimate purchaser: Provided, That when such dealer's preparatory or final assembly work involves modifications which increase the noise emission characteristics of such product, such dealer shall then be considered a manufacturer of such product for the purposes of this title and title V of this Act.

"(h) The term 'commerce' means trade, traffic, commerce, or transportation—

"(1) between a place in a State and any place outside thereof, or

"(2) which affects trade, traffic, commerce, or transportation described in paragraph (1) of this subsection.

"(i) The term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Canal Zone, American Samoa, Guam, and the Trust Territory of the Pacific Islands.

"(j) The term 'Federal agency' means any department, agency, or instrumentality of the United States including United States Postal Service.

"(k) The term 'environmental noise control agency' means any of the following:

"(1) A single State agency designated by the Governor of that State as the official State environmental noise control agency for purposes of this Act;

"(2) An agency established by two or more States and having substantial powers or duties pertaining to the prevention and control of environmental noise;

("3) A city, county, or other local government authority charged with responsibility for enforcing ordinances or laws relating to the prevention and control of environmental noise; or,

"(4) An agency of two or more municipalities located in the same State or in different States and having substantial powers or duties pertaining to the prevention and control of environmental noise.

"(l) The term 'municipality' means a city, town, borough, county, parish, district, or other public body created by or pursuant to State law.

"(m) The term 'noise emission standard' means a statement of a noise level or other acoustical characteristic which may not be exceeded under specified conditions or method of operation. Such standard shall include the test procedures to be followed and shall be stated in terms of performance rather than design criteria.

"(n) The term 'environmental noise' means the intensity, duration, and character of sounds from all sources.

"(o) The term 'cumulative noise exposure' means the exposure of individuals in defined areas around airports to noise from aircraft operations weighted by time of day."

"RESEARCH, INVESTIGATION, TRAINING, AND OTHER ACTIVITIES

"SEC. 405. (a) The Administrator shall establish a national research and development program for the prevention and control of environmental noise and as part of such program shall—

"(1) conduct, and promote the coordination and acceleration of, research, investigations, experiments, training, demonstrations, surveys, and studies relating to the causes, effects, extent, prevention, and control of environmental noise;

"(2) conduct and finance research by contract with any person, on the effects, measurement, and control of noise, including but not limited to—

"(A) investigation of the direct or indirect effects of noise on humans (including physiological and psychological effects), and the direct or indirect effects of noise on domestic animals, fish, wildlife, and property, and determination of acceptable levels of noise on the basis of such effects; and

"(B) development of improved methods and standards for measurement and monitoring of noise, in cooperation with the National Bureau of Standards, Department of Commerce.

"(3) encourage, cooperate with, and render technical services (including the drafting of model ordinances) and provide financial assistance to environmental noise control agencies and other appropriate public or private agencies, institutions and organizations, and individuals in the conduct of such activities;

"(4) conduct investigations and research and make surveys concerning any specific problem of environmental noise in cooperation with any noise pollution control agency with a view to recommending a solution of such problem, if he is requested to do so by such agency or if, in his judgment, such problem may affect any community or communities in a State other than that in which the source of the matter causing or contributing to the noise is located; and

"(5) establish technical advisory committees composed of recognized experts in various aspects of noise to assist in the examination and evaluation of research progress and proposals and to avoid duplication of research, and for other purposes.

"(b) In carrying out the provisions of the preceding subsection the Administrator is authorized to—

"(1) collect and make available, through publications and other appropriate means, the results of activities pursuant to subsection (a) and other information, including appropriate recommendations by him in connection therewith, pertaining to such research and other activities;

"(2) cooperate with other Federal agencies, with environmental noise control agencies, with other public and private agencies, institutions, and organizations, and with any industries involved, in the preparation and conduct of such research and other activities, including technical assistance;

"(3) make grants to environmental noise control agencies, to other public or nonprofit private agencies, institutions and organizations, and to individuals, for purposes stated in subsection (a) of this section;

"(4) contract with public or private agencies, institutions and organizations, and with individuals, without regard to sections 3648 and 3709 of the Revised Statutes (31 U.S.C. 529; 41 U.S.C. 5);

"(5) provide training (without fee) for, and make training grants to personnel of environmental noise control agencies and other persons with suitable qualifications;

"(6) establish and maintain research fellowships, in the Environmental Protection Agency and at public or nonprofit private educational institutions or research organizations;

"(7) collect and make available through publications and other appropriate means, in cooperation with other Federal departments and agencies, and with other public or private agencies, institutions, and organizations having related responsibilities, basic data on physical, and human and other effects of varying levels of noise and other information pertaining to noise and the prevention and control thereof; and

"(8) develop effective and practical processes, methods, and prototype devices for the prevention or control of environmental noise.

"(c) In carrying out the provisions of subsection (a) of this section the Administrator shall conduct research on, and survey the results of other scientific studies on, the harmful effects on the health or welfare of persons by the various known noise sources.

"(d) In carrying out research pursuant to this Act, the Administrator shall give special emphasis to research on the short- and long-term effects of environmental noise on public health and welfare.

"FEDERAL PROGRAMS

"SEC. 406. (a) The Congress authorizes and directs that Federal agencies shall, to the fullest extent consistent with their authority under Federal laws administered by them, carry out the programs within their control in such a manner as to further the policy declared in section 402 of this Act.

"(b) Each department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any property or facility, or (2) engaged in any activity resulting, or which may result, in the emission of noise shall comply with Federal, State, interstate, and local requirements respecting control and abatement of environmental noise to the same extent that any person is subject to such requirements. The President may exempt any single activity or facility, including noise emission sources or classes thereof, of any department, agency, or instrumentality in the executive branch from compliance with any such requirement if he determines it to be in the paramount interest of the United States to do so; except that no exemption, other than for those products specified pursuant to section 404(c)(2) of this Act may be granted from the requirements of sections 408, 511, and 521 of this Act. No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods of not to exceed one year upon the President's making a new de-

termination. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting such exemption.

(c)(1) The Administrator shall coordinate the programs of all Federal agencies relating to environmental noise research and environmental noise control. Each Federal agency shall furnish to the Administrator such information as he may reasonably require, to determine, as provided under section 309 of the Clean Air Act, if the nature, scope, and results of the noise research and environmental noise control programs of the agency are consistent with the purposes of this Act.

"(2) Each Federal agency shall consult with the Administrator in prescribing any regulations respecting environmental noise. If at any time the Administrator has reason to believe that a standard or regulation, or any proposed standard or regulation of any Federal agency, respecting noise, does not protect the public health and welfare to the extent he believes to be required he shall request such agency to review and report to him on the advisability of revising such standard or regulation to provide such protection. Any such request shall be published in the Federal Register and shall be accompanied by a detiled statement of the information on which such request is based. Such agency shall complete the requested review and report to the Administrator within 180 days after the date of the publication in the Federal Register of the request. The report shall be published in the Federal Register and shall be accompanied by a detailed statement of the findings and conclusions of the agency respecting the revision of its standard or regulation.

"(3) On the basis of regular consultation with appropriate Federal agencies, the Administrator shall compile and publish annually a report to the Congress on the status and progress of Federal activities relating to environmental noise research and environmental noise control. This report shall describe the environmental noise control programs of each Federal agency and assess the contributions of those programs to the Federal Government's overall efforts to control environmental noise.

"NOISE CRITERIA AND CONTROL TECHNOLOGY

"SEC. 407. (a) The Administrator shall, after consultation with appropriate Federal, State, and municipal agencies, and other appropriate persons, within nine months after the date of enactment of this section, issue, noise criteria. Such criteria shall reflect the scientific knowledge most useful in indicating the kind and extent of all identifiable effects on the public health or welfare which may be expected from differing quantities and qualities of noise, and such criteria shall set forth levels of environmental noise the attainment and maintenance of which in defined areas under various conditions are requisite to protect the public health and welfare with an adequate margin of safety.

"(b) The Administrator, after consultation with appropriate Federal, State, and municipal agencies, and other appropriate persons, shall within fifteen months after date of enactment of this section compile and publish a report or series of reports (1) identifying products (or classes of products) which on the basis of information available to him appear to be major sources of noise, and (2) giving information on the processes, procedures, or operating methods which result in the control of the emission of noise, to implement noise emission control standards under sections 408, 501, 503, 511, and 521 of this Act, which such information shall include technical and other data, including costs, as are available on alternative methods of noise control.

"(c) The Administrator, after consultation with appropriate Federal, State, and municipal agencies, and other appropriate persons, shall compile and provide information on methods and techniques of controlling environmental noise through, among other means, product use control, land use regulation, and construction and building standards. Such information shall be compiled and published to assist State and local governments in establishing and enforcing environmental noise control programs supported under section 418 of this Act.

"(d) The Administrator shall from time to time review and, as appropriate, revise or supplement any criteria or reports published under this section.

"(e) Any report under subsection (b)(1) of this section identifying major noise sources shall be published in the Federal Register. The publication or revision of any criteria or information on control techniques under this section shall be announced in the Federal Register, and copies shall be made available to the general public.

"NOISE EMISSION STANDARDS FOR NEW PRODUCTS

"SEC. 408. (a)(1) The Administrator shall publish proposed regulations establishing noise emission standards for new products or classes of products—

"(A) identified in any report published under section 407(b)(1) of this Act as a major source of noise, and

"(B) which falls in one of the following categories:

"(i) Construction equipment.

"(ii) Transportation equipment (including snowmobiles, motorcycles, and recreational vehicles and related equipment).

"(iii) Any motor or engine (including any equipment of which an engine or motor is an integral part).

"(iv) Turbines and compressors.

"(v) Electrical and electronic equipment, except those products which are designed for the production or reproduction of music or sound (to the extent such reproduction is identical, except in amplitude, to the source reproduced).

"(vi) Percussion and explosive equipment.

"(2)(A) Regulations proposed under paragraph (1) shall be promulgated not later than eighteen months after the date of enactment of this Act, and shall apply to any appropriate new product described in paragraph (1) which is identified (or in a class identified) in any report published under section 407(b)(1) of this Act on or before the date of publication of such initial proposed regulations.

"(B) In the case of any new product described in paragraph (1) which is identified (or is part of a class identified) as a major source of noise in a report published under section 407(b)(1) of this Act after publication of the initial proposed regulations under subparagraph (A) of this paragraph, regulations under paragraph (1) of this subsection for such new product shall be promulgated by the Administrator not later than nine months after such report is published.

"(b) The Administrator may publish proposed regulations establishing noise emission standards respecting any new product for which he is not required to establish standards under subsection (a) of this section but for which, in his judgment, noise emission standards are requisite to protect the public health and welfare. Not later than six months after the date of publication of such regulations respecting such new product, he shall promulgate regulations establishing noise emission standards for such new product.

"(c)(1) Any noise emission standard prescribed under subsection (a) or (b) of this section respecting a new product shall set limits on noise emissions from such new product over the useful life of the product (as determined by the Administrator taking into account the range of possible uses for the same type of product) and shall be a standard which in the Administrator's judgment, based on information published under section 407 of this Act, reflects the degree of noise reduction achievable through the application of the best available technology, taking into account the cost of compliance. In establishing such standards for any new product the Administrator shall assure that such standards are compatible with standards under other laws respecting emission of air or water pollutants and safety, including (but not limited to) any standard under the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1381 et seq.), the Clean Air Act (42 U.S.C. 1857 et seq.), or the Federal Water Pollution Control Act (33 U.S.C. 1151 et seq.). Any standard prescribed under subsection (a) or (b) of this section may contain provisions respecting instructions of the manufacturer for the maintenance or use of the product.

"(2) After publication of any proposed regulations under this section, the Administrator shall allow the public an opportunity to participate in rulemaking in accordance with section 553 of title 5, United States Code.

"(3) The Administrator may revise any noise emission standard prescribed by him in accordance with this section.

"(4) Any regulation prescribed under this section (and any revision thereof) shall take effect after a period not to exceed two years or such lesser time as the Administrator finds necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period. Standards prescribed under this section shall apply to products manufactured on or after the effective date of such standards.

"(5) The Administrator may prescribe regulations defining 'effective date' for the purpose of assuring that products manufactured before the effective date of a regulation under this section were not manufactured for purposes of circumventing the effective date of such regulations.

"(d)(1) On and after the effective date of any standards prescribed under this section, the manufacturer of each new product shall warrant to the ultimate purchaser and each subsequent purchaser that such product is (A) designed, built, and equipped to as to conform at the time of sale with applicable regulations under this section, and (B) free from defects in materials and workmanship which cause such product, under normal use, operation, and maintenance to fail to conform with applicable regulations for its useful life, as determined by the Administrator, taking into account the range of uses for such product.

"(2) Any cost obligation of any dealer incurred as a result of any requirement imposed by paragraph (1) of this subsection shall be borne by the manufacturer. The transfer of any such cost obligation from a manufacturer to any dealer through franchise or other agreement is prohibited.

"(3) If a manufacturer includes in any advertisement a statement respecting the cost or value of noise emission control devices or systems, such manufacturer shall set forth in such statement the cost or value attributed to such devices or systems by the Secretary of Labor (through the Bureau of Labor Statistics). The Secretary of Labor, and his representatives, shall have the same access for this purpose to the books, documents, papers, and records of a manufacturer as the Comptroller General has to those of a recipient of assistance for purposes of section 311 of the Clean Air Act, as amended.

"(e)(1) No State or political subdivision thereof may adopt or enforce, with respect to (A) any product manufactured after the effective date of a regulation prescribed by the Administrator under this section or (B) any component incorporated into such product by the manufacturer of such product,

any standard setting a limit on noise emissions from such product enforceable against the manufacturer which is not identical to the standard prescribed by the Administrator.

"(2) Subject to paragraph (1) of this subsection, nothing in this section shall preclude or deny the right of any State or political subdivision thereof to establish and enforce controls on environmental noise through the licensing, regulation, or restriction of the use, operation, or movement of any product or combination of products: *Provided*, That such control, licensing, regulation, or restriction shall not, in the case of any motor carrier engaged in interstate commerce or any equipment or facility of a surface carrier engaged in interstate commerce by railroad, result in a limit on noise emissions for any carriers, equipment, or facility different than any limit contained in any regulation applicable thereto prescribed by the Administrator under this section of title V of this Act, except that in the case of such carriers the Administrator may by regulation, upon the petition of a State or political subdivision thereof and after consultation with the Secretary of Transportation, permit such more restrictive limits on such noise emissions through the application of use, operation, or movement controls or regulations as in his judgment are necessitated by special local conditions.

"(3) If, after promulgation of any standards and regulations under this section and prior to their effective date, a product is manufactured in compliance with such standards and regulations such standards and regulations shall, for the purposes of paragraph (1) of this subsection, become effective with respect to such product on the date of such compliance.

"LABELING

"SEC. 409. (a) The Administrator shall by regulation for any new product (or class thereof)—

"(1) identified pursuant to section 407(b)(1); or

"(2) which is sold wholly or in part on the basis of its effectiveness in reducing noise,

require either (1) that a notice of the level of noise emission including the relationship to any applicable noise emission standard under section 408, or notice of the effectiveness in reducing noise (as the case may be) supplied by the manufacturer, be affixed to the new product and to the outside of its container at the time of its sale to the ultimate purchaser, or (2) that such notice of such level or effectiveness supplied by the manufacturer otherwise be given to the prospective user. He shall prescribe the form of the notice and the methods and units of measurement to be used for this purpose. Section 408(c)(2) shall apply to the promulgation of any regulation under this section.

"(b) This section does not prevent any State or political subdivision thereof from regulating product labeling in any way not in conflict with regulations promulgated by the Administrator under this section.

"IMPORTS

"SEC. 410. Any product offered for entry into the United States for which a standard or regulation has become effective pursuant to this title, which is not accompanied by certificate of compliance in the form prescribed by the Administrator, shall be refused entry into the United States. If a product is refused entry, the Secretary of the Treasury shall refuse delivery to the consignee and shall cause disposal or storage of any product refused delivery which has not been exported by the consignee within three months from the date of notice of such refusal under such regulations as the Secretary of the Treasury may prescribe, except that the Secretary of the Treasury may deliver to the consignee such product pending examination and decision in the matter on execution of bond for the amount of the full invoice value of such product, together with the duty thereon, and on refusal to return such product for any cause to the custody of the Secretary of the Treasury, when demanded, for the purpose of excluding it from the country, or for any other purpose, said consignee shall forfeit the full amount of said bond. All charges for storage, cartage, and labor on products which are refused admission or delivery under this section shall be paid by the owner or consignee, and in default of such payment shall constitute a lien against any future importation made by such owner or consignee.

"PROHIBITED ACTS

"SEC. 411. (a) Except as otherwise provided in subsection (b) of this section, the following acts or the causing thereof are prohibited:

"(1) In the case of a manufacturer, the sale in, the offering for sale in, or the introduction or delivery for introduction into, commerce of any new product, aircraft, or aircraft engine manufactured after the effective date of noise emission control standards prescribed under sections 408, 501, 503, 511, and 521 of this Act which are applicable to such product, unless such product is in conformity with such standards.

"(2)(A) The removal or rendering inoperative by any person, other than for purposes of maintenance, testing, repair, or replacement, of any device or element of design incorporated into any product, aircraft, or aircraft engine in compliance with noise emission standards promulgated under sections 408, 501, 503, 511, and 521 of this Act prior to its sale or delivery to the ultimate purchaser or during its term of use, or (B) the use of a product after such device or element of design has been removed or rendered inoperative.

"(3) In the case of a manufacturer, the sale in, the offering for sale in, or the introduction or delivery for introduction into, commerce of any new product manufactured after the effective date of regulations promulgated under option (1) in section 409(b) of this Act (requiring information respecting noise) which are applicable to such product, unless it is in conformity with such regulations.

"(3)(A) In the case of a manufacturer or dealer, the assistance of any person in a violation of paragraph (2)(A) of this subsection or the furnishing of information with respect to a violation of paragraph (2)(A) of this subsection.

"(B) In the case of a manufacturer, the sale in, the offering for sale in, or the introduction or delivery for introduction into, commerce of any new product manufactured after the effective date of regulations promulgated under option (1) in section 409(a) of this Act (requiring information respecting noise) which are applicable to such product, unless it is in conformity with such regulations.

"(4)(A) The removal by any person of any notice affixed to a product or container pursuant to regulations promulgated under section 409(a) of this Act prior to the sale of the new product to the ultimate purchaser, or (B) the sale of such product or container from which such notice has been removed.

"(5) The importation into the United States by any person of any new product in violation of regulations promulgated under section 410 of this Act that are applicable to such product.

"(6) The failure of any person to comply with any order issued under section 412(d) or 414 of this Act.

"(b)(1) The Administrator may after public hearings exempt for a specified period of time not to exceed one year, any new product, or class thereof, from paragraphs (1), (2), (3), and (5) of subsection (a) of this section upon such terms and conditions as he may find necessary to protect the public health or welfare, for the purpose of research, investigations, studies, demonstrations, or training, or for reasons of national security.

"(2) A new product intended solely for export, and so labeled or tagged on the outside of the container and on the product itself, shall be subject to noise emission standards of the country which imports such product. In no event shall the Administrator allow the export from the United States of any product subject to section 414 of this Act as a product, the noise emissions from which are an imminent and substantial endangerment to public health.

"ENFORCEMENT

"SEC. 412. (a) Any person who willfully or negligently violates paragraph (1), (3), (5), or (6) of subsection (a) of section 411 of this Act shall be punished by a fine of not more than $25,000 per day of violation, or by imprisonment for not more than one year, or by both. In the case of a violation of paragraph (1) or (6) of subsection (a) of section 411 of this Act the fine shall be not less than $2,500 per day of violation. If the conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $50,000 per day of violation, or by imprisonment for not more than two years, or by both.

"(b) For the purpose of this section, each day of violation of section 411(a) of this Act shall constitute a separate violation of that section.

"(c) The district courts of the United States shall have jurisdiction of actions brought by and in the name of the United States to restrain any violations of section 411(a) of this Act.

"(d)(1) Whenever any person is in violation of section 411(a) of this Act, the Administrator may issue an order specifying such relief as he determines is necessary to protect the public health and welfare. Such relief may include an order requiring such person to cease such violation, to notify ultimate purchasers of the risks associated with such violation, to make public notice of such risks, to recall any products responsible for such violation, to repurchase any such products, or to replace any such products. Such order may also require the seizure of any such products by the Administrator.

"(2) Any order under this subsection shall be issued only after notice and opportunity for a hearing in accordance with section 554 of title 5 of the United States Code.

"(e) When authorized by State law—

"(1) The Administrator may, by agreement with any environmental noise control agency with or without reimbursement, authorize law enforcement officers or other officers or employees of such environmental noise control agency to bring civil actions in the appropriate State courts to restrain any person from violating section 411(a).

"(2) The courts of such State may entertain any such civil action.

Nothing in this section shall affect the authority of an environmental noise control agency to commence a civil action under section 413 of this Act.

"CITIZEN SUITS

"SEC. 413. (a) Except as provided in subsection (b) of this section, any person may commence a civil action on his own behalf—

"(1) against any person (including (A) the United States, and (B) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any noise control requirement (as defined in subsection (f) of this section), or

"(2) against—

"(A) the Administrator of the Environmental Protection Agency where there is alleged a failure of such Administrator to perform any act or duty under this Act which is not discretionary with such Administrator.

"(B) the Administrator of the Federal Aviation Administration where there is alleged a failure of such Administrator to perform any act or duty under this Act or section 611 of the Federal Aviation Act of 1958 which is not discretionary with such Administrator,

The district courts of the United States shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such noise control requirement or to order such Administrator to perform such act or duty, as the case may be.

"(b) No action may be commenced—

"(1) under subsection (a)(1) of this section—

"(A) prior to sixty days after the plaintiff has given notice of the violation (i) to the Administrator of the Environmental Protection Agency (and to the Federal Aviation Administrator in the case of a violation of a noise emission control requirement with respect to aircraft under this Act or section 611 of the Federal Aviation Act as amended) and (ii) to any alleged violator of such requirement, or

"(B) if an Administrator has commenced and is diligently prosecuting a civil action to require compliance with the noise control requirement, but in any such action in a court of the United States any person may intervene as a matter of right; or

"(2) under subsection (a)(2) of this section prior to sixty days after the plaintiff has given notice to the defendant that he will commence such action.

Notice under this subsection shall be given in such manner as the Administrator of the Environmental Protection Agency shall prescribe by regulation.

"(c) In an action under this section, the Administrator of the Environmental Protection Agency or, if appropriate, the Administrator of the Federal Aviation Administration, if not a party, may intervene as a matter of right.

"(d) The court, in issuing any final order in any action brought pursuant to subsection (a) of this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such an award is appropriate.

"(e) Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any noise control requirement or to seek any other relief (including relief against an Administrator).

"(f) For purposes of this section, the term 'noise control requirement' means any prohibition, standard, or requirement under section 408, 411, 501, 503, 508, 511, or 521 of this Act or a prohibition, standard, rule, or regulation issued under section 611 of the Federal Aviation Act of 1958, as amended.

"EMERGENCY SITUATIONS

"SEC. 414. (a) The Administrator or the Attorney General shall file, in a district court of the United States having venue thereof, an action against any product the noise emissions from which are an imminent and substantial endangerment to public health, or against any person who manufactures for sale, sells, or offers for sale, in commerce, or imports into the United States, such product. Such an action may be filed, notwithstanding the existence or nonexistence of a noise emission standard applicable to a product, or the pendency of administrative proceedings initiated pursuant to this Act.

"(b) The district court in which such action is filed shall have jurisdiction to declare such product a product the noise emissions from which are an imminent and substantial endangerment to public health, and to grant (as ancillary to such declaration or in lieu thereof) such temporary or permanent equitable relief as may be necessary to protect the public from such risk. Such relief may include a mandatory order requiring the notification of the original purchasers of such product of such risk, public notice, the recall, the repurchase, the repair, the replacement, or the seizure of such product.

"JUDICIAL REVIEW

"SEC. 415. Any judicial review of final regulations promulgated under this Act shall be in accordance with sections 701–706 of title 5 of the United States Code, except that:

"(a) a petition of review of action the Administrator in promulgating any standard or regulation under section 408, 501, 511, or 521 of this Act or any labeling regulation under section 409 of this Act may be filed only in the United States Court of Appeals for the District of Columbia. Any such petition shall be filed within ninety days from the date of such promulgation, or after such date if such petition is based solely on grounds arising after such ninetieth day. Action of the Administrator with respect to which review could have been obtained under this subsection shall not be subject to judicial review in civil proceedings for enforcement except as to whether the administrative and judicial procedures of this Act have been observed;

"(b) if a party seeking review under this Act applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that the information is material and was not available at the time of the proceeding before the Administrator, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator, and to be adduced upon the hearing, in such manner and upon such terms and conditions as the court may deem proper. The Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file with the court such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original order, with the return of such additional evidence;

"(c) with respect to relief pending review of an action by the Administrator, no stay of an agency action may be granted unless the reviewing court determines that the party seeking such stay is (1) likely to prevail on the merits in the review proceeding and (2) will suffer irreparable harm pending such proceeding.

"RECORDS, REPORTS, AND INFORMATION

"SEC. 416. (a) Such manufacturer of a new product, aircraft, or aircraft engine to which standards or regulations under sections 408, 501, 503, 511, or 521 of this Act or regulations under section 409 apply shall (1) establish and maintain such records, make such reports, provide such information, and make such tests, as the Administrator may reasonably require to enable him to determine whether such manufacturer has acted or is acting in compliance with this Act, (2) upon request of an officer or employee duly designated by the Administrator, permit such officer or employee at reasonable times to have access to such information and the results of such tests and to copy such records, and (3) make new products coming off the assembly line or otherwise in the hands of the manufacturer available for testing by the Administrator, to the extent required by regulations of the Administrator.

"(b) For the purpose of obtaining information to carry out titles IV and V of this Act, the Administrator may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and he may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In cases of contumacy or refusal to obey a subpena served upon any person under this subsection, the district of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Administrator, to appear and produce papers, books, and documents before the Administrator, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

"(c) Any records, reports, or information obtained under this section shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that records, reports, or information or particular part thereof (other than noise emission data) to which the Administrator has access under this section if made public, would divulge methods or processes entitled to protection as trade secrets of such person, the Administrator shall consider such record, report, or information or particular portion thereof confidential in accordance with the purposes of section 1905 of title 18 of the United States Code, except that such record, report, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this Act or when relevant in any proceeding under this Act. Nothing in this section shall authorize the withholding of information by the Administrator or any officer or employee under his control, from the duly authorized committees of the Congress.

"(d) Any communication from a person to the Administrator or any other employee of the Agency concerning a matter presently under consideration in a rulemaking or adjudicatory proceeding in the Agency shall be made a part of the public file of that proceeding unless it is a communication entitled to protection under subsection (c) of this section.

"(e) Any person who knowingly 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 falsifies, tampers with, or knowingly 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.

"FEDERAL PROCUREMENT

"SEC. 417. (a) No Federal agency may enter into any contract for the procurement of goods, materials, or services with any person, who has been convicted of a criminal offense under section 412(a) of this Act and who, upon consideration of the gravity of the violation and the good faith of the person charged in attempting to achieve rapid compliance, the Administrator determines should be subject to the prohibition of this section. The prohibition in the preceding sentence shall continue until the Administrator certifies that the condition giving rise to a conviction has been corrected.

"(b) The Administrator shall establish procedures to provide all Federal agencies with the notification necessary for the purposes of subsection (a) of this section.

"(c) In order to implement the purposes and policy of this Act, the President shall,

not more than one hundred and eighty days after its enactment, cause to be issued an order (1) requiring each Federal agency authorized to enter into contracts and each Federal agency which is empowered to extend Federal assistance by way of grant loan, or contract to effectuate the purposes and policy of this Act in such contracting or assistance activities, and (2) setting forth procedures, sanctions, penalties, and such other provisions, as the President determines necessary to carry out such requirement.

"(d) The President may exempt any contract, loan, or grant from all or part of the provisions of this section where he determines such exemption is necessary in the paramount interest of the United States, and he shall notify the Congress of such exemption.

"GRANTS FOR SUPPORT OF ENVIRONMENTAL NOISE PLANNING AND CONTROL PROGRAMS

"SEC. 418. (a)(1) The Administrator may make grants to environmental noise control agencies in an amount up to two-thirds of the cost of planning, developing, establishing, or improving, and up to one-half of the cost of maintaining programs for the prevention and control of environmental noise.

"(2) Before approving any grant under this subsection to any environmental noise control agency within the meaning of sections 404(k)(3) and 404(k)(4) of this Act, the Administrator (when appropriate) shall receive assurances that such agency provides for adequate representation of State, interstate, local, and international interests in its area of jurisdiction. Before approving any grant under this subsection the Administrator shall determine that the recipient is the appropriate environmental noise control agency for the jurisdictions involved in order to minimize overlap and duplication of effort.

"(3) Before approving any planning grant under this subsection to any environmental noise control agency within the meaning of sections 404(k)(3) and 404(k)(4) of this Act, the Administrator shall receive assurances that such agency has the capability of developing and enforcing a comprehensive environmental noise control plan.

"(4) Before approving any grant for purposes other than developing a program under this section to any environmental noise control agency within the meaning of section 404 of this Act, the Administrator shall determine that such agency has the authority—

"(A) to regulate the location, modification, and construction of any facilities within the area of jurisdiction of such agency which may result in the generation of environmental noise; and

"(B) to assure that the use of any product in the area of jurisdiction of such agency will not exceed applicable noise control levels;

"(C) to (i) identify, if appropriate, sources of environmental noise within the jurisdiction of such agency, and (ii) set forth procedures, processes, and methods (including land use requirements and design and construction standards) to control such sources to the extent feasible;

"(D) to acquire, maintain, and operate noise monitoring facilities in the field and otherwise, making public reports of noise emissions and levels of environmental noise disclosed by such monitoring, which reports shall be related to any applicable standards or limitations; and

"(E) to issue abatement orders.

"(b) From the sums available for the purposes of subsection (a) of this section for any fiscal year, the Administrator shall from time to time make grants to environmental noise control agencies upon such terms and conditions as the Administrator may find necessary to carry out the purposes of this section. In establishing regulations for the granting of such funds the Administrator shall, so far as practicable, give due consideration to (1) the population, (2) the extent of the actual or potential environmental noise problem, and (3) the financial need of the respective agencies. No agency shall receive any grant under this section with respect to the maintenance of a program for the prevention and control of environmental noise unless the Administrator is satisfied that such grant will be so used as to supplement and, to the extent practicable, increase the level of State, local, or other non-Federal funds that would be in absence of such grant be made available for the maintenance of such program, and will in no event supplant such State, local, or other non-Federal funds. No grant shall be made under this section until the Administrator has consulted with the appropriate official as designated by the Governor or Governors of the State or States affected.

"(c) Not more than 10 per centum of the total funds appropriated or allocated for the purposes of subsection (a) of this section shall be granted for environmental noise control programs in any one State. In the case of a grant for a program in an area crossing State boundaries, the Administrator shall determine the portion of such grant that is chargeable to the percentage limitation under this subsection for each State into which such area extends.

"(d) The Administrator, with the concurrence of any recipient of a grant under this section, may reduce the payments to such recipient by the amount of the pay, allowances, traveling expenses, and any other costs in connection with the detail of any officer or employee to the recipient under section 403(c) of this Act, when such detail is for the convenience of, and at the request of, such recipient and for the purposes of carrying out the provisions of this Act. The amount by which such payments have been reduced shall be available for payment of such costs by the Administrator, but shall, for the purpose of determining the amount of any grant to a recipient under subsection (a) of this section, be deemed to have been paid to such agency.

"(e) There is authorized to be appropriated for this section $5,000,000 for fiscal year ending June 30, 1973, $7,500,000 for the fiscal year ending June 30, 1974, and $10,000,000 for the fiscal year ending June 30, 1975.

"DEVELOPMENT OF LOW-NOISE-EMISSION PRODUCTS

"SEC. 419. (a) For the purpose of this section:

"(1) The term 'Committee' means the Low-Noise-Emission Product Advisory Committee.

"(2) The term 'Federal Government' includes the legislative, executive, and judicial branches of the Government of the United States, and the government of the District of Columbia.

"(3) The term 'low-noise-emission product' means any product which emits noise in amounts significantly below the levels of other products in the competitive market for such product at the time of procurement.

"(4) The term 'retail price' means (A) the maximum statutory price applicable to any type of product; or (B) in any case where there is no applicable maximum statutory price, the most recent procurement price paid for any type of product.

"(b)(1) The Administrator shall determine which products qualify as low-noise-emission products in accordance with the provisions of this section.

"(2) The Administrator shall certify any product—

"(A) for which a certification application has been filed in accordance with paragraph (5)(A) of this subsection;

"(B) which is a low-noise-emission product as determined by the Administrator; and

"(C) which he determines is suitable for use as a substitute for a type of product at that time in use by agencies of the Federal Government.

"(3) The Administrator may establish a Low-Noise-Emission Product Advisory Committee to assist him in determining which products qualify as low-noise-emission products for purposes of this section. The Committee shall include the Administrator or his designee, a representative of the National Bureau of Standards, and representatives of such other Federal agencies and private individuals as the Administrator may deem necessary from time to time. Any member of the Committee not employed on a full-time basis by the United States may receive the daily equivalent of the annual rate of basic pay in effect for grade GS–18 of the General Schedule for each day such member is engaged upon work of the Committee. Each member of the Committee shall be reimbursed for travel expenses, including per diem in lieu of subsistence as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

"(4) Certification under this section shall be effective for a period of one year from the date of issuance.

"(5)(A) Any person seeking to have a class or model of product certified under this section shall file a certification application in accordance with regulations prescribed by the Administrator.

"(B) The Administrator shall publish in the Federal Register a notice of each application received.

"(C) The Administrator shall make determinations for the purpose of this section in accordance with procedures prescribed by him by regulation.

"(D) The Administrator shall conduct whatever investigation is necessary, including actual inspection of the product at a place designated in regulations prescribed under subparagraph (A).

"(E) The Administrator shall receive and evaluate written comments and documents from interested persons in support of, or in opposition to, certification of the class or model of product under consideration.

"(F) Within ninety days after the receipt of a properly filed certification application the Administrator shall determine whether such product is a low-noise-emission product for purposes of this section. If the Administrator determines that such product is a low-noise-emission product, then within one hundred and eighty days of such determination the Administrator shall reach a decision as to whether such product is a suitable substitute for any class or classes of product presently being purchased by the Federal Government for use by its agencies.

"(G) Immediately upon making any determination or decision under subparagraph (F), the Administrator shall publish in the Federal Register notice of such determination or decision, including reasons therefor.

"(c)(1) Certified low-noise-emission products shall be acquired by purchase or lease by the Federal Government for use by the Federal Government in lieu of other products if the Administrator of General Services determines that such certified products have procurement costs which are no more than 125 per centum of the retail price of the least expensive type of product for which they are certified substitutes.

"(2) Data relied upon by the Administrator in determining that a product is a certified low-noise-emission product shall be incorporated in any contract for the procurement of such product.

"(d) The procuring agency shall be required to purchase available certified low-noise-emission products which are eligible for purchase to the extent they are available before purchasing any other products for

which any low-noise-emission product is a certified substitute. In making purchasing selections between competing eligible certified low-noise-emission products, the procuring agency shall give priority to any class or model which does not require extensive periodic maintenance to retain its low-noise-emission qualities or which does not involve operating costs significantly in excess of those products for which it is a certified substitute.

"(e) For the purpose of procuring certified low-noise-emission products any statutory price limitations shall be waived.

"(f) The Administrator shall, from time to time as he deems appropriate, test the emissions of noise from certified low-noise-emission products purchased by the Federal Government. If at the time of purchase he finds that the noise-emission levels exceed the levels on which certification under this section was based, the Administrator shall give the supplier of such product written notice of this finding, issue public notice of it, and give the supplier an opportunity to make necessary repairs, adjustments, or replacements. If no such repairs, adjustments, or replacements are made within a period to be set by the Administrator, he may order the supplier to show cause why the product involved should be eligible for recertification.

"(g) There are authorized to be appropriated for paying additional amounts for products pursuant to, and for carrying out the provisions of, this section, $1,000,000 for the fiscal year ending June 30, 1973, and $2,000,000 for each of the two succeeding fiscal years.

"(h) The Administrator shall promulgate the procedures required to implement this section within one hundred and eighty days after the date of enactment of this section.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 420. There are authorized to be appropriated to carry out this Act (other than sections 418 and 419) $18,000,000 for the fiscal year ending June 30, 1973; $36,000,000 for the fiscal year ending June 30, 1974; and $50,000,000 for the fiscal year ending June 30, 1975."

SEC. 3. The Clean Air Act is amended to add a new title V as follows:

"TITLE V—MAJOR MOVING SOURCES

"PART A—CONTROL AND ABATEMENT OF AIRCRAFT NOISE AND SONIC BOOM

"SEC. 501. (a) In order to afford present and future relief and provide protection to public health and welfare from aircraft noise and sonic boom—

"(1) the Administrator of the Environmental Protection Agency, after consultation with the Administrator of the Federal Aviation Administration, shall promulgate and amend standards for the measurement of aircraft and aircraft engine noise and sonic boom; and

"(2) the Administrator of the Environmental Protection Agency shall promulgate and amend regulations with respect to noise emissions from aircraft and aircraft engines which in his judgment are adequate to protect the public health and welfare with an adequate margin of safety.

"(b)(1) Any regulations under this section, or amendments thereto, with respect to noise emissions from types of aircraft or aircraft engines, shall reflect the degree of noise reduction achievable through the application of the best available demonstrated technology, taking into account the cost of compliance, as determined by the Administrator of the Environmental Protection Agency and the Administrator of the Federal Aviation Administration, and shall not be promulgated until the Administrator of the Federal Aviation Administration has determined that such regulations are consistent with the highest degree of safety in air commerce and that any proposed standard, rule, or regulation has been demonstrated to be technologically available for application to types of aircraft, aircraft engine, appliance, or certificate to which it will apply.

"(2) All standards, rules, and regulations prescribed pursuant to section 611 of the Federal Aviation Act, as amended, prior to the date of enactment of the Environmental Noise Control Act of 1972 shall remain in effect until amended or revoked by subsequent standards, rules, or regulations promulgated and approved pursuant to this part.

"(c) Each Federal agency with regulatory authority over air commerce, aircraft or airport operations, or aircraft noise emissions, including the Civil Aeronautics Board, the Federal Aviation Administration, and the Environmental Protection Agency, shall exercise such regulatory authority so as to reduce noise in airport environments and surrounding areas.

"SEC. 502. The Administrator of the Environmental Protection Agency, after consultation with appropriate Federal, State, and local agencies and interested individuals, shall conduct a study of the (a) adequacy of Federal Aviation Administration flight and operational noise controls; (b) adequacy of noise emission standards on new and existing aircraft, together with recommendations on the retrofitting and phaseout of existing aircraft; (c) implications of identifying and achieving levels of cumulative noise exposure around airports; and (d) additional measures available to airport operators and local governments to control aircraft noise. He shall report on such study to the Committee on Interstate and Foreign Commerce of the House of Representatives and the Committees on Commerce and Public Works of the Senate within one year after enactment of this title, together with his recommendations for legislation.

"SEC. 503. (a) The Administrator of the Federal Aviation Administration, after consultation with the Administrator of the Environmental Protection Agency, shall promulgate regulations to insure compliance with all standards promulgated by the Administrator under section 501 of this Act. The regulations of the Secretary of Transportation shall include provisions making such standards respecting noise emissions from any type of aircraft applicable in the issuance, amendment, modification, suspension, or revocation of any certificate authorized by the Federal Aviation Act, as amended, or the Department of Transportation Act, as amended. Such Secretary shall insure that all necessary inspections are accomplished, and may execute any power or duty vested in him by any other provision of law in the execution of all powers and duties vested in him under this section.

"(b) In any action to amend, modify, suspend, or revoke a certificate in which violation of aircraft noise or sonic boom standards, rules, or regulations applied to aircraft or aircraft engines existing on the date of enactment of the Environmental Noise Control Act of 1972, is at issue, the certificate holder shall have the same notice and appeal rights as are contained in section 609 of the Federal Aviation Act, as amended, except that in any appeal to the National Transportation Safety Board, the Board may amend, modify, or revoke the order of the Secretary of Transportation only if it finds no violation of such standards, rules, or regulations, and that such amendment, modification, or revocation by the Board is consistent with safety in air transportation.

"SEC. 504. The Administrator of the Federal Aviation Administration shall not issue a type certificate under section 603(a) of the Federal Aviation Act, as amended, for any aircraft, or for any aircraft engine, propeller, or appliance that affects significantly the noise or sonic boom characteristics of any aircraft, after July 1, 1973, unless standards, rules, and regulations under this part which apply to such aircraft, aircraft engine, propeller, or appliance have been promulgated.

"SEC. 505. The Administrator of the Environmental Protection Agency, within nine months of the date of enactment of this Act, shall review all standards, rules, or regulations (or any proposed standard, rule, or regulation) in effect under section 611 of the Federal Aviation Act, as amended, prior to the date of enactment of this title. If he determines after public hearings, that such standards, rules, or regulations do not comply with section 501(b)(1) of this Act, within twelve months of the date of enactment of this title he shall revise such standard, rule, or regulation, in accordance with section 501(b) of this Act.

"SEC. 506. No State or political subdivision thereof may adopt or attempt to enforce any standard respecting noise emissions from any aircraft or engine thereof unless such standard is identical to a standard applicable to such aircraft under this part.

"SEC. 507. Terms used in this part (other than Administrator) shall have the same meaning as such terms have under section 101 of the Federal Aviation Act of 1958, as amended.

"CIVIL AIRCRAFT SONIC BOOM

"SEC. 508. (a) No person may operate a civil aircraft over the territory of the United States, the territorial sea of the United States, or the waters of the contiguous zone (as defined under Article 24 of the Conservation of the Territorial Sea and the Contiguous Zone) at a true flight mach number greater than 1 except in compliance with the conditions and limitations in an authorization to exceed mach 1 issued to the operator under this section.

"(b) For a research and development flight in a designated flight test area an authorization to exceed mach 1 may be issued if the applicant shows one or more of the following:

"(1) The flight is necessary to show compliance with an airworthiness regulation or is necessary for aircraft development.

"(2) The flight is necessary to determine the sonic boom characteristics of the airplane, or is necessary to establish means of reducing or eliminating the effects of sonic boom.

"(3) The flight is necessary to demonstrate the conditions and limitations under which speeds greater than a true flight mach number of 1 will not cause a sonic boom to reach the land or water surface of the earth.

"(c) An application for an authorization to exceed mach 1 must be made on a form and in a manner prescribed by the Administrator of the Environmental Protection Agency. In addition, for an authorization covered by subsection (b) of this section, each application must contain—

"(1) information showing that operation at speeds greater than mach 1 is necessary to accomplish one of the purposes specified in subsection (b) of this section;

"(2) a description of the flight test area proposed by the applicant; and

"(3) conditions and limitations that insure that no sonic boom will reach the land or water surface outside of the designated flight test area.

"(d) An application for an authorization to exceed mach 1 shall be denied whenever the Administrator of the Environmental Protection Agency finds that such research and development flight or flights may adversely affect public health or welfare or the quality of the environment.

"(e) An authorization to exceed mach 1 is effective until it expires, or until it is surrendered, and shall be terminated by the Administrator whenever he finds that such action is necessary to protect public health or welfare or the quality of the environment.

"(f) Any violation of this section shall be

subject to the penalties prescribed under subsection (a) of section 412 of this Act.

"PART B—RAILROAD NOISE EMISSION STANDARDS

"SEC. 511. (a) Within nine months after the date of enactment of this title, the Administrator shall publish proposed noise emission regulations for surface carriers engaged in interstate commerce by railroad. Such proposed regulations shall include noise emission standards setting such limits on noise emissions resulting from operation of the equipment and facilities of surface carriers engaged in interstate commerce by railroad which reflect the degree of noise reduction achievable through the application of the best available technology, taking into account the cost of compliance. These regulations shall be in addition to any regulations that may be proposed under section 408 of this Act.

"(b) Within ninety days after the publication of such regulations as may be proposed under subsection (a) of this section, and subject to the provisions of section 415 of this Act, the Administrator shall promulgate final regulations. Such regulations may be revised from time to time, in accordance with this section.

"(c) Any standard or regulation, or revision thereof, proposed under this section shall be promulgated only after consultation with the Secretary of Transportation in order to assure appropriate consideration for safety and technological availability.

"(d) Any regulation or revision thereof promulgated under this section shall take effect after such period as the Administrator finds necessary, after consultation with the Secretary of Transportation, to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.

"SEC. 512. The Secretary of Transportation, after consultation with the Administrator, shall promulgate regulations to insure compliance with all standards promulgated by the Administrator under section 511 of this Act. The Secretary of Transportation shall carry out such regulations through the use of his powers and duties of enforcement and inspection authorized by the Safety Appliance Acts, the Interstate Commerce Act, and the Department of Transportation Act. Regulations promulgated under this section and section 511 of this part shall be subject to the provisions of sections 411, 412, 413, 415, and 416 of this Act.

"SEC. 513. Nothwithstanding any other provision of this Act, after the effective date of regulations under this part, no State or political subdivision thereof may adopt or enforce any standard respecting noise emissions resulting from the operation of equipment or facilities of surface carriers engaged in interstate commerce by railroad unless such standard is identical to a standard applicable to noise emissions resulting from such operation prescribed by any regulation under this section: Provided, however, That nothing in this section shall diminish or enhance the rights of any State or political subdivision thereof to establish and enforce standards or controls on levels of environmental noise, or to control, license, regulate, or restrict the use, operation, or movement of any product as the Administrator, after consultation with the Secretary of Transportation may determine to be not in conflict with regulations promulgated under this part.

"SEC. 514. The terms 'carrier' and 'railroad' as used in sections 511, 512, and 513 of this part shall have the same meaning as such terms have under section 22 of title 45 of the United States Code.

"PART C—MOTOR CARRIER NOISE EMISSION STANDARDS

"SEC. 521. (a) Within nine months after the date of enactment of this title, the Administrator shall publish proposed noise emission regulations for motor carriers engaged in interstate commerce. Such proposed regulations shall include noise emission standards setting such limits on noise emissions resulting from operation of motor carriers engaged in interstate commerce which reflect the degree of noise reduction achievable through the application of the best available technology, taking into account the cost of compliance. These regulations shall be in addition to any regulations that may be proposed under section 408 of this Act.

"(b) Within ninety days after the publication of such regulations as may be proposed under subsection (a) of this section, and subject to the provisions of section 415 of this Act, the Administrator shall promulgate final regulations. Such regulations may be revised from time to time, in accordance with this section.

"(c) Any standard or regulation, or revision thereof, proposed under this section shall be promulgated only after consultation with the Secretary of Transportation in order to assure appropriate consideration for safety and technological availability.

"(d) Any regulation or revision thereof promulgated under this section shall take effect after such period as the Administrator finds necessary, after consultation with the Secretary of Transportation, to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.

"SEC. 522. The Secretary of Transportation, after consultation with the Administrator shall promulgate regulations to insure compliance with all standards promulgated by the Administrator under section 521 of this part. The Secretary of Transportation shall carry out such regulations through the use of his powers and duties of enforcement and inspection authorized by the Interstate Commerce Act and the Department of Transportation Act. Regulations promulgated under this section and section 521 of this part shall be subject to the provisions of sections 411, 412, 413, 415, and 416 of this Act.

"SEC. 523. Notwithstanding any other provision of this Act, after the effective date of regulations under this part no State or political subdivision thereof may adopt or enforce any standard respecting noise emissions resulting from the operation of motor carriers engaged in interstate commerce unless such standard is identical to a standard applicable to noise emissions resulting from such operation prescribed by any regulation under this section: *Provided, however,* That nothing in this section shall diminish or enhance the rights of any State or political subdivision thereof to establish and enforce standards or controls on levels of environmental noise, or to control, license, regulate, or restrict the use, operation, or movement of any product as the Administrator, after consultation with the Secretary of Transportation, may determine to be not in conflict with regulations promulgated under this part.

"SEC. 524. The term 'motor carrier' as used in sections 521, 522, and 523 of this part shall have the same meaning as those terms as defined in section 303(a) (14), (15), and (17) of title 49 of the United States Code."

SEC. 4. There is hereby authorized to be transferred to the Administrator any function or personnel of the Department of Transportation with respect to the control and abatement of aircraft noise which the President determines is necessary to carry out section 3 of this Act.

CONSTRUCTION AT MILITARY INSTALLATIONS—CONFERENCE REPORT

Mr. SYMINGTON. Mr. President, I submit a report of the committee of conference on H.R. 15641, and ask for its immediate consideration.

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

The legistative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 15641) to authorize certain construction at military installations, 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 October 9, 1972, at pages 34370–76.)

Mr. SYMINGTON. Mr. President, I move the adoption of the Conference Report on the Military Construction Authorization Bill for Fiscal Year 1973, and in connection therewith have a brief statement.

The report was signed by all conferees of the House and Senate, and has now been agreed to by the House.

The bill, as agreed to, would provide a total new authority of $2,549,525,000, and an increase in prior years' authority of $8,447,000, for a total authority of $2,557,972,000.

The amount of new authority approved is $498,436,000 below the amount originally requested by the Department of Defense. The original request, however, included $399,420,000 for the Safeguard anti-ballastic-missile system.

All but $6,004,000 of this was withdrawn as a result of the SALT agreement. The latter amount for 218 units of military family housing at the Grand Forks site was transferred to and considered in the military procurement bill.

This leaves a net reduction in new authority of $99,016,000 below the amount requested. Considering the fact that a very substantial portion of the bill this year is devoted to bachelor housing, and other personnel facilities, in furtherance of the voluntary force concept, together with air and water pollution abatement projects in compliance with existing law, we consider this reduction to be significant.

The Senate position prevailed in 64 percent of the items in dispute. The bill agreed to by the Congress is only $10,825,300 above the amount approved by the Senate.

I would like to now mention a couple of points that might be of special interest. The first relates to the military family housing. For some time now the committee has received complaints from service families that many of the older Government quarters in the United States did not meet the standards of adequacy, yet the sponsors assigned such quarters must forfeit their entire quarters allowances. In some instances better quarters are obtainable on the economy within, or less than, their basic allowance for quarters.

I believe it is the opinion of all concerned that such quarters, where economically possible, should be brought up

to the standards of adequacy. Where this is not possible, then some relief should be forthcoming to the occupants.

With this in mind, the Senate included a provision in the bill that will permit the families assigned such quarters to occupy them voluntarily on a fair rental basis, but not to exceed 75 percent of their basic allowance for quarters, unless the upkeep should exceed that amount.

I am pleased to advise that the House conferees agreed to the wisdom of this provision, but insisted on limiting the number of such quarters to be so designated to 20,000 units. This seems to be a reasonable limitation, and the Senate agreed. The limitation can, of course, be modified at a later date, if there appears to be a justifiable reason.

Finally, I wish to mention the Trident base construction program.

As I have previously called to the attention of the Senate, the Navy this year requested $14.3 million to provide for the beginning of the first Trident base. It is currently estimated that such a base, upon completion, will cost around $886 million. Supposedly the funds requested this year for construction would be used primarily for land acquisition and perhaps some site preparation such as grading and access roads.

The Senate denied this request since the Navy cannot, or does not choose to, indicate at this time where the proposed base is to be located. They have informed us that four different sites are under consideration—three on the east coast and one on the west coast.

Now, Mr. President, until such time as the Navy has made up their minds as to where this base is to be located, it seems inconceivable that they could estimate with any accuracy the amount of construction funds needed this year. The Senate conferees were adamant in their position that they would not authorize the appropriation of funds blindly as in this instance.

The House was equally adamant in their position that some funds should be authorized, so as to prevent a possible delay to the program. They were willing to compromise on $3½ million. This matter was again presented to the Senate Armed Services Full Committee, which agreed with the position of the Senate conferees.

Under the circumstances, I am pleased to inform you that the Senate provision prevailed.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The report was agreed to.

H.R. 16810 WOULD BE HARDSHIP ON VETERANS

Mr. HARTKE. Mr. President, the present bill which would limit spending of the Congress would impose an extreme hardship on all veterans. I ask unanimous consent to have printed in the RECORD a telegram I received from Herald E. Stringer, director, national legislative commission, of the American Legion, asking that we give consideration to protecting programs from cutbacks the spending ceiling would impose.

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

OCTOBER 11, 1972.

Hon. VANCE HARTKE,
Chairman, Senate Committee on Veterans' Affairs, Old Senate Office Building, Washington, D.C.:

The American Legion is seriously concerned about the effect H.R. 16810 could have on veterans programs unless the Veterans Administration is specifically exempted from any general spending ceiling the measure would impose.

Specifically the measure could jeopardize existing plans to improve and expand the VA medical and hospital programs for the nation's 28.8 million veterans of which number 5.9 million served in the Vietnam era and have special problems. We hope you can protect these programs from any cutbacks the spending ceiling might impose.

HERALD E. STRINGER,
Director, National Legislative Commission, The American Legion.

JORGE ORTUZAR-VARAS AND MARIA PABLA DE ORTUZAR

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the pending business be laid aside temporarily and that the Senate turn to the consideration of Calendar No. 1230. This matter has been cleared all the way around.

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

The legislative clerk read as follows:

A bill (H.R. 14128) for the relief of Jorge Ortuzar-Varas and Maria Pabla de Ortuzar.

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

ENVIRONMENTAL NOISE CONTROL ACT OF 1972

The Senate resumed the consideration of the bill (S. 3342) to amend title IV of the Clean Air Act, and for other purposes.

Mr. TUNNEY. Mr. President, I ask unanimous consent that the following members of the staff of the Committee on Public Works be permitted to be on the floor during the consideration and any votes on S. 3342: Barry Meyer, Philip Cummings, John Yago, Leon G. Billings, Bailey Guard, Richard Hellmann, Don Alexander, and Charlene Sturbitts and Jane Frank of my staff, and Mr. Hal Brayman of the staff of the Committee on Public Works.

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

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

Mr. TUNNEY. I yield.

Mr. CANNON. Mr. President, I ask unanimous consent that during the consideration of this bill Robert Ginther, Bill Frank, and Mike Pertschuk be permitted on the floor.

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

Mr. TUNNEY. Mr. President, I can think of no better way to introduce the subject of environmental noise control than to read a letter which I recently received from a constituent.

She wrote:

DEAR SENATOR TUNNEY: I heard you were out here in California checking on the noise. Where you went of course [there] wouldn't be any noise . . . Come to my house—stay one day—let no one know you are here. You will hear with your own ears—I will take you around—see the other sections that are affected.

The noise is so bad at my house—you could cry—it hurts your ears so much. When a plane comes directly over my house—it shakes the house and that squeal is so bad for the ear drums. . . .

When children will start crying when a plane flies overhead you know their ears will soon be deafened (so they will not hear that screech).

Do you know that seven schools are under the south runway [and] are going to be taken down. Look at all that money wasted. So easy to have just a westerly landing and that would be all removed.

Please, please—on bended knees, help us—do something . . . make it a law. . . .

Well, we have worked hard to "make it a law" on this subject. S. 3342, the Environmental Noise Control Act of 1972, would go a long way toward solving the aircraft noise problem, as well as the din from other major noise sources ranging from motorcycles to vacuum cleaners, to jackhammers to electric blenders. For the first time, in the version of the legislation reported by the Senate Public Works Commitee, we would establish a comprehensive Federal program—including grants to States and cities to support programs geared to local needs—to deal with noise pollution in much the same way and at the same level of priority as the Congress has dealt with air and water pollution.

Treating the subject of noise pollution as a total system, the legislation would require the Environmental Protection Agency to set noise emission levels from major noise sources adequate to protect the public health and welfare. It would provide technical and financial assistance to the States and cities while leaving them free to set the strongest possible noise control programs.

The legislation has broad-based support from such widely divergent groups as labor unions, the Airport Operators Council, environmental organizations, the American Public Health Association, the League of Cities, Council of Mayors, the National Governors Conference, and representatives of the industry. Support is especially strong for title V, which includes provisions for establishing the Environmental Protection Agency as lead agency in setting noise emission standards for aircraft.

This legislation was thoroughly considered in legislative hearings and extensive executive sessions. The hearings on the legislation pointed up some startling statistics about the subtle and pervasive effects of noise on hearing and other aspects of health. According to EPA, 80 million Americans are adversely affected by noise. Of these, about 40 million persons are literally listening to a health hazard, risking hearing impairment and other physiological and psychological effects. This figure does not include an additional 17 million workers who have incurred job-related hearing damage. Fifteen million people who live near airports all around the country are adversely affected by aircraft noise and

suffer health impairment which includes loss of sleep, anxiety, and interference with classroom learning and with normal conversation.

The hearings also explored the total inadequacy of present law to deal with the health need. Under the Clean Air Act Amendments of 1970, EPA is given study and review authority over Federal activities which result in a noise nuisance. But neither EPA nor any other Federal agency is given regulatory authority to set noise emission standards adequate to protect the public health.

The hearings showed, too, that States and cities are becoming increasingly frustrated at their inability to deal effectively with local noise problems: caught in a financial squeeze, they lack the tools and training to do the job they need. Indeed, a study by EPA of past State and local efforts shows that the most outstanding States have spent a paltry 10 cents per capita on noise controls; most States have spent as little as one or 2 cents per capita—or nothing at all. In the past year alone, EPA has received requests from 28 States and 111 cities for technical and financial assistance—demands which it has no authority to meet under present law.

Most frustrated of all are the people—who are bringing billions of dollars in damage suits against airport authorities—and hundreds of millions of dollars in compensation claims for hearing loss.

At Los Angeles International Airport alone, $14 billion in nuisance suits are pending—a situation which prompted the city attorney of Los Angeles to threaten to close down the airport. He seems to have recanted, but if the airport does close, thousands of jobs will be lost. This is in addition to the enormous impairment to air commerce.

Another problem discussed at the hearings was the decline of property values due to high levels of noise. A study conducted in Inglewood, Calif., shows land subject to noise levels less than 80 PndB was valued an average 50 percent higher than land subject to noise levels greater than 100 PndB.

For the first time, in S. 3342 we would define and meet the health needs, provide an adequate regulatory mechanism at the Federal level, and provide for technical and financial assistance to the States and cities.

Specifically to deal with the health need, section 407(a) of the bill requires the Administrator, within 9 months after enactment, to issue noise criteria reflecting all the identifiable effects of differing quantities and qualities of noise on public health or welfare. He will be expected to produce criteria documents very much like those prepared under the Clean Air Act for similar uses. These criteria must set forth the levels of environmental noise which are requisite to protect the public health and welfare with an adequate margin of safety.

The concept of environmental noise is used through the bill to describe the overall level of noise in a given area to which individuals are exposed, including the intensity, duration, and character of sounds from all sources. It also includes the concept of a limitation on noise which would be applicable to every individual source in such a defined geographic area.

Under the regulatory provisions of the act, within 15 months after enactment of the legislation, the Administrator is required to prepare public reports identifying products which appear to be major sources of noise. Identification as a major source of noise is the first step in the development of noise emission standards for particular products.

Noise emission standards must be established for any major source of noise which falls into the categories of construction equipment, transportation equipment, motors or engines, turbines and compressors, percussion and explosive equipment, or electrical and electronic equipment—other than sound reproduction equipment. These standards must take effect no later than 2 years after the date of promulgation or any shorter period which permits the application of the necessary technology. The Administrator is given authority to define "effective date" in such a way as to prevent the stockpiling of inventories to circumvent the purpose of the standards.

Standards for new products are required to set limits on noise emissions which in the Administrator's judgment reflect the degree of noise reduction achievable through the application of the best available technology, taking into account the cost of compliance. The difficulty of relating noise emissions from a given source to effects on public health and welfare in an enforceable way led the committee to conclude that implementation of a technologically based standard was preferable in terms of uniformity and enforceability to one calling for protection of the public health and welfare. While the intention of the whole bill is to protect public health and welfare from environmental noise, the committee expects that the application of the best available technology will just begin to realize that goal in the foreseeable future.

After the effective date of standards applicable to a product, the manufacturer must warranty to the purchaser and subsequent owners of that product that it conforms with the standards at the time of sale and that it is free from defects in materials and workmanship which cause the product, under normal use, operation, and maintenance, to fail to conform during its useful life.

For any product manufactured after the effective date of an applicable Federal standard, authority to establish noise emission standards for the product enforceable against the manufacturer is preempted. States and cities, however, retain complete authority to establish and enforce limits on environment noise through the licensing, regulation, or restriction of the use, operation, or movement of a product, or concentration or combination of products.

In the judgment of the committee, noise emission standards for products which must be met by manufacturers should be uniform. On the other hand, States and local governments have the primary responsibility under the bill for setting and enforcing limits on environmental noise which in their view are necessary to protect public health and welfare. This essentially local responsibility is not assumed or interfered with by this bill, although Federal guidance, technical and financial assistance are provided.

Under the legislation, at a minimum, States and local governments may reach or maintain levels of environmental noise which they desire through operational limits or regulations on products in use—such as speed or load limits or prohibitions of use in given areas or during given hours—quantitative limits on environmental noise in a given area which may be enforced against any source within the area, including zones adjacent to streets and highways, regulations limiting the environmental noise which may exist at the boundary of a construction site, nuisance laws, or uses which do not amount to a burden manufacturers must meet to continue in business.

In a letter to the editor of the New York Times dated September 29, 1972, which discusses preemption under the legislation, EPA Administrator Ruckelshaus draws an analogy to the regulation of alcoholic beverages, and states:

> This relationship between Federal, state and local controls is not unusual or unworkable. There are many precedents. For example, consider the case of alcoholic beverages. Such beverages only can be manufactured and introduced into interstate commerce in accordance with strict Federal specifications and regulations. However, states and cities can forbid their use or they can determine the method of sale, distribution or use, and control the hours, circumstances and locations of use. The states and cities cannot impose standards regarding content or specification for manufacture. This is the same situation as proposed for the control of noise sources—the Federal control does not inhibit the state and local use controls.

The bill generally parallels the enforcement authority of the Clean Air Act. This includes criminal penalties of $25,000 or 1 year's imprisonment for the first violation of the prohibited acts section applicable to manufacturers. The bill also provides authority to enjoin any violation. In addition, the bill makes it a criminal violation for a manufacturer or dealer to assist any person in removing or disconnecting a noise suppression device or the giving of information to any person on how to remove or disconnect such device for purposes not allowed by the bill.

Standards apply to all new products except those intended solely for export. Exported products have only to comply with applicable foreign standards.

The bill also provides authority for citizens to sue in the Federal district courts to abate violations of the requirements of the law. This section is nearly identical to the citizen suit provisions in the Clean Air Act—section 304—and the committee intends that it be utilized and interpreted in a similar fashion.

To aid the States and cities, the Administrator is authorized to grant a total of $22.5 million over a 3-year period to State and local environmental noise con-

trol agencies. Grants are limited to two-thirds of planning and development costs and one-half of maintenance costs, in order to highlight the importance of getting new programs off the ground. No one State may receive more than 10 percent of the total funds, and, where an environmental noise control agency program encompasses more than one State, funds are apportioned.

Through explicit qualifications in the legislation, a noise pollution control agency must have effective enforcement capability in order to qualify for Federal funds.

Over 3 years $104,000 in funds are provided to implement general provisions of the act.

A separate title, title V, in the legislation would deal with "Major Moving Sources," a category which includes aircraft, trucks, and trains. While, in each instance, EPA would be lead agency in setting emission levels from these sources adequate to meet public health and welfare needs, the process by which these various levels become actual standards would involve the special competence of other Federal agencies which have certain technical expertise with respect to these products.

In the case of aircraft, EPA would set emission standards adequate to meet the health needs. Standards for noise emissions from aircraft, which actually define what aircraft manufacturers and air carriers must attain, would be promulgated on the basis of the degree of noise reduction achievable through the application of best available demonstrated technology, taking into account the cost of compliance, as determined by EPA and the Federal Aviation Administration. FAA would be given a twofold veto over proposed standards, if technology were not available or standards were not consistent with the highest degree of safety. Under this scheme, each agency would take responsibility for those matters for which it has demonstrated competence.

In addition, the bill provides that existing standards promulgated under section 611 of the Federal Aviation Act will continue in effect until modified in accordance with the provisions of this bill. The Administrator of the Environmental Protection Agency is directed to review those standards within 9 months after enactment for consistency with the requirements of this bill. Original type certificates cannot be issued after July 1, 1973, unless noise emission standards which apply to such aircraft have been promulgated. Violations of the standards would be subject to the penalties and abatement procedures under title IV, including citizen suits to abate violations.

The committee considered approaches to controlling aircraft noise based on a concept of cumulative noise exposure, involving the level of noise from aircraft to which individuals in the areas surrounding airports are exposed and the effects of such exposure on public health and welfare. While methods other than noise emission standards can be effectively utilized to reduce aircraft noise, and while many members of the committee were strongly in favor of utilizing such additional methods, the committee felt that it had insufficient knowledge as to the precise regulatory mechanism for cumulative aircraft noise exposure. Therefore, the committee included in the bill, in place of any regulatory scheme dealing with community noise around airports, a 1-year study by the EPA of the implications of identifying and achieving levels of cumulative noise exposures around airports. The results of this study, submitted to the Committees on Public Works and Commerce of the Senate and the Committee on Interstate and Foreign Commerce of the House will form the basis for any legislation on aircraft noise in the next Congress.

Also included in this study are the adequacy of FAA flight and operational noise controls, the adequacy of noise emission standards on new and existing standards on new and existing aircraft—together with the EPA's recommendations on the retrofitting and phaseout of existing aircraft—and any additional measures available to airport operators and local governments to control aircraft noise.

The EPA study and recommendation called for by section 502 is not merely an extension of the investigations on this subject performed by EPA as required by title IV of the Clean Air Act Amendments of 1970. Rather, it is an effort to deal comprehensively with and develop an orderly national program for an urgent problem that has heretofore been dealt with on a piecemeal basis.

There are already in progress a number of investigations and activities on the part of a variety of Federal agencies on the subject of aircraft and airport noise. These include among others: the report of the Aviation Advisory Commission called for by the Airways and Airport Improvement Act of 1970, the research on development of quiet engines being accomplished by the National Aeronautics and Space Administration and the research on aircraft engine retrofit requirements being undertaken by the Federal Aviation Administration.

In addition, it is known that the executive branch of the Government through the Office of Management and Budget, and the National Aeronautics and Space Council is conducting studies and evaluations on aircraft noise problems and associated matters.

The Environmental Protection Agency along with the Department of Transportation and the Department of Housing and Urban Development have undertaken initial research on community noise, measurement, evaluation and description. It is also known that within its limited resources the Environmental Protection Agency has also initiated a study on the wide variety of schemes and methods used for aircraft noise, evaluation, and measurement. The Department of Defense through the U.S. Air Force Aerospace Medical Research Laboratory is undertaking a comprehensive investigation of the noise exposure forecast system and the background material upon which that system is based. All of these studies are viewing the problem from different viewpoints and different considerations. Nowhere is there presently established overview authority. The purpose of section 502 is to insure that all of this related, but presently disorganized, activity is brought into perspective and evaluated by an independent agency whose primary concern is that of environmental quality and the protection of health and welfare.

Tools other than noise emission standards do exist for reducing aircraft noise. It is the intention of the committee in section 501(c) of the bill that all existing authority over aircraft or aircraft noise be utilized to reduce that noise, including, among other things, the consideration of flight and operational changes such as the two-segment landing approach and the adjustment of take-off, approach and flight paths to impact fewer people, and review of traffic flow with regard to adequacy of load factor.

States and the local governments are preempted from establishing or enforcing noise emission standards for aircraft unless such standards are identical to standards prescribed under this bill. This does not address responsibilities or powers of airport operators, and no provision of the bill is intended to alter in any way the relationship between the authority of the Federal Government and that of State and local governments that existed with respect to matters covered by section 611 of the Federal Aviation Act of 1958 prior to the enactment of the bill.

Commercial flights of supersonic aircraft at supersonic speeds over the United States are forbidden, except for defined research and development purposes.

Standard-setting for railroads and trucks involve the Secretary of Transportation safety inspection and regulatory authority of the Secretary of Transportation. Local regulations are preempted except where necessitated by local conditions.

In conclusion, the legislation provides the first comprehensive program to control noise from all major noise sources—including aircraft. We have kept the people waiting long enough. We have their strong support for this bill. It is time to move forward.

Mr. President, I yield to the Senator from Maine.

The PRESIDING OFFICER. The Senator from Maine is recognized.

Mr. MUSKIE. Mr. President, I send to the desk an amendment and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk proceeded to read the amendment.

Mr. MUSKIE. 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:

S. 3342

On page 90, beginning at line 24, strike out all through line 14 on page 91 and insert, in lieu thereof, the following:

"SEC. 502. (a) (1) Within 180 days after the

enactment of this Act, the Administrator of the Environmental Protection Agency shall promulgate rules and regulations, based on criteria published pursuant to section 407(a) of this Act, to establish levels of cumulative noise exposure in the environment of airports and surrounding areas affected by noise from aircraft which levels shall be adequate to protect the public health and welfare with an adequate margin of safety.

"(2) Within 90 days after promulgation of regulations required by paragraph (1), the Administrator of the Environmental Protection Agency shall promulgate and amend standards for the measurement of levels of cumulative noise exposure.

"(b) Within 270 days after the promulgation of rules and regulations establishing levels of cumulative noise exposure, the Administrator of the Environmental Protection Agency shall identify and publish in the Federal Register those airports in the vicinity of which he has reason to believe such levels are or may be exceeded, and at any time thereafter the Administrator shall identify and publish in the Federal Register any other airports for which he subsequently receives evidence that levels of cumulative noise exposure are being exceeded.

"(c)(1) Within 90 days after an airport is identified pursuant to subsection (b) of this section, the Administrator of the Environmental Protection Agency shall monitor the levels of cumulative noise exposure in the vicinity of the airport, and shall install devices to monitor on a continuing basis the levels of cumulative noise exposure in the vicinity of the airport and shall periodically, but at least annually, examine the devices to assure accuracy and make a determination of the adequacy of the measures taken to attain and maintain such levels;

"(2) The Administrator of the Environmental Protection Agency shall make public the data derived from such monitoring, correlated with the levels of cumulative noise exposure established pursuant to subsection (a) of this section.

(d)(1) The Administrator of the Federal Aviation Administration, after consultation with the Administrator of the Environmental Protection Agency, shall develop and publish information on alternatives for reducing noise at airports and in the vicinity of airports, which information shall indicate the maximum degree of noise reduction control which can be achieved with available technology which is consistent with safety. Alternatives considered may include modifications and limitations on the number and frequency of operations, modifications of hours of airport operation, any other adjustments in operation of such airport, and any alternative controls or modifications of the use of land (including use of buildings and facilities, building code changes, etc.) surrounding such airport.

"(2) Where an airport is identified pursuant to thee procedures in subsection (b) the Administrator of the Federal Aviation Administration shall provide technical assistance to the operator of such airport to develop methods to attain and maintain levels of cumulative noise exposure through implementation of alternatives such as those published in accordance with paragraph (1) of this subsection.

"(e) There are authorized to be appropriated to the Administrator of the Environmental Protection Agency to carry out the provisions of this section not to exceed $15,000,000 for the fiscal year ending June 30, 1973, and $15,000,000 annually for each of the three succeeding fiscal years.

"(f) Nothing in this section shall limit the authority of an airport operator for other than emergencies to limit the number of frequency of operations or modify or limit the hours of airport operations in order to attain or maintain such levels.

Mr. MUSKIE. Mr. President, the Senate need look no further than the general statement section of the committee report on this bill for the facts which justify a major Government effort to control and reduce noise pollution. As chairman of the Subcommittee on Air and Water Pollution, however, I am sorry to have to say to this body that the legislation which it now considers will not provide the kind of action that those facts demand.

The Environmental Noise Control Act of 1972, S. 3342, was introduced on March 14, 1972 by Senator JOHN V. TUNNEY and myself. That legislation was different than either the House-passed bill, H.R. 11021, or the administration's bill, S. 1016, in purpose and intent. The bill which we introduced was not primarily designed to relieve product manufacturers from the effect of State noise pollution regulatory programs. Nor was it designed primarily to relieve transportation companies, particularly the airlines, from effective noise regulations.

We wanted to establish a means to reduce as rapidly as possible, through the application of available control measures, the exposure of people to noise by reducing noise at its source, by changing the way noisy products are used, by controlling noisy activities, and by such other means that are available.

Our bill was an environmental regulatory measure. We recognized that the regulation of noise would have an impact on commerce, but we also recognized that the purpose of regulation must be the reduction in the volume, intensity, and character of noise to which people are exposed in their daily lives from sources over which they have no control.

As the third annual report of the President's Council on Environmental Quality stated:

It is increasingly difficult for any individual—in urban or rural America—to escape noise. For many city residents, noise may be the single most pervasive environmental pollutant.

The committee report itself notes that noise has—

A significant impact on more than 80 million Americans . . . 40 million Americans risk hearing impairment and other physiological and psychological effects . . . 44 million Americans have the uitility of their dwellings adversely affected by noise from aircraft or traffic . . . 21 million Americans are similarly affected by construction-related noise.

In the face of these facts, we have no right to adopt any more lenient a policy against noise pollution than we have adopted against air and water pollution. It will not be an easy task, because we will have to give States and localities much more flexibility to impose strict controls in controlling noise within their own jurisdictions than in controlling air and water pollution.

Noise is not subject to easy regulation. Unlike the common air and water pollutants, noise does not accumulate in the environment. Noise is not subject to collective treatment and reduction processes. As a practical matter, then, the best method to reduce noise is to apply stringent emission regulations at the source of the noise, so that products and activity will not present a noise pollution problem alone or in combination with each other.

To a degree, the legislation reported by the committee moves in this direction. Through the establishment of a regulatory mechanism which permits the Administrator to impose noise emission restrictions attainable through the application of the best available technology, the Administrator will be able to press the limits of our capability to reduce noise from new products.

The bill does not, however, provide adequate options in those cases in which the best available technology is not adequate to achieve environmentally acceptable levels of noise. It does not protect adequately the authority of States and local government to safeguard the environment in which their citizens live. It does not give States the opportunity to ban the sale of federally regulated products which, in their jurisdictions, still emit unacceptable levels of sound. And at the same time, it does not expedite Federal regulation, thus holding out the hope of a quieter environment with no guarantee of early improvement.

By preempting State authority to restrict sale of noisy products, the bill places the burden on the consumer to take the risk of buying products which cannot be used in the manner intended at the time of purchase. The preemption provision limits State authority to restricting the manner of use of noisy products regulated by the Federal Government.

The Committee on Public Works is not unfamiliar with the problem of preemption. The Air Quality Act of 1967, which I sponsored, provided for Federal preemption of the authority to regulate air pollution emissions from new automobiles, except in California. That policy may have had an effect opposite of that which was intended. It appears that the preemption provision of that act did not cause the auto companies to focus their research efforts and investments on one set of national standards. Rather, the auto companies' efforts have been focused on undermining those national standards.

Again in 1970, preemption was discussed in relation to regulation of air pollution emissions from aircraft. The Congress decided on a preemption provision effective on enactment and set deadlines for standards to be developed.

Section 231(a) of the Clean Air Act requires that the Environmental Protection Agency must begin an investigation of air pollution from aircraft within 90 days of date of enactment. Within 180 days after commencing that investigation, the Environmental Protection Agency is required to report on the investigation and propose emission standards for any class of aircraft or aircraft engines which contributes to air pollution which endangers public health and welfare. Ninety days thereafter—1 year after enactment—EPA was to issue final regulations. The proposed standards were due over 1 year ago, September 27, 1971. Today, no report or proposed standards have been published.

This is a classic example of Federal preemption leading to Federal failure to protect public health. The Federal Aviation Administration has undoubtedly discouraged active efforts by the Administrator. And the efforts that the Environmental Protection Agency has made have run aground in the Office of Management and Budget.

Therefore, when the committee considered the pending legislation, I expressed reservations regarding a broad preemption provision for product and aircraft emission standards. The States have moved actively in this field. Federal noise pollution responsibility is new and little significant authority or responsibility exists, but a number of States have regulatory programs which impose emission controls on noisy products which are enforceable both at the point of sale and at the point of use.

I cannot support Federal preemption which protects product manufacturers and the air transportation industry without effective regulatory programs which will enhance the quality of the environment. Substituting Federal law for State law with even less assurance that public health will be protected is poor public policy.

My second major concern with the legislation reported from the committee deals with the problem of aircraft noise and regulatory mechanism recommended to cope with that problem.

To date, the regulation of aircraft noise pollution has been the sole responsibility of the Federal Aviation Administration. The Federal Aviation Administration has had this responsibility since its inception. It has had a specific legislative mandate for the past 4 years. And its record is wholly inadequate.

I understand why the Federal Aviation Administration's response has been inadequate. The FAA's primary mission is not to reduce the environmental impact caused by aircraft noise. Its mission is to promote air commerce and to protect safety. Regulation of noise from aircraft is not consistent with that primary mission.

In the proposed rulemaking in January 1969, FAA set forth a "noise floor" at 80 EPNdB as "an objective to aim for, and to achieve where economically reasonable, technologically practicable, and appropriate to the particular design" and went on:

> However, this objective is important because it makes it clear to all applicants that no increment of noise above 80 EPNdB can be considered acceptable, in and of itself, where it can be eliminated practically and reasonably. This figure is proposed as a reasonable boundary between noise levels that are high enough to interfere with communications and to obstruct normal life in homes or other buildings that are not designed with specific acoustical objectives, and lower noise levels which, while not completely benign, nevertheless allow those activities to proceed. Where this goal can be reached in a given case, and can be justified as economically reasonable, technologically practical, and appropriate to the particular type design, the FAA does not intend to ignore this potential reduction.

Yet after industry pressure, the FAA dropped this 80 EPNdB "objective" from the promulgated regulations stating:

> The FAA has determined that the request to remove the noise "floor" of 80 EPNdB from the regulatory language is reasonable and should be granted. This noise floor, not being currently achievable, could have no immediate legal effect.

The attitude of the Federal Aviation Administration as regards regulation of aircraft noise was more clearly spelled out in the following excerpt from a draft report on noise pollution prepared by the Environment Protection Agency:

> Both directly and by unmistakable inference, a number of important conclusions arise from the information gathered on Federal noise control programs.
>
> Most plainly, the control of unwanted sound is not a high priority issue for virtually any Federal agency or department. Only when an Agency's primary mission absolutely requires a commitment of time, manpower and funding to noise control to assume the smooth functioning of that primary mission (as with for instance, FAA and NASA) is even a modest venture into noise suppression undertaken. For the FAA, aircraft noise is only an annoying interference in the basic goal of the Agency: the most efficient, safest and swiftest air travel possible.

While this statement was deleted from the final report transmitted to the Congress, it is indicative of FAA's attitude toward noise from aircraft. Unfortunately, the bill, as reported, would continue the dominance of the FAA. Not only would FAA have veto over safety of noise reduction technology, but neither could EPA make any judgment as to the availability of technology or the cost of achieving noise reductions without FAA approval.

Continuation of the Federal Aviation Administration in a role of determining the degree to which noise emissions from aircraft will be reduced is not justified in the record. While the committee bill takes steps to establish the Administrator of the Environmental Protection Agency as the determinator of those levels of aircraft noise required to protect public health and welfare, EPA will have little authority to enforce standards to meet those requirements.

Members of the committee, including myself, recognized that aircraft were unique because of the safety requirements and the interrelationship of safety to the engine system. Therefore, I agreed with the committee's judgment and supported the amendments of Senator COOPER and Senator STAFFORD which would retain the Federal Aviation Administration lead role in making any final determination as to whether or not any technology available to achieve noise emission levels would also be consistent with the highest standards of safety.

The assumption that technology might not be available to meet noise emission goals combined with the assumption that technology could be vetoed because of FAA safety judgment, lead to the conclusion that there must be a mechanism to assure maximum pressure to develop safe technology while at the same time reduce the impact of noise in the environments of impacted airports.

The committee considered and rejected a provision that would have required achievement of health and welfare protection of noise levels in airport environments, whether or not specific aircraft engine emission control technology was available. Without an action-forcing mechanism such as enforceable "cumulative noise exposure levels," neither FAA nor the airlines would have any incentive to press technology and achieve the goals EPA would be authorized to establish. A combination of cumulative noise levels and emission standards would create that pressure. Obviously if technology exists to achieve the levels of noise emission reduction to protect public health, achievement of emission standards would reduce any economic burdens on the airline industry caused by controls imposed to achieve cumulative noise levels. And such local environmental noise requirements would require a reduction in the number and frequency of flights if technology did not exist.

The committee considered and rejected a provision which would have required the Administrator of the Environmental Protection Agency to identify any airports in the country with aircraft noise problems of a magnitude to cause a violation of cumulative noise exposure levels. The proposal defined "cumulative noise exposure levels" as those levels of noise in the environments of airports associated with aircraft operations which were adversely affecting the health and welfare of people around airports.

Most importantly, this provision would have imposed a positive burden upon the operator of the airport to exercise responsibility to regulate the number, the frequency and the hours of flight or to impose land use and other controls so as to eliminate noise as an environmental problem in the area of that airport. And the airport operator's duty and responsibility to carry out such responsibilities would be established by statute.

This concept is not unique. In 1970, the Congress enacted legislation which requires development of a clean car by 1975. That law recognized that reliance on technology alone would not result in elimination of auto-related pollution as a health hazard until existing vehicles were off the road—perhaps mid-1985 or later. Therefore, the bill established a procedure to regulate the use of automobiles in areas in which automobile-related air pollution was unacceptably high to assure that public health would be protected at an early date—in this instance, 1975–76.

The combination of emission reduction technology and air quality implementation plans has been a useful mechanism both to improve air quality and to apply pressure on local governments to seek alternatives to reliance on motor vehicles. Also, this mechanism will apply pressure to the auto industry to develop clean cars if they wish to preserve existing markets.

This mechanism can and should be applied to aircraft-related noise problems. It recognizes the limitations of technology, while providing a means to protect the health and welfare of those seven and a quarter million people who live in airport environments and who are adversely affected by aircraft noise. To do anything less in this legislation is to fail to meet responsibly the demands of the

American public for a safe, healthful and peaceful environment.

Without a provision of this type, I believe the bill to be inadequate. Without a provision of this type, the bill does not address in a meaningful way the real problem faced by people who are confronted now with unacceptable levels of aircraft noise. The reported bill would force these people to wait for emission control technology to be developed and applied to new and existing aircraft, or on the courts to impose sufficient penalties or damage claims against the airlines and the airport operators for creating a public nuisance before relief will be achieved. To turn over to the courts the responsibility of making ad hoc decisions to solve environmental noise problems is equally unacceptable. I think it is inadequate to rely on claims for damages, penalties against the airlines, and injunctions as a substitute for positive regulatory programs.

Mr. President, I think it is inadequate to enact a Federal law which ignores the most basic and most significant problem of noise as perceived by people.

These are the major flaws in this legislation as I see it, Mr. President. Even as our environment becomes noisier and noisier, as the physiological, psychological, and property costs of that noise rise higher and higher, and as we develop more and more techniques for reducing that noise, we are not responding adequately to our task.

We must protect the public health. The amendments which I and other Senators will propose will not create unreasonable restrictions on potential sources of noise, and they will give this legislation the quality of effective environmental regulation. They will improve our ability to protect the health and welfare of the people of our land. I urge that the Senate support these vital improvements.

Mr. President, the two amendments I offer today would get at these points I have just raised. The amendment just reported is designed to determine levels of airport noise which affect public health and welfare and to establish procedures to identify and monitor activities at airports where levels of excessive environmental noise exist. In recent years the primary impetus to develop Federal noise controls has been citizen concern with excessive noise levels in the vicinity of airports. Excessive airport noise may be reduced someday, in part, by controls on aircraft and aircraft engines which are dealt with in other sections of this bill.

But simply modifying aircraft and aircraft engines will not alone solve what has become known as the airport noise problem—at least not soon enough to help 7 million citizens who face unacceptable noise levels every day of their lives.

To solve the airport noise problem, other programs integrated with aircraft controls are necessary. Effective programs will include curfews, controls over operation or aircraft at and around airports, limitations on the number of airport operations per hours, land use, zoning, building construction and ground transportation system regulations in the airport and its vicinity, and other noise-related control efforts.

These controls are immediately more important than aircraft engine controls if airport noise problems are to be reduced. But nowhere in the legislation before us is a mechanism established to determine specific levels of airport noise which will protect public health and welfare, to monitor noise levels around airports, to give advice to airport operators on various approaches they can take to deal with the other aspects of airport noise problems, or to provide technical assistance to airport operators which they may need in implementing such controls. Nor does the bill assure airport operators that interim measures can be taken locally to reduce airport noise and thus the myriad of damage actions pending and anticipated.

All that S. 3342 does, in section 502, is call for a study of these matters. This is not enough. Today we are told we are enacting legislation to deal with the aircraft noise problem, not to study those problems but to have a real commitment of Federal action. If that is so, then we must include a real Federal commitment to act against airport noise.

The amendment I propose will require that within 180 days after enactment of this act, EPA publish regulations establishing levels of cumulative noise exposure for airports and surrounding areas which are adequate to protect public health and welfare with an adequate margin of safety.

Ninety days after publication of these regulations, EPA will be required to publish standards for measurements of levels of cumulative noise exposure.

Within 9 months after measurement regulations are published—about 18 months after enactment of the law—EPA would be required to identify those airports in the vicinity of which unacceptable levels of cumulative noise exposure exist. EPA would be required to install at those airports devices to monitor, on a continuing basis, levels of noise exposure and make available to the public data which resulted from EPA monitoring activities. This process would establish a single uniform basis for examining cumulative noise levels and determining just what airport noise levels and what airport activities result in levels of noise harmful to public health or welfare.

To aid the airports in reducing levels of cumulative noise exposure, the Administrator of the Federal Aviation Administration, whom we all agree has the greatest experience in airport operations and safety, is directed to develop and publish guidelines with suggested alternatives for reducing airport noise and to provide technical assistance to airports in solving their noise problems.

Finally, my amendment would establish a clear, statutory recognition of the duty and responsibility of airport operators to take necessary action to reduce airport noise as determined necessary to prevent damage actions and protect health and welfare. I am particularly concerned that this legislation clarify the role of the FAA in working with airports to solve their airport noise problems. Recently, the FAA has taken the position that airports cannot restrict aircraft operations in order to reduce noise. Thus, under FAA interpretation, aircraft operators must bear the burden of noise damage suits without authority to solve local problems and defend themselves against such suits.

I ask unanimous consent that there be included in the RECORD at this point a complaint filed by the FAA against the town of Morristown, N.J., charging Morristown had violated Federal law and grant agreements by restricting aircraft operations because of noise.

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

[In the U.S. District Court for the District of New Jersey]

UNITED STATES AGAINST MORRISTOWN, N.J.

(United States of America, plaintiff, v. the town of Morristown, a municipal corporation of the State of New Jersey; the Morristown Airport Commission; the township of Hanover, a municipal corporation of the State of New Jersey; the township of Morris, a municipal corporation of the State of New Jersey; the borough of Florham Park, a municipal corporation of the State of New Jersey; A. Stewart Dunford, Thomas E. Kenney, Martin B. Monroe, Joseph Elsman, John E. Flaherty, Norman S. Weinberger, all residents of Morris County, State of New Jersey; defendants.)

COMPLAINT

The United States, by the undersigned attorneys complaining of defendants, hereby alleges as follows:

1. This court has jurisdiction of the action pursuant to 28 U.S.C. § 1345, § 1331 and § 1337. The action arises under the Federal Aviation Act, 49 U.S.C. § 1101 *et seq.* The value of the matter in controversy exceeds $10,000.

2. Plaintiff is the United States of America. The Federal Aviation Administration (FAA) is an agency of the United States.

3. The defendants, Town of Morristown, Township of Hanover, Township of Morris and Borough of Florham Park are municipal corporations in the State of New Jersey. The Town of Morristown and the Morristown Airport Commission are the defendants in a suit styled *Township of Hanover, et al.* v. *Town of Morristown, et al.*, Docket No. C3172–68, Superior Court of New Jersey, Chancery Division, Morris County (108 N.J. Super. 461, Ch. Div.) in which judgment of Judge Joseph H. Stamler was entered on 23 March 1970. The Township of Hanover, Township of Morris, Borough of Florham Park, A. Stewart Dunford, Thomas E. Kenney, Martin B. Monroe, Joseph Elsman, John E. Flaherty and Norman S. Weinberger, are the plaintiffs in said suit. The individual defendants are residents of the County of Morris, State of New Jersey within this judicial district.

4. The Town of Morristown is the owner of Morristown Municipal Airport, a public airport located in Morristown, New Jersey. Operational control of the airport is in the Morristown Airport Commission which reports directly to the Mayor and the Board of Alderman of Morristown.

5. Aircraft operations to and from Morristown Municipal Airport include operations which are in inter-state commerce.

6. On 24 June 1969, the Town of Morristown entered into a written agreement with the Federal Aviation Administration on behalf of the United States, for a federal-aid airport project designated as Project No. 9–28–007–0904, under which the United States

agreed to participate to the extent of $1,259,818.00 in the cost of certain airport development at Morristown Municipal Airport. The airport development in the project consists of:

Land acquisition, consisting of Parcels 23, 25, 27, 28, 29, 30, 31, 36, 37, 38, 39, 40, 41, and 42; resurface and mark existing Runway 5–23 (4000′ x 150′) and two connecting taxiways; extend, light (H.I.) and mark Runway 5–23 (2000′ x 150′) to 6000′; construct, mark, and light taxiway parallel to Runway 5–23 (4300′ x 60′) from Runway 12–30 to north end of Runway 5–23, with associated drainage; install taxiway guidance signs.

7. The FAA approval of the project was consistent with the current National Airport Plan compiled pursuant to 49 U.S.C. 1102 which recognized the need for the extension of runway 5–23 and the other development to accommodate the aeronautical needs of the users of the airport.

8. Under the terms of the aforesaid grant agreement, the Town of Morristown agreed to operate Morristown Municipal Airport for the use and benefit of the public and agreed it would keep the airport open to all types, kinds and classes of aeronautic use without discrimination between such types, kinds and classes. The Town of Morristown further agreed that it would operate and maintain in a safe and serviceable condition the airport and all facilities thereon, connected therewith which are necessary to serve the aeronautical users of the airport and that it would not permit any activity thereon which would interfere with its use for airport purposes.

9. The extension of runway 5–23 included in Project No. 9–23–007–0904 has been satistorily completed; the other development in the project is substantially complete.

10. On or about July 24, 1969, the defendants herein, the Township of Hanover, Township of Morris, Borough of Florham Park, A. Stewart Dunford, John E. Flahety and Norman S. Weinberger filed a complaint against the defendants, the Town of Morristown and the Morristown Airport Commission, in the Superior Court of New Jersey, Chancery Division, Morris County, Docket No. C 3172–68 and, after trial, the court rendered its opinion which is reported in 108 N.J. Super 461 (Ch. Div. 1969). On March 23, 1970, a judgment was entered (Exhibit A) which among other things, (1) provides under paragraph C thereof, that runway 5–23 shall be used as the preferential runway by all jet aircraft landing at and taking off from Morristown Municipal Airport except when the crosswind component on runway 5–23 is in excess of twenty knots and under certain other specified exceptions; and (2) under paragraph I thereof, prohibits jet aircraft take-offs from and landings at the airport each day between the hours of 9:00 p.m. and 7:00 a.m. and on Sundays, except during the hours of 1:00 until 3:00 p.m.

11. As a result of the aforesaid judgment the defendants, Town of Morristown and Morristown Airport Commission, have closed the airport to take-offs and landings by jet aircraft during the hours prescribed in the judgment of Judge Stamler.

12. Prior to the imposition of the restrictions aforesaid, jet aircraft engaged in interstate commerce had used Morristown Municipal Airport for landings and take-offs during the weekdays between 9:00 p.m. and 7:00 a.m. and on Sundays during the hours from 3:01 p.m. to 12:59 p.m.

13. Effective November 9, 1970, in accordance with its authority under the Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(c) and 1431), the Federal Aviation Administration implemented a Noise Abatement Runway System at Morristown Municipal Airport, the standards and conditions of which differ from the conflict with those imposed by Judge Stamler in paragraph C of his Judgment (Exhibit A).

14. The Federal Aviation Administration has either disbursed or put under grant agreement the sum of $1,938,272.00 for participation in the development of Morristown Municipal Airport under authority of the Federal Airport Act (49 U.S.C. 1101 *et seq.*) The FAA has also allocated an additional sum of $1,032,451.00 for further participation in the development of Morristown Municipal Airport under authority of the Airport and Airway Development Act of 1970 (49 U.S.C. 1701 *et seq.*), successor to the Federal Airport Act.

15. The defendants, Township of Hanover, Township of Morris, Borough of Florham Park, A. Stewart Dunford, Thomas E. Kenney, Martin B. Monroe, Joseph Elsman, John E. Flaherty and Norman S. Weinberger, by commencing and continuing to maintain Civil Action No. C 3173–68 in the Superior Court, Chancery Division, Morris County, New Jersey, have caused and continued to cause the defendant, the Town of Morristown to breach and fail to fulfill its obligations and agreement to and with the United States under the grant agreement.

16. The defendants, Township of Hanover, Township of Morris, Borough of Florham Park, A. Stewart Dunford, Thomas E. Kenney, Martin B. Monroe, Joseph Elsman, John E. Flaherty and Norman S. Weinberger, by commencing and continuing to maintain Civil Action No. C 3172–68 in the Superior Court, Chancery Division, Morris County, New Jersey, have caused and continue to cause jet air traffic in interstate commerce to cease using navigable airspace during certain hours for landings and take-offs at Morristown Municipal Airport; and would purport to control the use of navigable airspace further by restricting the use of the runways under certain wind conditions and criteria which are in conflict with those implemented by the Federal Aviation Administration. The aforesaid defendants are without power to regulate, control or disrupt in any manner the use of navigable airspace.

17. The plaintiff has no adequate remedy at law.

Wherefore, Plaintiff prays:

A. For a permanent injunction restraining the defendant Town of Morristown from failing to perform its obligations and duties under the grant agreement with the United States;

B. For a permanent injunction restraining the defendants, Township of Hanover, Township of Morris, Borough of Florham Park, A. Stewart Dunford, Thomas E. Kenney, Martin B. Monroe, Joseph Elsman, John E. Flaherty and Norman S. Weinberger from interfering with compliance by the Town of Morristown with its obligations and duties under its agreement with the United States by continued maintenance of the suit styled *Township of Hanover, et al.* v. *Town of Morristown, et al.*, Docket No. C 3172–68, Superior Court, Chancery Division, Morris County, New Jersey or in any other manner.

C. For a permanent injunction restraining the defendants, Township of Hanover, Township of Morris, Borough of Florham Park, A. Stewart Dunford, Thomas E. Kenney, Martin B. Monroe, Joseph Elsman, John E. Flaherty and Norman E. Weinberger from interfering with the use by jet aircraft of navigable airspace for landing at and taking off from Morristown Municipal Airport by continued maintenance of the suit styled *Township of Hanover, et al.* v. *Town of Morristown, et al.*, Docket No. C 3172–68, Superior, Court, Chancery Division Morris County New Jersey or in any other manner.

D. For an order compelling all defendants herein to file a joint motion in the case styled *Township of Hanover, et al.*, v. *Town of Morristown, et al.*, Docket No. C 3172–68, Superior Court, Chancery Division, Morris County, New Jersey, demanding the Superior Court, New Jersey modify the judgment of Judge Stamler by deleting therefrom the restrictions imposed against the landings and take-offs of jet aircraft under paragraphs C and I and further order all parties to waive the 20 day notice provided in the judgment of Judge Stamler and demanding expedited consideration of the joint motion to vacate.

Mr. MUSKIE. Mr. President, I also ask unanimous consent that the judgment of the lower court in this matter be included in the RECORD.

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

[Superior Court of New Jersey, Chancery Division, Morris County, Docket No. C 3172-68]

(Township of Hanover &c., et al, Plaintiffs; vs. town of Morristown &c., et al; Defendants)

JUDGMENT

This matter having come before the Court in the presence of counsel, Harry L. Sears, Esquire and John M. Mills, Esquire appearing on behalf of the plaintiffs, and Edward F. Broderick, Jr., Esquire appearing on behalf of the defendants, and the Court having heard the representations of counsel and various technical consultants retained by the parties herein, and good cause being shown,

It is on the 23rd day of March, 1970, ordered that Judgment be entered in this case as follows:

A. The Court having determined that the extension and resurfacing of Runway 5–23 at the Morristown Airport will create an additional measure of safety and will produce some attenuation of noise in take-offs and landings, the extension of Runway 5–23 and the increase of weight bearing capacity of both runways will be permitted;

B. Having determined that the remaining phases of the General Airport and Layout Plans provide additional measures of safety and noise attenuation, the other provisions of the General Airport Plan and Layout including taxi-ways, I.L.S. System, lighting, et seq. will be permitted;

C. Having determined from the evidence that the wind rose patterns at the Morristown Airport indicate that the prevailing winds favor the utilization of Runway 5–23 approximately ninety percent of the time, it is directed that after the completion of the extension of said runway, that the preferential runway at Morristown shall be 5–23. This runway shall be utilized as the preferential one by all jet aircraft landing and taking off at Morristown, except as follows:

(1) When the cross wind component on 5–23 is found to be in excess of twenty (20) knots;

(2) When an emergency landing or take-off situation exists;

(3) When the use of Runway 12–30 shall be requested and or directed by the Airport Tower personnel in the interests of flight safety. Furthermore, such preferential runway program when initiated, shall be under the direction and guidance of F.A.A. control tower personnel and enforced by the management of Morristown Airport.

D. The noise abatement procedures promulgated by the management of Morristown Airport from time to time shall be enforced by the management of the Airport and copies of any changes in the established noise abatement proceduers shall be mailed within a reasonable period of time to the municipal clerks of those municipalities that immediately abut the Airport premises.

E. So that residents in the vicinity of the Airport may assert complaints based on detailed information, the management of the Morristown Airport will arrange to obtain information regarding movements at the Airport which are recorded on tapes at the airport tower, which tapes transcribe data received by the tower personnel of the aircraft in traffic patterns, as well as from

ground control, and which tapes are kept for a period of fifteen (15) days and contain information regarding each take-off, landing, aircraft, number, runway used, wind direction and force, altimeter setting, time of take-off or landing. The Airport Manager will monitor these tapes upon a request from a complainant and shall make available to any complainant any information so recorded which is needed to assist the complainant in the making of the complaint. Additionally, the airport management will keep records of the movements of itinerant aircraft at the Airport in order to assist any person seeking to make a complaint in obtaining any necessary information.

F. Additionally, the airport management will arrange to provide for a telephone service to be installed at the Airport to record the incoming calls of any complainants who wish to call the Airport after hours or who are otherwise desirous of calling the Airport after hours or who are otherwise desirous of calling the complaint number in response to such a listing in the local telephone directories. The airport management will follow up in response to said complaints and establish procedures for the mailing of data forms to all persons seeking to make a complaint. Upon receipt of these written complaints and the data forms requested, records shall be maintained at the Management or Operations Office of the Airport for public inspection during business hours of all complaints received, and such records shall note the action taken thereon by the airport management or the F.A.A. or both, as the case may require.

G. There shall be required at the Airport noise suppression devices and noise attenuation equipment or engine "test calls" which are to be installed and used for jet engine maintenance and testing and run-up.

H. Portable shields or sound baffeling devices similar to those described in the stipulation of facts submitted by the parties shall be used at such places and locations on the airport premises as in the opinion of the management they will best reduce hazards to safety and will be most effective, subject however to the requirements of the F.A.A. as to proper clearance at the end of each runway.

I. Oral argument having been heard from counsel and a proffer of proof having been made by counsel for defendants on the subject of restricting jet aircraft at Morristown Airport during certain hours and good cause being shown therefore, the Court directs that jet aircraft will be prohibited from take-offs or landings each day between the hours of 9:00 P.M. until 7:00 A.M. and on Sundays, except during the hours of 1:00 P.M. until 3:00 P.M., unless an emergency exists, or the interests of flight safety require the utilization of the airport under the guidance and direction of the F.A.A. tower personnel.

J. The provisions of Paragraph C herein shall be implemented upon the completion of the Runway (5–23) extension and improvements referred to in Paragraphs A and B herein, as shall the procedures with reference to noise abatement outlined in Paragraph D herein. Additionally, the Airport management shall have installed portable shields and sound baffling devices contemplated in Paragraph H herein by such time as the improvements and the runway extension have been completed. All other requirements of this Judgment shall become effective immediately upon the filing thereof.

The Court expressly retains jurisdiction of all issues herein. Although binding on all parties, and except as to Paragraphs A and B herein, this Judgment is experimental in nature. Subsequent to the entry of Judgment herein, either party or parties effected by the entry of said Judgment may, upon twenty days notice to the parties of record, move before this Court for a change in, a modification of, or relief from any of the provisions of Paragraphs C through I, and the Court in the exercise of its discretion, shall permit the taking of testimony or additional evidence related to the implementation of this Judgment, as it may effect, now or in the future, the legitimate interests of the parties.

Mr. MUSKIE. Mr. President, that judgment requires the airport to undertake certain procedures for handling complaints and orders the adoption of certain noise abatement procedures.

If it is indeed a position of the FAA, as indicated in its complaint, that airports should not be allowed to control aircraft operations to reduce noise, then it is essential that the FAA assist those airports to reduce their noise exposure to levels which are not harmful to the public health. Either Federal law must provide a clear method for airport operators to solve their problems, or the Federal Government must be held liable for damage action brought against those airports.

May I review the provisions of this amendment: First, the EPA would set levels of cumulative noise exposure which are unhealthy in terms of public health and welfare; secondly, it would set standards for measuring those noise levels; third, it would identify those airports in the country which exceed those levels.

That is the extent of the authority of EPA under this amendment.

Then FAA, the agency which the opponents of this amendment I take it, argue is the agency which ought to control aircraft operations, is charged under this amendment with the responsibility of issuing guidelines to airport operators and providing technical assistance so that they may safely meet their environmental responsibilities of controlling noise levels. I think FAA has that responsibility. But it is the aircraft operators themselves, who are subject to damage suits. Many of them are now in court for this purpose, because they violate public health and welfare levels of noise emissions.

I think this is a minimal kind of mechanism to deal with this problem.

The study provided in the bill is not sufficient. It mandates nothing.

This amendment proposal gives FAA the authority necessary to establish health and welfare standards. It gives FAA power to veto it, in effect, as well as the responsibility to issue guidelines to meet those standards.

I reserve the remainder of my time on the amendment.

Mr. TUNNEY. Mr. President, I must oppose this amendment, on behalf of myself and the committee. The committee took this matter up at quite some length——

Mr. MUSKIE. Mr. President, will the Senator yield for a moment so I may make a request to have certain staff members on the floor?

Mr. TUNNEY. I yield.

Mr. MUSKIE. Mr. President, I ask unanimous consent that Tom Gallagher of Senator TUNNEY's staff, and Len Bickwit, and Lee Tyner, of Senator HART's staff, may be permitted on the floor during the debate on this issue.

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

Mr. TUNNEY. Mr. President, I was saying that I shall have to oppose this amendment. This matter was considered at great length in the committee, and I personally spent a great deal of time on it. I wanted to see something done in this area. It seemed to me that, if we were going to have a noise bill, we really should try to develop a scheme whereby we can control cumulative noise levels around airports.

The bill went through a number of prints in which we tried to revise the language so as to meet the health need but also to various objections. As we got deeper and deeper into it in the mark-up session, we realized that we just did not have adequate data on which to base a rational judgment as to the best mechanism to do the job. It was the considered opinion of the committee that, instead of trying to push through a scheme at a very late date, without sufficient evidence as to its precise ramifications, what we should provide is a 1-year study which will certainly keep the heat on and will require the Environmental Protection Agency to come to the Congress and make proposals which I feel are needed if we are going to be able to reduce airport noise.

But there are more than a dozen different systems for monitoring airport noise; and when you are dealing with airport noise, you are dealing not only with aircraft, but with railroads that go past airports, and with highways. National Airport is a good example of what I mean. The question is how do you differentiate between aircraft noise, highway noise, and train noise?

This issue is something which really should be considered in a study, so that the committee has all the facts available to it before it rushes blindly into a regulatory scheme that may or may not be appropriate.

I would like to read from the committee report on this point. It states:

The Committee considered approaches to controlling aircraft noise based on a concept of cumulative noise exposure, involving the level of noise from aircraft to which individuals in the areas surrounding airports are exposed and the effects of such exposure on public health and welfare. While methods other than noise emission standards can be effectively utilized to reduce aircraft noise, the Committee felt that it had insufficient knowledge as to the precise regulatory mechanism for cumulative aircraft noise exposure. Therefore, the Committee included in the bill, in place of any regulatory scheme dealing with community noise around airports, a one year study by the EPA of the implications of identifying and achieving levels of cumulative noise exposures around airports. The results of this study, submitted to the Committees on Public Works and Commerce of the Senate and the Committee on Interstate and Foreign Commerce of the House with legislative recommendations, will form the basis for any legislation on aircraft noise in the next Congress.

Also included in this study are the adequacy of FAA flight and operational noise controls, the adequacy of noise emission standards on new and existing standards on new and existing aircraft (together with the Environmental Protection Agency's recommendations on the retrofitting and phaseout of existing aircraft), and any additional measures available to airport operators and local governments to control aircraft noise.

In the context of the development of this legislation, inquiries were sent by one member of the committee to manufacturers, airlines, trade organizations, government agencies, and independent consultants concerning the possibility of mandating retrofit and phase-out requirements. (See appendix for text of letter and replies.)

Tools other than noise emission standards do exist for reducing aircraft noise. It is the intention of the Committee in section 501(c) of the bill that all existing authority over aircraft or aircraft noise be utilized to reduce that noise, including, among other things, the consideration of flight and operational changes such as the two-segment landing approach and the adjustment of take-off, approach and flight paths to impact fewer people, and review of traffic flow with regard to adequacy of load factor.

It seems to me, Mr. President, that in this bill we have done just about all we could at this point in time. I was deeply concerned in the committee, as the debate progressed, that no one really understood what the effect of the mechanism that was put into the bill would be. That mechanism called for a conference to be held at a noise-impacted airport at which the airport operator, the FAA, the CAB, EPA, local authorities, and the interested public would discuss ways of cutting down on airport noise.

At this airport conference various measures to reduce noise, including the adequacy of noise-emission standards for aircraft, and operational and flight procedures, would be taken into consideration. Also considered would be the possibility of scheduling changes, curfews, use of preferential runways, substitution of quieter aircraft, and, finally, as a last resort, controls on land use.

But, as we got into the matter, it became very clear that we just did not have nearly enough information to be able to have this mechanism written into the law with a sufficient anticipation of all the possible consequences. Rather than be accused of legislating in the blind, we decided to have a study by EPA and to have the matter brought up again in Congress when we could have full hearings on this specific point.

In its present form, this amendment has not been considered by the Committee on Public Works. For this reason, I would have to say that, no matter how good this amendment may be or may not be, because of its complex nature and because perhaps no one really understands what it says except the Senator from Maine, it is objectionable, and the Senate ought to reject the amendment.

Mr. BOGGS. Mr. President, I would like to take a minute or two to agree with the statement that the manager of the bill, the distinguished Senator from California (Mr. TUNNEY), has just made in regard to the pending amendment.

I am free to say, and I say at the request of our colleague on the committee, the distinguished Senator from Kentucky (Mr. COOPER), who is unable to be here at the moment because he is in a conference on the highway bill, that he also supports the committee position. He has asked me to relay that point of view.

It seems to me, as the distinguished Senator from California has said, that this amendment has not been fully considered in committee. We have not had hearings on it and we do not really understand the full significance of it. I do appreciate the objective and the goal of the distinguished Senator from Maine, the chairman of our subcommittee, and I take this opportunity, as always, to compliment him on the outstanding work he has done as chairman of our Subcommittee on Air, and Water Pollution. His contributions are most valuable and immeasurable. However on this issue I find myself in disagreement.

Another point that has not been mentioned, which I do think is important at this time, because it is important to move forward with this noise pollution control legislation, is that I believe if the amendment were adopted at this time, at this late point in the session, it would probably complicate forward movement and complicate the chances of getting this bill enacted at this session, because it would undoubtedly involve committee jurisdictional problems, which have not been completely worked out.

Mr. President, I recommend that this amendment be rejected at this time. I think the Senator for yielding.

Mr. TUNNEY. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 20 minutes remaining.

Mr. TUNNEY. I would like to yield to the Senator from Nevada.

Mr. MUSKIE. Mr. President, how much time do I have?

The PRESIDING OFFICER. The Senator from Maine has 18 minutes.

Mr. MUSKIE. I yield myself 5 minutes to cover the points raised by the Senator from Delaware.

The PRESIDING OFFICER. The Senator is recognized for 5 minutes.

Mr. MUSKIE. Mr. President, I think it would be interesting to include, and ask unanimous consent to have printed in the RECORD at this point, the provision in the original bill which covered this subject.

I think, second, there ought to be included, and I ask unanimous consent to have printed in the RECORD, the modification of that provision which was developed as the result of the committee hearings and pressed by Senator TUNNEY and myself in the committee.

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

AIRCRAFT NOISE STANDARDS

SEC. 3. Section 611 of the Federal Aviation Act of 1958 (49 U.S.C. 1431) is amended to read as follows:

"CONTROL AND ABATEMENT OF AIRCRAFT NOISE AND SONIC BOOM

"SEC. 611. (a) In order to afford present and future relief and provide protection to public health and welfare from aircraft noise and sonic boom, the Administrator of the Environmental Protection Agency, after consultation with the Secretary of Transportation, shall prescribe and amend standards for the measurement of aircraft noise and sonic boom and shall prescribe and amend such rules and regulations as he may find necessary to provide for the control and abatement of aircraft noise and sonic boom, including the application of such standards, rules, and regulations in the issuance, amendment, modification, suspension, or revocation of any certificate authorized by this title. All standards, rules, and regulations prescribed pursuant to this section prior to the date of enactment of the Noise Pollution Control Act of 1972 shall remain in effect until amended or revoked by subsequent standards, rules, or regulations prescribed and approved pursuant to this section.

"(b) The Administrator of the Federal Aviation Administration shall not issue a type certificate under section 603(a) of this Act for any aircraft, or for any aircraft engine, propeller, or appliance that affects significantly the noise or sonic boom characteristics of any aircraft, unless the Administrator of the Environmental Protection Agency shall have prescribed standards, rules, and regulations under this section which apply to such aircraft, aircraft engine, propeller or appliance, and which protect the public health and welfare from aircraft noise or sonic boom consistent with the considerations listed in subsection (d) of this subsection.

"(c) The Administrator of the Environmental Protection Agency, within 6 months of the date of enactment of the Noise Pollution Control Act of 1972, shall review all standards, rules, or regulations (or any proposed standard, rule, or regulation) in effect under this section prior to the date of enactment of the Noise Pollution Control Act of 1972. If he determines after public hearings, that such standards, rules, or regulations do not protect the public health and welfare from aircraft noise or sonic boom consistent with the considerations listed in subsection (d) of this section, he shall within 12 months of the date of enactment of this Act, revise such standard, rule, or regulation.

"(d)(1) In prescribing and amending standards, rules, and regulations under this section, the Administrator of the Environmental Protection Agency shall—

"(A) consider relevant available data relating to aircraft noise and sonic boom and the noise environments of airports, including the results of research, development, testing, and evaluation activities conducted pursuant to this Act and the Department of Transportation Act;

"(B) consult with such Federal, State, interstate, and municipal agencies as he deems appropriate;

"(C) consider whether any proposed standard, rule, or regulation is consistent with the highest degree of safety in air commerce or air transportation in the public interest;

"(D) consider whether any proposed standard, rule, or regulation is technologically practicable for application to existing types of aircraft, aircraft engine, appliance, or certificate to which it will apply.

"(2) Aircraft, aircraft engines, or appliances which are manufactured or sold after date of enactment of the Noise Pollution Control Act of 1972 shall meet the standards prescribed pursuant to this section.

"(e) In any action to amend, modify, suspend, or revoke a certificate in which violation of aircraft noise or sonic boom standards, rules, or regulations applied to aircraft or aircraft engines existing on the date of enactment of the Noise Pollution Control Act of 1972, is at issue, the certificate holder shall have the same notice and appeal rights as are contained in section 609, except that in any appeal to the National Transportation Safety Board, the Board may amend, modify, or revoke the order of the Secretary of Transportation only if it finds no violation such standards, rules, or regulations, and that such amendment, modification, or revocation is consistent with safety in air transportation."

"SEC. 502. (a) In order to attain and maintain the ambient levels of noise for airport environments and surrounding areas established under section 501(a)(1) of this Act, the operator of any airport where such ambient levels are not presently attained shall develop and adopt a plan for the achievement and maintenance of such ambient levels,

after public hearings and consultation with the Secretary of Transportation and any affected State or political subdivision thereof. Such plan may consider reductions in noise emissions due to standards applicable to particular types of aircraft, controls on the granting or acceptance of air service, controls on the frequency and scheduling of flights, modifications of hours of airport operation, changes in operational and flight procedures, and land use regulation. The operator of any other airport, or any State or political subdivision thereof affected by aircraft noise, may develop and adopt such a plan with respect to an airport not covered by a plan developed under the first sentence of this subsection.

"(b)(1) Any plan required by subsection (a) of this section, shall be submitted to the Administrator of the Environmental Protection Agency and the Secretary of Transportation, within one hundred and eighty days after the promulgation of regulations establishing ambient levels of noise for airport environments and surrounding areas pursuant to section 501(a)(1) of this Act.

"(2) Within ninety days after such submission, the Secretary of Transportation shall transmit to the Administrator his determination as to the consistency of such plan with air safety and air commerce, together with his recommendation for approval or modification of such plan.

"The Administrator shall review such plan to assure attainment of maintenance of such ambient levels of noise established under section 501(a)(1) of this Act and, in accordance with the recommendation of the Secretary of Transportation, shall approve or modify such plan within sixty days after such transmittal.

"(c) Where the implementation of an approved plan under this section requires the promulgation or modification of any regulations under the authority of the Secretary of Transportation or the Civil Aeronautics Board, such regulations shall be promulgated or modified within ninety days after the approval of such plan under subsection (b) of this section.

Mr. TUNNEY. Will the Senator permit a correction? It was in print 6; the sixth edition.

Mr. MUSKIE. I thank the Senator.

Let me say, Mr. President, there was much discussion in the committee of this issue about the desirability of having this kind of control at the local level.

I ask unanimous consent to have printed in the RECORD a letter that is in the record of the hearings of the committee from Randall L. Hurlburt, of the city of Inglewood, Calif., addressed to me, dated March 24, 1972, in which he said:

DEAR MR. MUSKIE: I hope to convince your Committee that:

1. Aircraft noise pollution is excessive, is detrimental to the public welfare, and needs to be reduced.

2. Aircraft noise pollution can be reduced dramatically if the federal government uses its authority to set aircraft and airport noise standards.

The residents of Inglewood send you their quiet prayers. They hope that you understand fully the gravity of the work you are presently doing. Your efforts in controlling noise mean much more than just making life a little more pleasant; they may mean life or death to our city.

I ask unanimous consent that the full text of the letter be printed in the RECORD.

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

CITY OF INGLEWOOD, CALIFORNIA,
Inglewood, Calif., March 24, 1972.

Senator EDMUND S. MUSKIE,
Chairman, Subcommittee on Air and Water Pollution, U.S. Senate Public Works Committee, Washington, D.C.

Subject: Noise Pollution Hearings, San Francisco, California, March 24, 1972

DEAR MR. MUSKIE: I hope to convince your Committee that:

1. Aircraft noise pollution is excessive, is detrimental to the public welfare, and needs to be reduced.

2. Aircraft noise pollution *can* be reduced dramatically if the federal government uses its authority to set aircraft and airport noise standards.

The residents of Inglewood send you their quiet prayers. They hope that you understand fully the gravity of the work you are presently doing. Your efforts in controlling noise mean much more than just making life a little more pleasant; they may mean life or death to our city.

Inglewood has 90,000 residents. Most of them live under or near the landing approach corridors to Los Angeles International Airport. Most of the homes were built long before Los Angeles became a major airport. Today the lives and homes of these people are being destroyed by noise.

The Inglewood city government has become deeply involved in protecting its citizens from locally generated sources of noise pollution. We have also strongly supported all measures which promise meaningful relief from aircraft noise.

Just to show the extent of our involvement in the aircraft noise problem, to our knowledge Inglewood is the only city in the world which has an airport noise monitoring system even though it does not own an airport. Our system consists of four permanently located stations on telephone poles under the flight paths and one mobile station which can make sound recordings anywhere in the city. We have invested more than $50,000 in noise measuring equipment. We are determined that noise will not escalate above present levels, and we will make every effort to assure that noise is reduced quickly to acceptable levels.

We feel we have a thorough understanding of the need for aircraft noise reduction and how it can be accomplished. I'd like to share a few of these ideas with you.

As part of a recent federal program which studied the future of Inglewood, a survey was made to ascertain community opinions on important subjects. When asked, "How important to you is finding a solution to the following issue—jet noise control?" 61% responded that it was of the greatest importance. Twenty percent responded that it was very important. Only the issue of crime control was considered more important with 73% responding that solution to crime control was of greatest importance and 17% responding that it was very important. All other issues had less than 33% responding "of the greatest importance." It is therefore apparent that the problem of jet noise rivals the problem of crime control as the most important issue facing the future development of Inglewood. More detail on the results of Inglewood's Community Review Program questionnaire is shown in Attachment 1.

Associated with the above-mentioned Community Review Program was a study relating residential land values and vacancy rates to aircraft noise levels. We found that there was a statistically significant correlation between high noise levels and low land values. On the average, land subject to noise levels of less than 80 PndB was valued 50% higher than land subject to noise levels greater than 110 PndB. There was also a statistically significant correlation between high noise levels and high rental property vacancy rates. So noise not only hurts our citizens physically, psychologically, and emotionally, but also economically. Attachment 2 summarizes in somewhat more detail the results of this correlation study.

Knowledge of the harm being caused by noise would be of little value if there were no way to stop it. But there are many steps which can be taken to significantly alleviate jet noise pollution. The City of Inglewood is taking those steps which are within its authority such as enforcement of our noise ordinance, land use planning, and residential soundproofing. A draft ordinance requiring soundproofing in future residential construction is included as Attachment 3 and is currently under consideration by the Inglewood City Council.

If the federal government would shoulder its share of the responsibility for aircraft noise abatement, the noise environment in Inglewood could improve significantly in the future. Attachment 4 shows the improvement that could be achieved over time: a 75% reduction in noise exposure over the next 15 years. Compatibility between airports and communities could be established by 1985. This could be accomplished through a comprehensive planning approach to noise abatement which would include engine noise reduction, procedural changes for noise abatement, flight schedule reductions, and nighttime curfews designed to increase airline efficiency and decrease total noise pollution. NASA research programs have already shown the feasibility of engine retrofit for noise abatement. A few airlines such as PSA and National have implemented steep approach procedures which reduce landing noise at least 10 PndB. The state of California has adopted airport noise standards which use the comprehensive noise exposure methodology.

The stumbling block to progress has been the FAA. They have consistently denied responsibility for noise in airport environments but will not allow local controls. The authority for elimination of aircraft noise pollution must therefore be given to the Environmental Protection Agency where it belongs.

For the information of the Senate Public Works Committee I have included a copy of the testimony which we presented to the Environmental Protection Agency's hearings on noise control. This report is a very comprehensive review of Inglewood's noise program and the possibilities for noise abatement in the future. It covers other sources of noise besides aircraft noise.

CONCLUSIONS

We feel there is clearly a need for major actions to reduce aircraft noise pollution. The means of accomplishing this reduction are readily available. What is lacking is a commitment by those in authority to make use of available technology to improve the environment for our citizens. The Federal Aviation Agency has been unwilling to accept this responsibility. Therefore, we recommend that the United States Congress place authority for aircraft noise abatement in the Environmental Protection Agency and demand that standards for aircraft noise pollution be established and enforced with the goal of eliminating incompatibility between airports and communities by no later than 1985.

Respectfully yours,

RANDALL L. HURLBURT,
Environmental Standards Supervisor.

Mr. MUSKIE. I also ask unanimous consent to have printed in the RECORD a 10-point action program for the alleviation of noise pollution in Inglewood, Calif., dated January 1, 1970, which lists an action program which the city of

Inglewood has found possible to do, even without the assistance of the Federal Government.

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

THE 10-POINT ACTION PROGRAM FOR THE ALLEVIATION OF NOISE POLLUTION IN INGLEWOOD, CALIF.

THE PROBLEM

The problem of jet noise crosses political boundaries and therefore cannot be solved by any single local community acting alone. A lasting solution can only come from a cooperative effort of the Federal Aviation Administration, the air transport industry, airline unions, aircraft, airframe and engine manufacturers, airport operators, legislators, and citizens. However, a solution must begin with local communities. Local communities, acting together can be the catalyst that brings all other bodies together in a massive attack on the problem of jet aircraft noise, as well as all environmental noise pollutants.

AN ORGANIZATION OF COMMUNITIES

Indeed, it now apepars that a forceful organization of communities is the only catalyst that can bring the other bodies together in the attack that is essential to protect our society from jet noise pollution.

The City of Inglewood, and other communities throughout this country, have wrestled with the jet noise problem for over ten years. Each community has, for the most part, acted alone. Our success has been less than desirable. There is more jet noise pollution today than ever before and the trend is unmistakably upward. But we feel that our efforts to this date have not been in vain. We have reached a point where definite progress can now be made. Our experience has given us a "feel" for the magnitude and extent of the problem, as well as for the steps that must be taken to solve it. Also, we are no longer acting alone. The communities most affected by jet noise in this country are beginning to band together.

As this nationwide organizational process continues a program for eliminating jet noise as well as other environmental noise will be planned. All of the efforts exerted by individual communities and organizations to combat jet noise will then be studied and organized into this single national effort. In anticipation of this massive national task the City of Inglewood has condensed ten years of experience and effort into a Ten Point Action Program, which Inglewood is pursuing on a local level. Inglewood feels that many aspects of this Ten Point Action Program will be incorporated in the national effort against jet noise.

The general philosphy of the Inglewood City Council in adopting the Ten Point Inglewood program accepts jet aircraft as desirable, indeed essential, for today's highly complex need for rapid travel. The Inglewood program endorses the expansion of airports to accommodate more and better jet aircraft. The problem, as Inglewood sees it, is noise—not airplanes.

The Inglewood program calls first upon the people of Inglewood to adjust, within reasonable human limitations, to the advent of jet planes. The Inglewood program then calls upon the flying industry and federal and state regulatory agencies to consider the entire society and not just the traveling public when building, flying, and regulating America's growing fleet of jet planes.

WHAT INGLEWOOD CAN DO

Four of the ten points in the Inglewood program are things the City of Inglewood can and will do to better adjust to jet planes.

Point 1—Building code revisions and soundproofing

The City Building Code should be revised to require soundproofing of all affected new construction and remodeling.

Schools, public buildings, churches, apartments, and dwellings should be retroactively soundproofed if the sound levels are above the acceptable standards when jet aircraft fly overhead.

Point 2—Planning and development studies

Inglewood should begin rezoning, master planning and redevelopment studies to determine areas where incentive zoning, property assembly, and alternate land use redevelopment might be useful to assist property owners to enhance their property values under the jet aircraft corridors.

Point 3—Comprehensive noise ordinance

Inglewood should enact a comprehensive noise ordinance covering all sound in the City, including jet aircraft. Legally the ordinance must complement federal air regulations. It can neither supplant nor conflict with federal regulations.

Enforcement of such an ordinance is estimated to require two fully equipped enforcement trucks, costing about $30,000 each. Annual operating expenses for a technician and helper for each truck will add another $23,000 per year. Eventual operating expenses will approach $125,000 per year for around-the-clock comprehensive anti-noise enforcement.

It should be noted that our noise ordinance is to include all noise, whether emitted from aircraft, air conditioners, compressors, or amplification devices. Aircraft will not be treated differently in any respect and federally certified aircraft flying within approved federal regulation standards cannot, and will not be proscribed within our proposed noise ordinance.

(The above ordinance has been adopted by the Inglewood City Council. In November, 1969, the City employed an Acoustical Engineer to begin defining the specific equipment needed for the enforcement of the ordinance.)

Point 4—Legal actions

The City Attorney should be given authority to take appropriate legal action on behalf of the City. The first action should be to legally compel the City of Los Angeles Department of Airports to extend the runways to their maximum point westerly and thereby relocate the landing threshold in such a manner as to place landing aircraft at a higher altitude over Inglewood.

The second action series should be to file a claim against the City of Los Angeles for damages on behalf of residents and property owners living in Inglewood within or near the landing corridors.

Next, the City Attorney should be authorized to file and maintain a legal action to establish the legal right of adversely affected residents and property owners to recover monetary damages on the basis of a class action.

(The legal actions proposed above have been instituted by the City of Inglewood.)

WHAT THE FLYING INDUSTRY CAN DO

Inglewood feels that the flying industry can and must do much more than they have done in the past to insure the health and safety of those who live under flight patterns and near airports.

Four points of the Inglewood program are directed specifically at the flying industry. They are:

Point 5—Runway extensions

All runways at Los Angeles International Airport should be extended to within a minimum distance of the beach highway, and a displacement of the landing threshold an equal distance to the west. A STOL (Short Take Off and Landing) strip should be established to segregate traffic, thereby reducing the need to revise throttle settings on jet approaches.

Point 6—Approach pattern revision

Inglewood should seek the addition of more sophisticated and modern air traffic control equipment and additional F.A.A. air traffic controllers to man such equipment, thereby permitting a revision in the air traffic procedures on approach to LAX. Planes could then fly over Inglewood using less power. Were no turns made by approaching aircraft inside the outer marker at approximately the Harbor Freeway, power settings could be reduced by stabilizing approaches at a higher altitude, permitting the use of less power on final approach. Further, noise effects would be highly restricted—to two relatively narrow corridors over Inglewood approaching the two runway complexes.

This would reduce jet noise to the disappearing point in several areas of the City. Noise directly under the flight path could be reduced by as much as 8 PnDb.

Point 7—Quieter engines

Inglewood should actively push for the development of quieter and cleaner engines, which can be developed. The City must encourage the air transport industry to recognize the responsibility that goes with mature citizenship and to begin a serious effort to meet these responsibilities by investing as much money and effort into noise suppression as they have in things such as speed.

Point 8—Glide slope increase

An increase in the glide slope angle to at least 4 degrees is to be sought. With this increased glide slope angle a professional airline captain should be able to descend at a lower setting and still maintain adequate standards of safety and comfort for his passengers. Such approaches were done for a long period during the 1965 Watts riots, and have become known locally as "a Watts approach."

Point 9—FAA, CAB, and State PUC intervenor

The City should be an intervenor in all Federal Aviation Administration, Civil Aeronautics Board, and California Public Utilities Commission proceedings affecting noise. Examples of such proceedings are proposed rules concerning high density terminal areas, airline terminal traffic flow restrictions, engine noise standards, alternate terminal designations, and route hearings.

The City will thus serve notice on all regulatory bodies that airplanes and airports are not merely exotic businesses, aloof from the society that supports them; but rather they are a vital part of the community, which means they must behave like responsible adults.

Point 10—Support national noise abatement efforts

The City should not only support, but initiate, efforts to form a national organization to combat jet noise and other environment noise pollution. Efforts should be made to contact communities and other groups all over the country who suffer from jet noise pollution. Only by pooling our efforts behind a united front can real and lasting progress be made for society as a whole.

(In October, 1969, Inglewood, in conjunction with Hempstead, New York, called a meeting in Washington, D.C., of groups and communities interested in noise abatement. At that meeting was born an organization named NOISE (National Organization to Insure a Sound-controlled Environment).

Mr. MUSKIE. Let me read some of these points.

Point 5—runaway extensions; point 6—approach pattern revision; point 7—quieter engines; point 8—glide slope increase; point 9—FAA, CAB, and State PUC intervenor; point 10—support national noise abatement efforts.

The city of Inglewood, which has been concerned with noise for some time, has found it possible, within the limited scope of its experience, to suggest practical steps, without further study, to deal with the problem of airport noise.

What I am suggesting in my amendment is that we back up local efforts, efforts that emerge out of experience with noise that communities already find unacceptable from the point of view of health and public welfare. Let us build on that experience in terms of a national policy. The amendment provides that we shall deal initially only with those airports that EPA identifies as areas where there is unacceptable exposure to noise. That is easy to do. Inglewood, I am sure, would qualify by its own experience. There are others that can do so as well.

Of course, there are breakthroughs to be made in all the sciences related to environmental pollution. But as I have learned in the development of air pollution legislation and the development of water pollution legislation, if all you ever require of an agency at the Federal level is that at some point they issue criteria or make a study, you will postpone almost indefinitely any effective action to deal with the problem. That is why we did not move as fast as we should in dealing with air and water pollution.

The standards are not mandated to be implemented instantly. They are simply to establish criteria and standards, to then use such expertise as FAA has—and I am sure FAA has the expertise to do what the Inglewood plan suggests—in a practical way to begin to reduce the noise levels in the beleaguered communities. That is all this amendment asks. It is not anything more than that. It is not a monster. It is not something beyond our reach. It is not something that cannot be done. It is something that would implement practical, already tried—as in Inglewood—attempts to reduce noise levels.

So, Mr. President, I urge the adoption of the amendment.

Mr. TUNNEY. I yield myself 2 minutes, then I will yield to the Senator from Nevada.

Mr. President, I do not think anyone could disagree with the stated objectives of the Muskie amendment. I certainly agree with them. I think they are very good objectives, and I wish it were possible to achieve them overnight. Particularly, the people of Inglewood wish they could be achieved overnight. If we had quieter aircraft engines and if it were possible overnight to retrofit all the airline engines that fly into the Los Angeles International Airport, we would be able to solve the problem for the citizens of Inglewood and the citizens of other cities who live adjacent to airports.

But the problem is this: We have not had the opportunity to study the mechanism to achieve a reduction in airport noise the way we must in order to legislate in this area. As I have indicated, in many airports some of the major airport noise is created as a result of trains running by the airport and highways running by the airport.

Is the Environmental Protection Agency in concert with the FAA alone to regulate the scheduling of trains by the airport and to regulate the buses and cars that go by the airport? Should not other agencies like DOT be involved?

The only reason why I point this out is that it demonstrates to me that this issue has to be studied fully and that we should have hearings on this specific point. It was not adequately covered in the hearings we had on S. 3342. Much as I would like to see the Senator from Maine's objectives achieved tomorrow, I believe it is impossible and it would not be wise legislation.

I yield 5 minutes to the Senator from Nevada.

Mr. CANNON. I thank the distinguished Senator from California for yielding to me.

Mr. President, I, too, want to join him in saying that I recognize the problem, the very great problem, to which the Senator from Maine has addressed himself. However, I am completely opposed to the amendment that the Senator from Maine has offered, for many of the same reasons pointed out by the Senator from California.

I may say that an added point that I find very disturbing is that at the last minute, in the closing days of the session, attempts are made to modify legislation or get legislation through without full and adequate consideration.

The Committee on Commerce has jurisdiction over civil aeronautics and matters relating to activities of the FAA. We have held extended hearings in relation to the problem of aircraft noise to find out what can be done, what procedural changes can be made operationswise, and what actions can be taken to reduce the noise level around airports.

I recognize that people who are living close to an airport and who are most immediately affected feel that this job should have been done yesterday, not tomorrow, and they have a very valid point.

However, I should like to point out, also, that people are still building residential communities right around airports, including Washington National Airport, which is one of the biggest causes of complaint of noise in the area. We see high rises going up and people moving right into an area of great noise, as they did in California, as they built around the Los Angeles Airport and many others around the country. They are unwilling to build away from the airport, and they move in and build and then complain about the noise which is generated.

There are a number of bad features about this amendment, and I will read one at this time:

SEC. 502(a)(1) Within 180 days after the enactment of this Act, the Administrator of the Environmental Protection Agency shall promulgate rules and regulations, based on criteria published pursuant to section 407 (a) of this Act . . .

Mr. President, this is one of the examples I had in mind when I said there is a haste to get legislation through that is very ill-conceived and ill-considered. Why? Because section 407 (a) of the Act, to which that section referred, says that the Administrator shall, after consultation with appropriate Federal, State, and municipal agencies and other appropriate persons, within 9 months after the date of the enactment of this section, issue noise criteria.

So on the one hand you have the Administrator given 9 months, or 180 days, in which to issue noise criteria, and then in the amendment itself it is said that, within 6 months after the enactment of this act, he has to take action pursuant to that noise criteria. So the noise criteria promulgation still has 3 months to go before it can have been promulgated; yet, action will be required by the EPA Administrator 3 months earlier than the criteria have been published.

That is one of the examples that I say point out the bad features of trying to enact legislation in the closing hours of a session of Congress, on the floor of the Senate, involving such an emotional issue, an issue that has to be given rational consideration.

Mr. President, in our hearings we learned that the engine manufacturers are attempting to do everything they can to try to reduce the noise level of new engines coming on stream, and they are doing a fine job.

As a result, the aircraft coming out now—the 747's, the DC–10's, the Lockheed 1011's—are all very substantially lower in noise emission than the earlier aircraft. But they are the new planes coming on the line. It takes time to build new engines and make them more quiet. Also, it takes another decision, and that is, from an economic standpoint, is it economically feasible for new engines to be built and retrofitted to old aircraft reaching the latter part of their years of useful life? Those are some of the considerations that have to be given study and why I support the Senator from California in his position that the committee bill provide for a study. That is what should be done because we want to achieve the objective of noise reduction. We cannot go at it on a piecemeal basis but we must operate as fast as we can.

One of the criteria from the Long Beach area was the extension of runways.

Mr. President, do you know how long it takes to extend a runway? It cannot be done tomorrow, or the next day. Sometimes it takes a year and a half to make an extension of a runway and put it into operation. It depends on many factors: if the land can be acquired for the right-of-way, and to put houses out of the line for extension. Another point would be, presumably, that we would need less power to get off the ground.

I have traveled a lot by air and I, for one, would be reluctant to take any action to see that the pilot of that airplane not use all the power possible in the airplane to get it off the ground and into the air in as safe a manner as possible. This would be one of the problems.

Another problem, of the nine the Senator mentioned from Long Beach, would be the increase in the glide slope. That is already being done and the FAA is experimenting with that. The plane comes in at a higher altitude and we increase the steepness of the glide slope so that we do not have as much side exposure or underneath exposure to the noise. These are steps which are being taken now.

Thus, I would respectfully submit that the amendment of the Senator from Maine (Mr. MUSKIE) should be defeated. It should be, in all good judgment. The

committee provision for a study should be agreed to, so that we can find out what we can do and then get on with the job.

Mr. BENNETT. Mr. President, I ask unanimous consent that Dr. Lawrence Woodworth of the staff of the Joint Committee on Taxation be allowed the privilege of the floor for the next hour.

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

Mr. MAGNUSON. Mr. President, I join my distinguished colleague from Nevada in opposing the amendment. He knows what he is talking about so far as airplanes are concerned. He probably has more expertise in this matter than any of us in the Senate, or any one Senator.

This is a problem where we are all agreed on the objective but we have to be practical about some of these things, too. I know that every generation of jet airplanes has been quieter than the previous one, and that the airplane manufacturers are doing everything they can to make the next generation of jets quieter than before. That is being done.

I frankly prefer the House bill on this matter, because it is a little more practical. Moving ahead too swiftly, with the amendment of the Senator from Maine (Mr. MUSKIE), is very ill advised at this time. There has not been any hearings on it. A study should be made, Mr. President, and I will tell you why. We have gone through a good many hearings in the Commerce Committee over the years on this aspect of aviation, and it is pretty hard to find noise experts who agree on much. We had two or three testify. I do not know whether they were self-serving or not, but they said they did not think there were over four or five noise experts in the United States.

This is a problem that is not only highly technical but is a problem that has to be placed in a practical perspective as to how we proceed toward the objective.

The Commerce Committee did not see this amendment until 1 p.m. today. That is why the study should go ahead. I also understand it was discussed in the Committee on Public Works and was rejected there.

If carried out to its extreme, it would result in a drastic cutback in air service.

I cannot believe that the FAA and the EPA would be unreasonable. I think we have to assume they will act as reasonable people because both have the same objective and we are moving ahead. But on this business of trying for hard and fast drastic rules on limiting the use of airplanes, there has got to be more study to determine if this is wise and practical.

Mr. MUSKIE. Mr. President, may I say to the distinguished Senator from Washington that I doubt he understands the amendment. He talks about hard, drastic rules. There are no hard, drastic rules in this amendment. It provides, for the establishment of criteria with respect to noise levels; it provides for publishing the criteria, and it also provides for giving the FAA the authority to develop the guidelines for implementing the criteria. It provides for the FAA to give technical assistance. There is nothing hard and drastic about it.

But, Mr. President, my objection to this bill is that it would undertake to preempt the authority of State and local governments to deal with this problem and would substitute for State and local action a Federal study.

If we are not prepared to assume the authority to do the job, then my views is, leave it to the States and the communities to continue what they are now struggling to do and not preempt the field and throw a study at them as the Federal answer.

Mr. President, on July 19, 1972, the distinguished Senator from California (Mr. TUNNEY) wrote me a letter on the question of the FAA. Let the Senator from California give us the facts:

I read in part:

For fourteen years the FAA has had authority to control aircraft noise, and regulations have existed for four years. The 1968 FAA regulations require that new aircraft applying for type certification after December 1, 1969, meet a standard of 108 EPN dB. Not only is this standard too weak, but only the new DC–10, L–1011's, Cessna Citations, and about ten percent of the Boeing 747's are subject to it. The Airport Operators Council estimates that by 1975, out of a fleet of 2100 aircraft, only 393, or 18.6 percent will be required to have noise certification. Improvement in these figures is unlikely since the trend has been to refit rather than retire the existent fleet, as evidence by the new "wide body look" given to the 707 interiors.

It is for this reason, as stated in the Tunney letter, to me, why we must have the development of cumulative noise standards in the airport environment.

Mr. President, that is why I offer this amendment.

Let me read another portion of the Tunney letter on the mechanisms of the bill:

The mechanisms for controlling aircraft noise is substantially parallel to other environmental legislation including the Clean Air Act.

The Senator was correct.

Continuing reading:

The EPA Administrator would set performance levels for noise reduction in airport environments which must be met in order to protect the public health and welfare. For airports which exceed the target levels, a plan must be developed and submitted by the airport operator which could include controls on the frequency of flights, the hours of airport operation, changes in operational and flight procedures, land use, and other techniques which the Secretary of Transportation determines to be appropriate and safe to achieve the levels established by EPA.

Mr. President, this amendment before us does nothing more than the Senator from California (Mr. TUNNEY) urged on me in his letter of July 19.

I ask unanimous consent that the full text of this letter be printed in the RECORD.

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

U.S. SENATE,
COMMITTEE ON PUBLIC WORKS,
Washington, D.C., July 19, 1972.

HON. EDMUND S. MUSKIE,
U.S. Senate,
Washington, D.C.

DEAR ED: On June 8, the Subcommittee on Air and Water Pollution approved S. 3342, the Noise Pollution Control Act of 1972. This bill will be considered in full Committee next Thursday, July 27, at 10:00 a.m. While there continue to be several outstanding issues to be decided, I firmly believe this bill offers a comprehensive scheme for environmental protection from noise pollution.

I am writing in advance of the markup session to express my personal interest in the bill, and my strong hope that it will be passed in this session. I hope to contact you personally prior to the markup session to get your reactions to it. Before I do, however, I would like to share my views on the need for the legislation and on the outstanding issues.

The sixth print, a copy of which I attach, is the draft reported out of Subcommittee. It evolved from three days of legislative hearings, the June 8 session, numerous meetings of staff, and additional comments by the Administration, industry and environmental groups. The latest version has again been widely distributed, and I understand that staff is compiling and will circulate comments received. Additionally, I met earlier this month with airport managers and operators, local groups and local officials at three major airports in California, where the noise problem is particularly acute. Their helpful comments, which will also be circulated, were supportive of the need for comprehensive regulation of airport and aircraft noise.

NEED

The effects of excessive noise on health are well documented. In addition to hearing loss—which may include cell damage and be irreversible—there are all sorts of insidious effects to many bodily and psychological functions. The metabolic changes brought about by noise continue to take place during sleep—even when the noise is not loud enough to cause arousal. Most disturbing is evidence that noise can affect the unborn child, causing changes in heart rate and skeletal muscular contractions, and inhibiting weight gain. There is also a statistically significant correlation between high noise levels and low land values—especially, high rental property vacancy rates around airports.

ISSUES

Of all the major sources of noise pollution aircraft noise is by far the most noxious. Using the standard unit of measurement of sound, the decibel, conversational speech will typically be at the level of sixty dB, heavy city traffic at ninety-two dB, and a jet airliner 500 feet overhead at 115 dB. Because the decibel scale is a logarithmic scale, a difference of ten units is actually 100 times as intense. If a factor for the irritation of high frequency sounds is taken into account, aircraft noise measures even higher.

Residents of Inglewood, California were recently asked how important to them it was to find solutions to problems of jet noise, crime, etc. 61% responded that it was the greatest importance to control jet noise, and 20% answered that it was very important. These figures compare with 73% and 17% on the issue of crime, and no figure higher than 33% for any of the other issues. In Inglewood, therefore, the problem of jet noise rivals the problem of crime control as the most important issue to local residents. These sentiments were echoed in Okland, Marin County and San Diego.

THE FAA'S FAILURE TO ACT

The extraordinary levels of aircraft noise and their severe impact on the public health have led to repeated and increasing pressure from many sectors for effective control. For fourteen years the FAA has had authority to control aircraft noise, and regulations have existed for four years. The 1968 FAA regulations require that new aircraft applying for type certification after December 1, 1969, meet a standard of 108 EPN dB. Not only is this standard too weak, but only the new DC–10, L–1011's Cessna Citations, and about

ten percent of the Boeing 747's are subject to it. The Airport Operators Council estimates that by 1975, out of a fleet of 2100 aircraft only 393, or 18.6 percent will be required to have noise certification. Improvement in these figures is unlikely since the trend has been to refit rather than retire the existent fleet, as evidence by the new "wide body look" given to the 707 interiors. It is predicted, further, that the increase in numbers of flights should more than offset noise reductions from new quarter aircraft engines.

THE MECHANISM OF S. 3342

The mechanism for controlling aircraft noise is substantially parallel to other environmental legislation including the Clean Air Act. The EPA Administrator would set performance levels for noise reduction in airport environments which must be met in order to protect the public health and welfare. For airports which exceed the target levels, a plan must be developed and submitted by the airport operator which could include controls on the frequency of flights, the hours of airport operation, changes in operational and flight procedures, land use, and other techniques which the Secretary of Transportation determines to be appropriate and safe to achieve the levels established by EPA.

DOT would have responsibility to ensure that noise emission standards for aircraft are safe and technologically available. It would also review for purposes of safety and effect on commerce any plans submitted by airport operators to implement Federal ambient standards.

Each agency would act consistent with its mandate. As in most other areas of pollution, EPA would be empowered to prescribe standards to protect the public health and welfare. FAA would maintain sole responsibility for aircraft safety and technology, and, in coordination with the CAB, for developing and promoting an air transportation system which meets commercial needs while not degrading environmental quality.

As in other areas, I feel strongly that environmental programs should be implemented by environmental agencies. At the same time we must insist on safety and, to the maximum extent practicable, avoid disruption of commerce. I think the Subcommittee bill meets these tests and hope you will support early action on effective regulation.

I will contact you personally within the next week to get your reactions to this important issue.

Best regards,

JOHN V. TUNNEY,
U.S. Senator.

P.S.—Thanks so much for your personal letter of support for my position at the Subcommittee Exec. sess. Leon has been a terrific help and I look forward to seeing you both on Thursday.

Mr. MUSKIE. Mr. President, I do this not to embarrass the Senator from California but to make the point that, of course, it is tough but, as the Senator knows, in the water pollution bill we sent to the President this week, we require of the industry the development of a technology which does not now exist. Because we know as a committee, that unless we put this kind of pressure on the industry, we will not get the hardware. When our only means of control is technical, we have to build pressures into the bill to develop the technology. What we propose to do here is to do nothing more than we did in the Clean Air Act of 1970 or the Water Pollution Act of this year. We propose to set targets and to set standards which will force industry and the technological community to build the hardware necessary to deal with this problem and in the meantime permit the communities—and the FAA has a veto in the field—to take pragmatic approaches to the problem which will enable them to make at least a beginning toward reducing the noise around airports.

Mr. President, I reserve the remainder of my time.

Mr. TUNNEY. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from California has 8 minutes remaining.

Mr. TUNNEY. Mr. President, I yield myself 3 minutes.

The PRESIDING OFFICER. The Senator from California is recognized for 3 minutes.

Mr. TUNNEY. Mr. President, I am very pleased that the Senator from Maine read my letter because the essence of that letter is still my position. And the whole letter would be my position if we had committee print No. 6 of S. 3342 before us today.

I wrote my letter based on section 502 of print 6 of the bill which is a far different provision than section 502 of the bill reported. I might say that the pending Muskie amendment is quite different both from print six to which I addressed my letter and from the version of the provision we now have before us.

We had established in print six a mechanism whereby a conference was held at a local airport which included participation by the airport operators, FAA, EPH, and others. The Senator's amendment, as I understand it, does not contain such language.

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

Mr. TUNNEY. I will yield in a moment.

For the Senator from Maine to say, much as I respect him and have the strongest regard for him, that he addressed the amendment to my letter is not correct. My letter is addressed to print No. 6, and that is quite different from the bill before us today.

I am not saying that the Senator's amendment might not be a superb amendment. However, in the committee when we were asking tough questions as to how a mechanism to establish cumulative levels of noise should work and we could not secure agreement.

We want a bill that will start to curb the noise around the airports now. We are not willing to wait 2 or 3 years in order to preserve a purist position. We fought to give EPA a lead role in establishing aircraft noise emission levels, and we won in committee.

I am going to fight to protect the language of section 501, which establishes EPA as lead agency in setting noise emission levels. It is good language and should be maintained. But it is quite different to say that I was supportive of Senator MUSKIE's amendment to section 502 when I did not know it existed and did not see it until about 2 hours ago.

Mr. MUSKIE. Mr. President, I yield myself 2 minutes.

The PRESIDING OFFICER. The Senator from Maine is recognized for 2 minutes.

Mr. MUSKIE. Mr. President, I say to the Senator from California that if he wishes to offer a substitute for the pending amendment the language contained in print 6 covering the same subject, I would accept it without reservation. I would be happy to accept that as a substitute for this. The language in print 6 is similar to this language. It says:

A plan must be developed and submitted by the airport operator which could include controls on the frequency of flights, the hours of airport operation, changes in operational and flight procedures, land use, and other techniques which the Secretary of Transportation has laid out, and other techniques.

I still insist that those techniques would be implemented in print 6 and the language before us. Second, I read the footnote on that letter of July 19, 1972:

P.S.—Thanks so much for your personal letter of support for my position. . . .

Now the Senator makes an argument that is a little different. He says that the only reason he will not go along with the deletion of the provision is that he wants a bill that starts now. The pending bill does not start now on the problem. It just provides for a study. It does not start now. I am trying to help the bill to enable it to start now. That is the rationale of the amendment.

Mr. President, before I forget it, I ask for the yeas and nays, or perhaps I should suggest the absence of a quorum.

The PRESIDING OFFICER. The Senator from Maine does not have enough time under the present rule to suggest the absence of a quorum.

Mr. MUSKIE. Mr. President, I ask unanimous consent that we may have a quorum call with the time taken out of neither side.

The PRESIDING OFFICER. Is there objection?

Mr. TUNNEY. Mr. President, reserving the right to object, I would have just one further response to the Senator.

Mr. MUSKIE. Mr. President, we have not given up our time. I want the yeas and nays.

Mr. TUNNEY. Mr. President, will this time be taken out of our time?

The PRESIDING OFFICER. It will be taken out of the time of neither side.

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

Mr. TUNNEY. Mr. President, reserving the right to object, I first yield 2 minutes to the Senator from Missouri.

The PRESIDING OFFICER. The Senator from Missouri is recognized for 2 minutes.

OLDER AMERICANS ACT OF 1972—CONFERENCE REPORT

Mr. EAGLETON. Mr. President, I submit a report of the committee of conference on H.R. 15657, and ask for its immediate consideration.

The PRESIDING OFFICER (Mr. STAFFORD). The report will be stated by title.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on 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, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER (Mr. STAFFORD). 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 October 11, 1972, at pages 34996–35008.)

Mr. EAGLETON. Mr. President, I am pleased to recommend to the Senate the adoption of the report of the conference committee on H.R. 15657, a bill to strengthen and improve the Older Americans Act of 1965, and for other purposes.

This legislation represents long months of work by the Committee on Labor and Public Welfare's Subcommittee on Aging, which I have the honor of chairing, and by our counterparts on the Committee on Education and Labor in the House of Representatives. We began this work with the goal of developing legislation that would meet the needs of the Nation's 20 million citizens, older Americans, for greatly increased and improved services. In my judgment, H.R. 15657 meets that standard.

The Older Americans Act was first enacted in 1965 and, thereafter, was amended in 1967 and 1969. The heart of the program lies in the grants made to States under title III to provide social and supportive services for their elderly citizens. From small beginnings in 1965, programs under the act have expanded substantially. Appropriations have grown from $7.5 million in fiscal year 1966 to $101.7 million in fiscal year 1972. I should add that the 1972 figure was reached by way of a floor amendment to the supplemental appropriations bill, offered immediately after the White House Conference on Aging by the distinguished senior Senator from Massachusetts (Mr. KENNEDY), which added more than $55 million to last year's appropriation.

This increased funding was reflective of the greatly increased need for the services offered under the act. These are, in the truest sense, vital services, because they are designed to support older people and enable them to maintain an independent existence, to enrich their lives, and to avoid institutionalization.

As our Subcommittee on Aging began work on legislation needed to extend the Older Americans Act in light of its expiration on June 30, 1972, it became apparent that the increased demand for services and the increased funding provided by Congress required an improved mechanism for the delivery of services. We have responded, in H.R. 15657, by creating the framework for a comprehensive and coordinated system for the delivery of social services at the State and local level. States will be required, through State plans, to establish objectives and spell out their proposals for achieving those objectives. Moreover, the States will be required to divide each State into distinct areas—except in those small States best served as a single area—and to designate from among those areas the ones in which there is the greatest need for services. In such designated areas, an area plan will be developed to provide for the establishment of a coordinated network for the delivery of services to the elderly.

The services authorized under this bill cover a wide range—health services, including such matters as diagnostic screening; information, referral, and counseling services that will help the elderly gain access to other sources of service in their communities; homemaker and home health services that can assist older persons in retaining self-sufficiency and independence in their own home; recreational and educational services to enrich their lives and to draw them out of the social isolation that so often afflicts the elderly; transportation in connection with other services provided under the bill; and a variety of other important social and nutritional services.

In addition to this program of grants to the States, the bill authorizes the Commissioner on Aging to make direct grants to support model projects which hold the promise of demonstrating new or improved methods of providing expanded services to older Americans. In making such grants, the Commissioner on Aging is directed to give special consideration to projects in the areas of housing, transportation, continued education, preretirement counseling, and handicapped services.

Mr. President, we know about the services needed by older Americans and we have worked to meet this need. But there are a great many areas with respect to aging in which far to little is known. For this reason, title IV of the bill authorizes a greatly expanded program of research and demonstration projects to be conducted by, or under authority of, the Administration on Aging. It is hoped that through such research and demonstration projects it will be possible to emulate past successes, as with the nutrition projects now established under title VII of the act, which began as a demonstration program conducted under title IV. It is further our intention to assist in meeting the enormous demand for training personnel in this field by directing the Administration on Aging to survey the field to establish an accurate assessment of personnel needs and to take steps to meet such needs through training grants and through the establishment of multidisciplinary centers of gerontology. It is anticipated that such centers, in addition to their research and training functions, will also provide technical assistance to State and local agencies providing services for the aging.

There are a great many other programs established by this legislation, Mr. President, which are discussed in detail in the reports of the committees of the Senate and House and the report of the conference committee. I do, however, want to draw attention to two of these in particular—those contained in titles IX and X of H.R. 15657.

Title IX is identical to S. 555, introduced by the very able senior Senator from Massachusetts (Mr. KENNEDY) and passed by the Senate on September 21. This bill establishes in the Department of Labor a program for community service employment of older Americans, modeled on the very successful pilot programs conducted by the Department of Labor under Operation Mainstream. It will greatly expand employment opportunities in community service jobs for those aged 55 and older with a preference given to persons aged 60 and older.

Our estimates show that some 40,000 jobs can be provided under funds authorized to be appropriated in the current fiscal year and as many as 60,000 jobs could be provided next year. With about one-fourth of our older Americans living in poverty, Mr. President, I will not stress the importance of this opportunity to provide additional income for those so much in need. Suffice it to say that we anticipate that the establishment of this program should point the way to greatly increased opportunities for older people to find a meaningful role in their communities and to supplement their income at the same time. It is typical of the concern and understanding repeatedly expressed by Senator KENNEDY, who has long been recognized as a leader in this field through his work for the aging.

Title X of the bill, Mr. President, is also related to employment opportunities but it includes, in addition to older workers, those who are middleaged, that is, between 45 and 55 years of age, and provides special counseling and training programs in the Department of Labor to assist them in securing employment. We have seen so often that the principal casualties of the unemployment caused by the economic recession of recent years have been persons in their forties and fifties. Many have worked at the same job over a period of years and their ability to find new employment once they are laid off tends to be more limited than those of younger workers.

The programs established under title X, which are modeled after S. 1307 introduced by the distinguished senior Senator from West Virginia (Mr. RANDOLPH), will provide very significant assistance for these individuals in training them for new jobs and then helping them to find such jobs. I want to commend Senator RANDOLPH, who developed this title as his own separate legislation, and was then gracious enough to include it as a part of our older American legislation.

Finally, Mr. President, I wish to point to those provisions of the bill which do not bear directly on the provision of services to the elderly but which will have a very great bearing on the success of the entire program. These have to do with the role of the Commissioner on Aging and his position, and that of the Administration on Aging, in the Department of Health, Education, and Welfare. Heretofore, the Administration on Aging has been relegated to a low level in HEW and, in 1967, was made part of the social and rehabilitation service—SRS. Unfortunately, the dominant programs in SRS are those providing income main-

tenance; it is generally regarded as primarily a "welfare agency." Yet, the Older Americans Act was never intended to operate as a welfare program in the sense that it does not contain a means test and its services are not restricted to those with incomes below the poverty line. Indeed, those active in the field of aging find that older persons are, in many cases, resistant to utilizing needed services when those services are viewed as part of a welfare program.

For these reasons, we deemed it advisable to remove AOA from the SRS and place it within the Office of the Secretary. We are gratified that the administration has concurred in this judgment and supports the move of AOA provided in this legislation.

I believe that this reorganization will enhance the ability of AOA both as a spokesman for the elderly within the department and in its program operations.

Our bill also enhances the role of the Commissioner on Aging by providing that he shall report directly to the Secretary of Health, Education, and Welfare and that he shall not delegate functions assigned to him by law without first following reorganization plan procedures, thus providing an opportunity for either House of Congress to block a proposed delegation that it finds inconsistent with the purposes of the act. I should add that we recognize that the Secretary has many other responsibilities and so we construe the requirement that the Commissioner report directly to the Secretary to mean that he shall so report on matters involving essential policy questions affecting the act. Moreover, we do not mean to isolate AOA from the supportive activities that may be provided by other parts of the department at both the national and regional levels.

The Senate wanted further to improve the Federal organizational structure with respect to aging by creating the Older Americans Advocacy Commission to act as an independent advocate on behalf of the elderly throughout the Federal Government. This body was established in recognition of the fact that a great many Federal Departments and agencies are involved in activities affecting the aging, but too often these activities are carried on without consideration being given to the special needs and concerns of our elderly citizens.

The House refused to accept the advocacy commission as established by the Senate bill—largely, I am sorry to report, because of strenuous administration opposition to the creation of a body which it rightly conceived might be critical of administration policy regarding the aging. However, we were successful in incorporating essentially the same functions intended for the advocacy commission into the provisions of the House bill establishing a National Advisory Council on the Aging. This body is renamed the Federal Council on the Aging by the conference report and I want to emphasize that the term "advisory" was deleted from the title in a conscious effort to make this body something more than the usual passive advisory council.

We intend that the Federal Council on the Aging shall make vigorous efforts to serve as an advocate for older Americans across the whole range of the Federal establishment. While the word "advocate" was deleted from the list of its functions at the insistence of those who are somehow made uncomfortable by this term, the role of the council remains the same and I consider its responsibility to act as "spokesman" for the elderly to have the same effect as the original charge to "advocate" their cause.

Mr. President, in closing I want to pay tribute to the many persons who worked closely on the development and enactment of this legislation and who made major contributions to it. The distinguished junior Senator from Maryland (Mr. BEALL), the ranking minority member of the Subcommittee on Aging, was extremely diligent and constructive during our work on the bill. His imprint is seen on the final product in many places and his helpful suggestions throughout shaped major provisions of the bill. Nearly all of the other members of the subcommittee were also quite active in their work on behalf of this legislation.

As always, it was a pleasure to work with the very able chairman of the House Education and Labor Committee, Mr. PERKINS, and the distinguished subcommittee chairman in the House, Mr. BRADEMAS, both of who displayed their devotion and concern for older Americans by their unstinting work on this bill.

We also benefited by the counsel and advice of a great many persons in the Department of Health, Education, and Welfare. They include Mr. John Twiname, Commissioner of Social and Rehabilitation Service; Mr. Richard Verville, Deputy Assistant Secretary for Legislation; Mr. Harvey Yampolsky, a truly gifted and imaginative draftsman; Mr. Don Reilly, Deputy Commissioner of AOA; Mr. Herman Brotman, whose ability to come up with statistical information coherently arranged on short notice was consistently amazing; and Mr. William Norman and Ms. Dolly Cutler from the Administration on Aging Legislative Liaison office.

Mr. President, I am proud of the product of our endeavors—the Older Americans Comprehensive Services Amendments of 1972—and I recommend its adoption by the Senate.

Mr. BEALL. Mr. President, as the ranking Republican member on the Subcommittee on Aging, I have a special interest in, and concern for, the well being of our 20 million senior citizens. I have consistently contended, that America's elderly citizens deserve a great deal more attention than they have previously received. I, for one, hold our Nation's senior citizens in a position of great respect for they have toiled long and hard in our Nation's factories, on its farms, in its armed services, and so forth, and they have earned the right to live their retirement years in security, dignity, and independence. We owe these senior Americans a debt of gratitude for they are primarily responsible for the prosperity and the greatness that our Nation enjoys today. Through their efforts and sacrifices, our Nation has reached unprecedented heights of economic prosperity, met the challenge of foreign aggressors, and created for all Americans a society dedicated to the full realization of the goals of our Nation's forefathers.

Mr. President, during the past several months, the members of the Subcommittee on Aging have worked to shape a bill that would achieve the fundamental objective of delivering social services to our older Americans in a prompt, efficient, and effective manner. I would simply say that the subcommittee chairman and the other members of this committee worked in an open and bipartisan manner to produce a bill that will significantly contribute to the well being of our older Americans.

Before proceeding with consideration of the conference report on H.R. 15657, I would like to briefly summarize some of the accomplishments which we have seen in recent years in our efforts to improve the livelihood of our older citizens. Since I first came to Congress in January of 1969, I have had the pleasure of working with two Secretaries of Health, Education, and Welfare, Honorable Robert Finch and Honorable Elliot Richardson, both of whom are men of great ability, great sensitivity, and great compassion for our aging Americans as well as other recipients of services in their area of responsibility. Commissioner John Martin is a dedicated public servant who is widely respected in the field of aging and I believe that he has done everything in his power to see that the Administration on Aging fulfills its mandate.

One could hardly comment on the progress we have made in understanding and meeting the needs of the elderly without mentioning the role of Dr. Arthur S. Flemming. Dr. Flemming is a distinguished public servant and academician who has served his nation in a variety of capacities in the last four decades. As the Chairman of the White House Conference on Aging, 1971, Dr. Flemming brought together thousands of delegates and experts from across our Nation. He oversaw an immensely productive White House Conference which has generated the type of momentum needed to bring the problems of our Nation's senior citizens to the attention of all of our people.

Even though the final reports and recommendations of this conference are not yet in, the President and the Congress have both taken decisive action aimed at resolving many of these problems. Now, as the Special Consultant to the President on Aging, Dr. Flemming is in an excellent position to advocate the cause of senior citizens, coordinate interdepartmental governmental programs, and inform the public of possible solutions to the various problems confronting our older Americans.

Assisting Dr. Flemming in coordinating domestic programs for the aging, is the Committee on Aging within the Cabinet-level Domestic Council. The creation of a Domestic Council in general and the Committee on Aging specifically reflects President Nixon's commitment to coordinate and deliver services to older Americans in a coherent, effec-

tive, efficient manner. It is now up to the Congress to take the decisive steps necessary to end the isolation, the neglect, and the indifference which have plagued older Americans for far too long.

Mr. President, I believe that H.R. 15657, as amended by the conference committee will make a very significant contribution to the well-being of older Americans. This legislation will dramatically strengthen the Administration on Aging by upgrading it and moving it into the Office of the Secretary. In addition, it significantly expands the Administration on Aging's authority as well as its authorization levels.

Under this bill, AOA will strengthen State aging units, foster the growth and development of local aging offices, and provide them with the technical know-how needed to meet the requirements contained in this legislation. Within each State, areas selected for priority consideration, will receive funds to establish area planning and service agencies. These organizations will serve to coordinate existing social and nutritional services so that they can be effectively delivered to senior citizens who are in need of such services. It is not envisioned, that these regional planning units will directly deliver services to the elderly unless the needed services are not available from any other source.

Thus, we are talking about an apparatus that will coordinate programs conducted under the Social Security Act, the Department of Transportation, other agencies within the Department of Health, Education, and Welfare, the Department of Housing and Urban Development, and so forth. In addition, these area aging units will draw upon the resources of existing State and local services as well as nonprofit organizations designed to assist the elderly. At the present time, AOA lacks the authority to effectively coordinate the delivery of various social and nutritional services and I believe that this is perhaps the most significant reform contained in this legislation. In addition, this bill would provide for the establishment of a National Information and Resource Clearing House for the Aging" as well as State and local information and referral systems that will serve to place much needed information in the hands of our senior citizens so that they can resolve many of their problems by their own initiative.

H.R. 15657 sought to touch as many "bases" as possible with regard to the problems facing senior citizens. Under the provisions of this legislation we will be able to expand and improve our system of senior citizen centers; expand the volunteer programs for the elderly which are administered by the Action Agency; provide community service employment programs and job training opportunities for middle-aged and older Americans; promote expanded library facilities, reading services, and educational programs for senior citizens; train personnel to meet the needs for older Americans; undertake various gerontological research projects; as well as a variety of demonstration and special impact projects designed to further our knowledge with regard to problems of the aging.

Mr. President, I am an enthusiastic supporter of the initiatives contained in this legislation, and I am firmly of the opinion that a significant corner has been turned in our efforts to make life a little better for our Nation's 20 million senior citizens.

Mr. President, I have compiled a brief title by title summary of the provisions contained in H.R. 15657 and I ask unanimous consent that this summary be printed at the conclusion of my remarks.

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

TITLE-BY-TITLE SUMMARY OF H.R. 15657, THE OLDER AMERICANS COMPREHENSIVE SERVICES AMENDMENTS OF 1972

TITLE I—DECLARATION OF OBJECTIVES

The Congress expanded the objectives contained in the original Older Americans Act of 1965 by placing emphasis on the need to make comprehensive social service programs available to older Americans and to insure their participation in the development of these programs.

TITLE II—ADMINISTRATION ON AGING

This Title establishes the Administration on Aging and places it within the Office of the Secretary of Health, Education and Welfare. AOA is headed by a Commissioner on Aging who is appointed by the President and confirmed by the Senate. The Administration on Aging is given primary responsibility for carrying out the programs authorized under this Act. Language has also been included which is designed to protect the administrative integrity of the Administration on Aging so as to guarantee that AOA carries out the mandate prescribed by Congress in this legislation.

Title II also creates a "National Information and Resource Clearing House for the Aging" which is designed to collect, analyze, prepare and disseminate information regarding the needs and interests of older Americans.

In addition, Title II contains a provision establishing a "Federal Council on the Aging" which will be composed of 15 members appointed by the President and confirmed by the Senate. The Council will assist and advise the President on matters relating to the needs of older Americans; review and evaluate the impact of Federal policies and programs on the Aging; serve as a spokesman on behalf of older Americans by making recommendations to the President, the Secretary of Health, Education and Welfare, the Commissioner on Aging, and the Congress with respect to federal activities in the field of aging; and undertake programs designed to increase public awareness of the problems and needs of our senior citizens. The Federal Council on the Aging will also undertake various studies designed to further clarify the specific needs of the elderly and recommend solutions to them.

TITLE III—GRANTS FOR STATE AND COMMUNITY PROGRAMS ON AGING

Under Title III, the Administration on Aging will work with State aging offices to develop a state-wide plan for delivering social services to senior citizens. Each state will be divided into planning and service areas which will bear the primary responsibility for developing the apparatus required to deliver social and nutritional services to the elderly. These area aging units are designed to coordinate existing governmental services, purchase services, and/or provide services where they are otherwise unavailable.

In addition, the Commissioner may undertake "model projects" within a state, giving special consideration to projects involving the housing needs of older persons, transportation needs, continuing education, preretirement information, and special services to the handicapped. It is hoped that these model projects will expand and improve the delivery of social services to older persons.

TITLE IV—TRAINING AND RESEARCH

The Commissioner on Aging is authorized to make grants for research and development projects in the field of aging. He may also undertake programs designed to attract qualified persons into the field of aging and to provide training programs for personnel in this field. There is also a provision for the establishment and support of multidisciplinary centers of gerontology which will assist in the research and training programs as well as provide technical assistance for state and local aging units.

TITLE V—MULTIPURPOSE SENIOR CENTERS

This provision provides for the acquisition, alteration, renovation and construction of multi-purpose senior citizen centers. Included in this section are provisions for loan insurance for senior citizen centers, grant authorizations for staffing of such centers, etc.

TITLE VI—NATIONAL OLDER AMERICANS VOLUNTEER PROGRAM

This Title extends and expands the authorization for the Foster Grandparents Program and other Older Americans Community Service Programs. These programs, which were transferred to the ACTION Agency in 1971 seek to involve Older Americans in a variety of programs designed to benefit persons, both children and adults, having exceptional needs.

TITLE VII—NUTRITION PROGRAM

This Title makes several minor conforming changes in the nutrition legislation which was passed earlier this year. The changes are primarily designed to produce greater coordination between nutrition programs and the social service programs provided in Title III.

TITLE VIII—AMENDMENTS TO OTHER ACTS

This provision amends the Library Services and Construction Act, the National Commission on Libraries and Information Science Act, the Higher Education Act, and the Adult Education Act, so as to provide expanded opportunities for older Americans to participate in programs of continuing education.

TITLE IX—COMMUNITY SERVICE EMPLOYMENT FOR OLDER AMERICANS

This Title is designed to provide community service jobs for low income older Americans 55 years of age and older in the fields of education, social services, recreational services, conservation, environmental restoration, economic development, etc. The programs created by Title IX are structured in such a way as to draw upon the experiences of numerous pilot and demonstration projects conducted by the Department of Labor under its Operation Mainstream Program. It is estimated that as many as 40 to 60 thousand jobs could be created under the provisions of this Title.

TITLE X—MIDDLE-AGED AND OLDER WORKERS TRAINING ACT

This Title is designed to provide manpower training programs and other services to increase job opportunities for middle-aged and older persons. The Secretary of Labor will carry out the provisions of this Title within the framework of existing programs during the remainder of fiscal year 1973.

Mr. KENNEDY. Mr. President, I am pleased to be able to rise to speak in favor of the conference report on H.R.

15657, the Older Americans Comprehensive Services Amendments of 1972.

This measure moves us far closer to providing adequate services to 20 million older Americans. After the past 4 years, when the level of appropriations requested by this administration fell far short of the need, this new statement of concern by the Congress represents a Federal mandate to meet the needs of the Nation's elderly.

I am particularly pleased that the conference committee retained title IX community service employment programs for persons 55 and older with virtually no change from the measure passed by the Senate.

The only alteration in this categorical employment program is a preference being provided for unemployed, low-income elderly persons 60 and older.

Otherwise, this measure is the same bill which originally passed the Senate as S. 555 a month ago. Now it has become a part of the Older Americans Act extension. However, its administration will remain within the Department of Labor, where it is expected to provide a focus for Labor Department efforts to meet the employment needs of elderly Americans.

Essentially, this program takes the older Americans portion of the Operation Mainstream pilot programs and expands them and makes them permanent and nationwide.

Grants will be made directly from the Labor Department on a 90–10 basis to nonprofit private organizations as well as State and local governmental units for the employment of elderly persons in community service programs.

No delay is expected in gearing up for this program once funds are made available since the groups which now participate in the Operation Mainstream Older Americans program say their applications are seven or eight times the available slots.

The critical need for this program is shown by the statistics depicting a steady rise in the numbers of older Americans who are unemployed.

For during the past several years of rising unemployment, the impact on older workers has been particularly grim. From January 1969 to September 1971, unemployment for persons 45 and older jumped from 596,000 to 1,057,000—a 77-percent hike. And the large bulk of that increase fell on those individuals 55 and older.

What is perhaps even more of an indication of our failure to show a national sensitivity to the needs of these older workers is the recent reports from the Bureau of the Census. They show that some 6.8 million persons aged 55 and older are living in poverty, 25 percent of the Nation's 25.9 million poor.

The impact of unemployed and poor older workers on the social service system of the Nation is increasing as a result with some 2.9 million Americans over 55 receiving public assistance.

The Emergency Employment Act of 1971 was the first major effort to provide public employment opportunities to our citizens. Yet the older worker, despite representing 25 percent of the poor, has received only 6 percent of the available EEA job opportunities, according to the Department of Labor. The Labor Department's administration of this program unfortunately has continued the past pattern of neglect for these older workers.

The most successful Federal effort in providing job opportunities to older Americans has been the economic opportunity pilot program operation mainstream.

With operation mainstream support, the National Council of Senior Citizens has operated the Senior Aides Project; the National Farmers Union has directed the Green Thumb and Green Light projects; the National Council on Aging has funded Senior Community Service Aides project.

All of these projects have met with enormous success, success documented in evaluations carried out under Labor Department contract and success documented in testimony before the Senate Aging Subcommittee.

The projects on the whole have provided part-time work for older Americans, usually 4 hours a day, 5 days a week with an average wage of $2.15 per hour. In addition to the importance of the added income provided by these programs, older men and women have discovered a second vocation, a second career, a second opportunity to contribute to the life of the Nation.

For that reason, the Older Americans Community Service Employment Act is vital to the needs of the Nation's older Americans. It is for that reason that every major group representing older Americans has testified in favor of this legislation and has sent telegrams and letters affirming their support for the early approval of this legislation.

For this bill represents a beginning step to meet the employment needs of older workers, providing 100,000 additional job opportunities in the next 2 years.

Unfortunately despite the full support of all concerned and the apparent support of the President in his statement to the White House Conference on Aging last year, the administration formally has opposed this program in hearings and in letters to Senators and in the most bizarre act, in a threatening letter to the House-Senate conferees.

I ask unanimous consent that the letter appear in the RECORD at this point.

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

U.S. DEPARTMENT OF LABOR,
Washington, D.C., October 9, 1972.

HON. HARRISON A. WILLIAMS,
Chairman, Committee on Labor and Public Welfare, Washington, D.C.

DEAR MR. CHAIRMAN: I would like to express the concern of the Department of Labor to Titles IX and X of S. 4044, Older Americans Act Amendments of 1972.

The major conceptual concern deals with the fact that these titles are duplications of existing legislation and establish a separate category for this particular client group.

As you know, the Labor Department shares the concern of your Committee with the manpower and employment problems of middle-aged and older workers. We feel, however, that all of the purposes of Titles IX and X can be carried out under existing legislation.

We are most concerned about a specific allocation of funds for one client group, as this will clearly create a demand from other client groups for equal treatment.

Finally, I must also emphasize that the President's budget for fiscal 1973 for all manpower and employment programs under the jurisdiction of the Labor Department is in excess of four billion dollars. If further appropriations were authorized for middle-aged and older workers we believe corresponding reductions would need to be made in other manpower activities.

Sincerely,

MALCOLM R. LOVELL,
Assistant Secretary for Manpower.

Mr. KENNEDY. Mr. President, this last act simply is not understandable. It represents such flagrant disregard of the needs of the elderly and it is so flagrantly misleading that I cannot understand its being sent. I would urge the Senate to note the statement that the purposes of title IX "can be carried out under existing legislation."

Because during hearings, the Deputy Assistant Secretary for Manpower testified that he could not guarantee under existing legislation or under the proposed manpower revenue-sharing legislation that any additional money would be directed this year to these persons 55 and older.

It was for that reason that we pushed forward to make pilot programs which have been successful in providing assistance to older Americans permanent and nationwide.

The other provisions in this bill also represent steps forward in providing assistance to the Nation's older Americans.

The measure makes an effort to bring together many of the social services that older Americans require, establishing areawide projects to oversee the coordination of local and Federal resources.

The bill also responds to special needs of the elderly in the fields of transportation, in housing and in continuing education. It also establishes for the first time clearinghouses for information for the elderly at all levels of Government.

It is a forward-looking measure that seeks to insure that the Administration on Aging will have a major arsenal of programs and power in its efforts to be the advocate for the Nation's elderly within the administration.

Hopefully, we will have moved the Nation closer to the ideal of assuring dignity to older Americans in the final chapter of their lives.

Mr. President, there is another matter that I would call to the attention of my colleagues. That provision is contained within title VII, the nutrition for the elderly program which I sponsored and which is now ready to begin immediate operation as soon as the President signs the Labor-HEW appropriations bill which he is expected to receive shortly.

The amendments to this title provide additional authority for agricultural commodities and products to be made available to the program.

At the same time an effort is made to recognize the expansion of title III into a major source of coordination of social services for the elderly.

However, in the Senate, I put in a committee amendment to insure that the nutrition program retains its separate identity, to insure that no delay occur, because of the enactment of title III, in the operation of the nutrition program, and to insure that coordination with areawide agencies may take place only, and I repeat, only when there is agreement by the local nutrition program.

We had extensive hearings into the proposed regulations of the nutrition program for the elderly. We heard from State commissions on aging. We heard from directors of local nutrition pilot programs.

All objected to the original regulations proposed which resembled the areawide approach. All expressed fears that local needs and identities could be lost and an additional and unnecessary level of bureaucracy could be thrust on the scene.

As a result of these hearings, the administration, I think wisely, altered its original regulations substantially and issued new regulations which I believe will help in the efficient and successful operation of nutrition programs.

I wanted to insure that this process would not in any way be subverted by the action of the Congress on the Older Americans Act. As originally proposed by the administration title VII would have been absorbed by title III. This has been rejected. As subsequently proposed, title VII would have been required to operate as a part of title III programs. This has been rejected.

The House-passed bill would have expressed a strong pressure to force title VII programs to become part of title III programs. This has been rejected.

Instead, the conferees adopted the Senate position which incorporated the amendment I had introduced in committee. This states that only when "mutually agreed upon by recipients of grants and contracts and area planning and service areas" is there to be inclusion of nutrition projects in areawide projects.

The option is there for integration but there is no requirement, no demand that it be done. It is up to the local nutrition projects.

Thus, the Senate committee report, which is the operative explanatory language after the House receding to the Senate on this matter states:

> Second, provision is made for the integration of Title VII nutrition programs into comprehensive and coordinated social services systems funded under Title III, but only, it should be emphasized, when such an arrangement is mutually agreed upon by both the Title III and the Title VII grantees. It is not the intention of the committee to remove the special identity that the Title VII programs have already achieved.

Thus, let it be clear that in no way should HEW regulations, guidelines, or State actions in any way coerce or force or demand that successful title VII projects operate as part of title III projects. The option is there, but let the local programs decide what is best for themselves.

Mr. JAVITS. Mr. President, I commend the Senate-House conferees for responding in such a prompt, efficient, and bipartisan manner in processing the comprehensive older Americans service amendments through conference in the last few days. I would particularly like to congratulate the chairman of the Subcommittee on Aging, Senator EAGLETON, and the ranking minority Senator on that subcommittee, Senator BEALL, for their valuable contributions in furthering the efforts of the Congress to coordinate and deliver improved and expanded services to older Americans in an effective manner.

I am particularly gratified that the conferees have resolved in a true spirit of cooperation and concern for the well-being of older Americans, the points of difference which existed between the House bill and the Senate bill. I am gratified that the concern that was expressed by many Senators, including myself, as well as by the administration, over the creation of an independent advocacy commission has been resolved amicably by transferring certain functions assigned to the advocacy commission to the council established under the House bill and accepting the House establishment of such a council. I believe that this is a healthy and constructive approach which encompasses in a sufficient manner the concerns expressed by both adherents of the advocacy commission concept and those who were opposed to it. I trust that the Senate will respond favorably to this approach, because these concerns were not expressed in a narrow partisan manner but as a result of legitimate anxiety over the creation of an advocacy body in the context of a nonadversary program.

It is my hope that this legislation will provide the essential framework for enabling older Americans to fully participate in our society with the maximum degree of independence. The life of older Americans should be a life filled with hope, confidence, and the freedom to act. In my judgment the bill provides one of the basic tools for assisting older people to secure equal opportunity for the full and free enjoyment of their retirement years.

I would like also to offer for the RECORD a brief description of the major provisions of the bill recommended by the conferees.

First, it establishes a 15-member Federal Council on the Aging which would work actively to promote the interests of older Americans on matters relating to their special needs and to Federal programs affecting them.

Second, the Administration on Aging would be elevated by placing it in the Office of the Secretary of Health, Education, and Welfare and would make the Commissioner on Aging directly responsible to the Secretary and required to report to him on the central policy matters affecting the act.

Third, the conference agreement adopts the existing title III formula for fiscal year 1973 except that the minimum guarantee is reduced from 1 to ½ percent for States and from ½ to ¼ percent for territories. In succeeding fiscal years the formula now contained in title VII of the Older Americans Act of 1965 is adopted, except that each State and territory is guaranteed as a minimum an amount equal to its fiscal year 1973 allotment.

Fourth, funds are authorized for direct grants by the Commissioner on Aging to support model projects which would expand or improve social services to older persons and inserts language of the House bill defining projects dealing with such matters as housing, transportation, employment, continued education, preretirement counseling, and special services for the handicapped.

Fifth, the Commissioner is authorized to make grants and contracts to conduct research in the field of aging and for training personnel for programs for the aging, including the establishment of multidiscipline centers of gerontology. A special program of grants and contracts relating to transportation problems of the elderly is incorporated into the model projects section of the bill.

Sixth, funds are authorized to make grants for the purpose of acquisition, alteration, renovation, or construction of multipurpose senior centers.

Seventh, authorization for the Foster Grandparents and RSVP programs conducted by the Action Agency is extended for an additional 3 years and broadened to permit the provision of services to individuals other than children. The present age 60 eligibility for participation in the program is retained.

In addition, the conference report includes two proposals to maximize job opportunities for older workers: First, the Older Americans Comprehensive Service Employment Act which would assist in converting mainstream pilot projects into permanent ongoing national programs, and second, the Middle-Aged and Older Workers Training Act which would authorize training, counseling, and special support services for unemployed or underemployed individuals who are middle-aged or older.

Mr. President, I wish to comment generally also on titles IX and X of the conference bill.

Title IX would establish a program of community service jobs for low-income persons 55 years or older with an authorization of $100 million for fiscal year 1973 and $150 million for fiscal year 1974.

Title X, a complementary provision, would establish a program of manpower training and related services for unemployed and underemployed persons 45 years of age or older with an authorization of $100 million for fiscal year 1974, during fiscal 1973 it would be conducted through existing programs.

I support both of these titles. In my opinion, these new measures constitute a necessary supplement at this time to the provision made for middle-aged and older persons under existing manpower training, work experience, and employment programs.

The conditions of unemployment and job scarcity which affect many of our citizens are particularly harsh in their effect on middle-aged and older persons. Most vulnerable to technological change and subject as well to age discrimination, middle-aged and older workers are often at a disadvantage in competing for existing jobs in the labor market.

As ranking minority member of the Committee on Labor and Public Welfare, and a member of its Subcommittee on Employment, Manpower and Poverty, I

consider it my duty now—as I did when the bill was considered by the Senate—to indicate that the administration is opposed to the inclusion of these titles.

Their position is set forth in a letter to the conferees dated October which reads as follows:

U.S. DEPARTMENT OF LABOR,
Washington, D.C., October 9, 1972.

Hon. HARRISON A. WILLIAMS,
Chairman, Committee on Labor and Public Welfare, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I would like to express the concern of the Department of Labor to Titles IX and X of S. 4044, Older Americans Act Amendments of 1972.

The major conceptual concern deals with the fact that these titles are duplications of existing legislation and establish a separate category for this particular client group.

As you know, the Labor Department shares the concern of your Committee with the manpower and employment problems of middle-aged and older workers. We feel, however, that all of the purposes of Titles IX and X can be carried out under existing legislation.

We are most concerned about a specific allocation of funds for one client group, as this will clearly create a demand from other groups for equal treatment.

Finally, I must also emphasize that the President's budget for fiscal 1973 for all manpower and employment programs under the jurisdiction of the Labor Department is in excess of four billion dollars. If further appropriations were authorized for middle-aged and older workers we believe corresponding reductions would need to be made in other manpower activities.

Sincerely,

MALCOLM R. LOVELL,
Assistant Secretary.

Mr. President, although the conference did not accede to the administration's desire to eliminate both of these titles from the bill, I should point out that the conference bill does reflect some concern with the administration's position.

First, each title contains provisions—which I added in committee—authorizing and directing the Secretary of Labor to coordinate these programs with existing programs and when any comprehensive manpower legislation is enacted—as we hope it will be early next year—to carry out these programs through that new authority.

These provisions are contained in section 903(b)(c) of title IX and section 1033(b)(c) of title X.

Second, with respect to title X for fiscal year 1973—the current fiscal year—in lieu of the $100 million authorization contained in the Senate-passed bill for that year, the conference agreed upon a provision under which the Secretary is directed to carry out the program through existing similar programs. This is contained in section 1004 of the act. For fiscal year 1974, an authorization of $100 million is provided.

I ask unanimous consent that a chart prepared at my request by the Department of Labor showing the current anticipated level of funding and opportunities in each of the major existing programs be printed at this point in the RECORD.

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

MANPOWER ADMINISTRATION—FISCAL YEAR 1972 WORK AND TRAINING PROGRAM RESOURCES GOING TO ENROLLEES 45 YEARS OF AGE AND OVER

[Dollar amounts in millions]

	Total funds obligated	Number of enrollees 45 and over	Percent of enrollees 45 and over	Funds obligated for 45 and over
Public employment program (PEP)	$976.0	36,200	16.0	$156.2
Work incentive program (WIN)	183.3	6,000	5.0	9.2
Operation Mainstream	83.9	17,000	46.0	38.6
Public service careers (PSC)	62.2	8,100	14.0	8.7
Job opportunities in business sector (JOBS)	125.6	4,100	5.0	6.3
Jobs optional program (JOPS)	48.1	4,600	8.0	3.2
MDTA institutional	372.5	14,200	8.0	29.8
Special targeting (CEP)	154.6	5,100	6.0	9.3
National contracts	20.5	3,000	12.0	2.5
Total	2,026.7	98,300	11.3	264.4

Mr. STAFFORD. Mr. President, the conference report on the Older Americans Act represents a significant step toward the goal of helping our older citizens who have done so much to help this country progress.

The approach as taken by both the House and State in working out an acceptable bill truly demonstrates a unified congressional concern for those who have borne the burden of the society. The many older Americans deserve the gratitude of our generation and of those generations that have come behind us for the hard work they have done; yet, as we have seen in our recent hearings on both sides of the Congress, the lot of the older American is not one which we would like to idealize.

The Older American Act will be able to refocus the priorities of our older citizens for the Government to take action that is needed. The significant increases in moneys for the program and the new redirections show our commitment toward helping these citizens.

A few important changes in direction in this legislation are the creation of the Administration on Aging within the office of the Secretary, which I might add, was originally intended by the Congress when the administration was created.

The second is a general focal point of the research and development and special impact programs into those areas that need the immediate solutions that would most benefit the older citizens. In particular, I am thinking of the need of transportation. The Senate bill incorporated a proposal for a comprehensive study and survey of transportation problems for the elderly which was authored by Senator WILLIAMS and myself. This section is not just another study, but is a demonstration project combined with a study for the utilization of a variety of methods and techniques to solve the transportation problems of our older citizens. The emphasis of this section is on solutions. We have had enough studies and solutions are now needed.

I feel sure that the administration will pursue this vigorously and provide the needed mobility for the many older citizens who find themselves confined.

I would like to add one more thought of support for the nutrition programs of title VII of the bill which I was happy to cosponsor as a separate bill in the last session of the Congress. This is a significant step forward on the part of the Congress and the Government to help solve another major problem faced by older Americans.

Again, it is my hope that the administration will vigorously pursue this program to make sure that every older American has a balanced diet.

Thank you, Mr. President.

H.R. 15657—OLDER AMERICANS ACT AMENDMENTS

Mr. RANDOLPH. Mr. President, as a sponsor of one of its major titles; as one who was privileged to act as chairman of the Senate conferees in Senator EAGLETON'S necessary absence when the conference report was agreed to; and as one who has fought for the concerns of the aging for many years, I am gratified that agreement has been reached on H.R. 15657, the Comprehensive Older Americans Services Amendments of 1972.

The conference report includes as title X a measure which I have sponsored for several years—the Middle-Aged and Older Workers Training Act. I am most pleased that the conferees on the part of the House agreed to these provisions. I firmly believe they are absolutely necessary if we are to even begin to lift middle-aged and older workers out of the quagmire of long-term unemployment.

More than 1 million persons age 45 and older are now unemployed. This is a shocking increase of 73 percent since January 1969. The statistics on very long-term unemployment among this age group are even more alarming. The number of middle-aged and older workers out of work for 27 weeks or longer has increased by 352 percent since 1969.

The tide that has resulted in such human misery and poverty must be stopped, and stopped now. Even the figures I have recited are only the tip of the iceberg. They do not include hidden unemployment—the "dropouts" who are no longer seeking work. It is conservatively estimated that if such unemployment were included—as it should be—in the unemployment statistics, the number of middle-aged and older workers who are out of work would jump by at least 1 million persons.

Title X of the conference report, which I introduced last year as S. 1307, would begin to reverse this trend of human devastation.

I must add that the other aspects of H.R. 15657, already discussed in detail

by the able manager of this legislation in the Senate, are eminently worth while, and will, in accordance with the recommendations of the White House Conference on Aging, provide a new emphasis to serving the needs of America's older population.

I fully support the adoption of the conference report in the Senate, and urge its prompt enactment into law.

Mr. EAGLETON. Mr. President, I move that the Senate agree to the conference report.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Missouri.

The motion was agreed to.

RESEARCH ON AGING ACT OF 1972

Mr. EAGLETON. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on H.R. 14424.

The PRESIDING OFFICER (Mr. STAFFORD) laid before the Senate the amendment of the House of Representatives to the amendments of the Senate to the bill (H.R. 14424) to amend the Public Health Service Act to provide for the establishment of a National Institute of Aging, and for other purposes, which was, in lieu of the matter inserted by the amendment of the Senate, insert:

SHORT TITLE

SECTION 1. This Act may be cited as the "Research on Aging Act of 1972".

FINDINGS AND DECLARATION OF PURPOSE

SEC. 2. The Congress hereby finds and declares—

(1) that the study of the aging process, the one biological condition common to all, has not received research support commensurate with its effects on the lives of every individual;

(2) that, in addition to the physical infirmities resulting from advanced age, the economic, social, and psychological factors associated with aging operate to exclude millions of older Americans from the full life and the place in our society to which their years of service and experience entitle them;

(3) that recent research efforts point the way toward alleviation of the problems of old age by extending the healthy middle years of life;

(4) that there is no American institution that has undertaken, or is now capable of undertaking, comprehensive systematic and intensive studies of the biomedical and behavioral aspects of aging and the related training of necessary personnel;

(5) that the establishment of a National Institute on Aging within the National Institutes of Health will meet the need for such an institution.

SEC. 3. Title IV of the Public Health Service Act is amended by adding at the end thereof the following new part:

"PART G—NATIONAL INSTITUTE ON AGING

"ESTABLISHMENT OF NATIONAL INSTITUTE ON AGING

"SEC. 461. The Secretary shall establish in the Public Health Service an institute to be known as the National Institute on Aging (hereinafter in this part referred to as the 'Institute') for the conduct and support of biomedical, social, and behavioral research and training relating to the aging process and the diseases and other special problems and needs of the aged.

"NATIONAL ADVISORY COUNCIL ON AGING

"SEC. 462. (a) The Secretary shall establish a National Advisory Council on Aging to advise, consult with, and make recommendations to him on programs relating to the aged which are administered by him and on those matters which relate to the Institute.

"(b) The provisions relating to the composition, terms of office of members, and reappointment of members of advisory councils under section 432(a) shall be applicable to the Advisory Council established under this section, except that the Secretary may include on such Advisory Council such additional ex officio members as he deems necessary. The Secretary shall appoint to the Council leading medical or scientific authorities skilled in aspects of the biological and the behavioral sciences related to aging.

"(c) Upon appointment of such Advisory Council, it shall assume all, or such part as the Secretary may specify, of the duties, functions, and powers of the National Advisory Health Council relating to programs for the aged with which the Advisory Council established under this part is concerned and such portion as the Secretary may specify of the duties, functions, and powers of any other advisory council established under this Act relating to programs for the aged.

"FUNCTIONS

"SEC. 463. (a) The Secretary shall, through the Institute, carry out the purposes of section 301 with respect to research, investigations, experiments, demonstrations, and studies related to the aging process and the diseases and other special problems and needs of the aged, except that the Director of the National Institutes of Health shall determine the area in which and the extent to which he will carry out such activities in furtherance of the purposes of section 301 through the Institute or another institute established by or under other provisions of this Act, or both of them, when both such institutes have functions with respect to the same subject matter, and shall be responsible for coordinating such activities so as to avoid unproductive and unnecessary overlap and duplication of such functions. The Secretary may also provide training and instruction and establish traineeships and fellowships, in the Institute and elsewhere, in matters relating to study an investigation of the aging process and the diseases and other special problems and needs of the aged. The Secretary may provide trainees and fellows participating in such training and instruction or in such traineeships and fellowships with such stipends and allowances (including travel and subsistence expenses) as he deems necessary, and, in addition, provide for such training, instruction, and traineeships and for such fellowships through grants to public or other nonprofit institutions. In carrying out his health manpower training responsibilities under the Public Health Service Act or any other Act, the Secretary shall take appropriate steps to insure the education and training of adequate numbers of allied health, nursing, and paramedical personnel in the field of health care for the aged.

"(b) The Secretary shall, through the Institute, conduct scientific studies to measure the impact on the biological, medical, and psychological aspects of aging of all programs and activities assisted or conducted by the Department of Health, Education, and Welfare.

"(c) The Secretary, through the Institute, shall carry out public information and education programs designed to disseminate as widely as possible the findings of Institute sponsored and other relevant aging research and studies, and other information about the process of aging which may assist elderly and near-elderly persons in dealing with, and all Americans in understanding, the problems and processes associated with growing older.

"SEC. 464. (a) The Secretary, in consultation with the Institute (acting through the Council) and such other appropriate advisory bodies as he may establish, shall within one year after the effective date of this section develop a plan for an aging research program designed to coordinate and promote research into the biological, medical, psychological, social, educational, and economic aspects of aging. Such program shall be carried out, as to research involving the functions of the Institute, primarily through the Institute, and as to other research shall be carried out through any other institute established by or under other provisions of this Act or through any appropriate agency or other organizational unit within the Department of Health, Education, and Welfare.

"(b) The plan required by subsection (a) of this section shall be transmitted to the Congress and the President and shall set forth the staffing and funding requirements to carry out the program contained therein."

SEC. 2. The Community Mental Health Centers Act is amended by adding at the end thereof the following new part:

"PART G—MENTAL HEALTH OF THE AGED

"GRANTS FOR FACILITIES AND STAFFING

"SEC. 281. (a) Grants may be made to public or nonprofit private agencies and organizations (1) to assist them in meeting the costs of construction of facilities to provide mental health services for the aged within the States, and (2) to assist them in meeting a portion of the costs (determined pursuant to regulations of the Secretary) of compensation of professional and technical personnel for the operation of a facility for mental health of the aged constructed with a grant made under part A of this section or for the operation of new services for mental health of the aged in an existing facility.

"(b)(1) Grants may be made under this section only with respect to (A) facilities which are part of or affiliated with a community mental health center providing at least those essential services which are prescribed by the Secretary, or (B) where there is no such center serving the community in which such facilities are to be situated, facilities with respect to which satisfactory provision (as determined by the Secretary) has been made for appropriate utilization of existing community resources needed for an adequate program of prevention and treatment of mental health problems of the aged.

"(2) No grant shall be made under this section with respect to any facility unless the applicant for such grant provides assurances satisfactory to the Secretary that such facility will make available a full range of treatment, liaison, and followup services (as prescribed by the Secretary) for the aged in the service area of such facility who need such services, and will, when so requested, provide consultation and education for personnel of other community agencies serving the aged in such area.

"(3) The grant program for construction of facilities authorized by subsection (a) shall be carried out consistently with the grant program under part A, except that the amount of any such grant with respect to any project shall be such percentage of the cost thereof, but not in excess of 66⅔ per centum (or 90 per centum in the case of a facility providing services in an area designated by the Secretary as an urban or rural poverty area), as the Secretary may determine.

"(c) Grants made under this section for costs of compensation of professional and technical personnel may not exceed the percentages of such costs, and may be made only for the periods, prescribed for grants for such costs under section 242.

"(d)(1) There are authorized to be appropriated for the fiscal year ending June 30, 1973, (A) $5,000,000 for grants under this section for construction, and (B) $15,000,000 for initial grants under this section for com-

pensation of professional and technical personnel and for training and evaluation grants under section 282.

"(2) There are authorized to be appropriated for the fiscal year ending June 30, 1974, and for each of the next six fiscal years such sums as may be necessary to continue to make grants with respect to any project under this section for which an initial staffing grant was made from appropriations under paragraph (1)(B) for the fiscal year ending June 30, 1973.

"TRAINING AND EVALUATION

"SEC. 282. The Secretary is authorized, during the period beginning July 1, 1972, and ending with the close of June 30, 1973, to make grants to public or nonprofit private agencies or organizations to cover part or all of the cost of (1) developing specialized training programs or materials relating to the provision of services for the mental health of the aged, or developing inservice training or short-term or refresher courses with respect to the provision of such services; (2) training personnel to operate, supervise, and administer such services; and (3) conducting surveys and field trials to evaluate the adequacy of the programs for the mental health of the aged within the United States with a view to determining ways and means of improving, extending, and expanding such programs."

Mr. EAGLETON. Mr. President, the adoption of this legislation, H.R. 14424, to create a National Institute on Aging, will fill a long recognized but long unmet need to greatly expand biological and behavioral research into the aging process. As the principal sponsor of this legislation, and as chairman of the Subcommittee on Aging of the Senate Committee on Labor and Public Welfare, which developed and refined the bill, I am pleased to recommend it to the Senate.

Basic research in the process of aging is widely recognized in the scientific community as an idea whose time has come. In testimony and other materials submitted to the committee, respected authorities have stated that scientific knowledge regarding aging and degenerative diseases has reached a point where major breakthroughs are possible. Critical, but still unanswered, questions about growing old present persuasive arguments for developing an expanded, coordinated research program in aging.

That aging is a major biological process is undisputed. Moreover, aging underlies our increased susceptibility with advanced years to cancer, heart attacks, and other life-terminating events. The aging process determines the maximum lifespan of a species; thus very few humans live beyond 100 years and very few dogs live beyond 20 years. Dogs die of the same spectrum of diseases as does man but the rate at which these diseases develop and run their course in dogs is about five times as fast as in man since the lifespan of dogs is about one-fifth that of man.

These facts have particular significance when viewed in relationship to the extraordinary growth of our Nation's elderly population and the corresponding increase in health costs associated with care and treatment for the elderly. Today there are more than 20 million Americans aged 65 or older—nearly seven times as many as at the beginning of this century—and the older population is increasing at a much faster rate than the under-65 population. Between 1960 and 1970, the over-65 population showed a rise of 21.1 percent while the under-65 population grew 12.5 percent. Within the next 30 years, we can expect nearly 45 million persons to reach their 65th birthday. In this population group, health problems tend to be the rule, not the exception. Eighty percent of those aged 65 or older have a chronic health problem and 40 percent are impaired in their activities because of a health condition. They are twice as likely to be hospitalized as younger persons and, once hospitalized, their average stay is twice as long. As much as two-thirds of our total expenditures for health care can be attributed to treating older persons, according to some estimates.

Despite these facts, the level of federally supported research into phenomena associated with aging has been extremely low. As a nation, we recognize the importance of research—but unfortunately not in the field of aging. The amount expressly devoted to aging research in the National Institutes of Health represents only about one-tenth of 1 percent of Federal expenditures in health programs for the elderly. In sharp contrast, many businesses or governmental units may earmark as much as 5 to 10 percent of their available funds for research.

Not only is gerontological research funded at low levels, it is fragmented among the departments and agencies of the Federal Government. This diffusion of responsibility has resulted in duplication of efforts, lack of coordination, and gaps in our overall approach. Most importantly, the result has been a severe lack of systematic research in aging.

The focal point for aging research in the National Institutes of Health—NIH—is the National Institute of Child Health and Human Development—NICHD. This Institute was authorized by legislation enacted in 1962 and, as its programs have evolved, major emphasis has been given to research in child health, human reproduction, and fertility control. Aging research constitutes only about 10 percent of its budget and such increases in funding for aging research as have occurred in recent years have been achieved largely through the insistence of the Appropriations Committees of the Senate and the House of Representatives. In 1968, NICHD established the Gerontology Research Center for intramural research in aging. This center, located in Baltimore, was designed to be the largest center for aging research in the world, yet it has consistently operated at 50 percent, or less, of its intended capacity. The failure to staff this center on an adequate basis and to conduct the vigorous intramural program of gerontological research for which it was designed is reflective of the relatively low priority accorded this kind of research within the present organizational structure at the National Institutes of Health.

The creation of a National Institute of Aging, as provided in H.R. 14424, is an effort to reverse this trend. Expansion of the aging research and training program within NICHD cannot reasonably be expected to take place at the expense of the other programs which have dominated the activities of the Institute since its inception. Nor can it be anticipated that such expansion will occur as a result of overall NICHD budget increases, for the funding history shows the aging program remaining relatively static in comparison to the large increases received by other NICHD programs. Indeed, the budget request for fiscal year 1972 showed a substantial increase for the Institute as a whole accompanied by a cutback for the aging program.

These are the considerations that led the delegates to the 1971 White House Conference on Aging to recommend the establishment of a separate institute to conduct research and training in aging. Significantly, a similar recommendation made by the 1961 White House Conference on Aging was sought to be answered by including aging research and training within the responsibilities assigned to NICHD when it was created in 1962. The reiteration of this recommendation by the most recent White House conference points up the inadequacies of the aging program as conducted by NICHD.

Mr. President, both the Senate and the House have responded to these recommendations by enacting separate versions of the bill to establish a National Institute on Aging. The substantive differences in the House and Senate versions are as follows:

First. The Senate amendment spelled out in some detail the structure and membership of an advisory council to the Institute while the House bill provided for such an advisory council in general terms.

Second. The House bill emphasized biomedical research while the Senate bill provided for social and behavioral research as well.

Third. The Senate amendment called for the development of an aging research plan which was not contained in the House bill.

Fourth. The House bill contained an amendment to the Community Mental Health Centers program to establish a special emphasis program for mental health services for the elderly. While the Senate amendment did not contain this provision, a nearly identical section was contained as a part of S. 3716, which passed the Senate earlier this session but which was not passed by the House.

Given the limited scope of the differences between the House and Senate versions, we have concluded that these differences can be appropriately disposed of by amending the bill rather than by convening a conference committee. Accordingly the House last week adopted an amendment to the Senate amendment and it is this which is presently before the Senate.

The House-passed amendment disposes of our differences in the following manner:

First. The advisory committee structure is retained as provided in the original House bill in accordance with suggestions made by the administration. However, provision is made for representation on the advisory committee of

social scientists, along with biomedical scientists and public representatives.

Second. The Senate language on biomedical, social and behavioral research to be conducted by the new institute is retained by the amendment.

Third. The aging research plan provided in the Senate amendment is retained by the House amendment.

Fourth. The House amendment retains the provisions relating to Community Mental Health Centers programs for the elderly, inasmuch as this program has been passed by both Houses although in different bills.

In closing, Mr. President, I cannot let this opportunity pass without paying tribute to a very distinguished lady, Mrs. Florence Mahoney of Washington, D.C., whose intelligence, determination, and concern for the creation of a National Institute on Aging contributed in very large measure to the enactment of this legislation. Indeed, Mr. President, were it not contrary to the accepted practice, I would suggest that the new institute might appropriately be known as the Florence Mahoney Institute on Aging—her role has been of that great a significance. I am grateful to Mrs. Mahoney for the encouragement that she has given and the support she has mobilized on behalf of the establishment of this institute. While I did not presume to intrude on the prerogatives of the Secertary of Health, Education, and Welfare, I strongly commend Mrs. Mahoney to him with the hope that he may find her to be a suitable nominee for a position on the advisory council of the new institute.

Finally, Mr. President, I want to express my thanks and appreciation to the ranking majority member of the Subcommittee on Aging, the senior Senator from California (Mr. CRANSTON) and the ranking minority member, the junior Senator from Maryland (Mr. BEALL). Senator CRANSTON took a very active interest in this bill and was good enough to chair hearings on it in California. Senator BEALL, as is his practice with all matters being considered by our subcommittee, worked constructively and in a genuine spirit of cooperation to develop the best possible bill. Again, I am grateful to both these distinguished Senators and to all of the other members of our subcommittee who consistently contribute so much to our legislation.

Mr. BEALL. Mr. President, in recent decades, improved nutrition and improved medical services have dramatically extended the average life expectancy of Americans. It is interesting to note that there are, today, over 20 million Americans age 65 and over. This constitutes an almost sevenfold increase since the turn of the century. In addition, the over 65 segment of our population is growing almost twice as fast as is the rest of our society.

In 1962, the Congress responded to this situation by creating a National Institute of Child Health and Human Development containing the Center for Gerontological Research within the framework of the National Institutes of Health. This Institute conducts research into the developmental process as it affects all age groups within our society. Unfortunately, only approximately 11 percent of the budget of NICHD has been devoted to studying the aging process in the upper age ranges. On the contrary, approximately 58 percent of the budget has been devoted to the activities in the field of child health while an additional 31 percent has gone into various aspects of population research.

This unfortunate distribution of resources served to motivate the Subcommittee on Aging's deliberations with regard to the establishment of a separate National Institute on Aging. In addition to granting a greater degree of visibility and momentum to research in the field of the aging process, the establishment of a separate institute should serve to bring together the presently defused and fragmented research efforts which are presently scattered among a variety of Federal departments and agencies.

It is our desire, in the creation of the Institute on Aging, to produce a coherent and coordinated research program that is capable of systematically unlocking the secrets of the aging process. It is important to note, Mr. President, that the subcommittee did not envision the National Institute on Aging as an agency that would overlap or compete with existing institutes within NIH. We expect that the new Institute will primarily concern itself with the biomedical and behavioral aspects of the aging process, rather than undertake the indepth research into various chronic diseases, and so forth, which tend to afflict the aging.

In addition to establishing the National Institute on Aging, H.R. 14424 contains a provision authorizing a program of grants to public and nonprofit agencies and organizations for the construction and staffing of community mental health centers for senior citizens. Existing facilities, could also receive Federal assistance if they are prepared to provide a full range of treatment and the appropriate followup services.

Although senior citizens are served by the facilities established under the Community Mental Health Centers Act, the committee found that these centers did not provide the comprehensive specialized programs oriented toward the needs of older persons. Since older Americans unfortunately constitute the largest age group in our mental hospitals as well as being the victims of the highest incident rate of psychiatric disturbances, I believe that the time has come for special emphasis to be placed on delivering these vital medical services to those who most need it.

In closing, Mr. President, I would like to say that throughout my career in public service, I have been deeply concerned about the way our Government, on all levels, delivers services. A nation that can put men on the moon and explore the far reaches of space, that can conduct medical and scientific research on a scale and in depths unequalled in history, is the same nation that is often plagued by the unbelievable inability to render coherent and comprehensive services to people in need of them.

Earlier this year I introduced legislation that seeks, on a broader scale, to resolve some of the problems we are alluding to in this bill. My proposal to create an Institute of Health Care Delivery, which has subsequently been incorporated into S. 327, the health maintenance organization bill, is designed to conduct research on the techniques of delivering health care services so that our citizens can benefit from the truly remarkable work being done at public and private research centers throughout our Nation.

The substantive breakthroughs achieved at NIH and similar research centers cannot begin to benefit the American people until that data "filters down" to the operating level of health care delivery. In addition, such benefits are denied to many Americans because our presently inefficient delivery procedures result in prohibitively high costs for medical services.

Mr. President, I enthusiastically support the provisions contained in H.R. 14424, because I believe that the health and welfare of millions of older Americans will be, over a period of time, substantially improved as a result of the research conducted by the National Institute on Aging. In addition, I would hope that the community mental health provisions of this legislation will enable us to make necessary medical services available to those in need of it. I would urge my colleagues to give prompt and favorable action to this important legislation.

Mr. EAGLETON. Mr. President, I move that the Senate concur in the House amendment to the Senate amendment and that this bill be passed and sent to the President so that an early start can be made on the establishment of the National Institute on Aging.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Missouri.

The motion was agreed to.

AMENDMENT OF SECTION 389 OF THE REVISED STATUTES OF THE UNITED STATES

Mr. EAGLETON. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on H.R. 11773.

The PRESIDING OFFICER (Mr. STAFFORD) laid before the Senate a message from the House of Representatives announcing its disagreement to the amendments of the Senate to the bill (H.R. 11773) to amend section 389 of the Revised Statutes of the United States relating to the District of Columbia to exclude the personnel records, home addresses, and telephone numbers of the officers and members of the Metropolitan Police Department of the District of Columbia from the records open to public inspection, and requesting a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. EAGLETON. Mr. President, I move that the Senate insist upon its amendments.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Missouri.

The motion was agreed to.

ENVIRONMENTAL NOISE CONTROL ACT OF 1972

The Senate resumed the consideration of the bill (S. 3342) to amend title IV of the Clean Air Act, and for other purposes.

Mr. MUSKIE. Mr. President, I now ask for the yeas and nays on my amendment.

The yeas and nays were ordered.

Mr. BOGGS. Mr. President, I wish to express my strong support for S. 3342, the Environmental Noise Control Act of 1972. This legislation, I believe, represents a major first step toward a better environment through the elimination of excessive and unnecessary noise.

In a 20th century urban society, all of us are subjected to a continual onslaught of noise. This occurs literally from the time we wake up in the morning until we go to sleep at night—if we can get to sleep with the racket going on outside our window.

Consider a typical day. The average American is subjected to a wide range of household noises, electric shavers, dishwashers, garbage disposals, and dozens of other sources, including our neighbors' stereo set, or an overhead jet.

On our way to work, our nerves are jangled by the noise of car horns, trucks, construction equipment, buses, or subways, depending on where we live.

At our office or factory, we may be assaulted by noisy machinery and equipment.

After work, the cycle begins again, in reverse.

To an extent, we seem to be able to adapt to such noise—to an extent. The average citizen may well be totally unaware of the range of noises to which he is subjected during his day, and of the total effect of continual exposure to noise.

Yet, all of us are aware of the need for quiet.

When planning a vacation, do not we tend to choose a retreat, at least partially, because it is quiet?

Apart from the health problems associated with noise, American society seems to seek a quieter environment for its own sake. If we can cut down on the excessive and unnecessary noise, the quality of our lives will be improved.

Mr. President, the bill before us today is an important and valuable piece of legislation. I support it fully, because we need a coordinated, Federal program to control noise pollution.

By directing the Administrator of the Environmental Protection Agency to set standards on major noise sources based on the best available noise control technology, we will achieve a quieter environment based on a reasonable standard.

I know some members believe EPA should not have authority over aircraft noise. I disagree. I believe the legislation giving EPA the responsibility for setting the standard, with a Federal Aviation Administration veto based on safety, is the best course, because the agency responsible for protecting the environment can best make this decision.

But let us not assume that this is a problem which can be solved by governmental action alone. Private citizens can and must play a key role in quieting excess noise in our Nation.

We need to become more noise-conscious, more aware of the need for quiet. Private citizens, in the free marketplace, can do as much as for quieter environment as the Congress can accomplish by legislation. For example, it has been recognized that a family will often buy a noisy vacuum cleaner, in preference to a quieter one, because the family mistakenly equates noise with cleaning power. The same is true with motorcycles, cars, and other things we buy. If we understood that the noisier machine was not necessarily the best, and that the excessive noise harmed the buyer, we might choose the quieter machine.

Another contribution the private citizen can make is simply to complain more when irritated by noise. Noise is usually a byproduct of a necessary activity. And it is often a byproduct that goes unnoticed by its producer.

Citizen complaints could be effective, for example, as a way to encourage construction contractors to use quieter equipment, when available, and confine their activities to reasonable, daytime hours. Citizen activity can also prod State and local governments into writing the kind of effective antinoise use ordinances that continue to be permitted by this legislation.

Mr. President, peace and quiet is a universal, human need. A quieter world is a better world, a world in which the quality of our lives will be enhanced. I urge the passage of this legislation. While it is not a cure-all, it does represent a major step toward a better quality of life for all Americans.

I would like to explain some of the features of the bill.

In his last two environmental messages the President proposed comprehensive noise legislation. We have taken the major objectives of that legislation, strengthened and broadened many of its provisions, and incorporated a number of the concepts from the Clean Air Act Amendments of 1970 and the Federal Water Pollution Control Act Amendments of 1972 now before the President for signature, and produced what we think is a stronger, more enforceable, more workable bill. We have received assurances from William D. Ruckelshaus, the very able Administrator of the Environmental Protection Agency that he approves of S. 3342 and could accept the changes from the administration's proposed legislation.

Some of the major features of this legislation include, first, the application of the best available technology standard to major classes of manufactured equipment; second, the direction that all Federal agencies conduct their programs in a manner fully consistent with this legislation; third, that EPA develop basic criteria documents on noise and its control, that EPA publish reports identifying products or classes that are major sources of noise and provide information on techniques for controlling noise from such sources; fourth, that EPA set noise levels for interstate motor carriers, railroads, and aircraft, with the aircraft standards subject to Federal Aviation Administration review with regard to safety and technological feasibility; fifth, EPA would be authorized to make grants to State and local noise control program agencies; sixth, several new enforcement powers would be granted, including civil and criminal penalties, authority to enjoin violations and authority for citizens to compel the Administrator to perform nondiscretionary acts and to bring any person into compliance with the terms of the statute.

Some of the major problems with which the committee grappled included the appropriate standard to be set for new products manufactured in the United States, the respective roles of Federal, State, and local governments in control of noise, and the respective roles of the EPA and the FAA in the control of aircraft and airport noise.

Building upon the experience of the Clean Air Act and the Federal Water Pollution Control Act, the committee determined that rather than the vague and general test of protecting public health and welfare, it would be preferable to set standards for major sources of noise based on best available technology taking into account the cost of compliance. Witnesses before the committee indicated that in most cases the noise of major classes of products manufactured in the United States could be drastically reduced by the applicaton of existing technology and that the cost of applying such technology would be comparatively reasonable.

Therefore, it was determined that precise, uniform, and enforceable standards could best be obtained by requiring that EPA apply a technological standard rather than apply the health and welfare test directly. In this way, the public health and welfare would be best protected. The committee also chose to broaden the classes of equipment covered by these standards to include not only construction equipment, internal-combustion-powered equipment and transportation equipment as proposed by the administration, but also turbines and compressors, electrical and electronic equipment, and percussive and explosive equipment.

Testimony before the committee indicated that all of these classes are major sources of noise and should be regulated in a comprehensive manner. In a related area, the committee decided that the manufacturer should be required to warrant for the useful life of the equipment that the equipment will be free from defects in materials and workmanship that would cause it under normal use, operation, and maintenance to fail to meet the noise standard. Useful life as determined by the Administrator will have to take into account the range of uses to which such a product might be put. This is not a performance warranty but rather a defects warranty which takes into account the fact that the manufacturer might not be able to foresee all of the uses to which a product might conceivably be put.

The committee was concerned that the Federal, State and local roles in controlling noise be clearly delineated. Therefore it determined that Federal au-

thority should be primarily for product noise emission standards. State and local authority to establish and enforce limits of environmental noise through licensing, regulation, or restriction of the use, operation or movement of a product would be preserved. On the other hand, States and localities would be preempted from setting noise emission standards which would be enforceable directly or indirectly against the manufacturer.

The committee intended to prohibit burdens on interstate commerce from State and local product emission standards while recognizing that States and localities would have primary responsibility for setting and enforcing limits on environmental noise needed to protect the public health and welfare. This was thought appropriate in view of the very high standard—best available technology—upon which Federal product requirements would be based.

The excessive noise from aircraft operations, particularly in the major urban centers of the United States, has been identified in EPA hearings and other forums and publications as the major noise problem for many of our citizens. The committee was concerned that the legislation which we brought to the floor should address this problem in a more responsible fashion than the bill proposed by the administration and the bill H.R. 11021 which the House passed. These latter bills provide only for EPA to call into question the standards for aircraft set by the FAA if EPA believed they would not meet the public health and welfare standard.

Neither of these bills addressed the critical problem of airport environmental noise as distinguished from the more narrow question of aircraft noise emission. S. 3342 vests authority in EPA to set standards for aircraft and aircraft engines based on the same standard as that for other classes of equipment, that is, on the basis of the degree of noise reduction achievable by applying the best available demonstrated technology taking into account the cost of compliance.

Of course, the committee determined that the safety of aircraft operations must be protected at all cost. Therefore, it reserved to FAA the right to review and, if need be, veto EPA proposed aircraft standards if they do not insure the highest degree of safety of, if the technology is not available to implement the standards.

This division of authority will provide that the environmental regulation is vested in the agency most concerned with environmental protection, as in the Clean Air Act and the Federal Water Pollution Control Act, and in the provisions of this bill for control of noise emissions from other classes of products. At the same time the special requirements of air safety and the need to assure the application of technological expertise by FAA is preserved.

The committee had hoped to deal with the problem of cumulative noise exposure in areas surrounding airports. However, we felt that in view of the lack of information as to how to solve this problem, it would be preferable to authorize EPA to conduct a comprehensive 1-year study of the airport noise problem and report back to the Congress with its recommendations. S. 3342 will authorize such a study.

This legislation will call for a quantum increase in the noise control program of the Environmental Protection Agency. I am confident that Mr. Ruckelshaus will be able to convert the embryonic noise control program which was established pursuant to title IV of the Clean Air Act Amendments of 1970 into a full-fledged Federal noise control and abatement program working in close cooperation with the States and localities throughout the Nation.

EPA will for the first time be able to coordinate the various Federal noise control programs, including the program of the Department of Labor under the Occupational Safety and Health Act of 1970, the program of the Department of Transportation for control of noise from transportation sources, and the program of NASA for research on aircraft noise. This will require a greatly increased level of funding and staffing and therefore we have provided $18 million in fiscal year 1973, $36 million in fiscal year 1974, and $50 million in fiscal year 1975.

In addition, there is provided for State grants $5 million in fiscal year 1973, $7.5 million in fiscal year 1974, $10 million in fiscal year 1975; and for the low-emission product incentive purchases $1 million in fiscal year 1973, $2 million in fiscal year 1974 and $2 million in fiscal year 1975. In some cases EPA may have to call upon other agencies to detail personnel to help set up programs and specific legislative authority is provided in the bill for such transfers.

We recognize that in many cases the control of noise is a local responsibility. Therefore provisions are included in the bill for grant support to State and local agencies and for joint enforcement of the bill's provisions. The committee envisions the closest cooperation of EPA with State and local noise control agencies.

I wish to call attention to the very fine work of the distinguished Senator from California (Mr. TUNNEY) who has worked with great enthusiasm for this bill and particularly for the provisions to control aircraft noise. The distinguished Senator from Maine (Mr. MUSKIE), the chairman of the Subcommittee on Air and Water Pollution, provided the same great leadership which he has demonstrated in guiding legislation on air and water pollution control, solid wastes and other environmental problems. The distinguished Senator from West Virginia (Mr. RANDOLPH), and chairman of our committee was most helpful in assuring that our committee moved this important legislation, notwithstanding the severe press of other pending business.

I take particular pride in calling attention to the efforts of our distinguished colleague from Kentucky, Senator COOPER, who will soon retire and who has been instrumental in producing a strong and workable noise bill, just as he has worked untiringly for other environmental legislation. The distinguished Senators from Tennessee (Mr. BAKER), and from Vermont (Mr. STAFFORD) gave considerable time and attention to this bill and I wish to give credit to their valuable efforts.

Mr. TUNNEY. Mr. President, I am prepared to yield back the remainder of my time unless someone else wants to talk, after I use up 1 more minute of my time. Is the Senator from Maine agreeable to that?

Mr. MUSKIE. Mr. President, I will agree to not more than a minute if I might respond.

Mr. TUNNEY. Mr. President, I would like to point out once again something that I made clear in my opening remarks.

The bill presently contains section 501(c) which states:

Each Federal agency with regulatory authority over air commerce, aircraft, or airport operations, or aircraft noise emissions, including the Civil Aeronautics Board, the Federal Aviation Administration, and the Environmental Protection Agency, shall exercise such regulatory authority so as to reduce noise in airport environments and surrounding areas.

That relates to such things as flight and operational procedures, and any other means within present regulatory authority of relevant agencies. It relates to all those matters. No one can say the bill does not contain significant, strong language now so that these agencies must utilize their authority to produce a quieter airport environment. I do not want the record to appear that the committee and the manager of the bill are not in favor of reducing airport noise. This language will insure that all existent regulatory authority must be used.

Mr. MUSKIE. Mr. President, I may have to take more than a minute. There is no provision in the bill, unless I have been greatly mistaken during the course of committee work over a period of weeks, that authorizes noise standards or the issuance of criteria, or which provides for the development of plans for airport managers, or to require the FAA to provide technical assistance. I am not aware that it is there, but if it is we should have unanimous support for this amendment.

I gather the language the Senator refers to is on page 90 of the bill which reads, on line 17:

"(c) Each Federal agency with regulatory authority over air commerce, aircraft or airport operations, or aircraft noise emissions, including the Civil Aeronautics Board, the Federal Aviation Administration, and the Environmental Protection Agency, shall exercise such regulatory authority so as to reduce noise in airport environments and surrounding areas.

I suggest that on its own with such authority the FAA has not used such authority, and if this means what it says, the Senator should be glad to incorporate in the bill the procedures covered by the pending amendment.

With that, unless others wish to speak, I am prepared to yield back my time.

Mr. TUNNEY. I yield back the remainder of our time.

Mr. MUSKIE. I yield back my time.

The PRESIDING OFFICER. All time is yielded back. The question is on agree-

ing to the amendment of the Senator from Maine. 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 Florida (Mr. CHILES), the Senator from Louisiana (Mrs. EDWARDS), the Senator from Oklahoma (Mr. HARRIS), the Senator from Massachusetts (Mr. KENNEDY), 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 Virginia (Mr. SPONG) are necessarily absent.

I further announce that the Senator from Wyoming (Mr. McGEE) is absent on official business.

I further announce that, if present and voting, the Senator from Rhode Island (Mr. PELL) would vote "yea."

Mr. SCOTT. I announce that the Senator from Colorado (Mr. ALLOTT), the Senator from Tennessee (Mr. BAKER), the Senator from Nebraska (Mr. CURTIS), the Senator from Arizona (Mr. GOLDWATER), the Senator from Oregon (Mr. HATFIELD), the Senator from Iowa (Mr. MILLER), the Senator from South Carolina (Mr. THURMOND) and the Senator from Texas (Mr. TOWER) are necessarily absent.

The Senator from Kentucky (Mr. COOK) is absent on official business.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Arizona (Mr. FANNIN), and the Senator from Michigan (Mr. GRIFFIN) are detained on official business.

If present and voting, the Senator from Nebraska (Mr. CURTIS), the Senator from Iowa (Mr. MILLER), and the Senator from Texas (Mr. TOWER) would each vote "nay."

On this vote, the Senator from Oregon (Mr. HATFIELD) is paired with the Senator from South Carolina (Mr. THURMOND). If present and voting, the Senator from Oregon would vote "yea" and the Senator from South Carolina would vote "nay."

The result was announced—yeas 31, nays 47, as follows:

[No. 547 Leg.]

YEAS—31

Aiken	Fulbright	Packwood
Brock	Hart	Pastore
Brooke	Hartke	Percy
Buckley	Hughes	Proxmire
Burdick	Humphrey	Ribicoff
Case	Javits	Schweiker
Church	Mansfield	Smith
Cranston	Mondale	Stevenson
Dole	Montoya	Williams
Dominick	Muskie	
Eagleton	Nelson	

NAYS—47

Allen	Cannon	Inouye
Anderson	Cooper	Jackson
Bayh	Cotton	Jordan, N.C.
Beall	Eastland	Jordan, Idaho
Bellmon	Ervin	Long
Bennett	Fong	Magnuson
Bentsen	Gambrell	Mathias
Bible	Gravel	McClellan
Boggs	Gurney	Moss
Byrd, Harry F., Jr.	Hansen	Pearson
Byrd, Robert C.	Hollings	Randolph
	Hruska	Roth
Saxbe	Stennis	Talmadge
Scott	Stevens	Tunney
Sparkman	Symington	Weicker
Stafford	Taft	Young

NOT VOTING—22

Allott	Griffin	Miller
Baker	Harris	Mundt
Chiles	Hatfield	Pell
Cook	Kennedy	Spong
Curtis	McGee	Thurmond
Edwards	McGovern	Tower
Fannin	McIntyre	
Goldwater	Metcalf	

So Mr. MUSKIE's amendment was rejected.

Mr. RANDOLPH. Mr. President, noise is one of the most pervasive pollutants in our society. In our mechanized industries, transportation systems, and households, the level of noise to which the average citizen is exposed has increased to an astonishing level. Present trends indicate that the amount of environmental noise with which Americans must contend will double within 10 years.

At the present time as many as 44 million Americans have the comfort and serenity of their homes adversely affected by noise from aircraft or traffic, and 21 million more Americans are affected by construction-related noise. There may be as many as 40 million Americans whose exposure to noise constitutes a health hazard, with potential hearing impairment or other physiological and psychological effects. Not only is noise a serious problem of the workplace but it becomes increasingly difficult for individuals to find, in their home or place of recreation the quiet necessary to provide a recuperative period for mental processes or the delicate mechanisms of hearing.

Legislation to control levels of environmental noise is necessary now to check the rising crescendo of unwanted sound associated with our industrial society and to conserve the hearing and the mental peace of our citizens.

S. 3342, the Environmental Noise Control Act of 1972, as reported by the Committee on Public Works, provides a regulatory framework which will achieve effective control of this form of environmental degradation. Senator TUNNEY in his remarks has described the provisions of the bill in detail. I will emphasize to Members of the Senate several provisions which I think to be important.

First, the bill as reported by the committee addresses the problem of aircraft noise, a problem which our investigations indicated to be one of the most serious, yet one of the most difficult with which to deal. Under the present law, the Federal Aviation Administration is charged with the responsibility for establishing noise emission standards for all types of aircraft. At the same time, of course, the Federal Aviation Administration is required to fullfill its primary mission of facilitating safe and efficient air commerce.

In 1970, the Environmental Protection Agency was created to centralize Federal regulation of environmental problems. A major question which the committee faced in developing S. 3342 was the proper roles of the Federal Aviation Administration and the Environmental Protection Agency in controlling aircraft noise. It is clearly my understanding, and I believe the understanding of the committee, that the Federal Aviation Administration is the agency intended by the Congress to have primary responsibility for aircraft operations and safety in air commerce. The Nation's air commerce system must be operated, first of all, to assure safety for aircraft crews and passengers and for those on the ground, and second, to reduce the levels of aircraft noise to which the public is exposed, to the extent that aim is consistent with the highest degree of safety in air commerce.

Reflecting this understanding, the bill reported by the committee provides that standards for noise emissions from aircraft which manufacturers of aircraft and air carriers must attain, would be established on the basis of a joint determination by the Administrators of the Federal Aviation Administration and the Environmental Protection Agency as to the availability of demonstrated control technology and the reasonableness of compliance costs. However, air safety is the paramount concern, and the Administrator of the Federal Aviation Administration must determine that any proposed standards are consistent with the highest degree of safety in air commerce before such standards could be promulgated.

The question of regulating community noise around airports was discussed by the committee. However, it was the judgment of the committee that too little is known about the measurement of noise levels around airports and their effects on health or welfare to justify at this time any regulation of aircraft operations based on levels of noise exposure in the vicinity of airports. Instead, S. 3342 provides for a 1-year study by the Environmental Protection Agency of the implications of identifying and achieving levels of cumulative noise exposures around airports. The study also includes the retrofitting or phaseout of existing aircraft and any additional aircraft noise control measures which might be available to airport operators and local governments. The results and recommendations of this study will form a sound base of information for any legislation in this area in the future.

Another issue of importance in this legislation is the question of the roles State and local governments will play in controlling noise emissions after Federal emission standards have been established. The committee received extensive testimony that present standards were controlled by a variety of State and local jurisdictions, producing a situation of conflict and chaos for national manufacturers of such products as vehicles or construction equipment. This situation is placing an intolerable burden on interstate commerce as manufacturers strain to meet conflicting standards or are forced out of some local markets. S. 3342 responds to this problem by providing that once effective noise control standards have been established for any product by the Federal Government, State and local governments are preempted from setting noise emission standards applicable to that product. The intention of the committee is to relieve manufac-

turers from the burden of meeting conflicting standards, so long as there are effective Federal regulations, while preserving the power of State and local governments to deal with all sources of noise in the hands of their users. Thus, limitations on uses may be imposed but no State or local emission standards have products covered by Federal standards.

I also bring to the attention of the Senate the provisions in title V of S. 3342, which establishes a regulatory framework for noise from interstate trucks and buses and the operations of railroads. Here, as well as in the area of product noise emission standards, the transportation industry is faced with the prospect of conflicting noise control regulations in every jurisdiction along their routes. It is completely inappropriate for interstate carriers or interstate transportation to be burdened in this way. The committee met the need for active legislation on moving noise sources by requiring controls on noise from all interstate trucks and buses and railroads, including existing equipment which would not otherwise be subject to product noise emission standards under title IV and the patterns of operations of such carriers. After the effective date of an adequate Federal regulation program, the authority of State and local governments to regulate noise from interstate trucks and buses or trains is completely preempted, except where the Administrator determines it would be necessitated by special local conditions or in no conflict with the Federal requirements.

During the consideration of this bill, I received extensive correspondence on the subject of the warranty required by section 408(d). This warranty, similar to one now in effect for other vehicles under the Clean Air Act, requires manufacturers to warrant that defects in maintenance and workmanship will not cause a new product subject to noise emission standards, under normal uses and maintenance, to fail to conform to those standards under its useful life. The committee, recognizing that useful life will vary substantially for any given product depending upon the uses to which it is put and many other factors, modified the warranty provisions to require the Administrator to take into account the range of uses to which a product might be put as he establishes its useful life. It is the intention of the committee to make the manufacturers liable only for those increases in noise emission which were within his control in the manufacturing process. The user must bear the burden of operating and maintaining the product in a normal way if he wishes to be protected by the warranty on noise emissions.

Mr. President, there have been sporadic efforts by State and local governments to control the noise problem, and recent activity at those levels of government have given a further spur to Federal legislation. In 1970, the Committee on Public Works authored title IV of the Clean Air Act, establishing an Office of Noise Abatement and Control in the Environmental Protection Agency and launching the study which has culminated in this legislation. This bill will be a valuable tool in reducing the noise in our cities and our countryside and I urge its passage by the Senate.

Mr. PEARSON. Mr. President, one of the congressional leaders in efforts to control noise pollution is the distinguished senior Senator from Oregon (Mr. HATFIELD). Since coming to the Senate in 1967, he has been in the forefront of efforts to educate the public about this hazard, and to see that meaningful efforts to control unwanted noise are pursued by the Congress.

Senator HATFIELD hoped to be here on the Senate floor today to participate in this debate, but is in Oregon and unable to be here.

Because of his prominence in this effort, I would like to ask unanimous consent that a copy of Senator HATFIELD's major address to the Noise Abatement Council of America on October 8, 1969; his floor remarks in introducing the Noise Abatement Act of 1970 on November 24, 1970; his opening statement at hearings he chaired on the Noise Control Act of 1971—legislation he sponsored—on June 28, 1971, and his remarks and those of Senator HART in introducing strengthening amendments to that bill on June 21, 1971 all might appear at this point in the RECORD.

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

[From the CONGRESSIONAL RECORD, Oct. 9, 1969]

NOISE, THE GATHERING CRISIS

(Speech by Senator MARK O. HATFIELD, before the Noise Abatement Council of America, October 8, 1969)

There is a bumper sticker now circulating which says: "Eliminate Pollution Before Pollution Eliminates You." Immediately we will think of studies which threaten a lack of water by 1980 and conjure up the words of California scientists stating that within 50 years their state will be uninhabitable for any form of life. Or we hold our breath for a moment remembering that 142 million tons of smoke and noxious fumes are dumped into the atmosphere each year. Momentarily we feel brief panic and then for one reason or another, we forget the threatening words of the bumper sticker and go about our daily duties in a comfortable shield of self-deception and false security. Unfortunately such an attitude has now brought us to a situation in which the rapidly deteriorating quality of our environment is the most hazardous challenge to not only our health and well-being but to our very lives and those of our children and grandchildren.

Environmental pollution may not pose the immediate destruction that nuclear war does, but I might remind you that the effects are the same and just as lasting. And I might remind you that destruction at the hands of our environment is as immediate as your and my lifetime. And finally, I might remind you that lack of inhabitable land, lack of food, lack of good water to drink and good air to breath are the very conditions under which men become desperate and resort to any and all means to preserve their survival. It is with these thoughts in mind that I state my firm conviction that pollution—all forms of pollution: air, water, and noise pollution, overpopulation, land and soil pollution—is the most challenging and the most crucial problem facing the man of the 20th century. And it is with these thoughts in mind that I firmly believe that if we do not meet this problem with all the creativity and ingenuity of our age, then within a very short time nothing else will matter, for there will be nothing else to worry about.

Your concern with environmental pollution has brought you here today in order to form an effective citizen's group to combat this onslaught on our planet before it is indeed too late. Your special concern is with the assault of noise pollution on our society and in your recognition of noise as a pollutant you have established yourselves as somewhat pioneers in combating the effects of noise on our society. It was therefore an honor to be invited to speak at this organizational meeting of the Noise Abatement Council of America. Had such groups been instrumental in educating the public to appreciate the inevitable results of uncontrolled air and water pollution and in effecting remedial action to combat these problems even ten years ago then we would not be faced with the present national crisis in these areas. Today let us pledge ourselves to the task of preventing noise becoming another uncontrolled threat to our existence.

The effects of noise, although long a problem, have only begun to receive the well-founded concerns of government, health, industrial and community organizations. We are already far behind the rest of the world in appreciating the scope of the problem. For our backwardness in the field of noise abatement the United States is now the noisiest country on this planet, and frankly, I hate to think that we are now carrying this lack of respect for civilized standards to other planetary bodies. Basically, noise pollution is reaching crisis proportions in the United States and I think that it is time that all of us wake up to this fact.

We should be concerned with noise as a problem because for over a century noise exposure of sufficient intensity and duration has been recognized to produce sensorineural hearing loss. But in spite of this knowledge, an over-exposure to excessive noise is the major cause of hearing loss in the United States today. In fact it is estimated that 10–20 million people in the United States have some degree of hearing impairment.

Everyone realizes that if he is exposed to a very loud noise such as an explosion he may very likely wind up deaf—at least temporarily. What is not so apparent is that the effect of noise is cumulative; it produces as Dr. Leo Beranek, whose work in acoustics is international in scope, an "acoustic fatigue". Repeated moderate noise builds up to produce the same effect as would a single loud noise. And even more important, is the fact that repeated noise is the only type, short of a shattering explosion, that produces *permanent* hearing loss. The importance of this is readily seen when one is considering the harmful effects of exposure to daily occupational noise.

Another matter of some concern is that the noise level of the United States is increasing at an astonishing rate. Over the past 25 years the average increase in noise level has been at one decibel per year. When one considers that damage to the ears can occur at sustained exposure to the ranges around 85 decibels and over, and given our present noise levels, it will not be too many years before noise levels in the United States became lethal. To quote Dr. Vern O. Knudsen, physicist and former Chancellor of the University of California. "If the noise we make keeps increasing at the present rate, it will be as deadly in thirty years in some of our downtown cities as were the ancient Chinese tortures for executing condemned prisoners."

We know of course that the most pronounced physical effect of noise is damage to the ear. Exposure to intense noise over

varying durations causes partial and in some cases permanent hearing loss due to actual cell damage in the organ of the Corti located within the cochlea of the inner ear.

But noise has much farther reaching effects than just hearing damage. As Paul E. Sabine stated even back as far as the March 1944 issue of the American Journal of Public Health: "There is a wealth of reliable data from medical sources in support of the statement that sustained exposure to noise is a contributing factor in impaired hearing, chronic fatigue that lowers bodily resistance, neurasthenia, increased blood pressure, and decreased working and mental efficiency and that noise should rightfully be classified as an occupational hazard along with gases, fumes, dust, toxic liquids, and bacteria." To put this into, if nothing else, economic perspective, the total cost to industry in compensation payments, lost production, and decreased efficiency due to noise is estimated at well over $4 billion per year. In relation to business a World Health Organization report states that before 1939 office noise was costing United States business $2 million per day through inefficient work. Today that figure is $4 million. The psychological and physiological effects of noise are difficult to assess but the correlation between noise and such things as sleep disturbances, hypertension due to the consistant response of hormonal and neurological mechanisms to noise stress, interference with basic communication, the loss in efficient performance and even damage to property must be counted as a very real and a very enormous threat to our well-being not to mention the economic repercussions.

The effects of noise cannot be fully appreciated until we have more thorough studies in the field. One effect which needs to be especially explored by sociologists and criminologists is referred to in a recent Fortune magazine article. As related by Fortune: In the Bronx borough of New York City one evening last spring, four boys were at play, shouting and racing in and out of an apartment building. Suddenly from a second-floor window came the crack of a pistol. One of the boys spawled dead on the pavement. The victim happened to be Roy Innis, Jr., thirteen, son of a prominent Negro leader, but there was no political implication in the tragedy. The killer, also a Negro, confessed to police that he was a nightworker who had lost control of himself because the noise from the boys prevented him from sleeping. This incident is extreme but worthy of our careful attention due to the implications it has on the worsening human problems which we are now experiencing in our cities.

Until recently the most authoritative voices about noise have come from within the industrial occupations due to the mere fact that noise has been a problem much longer in this area than in any other. Industrial management has become increasingly concerned with the adverse effects of noise on those persons who work under constant exposure to intense levels of noise—and I might add with due reason.

According to Dr. Glorig, director of the Callier Hearing and Speech Center in Dallas, Texas: "Industrial noise is now the most important single cause of hearing loss." Despite numerous research, training and regulatory programs now underway in some industries and in various Federal agencies, and despite the great strides accomplished in responsible noise abatement efforts in the occupational fields, there is still need for a vast amount of education in the field of occupational noise. For instance, B. F. Goodrich estimates that the total market for acoustical goods and products will reach $875 million by 1970, which if one takes into account all that this comprises is a very paltry sum.

Another example of the need for increased emphasis placed on occupational noise is the fact that permanent hearing loss caused by excessive exposure to noise is now a recognized occupation hazard and is compensable in only 35 states. I am always reminded of the basic lack of awareness in this field by an unfortunately true story which occurred when one of my aids was touring a textile factory in the South. When he commented on the high level of noise to which the workers were subjected, the manager hastened to assure him that immediate efforts were being made to correct the unpleasant conditions. "Next week the factory is playing country-western music over the loud-speaker at a level which will block out the noise of the factory."

The noise of our industries is put into further perspective when one considers them in light of "safe" noise levels. There are differences of opinion about permissible occupational noise levels. The American Academy of Ophthalmology and Otolaryngology states that our present knowledge of the relation of noise exposure and hearing loss is much too limited to propose safe amounts of exposure. However, the Academy recommends noise-exposure control and tests of hearing if there is habitual exposure to continuous noise at 85 decibels at a frequency of 300–1200 cycles per second. Noise is measured in a dimensionless unit called the decibel which is used to describe the levels of acoustical pressure, power and intensity.

The decibel expresses a logarithmic ratio between two sounds. In other words, the difference between a noise with a decibel rating of 60 and that with a rating of 70 is a relative increase of 10 times the lower level. The frequency of noise expressed in cycles per second is useful for rating noise hazards since some frequencies are more likely to cause hearing damage than others, with high pitched sounds more annoying than low pitched sounds. The British Medical Society recommends hearing conservation measures when noise exceeds 85 decibels in the 250-4000 cycles per second range.

The United States Air Force recommends ear defenders when personnel are exposed to 85 decibels in the 300–4800 frequency range. The American Standards Association has suggested permissible daily quotas of exposure to noise which they suggest should protect the worker from hearing loss. Over an eight hour working day they suggest a limit of 85 decibels at any frequency range above 700 cycles per second. In the Walsh-Healey Public Contracts Act the Federal government has adopted 90 decibels at any frequency range as a permissible safe occupational noise level.

Only recently has there been concern about the entire realm of urban and community noise although millions of Americans are affected each day by the repercussions of this type of noise. As Dougherty and Welsh commented in "Community Noise and Hearing Loss":

"The saving quality heretofore has been that community noise has been a short-term exposure as compared to an 8 hour day period in industry. As the power use of both home and street increase, steps must be taken to limit the noise output. Otherwise, total timed exposure will exceed industrial standards that actually rely on regular audiograms to prevent severe hearing loss."

Indeed the din in the cities at times far exceeds the noise levels considered "safe" for an occupational situation. A noise level of 100 decibels was once recorded on the Avenue of the Americas in New York City where the Transit Authority was building the extension of the 6th Avenue subway. Construction is perhaps the most irritating source of noise to the urbanite and the problem is intensified when once we realize that there are virtually no legal controls on the amount of noise that can emanate from a construction site. In the absence of any forms of control the consequences are logical—existing knowledge for noise control is not even applied.

Noise control costs money, and it is not reasonable to ask sympathetic construction firms to invest in noise control only to let unsympathetic firms underbid them on jobs by avoiding the noise control costs. Air compressors, pneumatic drills, power saws, concrete mixers and other machines involved in the construction or demolition of buildings are permitted in some urban areas between 7 am and 6 pm, six days a week and at night with special permit. Combined with the poor soundproofing in modern apartments, the sounds of congested traffic which can reach upwards of 90 decibels, and the multitudinous other sounds of "civilized living", the city dweller is caught in the midst of a "cacophonic catastrophe".

Europe and such countries as Russia and Japan have for some time had strictly enforced noise abatement laws, including zoning and construction measures and national councils like the Swiss Anti-Noise Commission which deals with the basic medical, acoustic and technical questions of road, rail and water traffic: aircraft noise, noise in industry, building construction, homes, etc.: and legal questions.

The United States by contrast has few laws regarding noise abatement and even those that it has are barely enforced. For example, New York City is one of the cities that has strict noise laws against horn-blowing and even has a legal noise limit for the city of 88 decibels at 150 feet. If you have ever been to New York, I am sure that these laws will come as surprising news.

The final assault on the nation's well-being due to noise and the one which brings you here today is that of aircraft noise. Of all the fields of noise abatement that of air transportation has received the most attention by industry and government due to the obvious severity of the problem. The possible adverse effects of aircraft noise have been recognized for several years. In 1952 the Dolittle Report pointed out that "positive efforts should be continued by both government and industry to reduce or control aircraft noise nuisance to people on the ground and that substantial reduction of such noise is practicable."

Such firms as Pratt and Whitney, General Electric and Boeing have been involved for some years in the research and development of a "quiet" engine. According to sources within the field we are five years away from a prototype which when operational will only reduce the perceived noise level at take-off and landing by 10 percent. The problem in this area is not so much a matter of money as lack of available technology. The sound of a jet taking off is approximately 130 decibels which is also the estimated maximum noise bearable to human ears. A reduction of 10% will bearly scratch the surface of the noise problem in this area unless there is a major technological breakthrough.

Therefore in combating aircraft noise we also need to pursue abatement efforts in the aspects of aircraft operations and apply methods of compatible landuse around the airports. In the realm of flight patterns, airport design and placement, guaranteed buffer zones, adequate soundproofing of buildings in and around airports, extension of runways, legal controls, and so on, joint action will have to be taken by the Federal government, the airlines, and the community. With over 98% of our airports owned by some level of state government, it will be primarily up to the local government and the airport operators of the same to effect noise abatement controls. In addition airport operators should share the responsibility of enforcing the new Federal Aviation Agency noise standards to be announced this month

and closely coordinating local efforts with such programs as the Aircraft Noise Alleviation Program established under the F.A.A. in 1961.

For examples of innovative noise control efforts I recommended such programs as that taken in the Los Angeles area in which community efforts and pilot programs have been established to abate noise at the Los Angeles International Airport. The Port of New York Authority has also carried out extensions costing several million dollars to the three runways at New York's Kennedy International Airport solely out of noise abatement considerations. Dulles International Airport in Washington is a good example of how zoning laws and design can be effectively employed to control noise levels emanating from aircraft.

But despite these examples, the fact remains that there is much left to do before you can successfully cope with aircraft noise. Your recognition of this fact has brought you here today. There are many questions which must be answered before actual work can even begin. The most important of these is funding of noise abatement efforts. Who is responsible? Should we ever obtain an operational "quiet" engine, the estimated cost of retrofitting our four engine commercial jets has been upwards of $300 million. This is perhaps the most touchy issue which will face you in your efforts to combat jet noise for the costs are formidable and the responsibility ill-defined.

Another problem of considerable concern is that of the sonic boom. Until recently the shock waves from the sonic boom was confined to occasional military flights scheduled to fly over unpopulated areas of the United States. However, since President Nixon's request for $96 million for the current fiscal year ending June 30, 1970 in order to finance the start of construction of two SST prototype aircraft it now appears that within the next 10 years we will be subjected to the sound of commercial sonic booms. I am opposed to the development of this aircraft. Aside from the obvious criticism of low cost-benefit considerations, I find it difficult to justify the vast noise disturbance of this aircraft in light of the small domestic value derived. The plane has no defense value, will cost the government a total of $1.29 billion, out of a total development cost of $1.51 billion, and its flights have been estimated to disturb 20 million groundlings every time the SST flies from coast to coast.

The repercussions of the noise problem have just begun to be understood and much has been done to alleviate the noise onslaught on our environment. For instance, New York City has a law requiring walls soundproof enough to reduce any airborne noise passing through by 45 decibels. Some construction companies have proved that buildings can be constructed quietly, by muffling blasting by special steel mesh blankets, welding instead of using the horrendous racket of riveting or bolting. New machines have been offered on the market which have a vast reduction in decibel rating over their old predecessors such as a new compressor which reduces the decibel level from 110 to 85 decibels and a new paving breaker that has had its sound reduced by ⅔.

New York, California, New Jersey, Minnesota, and other states have voted or have pending various legislation on noise abatement particularly in the realm of vehicular noise. Numerous local ordinances deal with specific noise problems of their area offering such things as prevention of transistor playing in public areas, zoning laws, etc. Some states have legislation which prohibits vehicles on its public highways that exceed certain established noise levels for that particular vehicle.

All of these are good beginnings but they cannot be assessed as anything more than just beginnings. What is needed are guaranteed standards for the man on the street, on his job, or in his home. In this category I would like to mention the Walsh-Healey Public Contracts Act which was signed into effect by Secretary of Labor Shultz on May 17, 1969. This Act provides for a limit of on-the-job noise levels at 90 decibels at any frequency. This regulation only applies to firms that have a $10,000 or better contract with the Federal government during the course of one year. The Walsh-Healey Act is a step in the right direction but again it is only a beginning. It only affects certain segments of workers and sets as a standard a noise level which is of debatable safety for an occupational level.

The real question at hand in the consideration of the noise level of our society is whether we are going to preserve the basic amenities of civilized life in the onslaught of technological advance.

As one noted figure in the noise abatement field, William H. Ferry, once said: "We have been neither interested nor successful in controlling noise because we have been neither interested nor successful in coping with technology."

Some 60 years ago Robert Koch, a bacteriologist and Nobel Laureate predicted: "The day will come when man will have to fight merciless noise as the worst enemy to his health."

That day is not so far away. The problem must be faced now before it is beyond our control. So I offer a few suggestions from my meager knowledge of the problem of what may prevent a continuation of the insult of noise on the future sensibilities of our nation. The problem of our "cacophonic republic" requires education, public awareness, increased research and greater application of economical acoustical materials, and a great deal of cooperation and coalition of effort between industry, business, government, health officials and community groups in order to find and carry out solutions to local, regional and national noise problems.

We need uniform noise control standards for all industrial and office workers . . . a Walsh-Healey Public Contracts Act of more encompassing and more rigorous standards.

We need to educate consumer demand that will call for quieter jobs and products in order to make it desirable for industry to compete to produce both at less cost.

We need the City Code level to handle such noise sources as garbage collection, construction, loud speakers, and motor vehicles. We need a regional approach to the research and development or programs directed toward the alleviation of the noises that plague particular areas of the United States. Lastly we need the full cooperation of the Federal government in assisting, coordinating and financing these efforts to provide a quieter environment.

As Dr. William H. Steward of the Public Health Service once stated: "Those things within man's power to control which impact upon an individual in a negative way, which infringe upon his integrity, and interrupt his pursuit of fulfillment, are hazards to the public health."

Noise can and must be controlled as a danger to the public health and economy, but above all else we must commit ourselves to the control of the noise in our society on the basis of civilized standards.

[From the CONGRESSIONAL RECORD, Nov. 24, 1970]

S. 4538—INTRODUCTION OF THE NOISE ABATEMENT ACT OF 1970

Mr. HATFIELD. Mr. President, as the country has become increasingly aware of the growing threat to our environment, attention has been primarily focused on air and water pollution. But there is another form of pollution which has been shown to be very harmful yet has received little public attention: noise.

Recently the Environmental Protection Agency was formed in which the various problems of our environment could be focused and possible solutions recommended. However, there was no provision made to deal with noise abatement with this agency. Today, consequently, I am introducing legislation which would create an Office of Noise Abatement within the Environmental Protection Agency. This office would help coordinate research on Federal, State, and local levels, provide grants for such research, help provide information regarding noise abatement to interested parties, and make recommendations regarding the promulgation of standards.

Mr. President, I am confident that the legislation I am introducing today will receive close scrutiny by the various Federal agencies which are already directing their attention to the problems of noise as well as the Environmental Protection Agency. And I am assured that we will be able to make an Office of Noise Abatement a reality through our mutual effort.

There is a bumper sticker now circulating which says:

"Eliminate Pollution Before Pollution Eliminates You."

Immediately we will think of studies which threaten a lack of water by 1980 and conjure up the words of California scientists stating that within 50 years their State will be uninhabitable for any form of life. Or we hold our breath for a moment remembering that 142 million tons of smoke and noxious fumes are dumped into the atmosphere each year. Momentarily we feel brief panic and then for one reason or another, we forget the threatening words of the bumper sticker and go about our daily duties in a comfortable shield of self-deception and false security. Unfortunately such an attitude has now brought us to a situation in which the rapidly deteriorating quality of our environment is the most hazardous challenge to not only our health and well-being but to our very lives and those of our children and grandchildren.

Environmental pollution may not pose the immediate destruction that nuclear war does, but I might remind you that the effects are the same and just as lasting. And I might remind you that destruction at the hands of our environment is as immediate as your and my lifetime. And finally, I might remind you that lack of inhabitable land, lack of food, lack of good water to drink and good air to breathe are the very conditions under which men become desparate and resort to any and all means to preserve their survival. It is with these thoughts in mind that I state my firm conviction that pollution—all forms of pollution: air, water, and noise pollution, overpopulation, land and soil pollution—is the most challenging and the most crucial problem facing the man of the 20th century. And it is with these thoughts in mind that I firmly believe that if we do not meet this problem with all the creativity and ingenuity of our age, then within a very short time nothing else will matter, for there will be nothing else to worry about.

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appreciate the inevitable results of uncontrolled air and water pollution and in affecting remedial action to combat these problems even 10 years ago then we would not be faced with the present national crisis in these areas. Today let us pledge ourselves to the task of preventing noise becoming another uncontrolled threat to our existence.

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We should be concerned with noise as a problem because for over a century noise exposure of sufficient intensity and duration has been recognized to produce sensorineural hearing loss. But in spite of this knowledge, an overexposure to excessive noise is the major cause of hearing loss in the United States today. In fact it is estimated that 10 to 20 million people in the United States have some degree of hearing impairment.

Everyone realizes that if he is exposed to a very loud noise such as an explosion he may very likely wind up deaf—at least temporarily. What is not so apparent is that the effect of noise is cumulative; it produces as Dr. Leo Beranek, whose work is acoustics is international in scope, an "acoustic fatigue." Repeated moderate noise builds up to produce the same effect as would a single loud noise. And even more important is the fact that repeated noise is the only type, short of a shattering explosion, that produces permanent hearing loss. The importance of this is readily seen when one is considering the harmful effects of exposure to daily occupational noise.

Another matter of some concern is that the noise level of the United States is increasing at an astonishing rate. Over the past 25 years the average increase in noise level has been at one decibel per year. When one considers that damage to the ears can occur at sustained exposure to the ranges around 85 decibels and over, and given our present noise levels, it will not be too many years before noise levels in the United States become lethal. To quote Dr. Vern O. Knudsen, physicist and former chancellor of the University of California:

"If the noise we make keeps increasing at the present rate, it will be as deadly in thirty years in some of our downtown cities as were the ancient Chinese tortures for executing condemned prisoners."

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"There is a wealth of reliable data from medical sources in support of the Statement that sustained exposure to noise is a contributing factor in impaired hearing, chronic fatigue that lowers bodily resistance, neurasthemia, increased blood pressure, and decreased working and mental efficiency and that noise should rightfully be classified as an occupational hazard along with gases, fumes, dust, toxic liquids, and bacteria."

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"Positive efforts should be continued by both government and industry to reduce or control aircraft noise nuisance to people on the ground and that substantial reduction of such noise is practicable."

Such firms as Pratt & Whitney, General Electric, and Boeing have been involved for some years in the research and development of a quiet engine. According to sources within the field, we are 5 years away from a prototype which when operational will only reduce the perceived noise level at takeoff and landing by 10 percent. The problem in this area is not so much a matter of money as lack of available technology. The sound of a jet talking off is approximately 130 decibels which is also the estimated maximum noise bearable to human ears. A reduction of 10 percent will barely scratch the surface of the noise problem in this area unless there is a major technological breakthrough.

Therefore, in combating aircraft noise we also need to pursue abatement efforts in the aspects of aircraft operations and apply methods of compatible landuse around the airports. In the realm of flight patterns, airport design and placement, guaranteed buffer zones, adequate soundproofing of buildings in and around airports, extension of runways, legal controls, and so on, joint action will have to be taken by the Federal Government, the airlines, and the community. With over 98 percent of our airports owned by some level of State government, it will be primarily up to the local governments and the airport operators of the same to effect noise abatement controls. In addition airport operators should share the responsibility of enforcing the new Federal Aviation Agency noise standards to be announced this month and closely coordinating local efforts with such programs as the aircraft noise alleviation program established under the FAA in 1961.

For examples of innovative noise control efforts I recommend such programs as that taken in the Los Angeles area in which community efforts and pilot programs have been established to abate noise at the Los Angeles International Airport. The Port of New York Authority has also carried out extensions costing several million dollars to the three runways at New York's Kennedy International Airport solely out of noise abatement considerations. Dulles International Airport in Washington is a good example of how zoning laws and design can be effectively employed to control noise levels emanating from aircraft.

But despite these examples, the fact remains that there is much left to do before we can successfully cope with aircraft noise. Your recognition of this fact has brought you here today. There are many questions which must be answered before actual work can even begin. The most important of these is funding of noise abatement efforts. Who is responsible? Should we ever obtain an operational "quiet" engine, the estimated cost of retrofitting our four engine commercial jets has been upwards of $300 million. This is perhaps the most touchy issue which will face you in your efforts to combat jet noise for the costs are formidable and the responsibility ill defined.

Another problem of considerable concern is that of the sonic boom. Until recently the shock waves from the sonic boom was confined to occasional military flights scheduled to fly over unpopulated areas of the United States. However, since President Nixon's request for $96 million for the current fiscal year ending June 30, 1970, in order to finance the start of construction of two SST prototype aircraft it now appears that within the next 10 years we will be subjected to the sound of commercial sonic booms. I am opposed to the development of this aircraft. Aside from the obvious criticism of low cost-benefit considerations, I find it difficult to justify the vast noise disturbance of this aircraft in light of the small domestic value derived. The plane has no defense value, will cost the Government a total of $1.29 billion, out of a total development cost of $1.51 billion, and its flights have been estimated to disturb 20 million groundlings every time the SST flies from coast to coast.

The repercussions of the noise problem have just begun to be understood and much has been done to alleviate the noise onslaught on our environment. For instance, New York City has a law requiring walls soundproof enough to reduce any airborne noise passing through by 45 decibels. Some construction companies have proved that buildings can be constructed quietly, by muffing blasting by special mesh blankets, welding instead of using the horrendous racket of riveting or bolting. New machines have been offered on the market which have a vast reduction in decibel rating over their old predecessors such as a new compressor which reduces the decibel level from 110 to 85 decibels and a new paving breaker that has had its sound reduced by two-thirds.

New York, California, New Jersey, Minnesota, and other States have voted or have pending various legislation on noise abatement particularly in the realm of vehicular noise. Numerous local ordinances deal with specific noise problems of their area offering such things as prevention of transistor playing in public areas, zoning laws, et cetera. Some States have legislation which prohibits vehicles on its public highways that exceed certain established noise levels for that particular vehicle.

All of these are good beginnings, but they cannot be assessed as anything more than just beginnings. What is needed are guaranteed standards for the man on the street, on his job, or in his home. In this category I would like to mention the Walsh-Healey Public Contracts Act which was signed into effect by Secretary of Labor Shultz on May 17, 1969. This act provides for a limit of on-the-job noise levels at 90 decibels at any frequency. This regulation only applies to firms that have a $10,000 or better contract with the Federal Government during the course of 1 year. The Walsh-Healey Act is a step in the right direction but again it is only a beginning. It only affects certain segments of workers and sets as a standard a noise level which is of debatable safety for an occupational level.

The real question at hand in the consideration of the noise level of our society is whether we are going to preserve the basic amenities of civilized life in the onslaught of technological advance.

As one noted figure in the noise abatement field, William H. Ferry, once said: "We have been neither interested nor successful in controlling noise because we have been neither interested nor successful in coping with technology."

Some 60 years ago Robert Koch, a bacteriologist and Nobel Laureate predicted:

"The day will come when man will have to fight merciless noise as the worst enemy to his health."

That day is not so far away. The problem must be faced now before it is beyond our control. So I offer a few suggestions from my meager knowledge of the problem of what may prevent a continuation of the insult of noise on the future sensibilities of our Nation. The problem of our "cacophonic republic" requires education, public awareness, increased research and greater application of economical acoustical materials, and a great deal of cooperation and coalition of effort between industry, business, government, health officials and community groups in order to find and carry out solutions to local, regional, and national noise problems.

We need a uniform noise control standard for all industrial and office workers—a Walsh-Healey Public Contracts Act of more encompassing and more rigorous standards.

We need to educate consumer demand that will call for quieter jobs and products in order to make it desirable for industry to compete to produce both at less cost.

We need the city code level to handle such noise sources as garbage collection, construction, loud speakers, and motor vehicles. We need a regional approach to the research and development of programs directed toward the alleviation of the noise that plague particular areas of the United States. Lastly we need the full cooperation of the Federal Government in assisting, coordinating and financing these efforts to provide a quieter environment.

As Dr. William H. Steward of the Public Health Service once stated:

"Those things within man's power to control which impact upon an individual in a negative way, which infringe upon his integrity, and interrupt his pursuit of fulfillment, are the hazards to the public health."

Noise can and must be controlled as a danger to the public health and economy, but above all else we must commit ourselves to the control of the noise in our society on the basis of civilized standards.

[From the CONGRESSIONAL RECORD, June 21, 1971]

NOISE CONTROL ACT OF 1971—AMENDMENT

AMENDMENT NO. 216

(Ordered to be printed and referred, jointly, to the Committees on Commerce and Public Works.)

Mr. HATFIELD, for himself, Mr. HART, and Mr. CRANSTON, submitted an amendment intended to be proposed to the bill (S. 1016), to control the generation and transmission of noise detrimental to the human environment, and for other purposes.

Mr. HART. Mr. President, the evidence is accumulating that yet another form of pollution has reached serious levels. I refer to noise. Noise is more than a nuisance: Excessive noise, I am told, is a serious hazard to us physically, mentally, and economically. Too much noise can result in temporary, or even permanent, damage to our hearing Nighttime noise disturbs sleep, while noisy places of work reduce the efficiency of workers. Noise can also influence property values as anyone who lives on the perimeter of an airport or foundry can tell you.

Congress took a major step last year when it created the Office of Noise Abatement and Control in the Environmental Protection Agency. S. 1016, the Noise Control Act of 1971 proposed by the administration, is a further important step in controlling this problem. The President is to be commended for his efforts to bring the seriousness of this problem to the attention of the public and

for his commitment to promote an environment which is free from noise that jeopardizes the health and welfare of the citizens of this Nation.

As I join with the distinguished Senators from Oregon (Mr. Hatfield) and California (Mr. Cranston), to introduce several amendments to S. 1016, I think we should pay tribute to our colleague in the House of Representatives, the distinguished Congressman from New York (Mr. Ryan), who has long been a leader in this field. We thank him for the considerable guidance he has given us in developing our thoughts on noise pollution and its control.

The amendments to S. 1016 which we offer today are, we believe, in harmony with the stated goal of that bill. The amendments requiring the Administrator of the Environmental Protection Agency to set certain noise emission standards within a specified time are designed merely to help him implement the original intent of the law. The addition of a citizens suit provision similar to that in the Clean Air Act amendments passed last year is meant to provide an additional vehicle for the enforcement of noise standards. The citizen will be further benefited, it is hoped, by the requirement that products used in and around the home have labels telling the actual level of noise generation. Thus the consumer will be able to choose products on the basis of their noise generation characteristics as well as price, color, and so forth.

Mr. President, the time has arrived to take positive action toward controlling undesirable noise. The administration has come forward with a very useful proposal. The House began hearings on that proposal and several others last week. The Environment Subcommittee of the Senate Committee on Commerce is scheduled next week to begin consideration of S. 1016 and the amendments introduced today. Let us hope that the momentum of our present efforts will not be lost, but will result in the swift passage of legislation necessary to protect the citizens of this Nation from the hazards of excessive noise.

OPENING STATEMENT, SUBCOMMITTEE ON ENVIRONMENT

(By Senator MARK O. HATFIELD)

The national effort to restore our deteriorating environment has unfortunately neglected one of our most devastating and most common pollutants—noise. Excessive noise threatens not only our emotional well being, but as these hearings will establish, noise can be detrimental to our physical health as well.

For too long, the ecological movement has focused only upon the more obvious forms of air and water pollution. While most Americans are incensed because they are deprived of clean lakes and streams, and rightfully deplore the blight of smog, these same Americans are unaware of the toll which excessive noise extracts from their lives.

For over a century it has been known that noise exposure of sufficient intensity and duration produces hearing loss. Yet, we have disregarded known facts about noise and advanced to the point where we now have the dubious distinction of being the noisiest nation in the world. In fact, in the United States it is estimated that 10 to 20 million people have some degree of hearing impairment—the primary cause being overexposure to excessive noise.

It is common knowledge that exposure to a very loud noise such as an explosion, may create deafness—at least temporarily. What is not as well known, but equally as devastating, is that repeated noise builds up to produce the same effect as would a single loud noise. This phenomena, labelled "accoustical fatigue" is capable of producing the same harmul effects upon human hearing.

Loss of hearing, however, is not the only concern when dealing with the problem of increasing noise levels. We are all familiar with the annoyance properties of noise—conversations punctuated with the whir of a blender, television programs distrupted by the passing motorcycle, and a Saturday afternoon nap disturbed by the neighbor's power lawn mower or power saw.

What we do not always realize is that these "irritations" should be regarded as health hazards as well. Although it is more difficult to measure, there is growing evidence that the levels of noise to which urban Americans have grown accustomed are actually capable of inducing a variety of physical, and psychological ills.

Another matter of great concern is that the noise level of the United States is increasing at an astonishing rate. Over the past 25 years the average increase in noise level has been at one decibel per year. When one considers that damage to the ears can occur at sustained exposure to the ranges around 85 decibels and over, and given our present noise levels, it will not be too many years before noise levels in the United States become lethal. To quote Dr. Vern O. Knudsen, physicist and former chancellor of the University of California: "If the noise we make keeps increasing at the present rate, it will be as deadly in thirty years in some of our downtown cities as were the ancient Chinese tortures for executing condemned prisoners."

It is my understanding that the witnesses will testify to the extent and character of this growing problem in some detail so I will not dwell further on this matter at this time.

For a number of years I have been personally involved in trying to bring the noise problem to the attention of American people and my colleagues in Congress. I should at this point like to place in the Record copies of remarks I made before the Noise Abatement Council in 1969 and a compilation of State and local noise enforcement laws across the country which was prepared in conjunction with the conference. I am told that this compilation and analysis of existing statutes is the only one of its kind and my office has had numerous requests for it from persons dealing with the noise pollution problem.

I commend the Administration and the Environmental Protection Agency for the bill now before this committee. Too often, legislation follows in the wake of aroused public opinion when the proportions of a crisis have already overwhelmed us. In this case, however, we are presented with the opportunity of being on the offensive—of acting before further damage is done. The Administration has presented us with a bill that would head off what otherwise could be a crisis of the most serious consequences.

The "Noise Control Act of 1971" (S. 1016) if enacted would be a great step forward toward insuring the protection of the human environment from the detrimental effects of noise. This bill allows EPA to co-ordinate all existing Federal noise research and control programs, thus eliminating duplicity and providing for efficient handling of this crucial area.

The Noise Control Act also authorizes EPA to establish criteria for human exposure to noise and authorizes EPA to set standards based upon these criteria to regulate noise emissions on articles which move in commerce. In addition, the bill would authorize EPA to label manufactured goods giving the consumer the benefit of knowing just how noisy a product will be. The bill also provides assistance to states and local governments in establishing noise abatement programs.

The Amendment (216) which has been offered to the Noise Control Act would, in my judgment, serve to strengthen the bill. By setting reasonable time limits for the establishment and enforcement of standards and requiring rather than authorizing the setting of standards, the Amendment would insure that Americans will to be subject to any unnecessary delay in realizing the benefits of this legislation. The Amendment would also serve to guarantee the private citizen recourse against the detrimental effects of noise by allowing EPA to initiate legal action and providing for citizen suits.

I hope that these hearings will prove fruitful in bringing to light the nature of the noise problem and the need to enact this legislation.

Mr. MUSKIE. Mr. President, I call up my amendment No. 1740 and ask that it be stated.

The PRESIDING OFFICER. The clerk will read the amendment.

The second assistant legislative clerk proceeded to read the amendment.

Mr. MUSKIE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

Amendment No. 1740 is as follows:

On page 63, line 2, following the word "the" insert the following phrase: "sale for use,".

Mr. MUSKIE. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. MUSKIE. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from Maine is recognized for 5 minutes.

Mr. MUSKIE. Mr. President, may I say to my colleagues that we have a 1-hour limitation. I think I can dispense with my case in 10 minutes, so I would expect that there is a reasonable chance for a vote in 20 or 25 minutes. I do not want to delay the Senate unduly.

This amendment is aimed at one point. It is a point I made in connection with the debate on the previous amendment and that is that at the present time some 32 States and numerous localities have adopted or are considering measures to control noise levels for the protection of public health in their communities.

The effect of this bill is to severely restrict, if not entirely eliminate, the right to continue to do so; and when we take that right away from them, then we ought to be certain that we are establishing a Federal policy which will do at least as good a job for them as they are now doing for themselves.

Full implementation of the noise control standards we consider today may be 1 or 2 years away, and the levels of control finally adopted will protect the public health and welfare as perceived on a national basis. They will not meet the needs of many State and local communities which have particularly critical noise problems that require more stringent controls.

The States and localities must have the right to adopt more stringent controls and the ability to enforce them. Use controls alone, without controls on sales, will not be adequate. They will force State and local governments to assume heavy enforcement burdens simply because the Congress was not

willing to require manufacturers to carry the responsibility of manufacturing products which could be used in areas with particular noise problems, and if they could not fill those requirements, to be prohibited from selling them in those jurisdictions.

The point of sale is a sensible and manageable point to control and monitor. When States or localities impose use taxes on various products—as many do to collect revenue—they do not put the burden of paying those taxes on the people using the taxed products in the State, and they do not burden themselves with the job of monitoring all users; they require the seller to collect the tax from the users at the point of sale.

Similarly, States which ban use of dangerous weapons or dangerous drugs direct their heaviest efforts at stopping the sale of such items, because permitting the unfettered sale of dangerous drugs and weapons and then trying to control their use would be futile.

In judging the merits of allowing States to impose controls on the sale as well as the use of products which produce dangerous noise, we should consider the different kinds of enforcement mechanisms which the States will have to use. Our local police and court systems are already heavily overburdened with work. Restricting States and localities to use controls alone will put an even greater burden on the police and court systems—each user will have to be apprehended, processed, fined, and convicted, with all the procedural limitations necessarily attached to the criminal law system. Control of sale, involving many fewer persons and products for which levels of noise can be identified before the products reach the stream of trade, is a much simpler method of enforcement.

The protection of manufacturers of noisy products should not be the prime public interest goal of Federal action to control noise. In this connection, let me read a portion of the statement of Mr. Nicholas C. Yost, the deputy attorney general of the State of California in charge of noise, when he testified before my subcommittee on noise control:

> The arguments for preemption are not made by the advocates of more stringent abatement of noise pollution. They are made by manufacturers who dislike the multiplicity of labels that confront them in a diverse nation. Their arguments concerning the burden created for them in different standards seems specious. Nobody is telling a manufacturer that he must sell in a particular State. If he wants to sell there, he can meet the standards the people of that State choose to adopt. As a practical matter no State or locality will set a standard so low that a necessary item cannot be sold. If that item can be made quieter, why should not the people of that State be enabled to insist upon it.

While it may be argued that preemption provisions are necessary and that they will protect public health because the Federal standards will be sufficiently strict to meet the concerns of most local communities. I must point out that some of our recent congressional experience with preemption has not resulted in such effective or immediate protection of the public health.

The Air Quality Act of 1967, which I sponsored, provided for Federal preemption of the authority to regulate air pollution emissions from new automobiles, except in California. That policy may have had the effect opposite of that which was intended. It appears that the preemption provision of that Act did not cause the auto companies to focus their research efforts and investments on one set of national standards. Rather, the auto companies' efforts have been focused on undermining those national standards.

Again in 1970, preemption was discussed in relation to the regulation of air pollution emissions from aircraft. The Congress decided on a preemption provision effective on enactment and set deadlines for standards to be developed.

Section 231(a) of the Clean Air Act requires that the Environmental Protection Agency must begin an investigation of air pollution from aircraft within 90 days of date of enactment. Within 180 days after commencing that investigation, the Environmental Protection Agency is required to report on the investigation and propose emission standards for any class of aircraft or aircraft engines which contribute to air pollution which endangers public health and welfare. Ninety days thereafter—1 year after enactment—EPA was to issue final regulations. The proposed standards were due nearly 1 year ago, September 27, 1971. Today, no report or proposed standards have been published.

This is a classic example of Federal preemption leading to Federal failure to protect public health. The Federal Aviation Administration has undoubtedly discouraged active efforts by the Administrator. And the efforts that the Environmental Protection Agency has made have run aground in the Office of Management and Budget.

Therefore, in consideration of the pending legislation, I expressed reservations regarding a broad preemption provision for product and aircraft emission standards.

Federal noise pollution responsibility will be new; little significant authority or responsibility exists. Conversely, a number of States have regulatory programs which impose enforceable emission controls on noisy products, both at the point of sale and the point of use.

In my judgment, this bill falls short for that reason. That is why I offered the amendment which has just been defeated, and I now offer this amendment as another way of strengthening the hand of local authorities.

Let me read something that was said by the speaker of the Assembly of the State of California with respect to this question before our committee. He said:

> I urge you to recommend to the full Senate committee that any language preempting California's enforcement role in noise pollution be deleted from the legislation.
>
> Make no mistake about it, I am here today to endorse progress in sound suppression at the Federal level.
>
> But, should it be necessary, I am also here to begin a campaign to make certain that Washington does not limit our ability to go beyond whatever nationwide controls are enacted.

We have had, Mr. President, a petition from the Legislature of the State of California making the same point to us:

> Resolved, That this Legislature respectfully memorializes the Congress of the United States to reject any plan of noise regulation which would prohibit States from adopting standards more stringent than those adopted by the Federal Government.

Normally, Mr. President, I would urge national standards in this field, as I have in air pollution and water pollution, and have supported preemption provisions, because accompanying such preemptions we wrote adequate national policy and adequate national law. In this case, we do not have that situation, and it is for that reason that I have offered these amendments.

This amendment is a very simple one. In section 408(e)(2) of the bill, on page 62, line 23, Senators will find this language:

> Subject to paragraph (1) of this subsection, nothing in this section shall preclude or deny the right of any State or political subdivision thereof to establish and enforce controls on environmental noise through the licensing, regulation, or restriction of the use, operation, or movement of any product or combination of products:

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

Mr. MUSKIE. I yield myself 2 more minutes.

What I would add to that are the words "sale for use," so that the language would read:

> To establish and enforce controls on environmental noise through the licensing, regulation, or restriction of the sale for use, use, operation, or movement of any product or combination of products.

Not permitting localities to control the sale for use is to impose an impossible enforcement problem on local authorities, because the only form of enforcement would be through control of use. I say to my colleagues it is almost impossible for local police departments, beleaguered as they are with their responsibilities today, to run them down and control noise pollution by controlling their use after products have been sold in their jurisdictions.

So I urge, Mr. President, that this very simple amendment be adopted. It is consistent with the exercise of police power. The standard that would be used is the standard of health and welfare which we have already adopted in the Clean Air Act of 1970, and which we adopt whenever it is possible in order to apply enforcement mechanisms to that standard. That is the standard in this case. I urge the adoption of the amendment, and I reserve the remainder of my time.

Mr. PERCY. Mr. President, I ask unanimous consent that Stuart Statler of the staff of the Committee on Government Operations be permitted to be present in the Chamber during the consideration of this measure.

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

Mr. TUNNEY. Mr. President, the intent of the committee is that conflicting

standards on noise emissions from products not be allowed to impose a burden on interstate commerce. Therefore, the bill preempts the setting of noise emission standards enforceable against the manufacturer of a product subject to Federal standards. The committee felt that any imposition of conflicting standards anywhere in the chain of commerce which the manufacturer must meet should not be allowed.

However, the committee intended to make it clear that States and cities, in pursuit of levels of environmental noise thought desirable locally, can impose any burden on the users of products covered by Federal standards which it finds necessary. The committee felt that the language of the bill allowing controls on environmental noise through licensing the use, operation, or movement of products would retain for States and local governments the power to establish and enforce limitations on noise emissions as a condition to use within their jurisdiction. Noise emission limitations imposed through licensing are just as general and easily enforceable as controls on sale. Therefore, the amendment—adding the words "sale for use"—really adds little in practical effect to the powers of State and local governments preserved by the present language of this bill.

Mr. President, I find myself in an interesting position because, having stated what the committee position is, I want the Senate to know that I personally support the language of the Senator from Maine. After having listened to the testimony at our legislative hearing on S. 3342 in California from the Speaker of the House and from an assistant attorney general, I feel that this is really a States rights issue. If the States want to impose a tougher standard on noise emissions through a limitation of the sale of a product, then I feel that the States ought to have that right.

I cannot speak for every State. I do know that some States have excellent ongoing programs to reduce the noise of various products that are sold in intrastate and interstate commerce. I would hate to see the Federal Government move in and say that the good work that has been done by the States and by cities and other localities should be ended.

I yield now to the distinguished Senator from Delaware (Mr. BOGGS).

The PRESIDING OFFICER. How much time does the Senator yield?

Mr. TUNNEY. I yield 5 minutes to the Senator from Delaware.

Mr. BOGGS. I thank the distinguished Senator from California, the floor manager of the bill, for yielding.

First, Mr. President, I ask unanimous consent, on behalf of the Senator from Michigan (Mr. GRIFFIN), that David Clanton, of the staff of the Committee on Commerce, be permitted to be present in the Chamber during the consideration of this amendment.

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

Mr. BOGGS. Mr. President, this bill deals with the responsibilities of the Federal Government and the State and local governments in controlling noise created by products manufactured after the effective date of the Federal standard, authority to establish noise emission standards for the product enforceable directly or indirectly against the manufacturer is preempted. States and cities, however, retain complete authority to establish and enforce limits on environmental noise through the licensing, regulation, or restriction of the use, operation, or movement of a product, or concentration or combination of products.

That, briefly, is the language from the committee report on preemption, on the very question before us. It simply says that, in the manufacture of the product, once a standard has been announced, the Federal Government will preempt, and there will be one standard. There would not be 50 standards for each of the 50 States, or 50 plus however many thousand cities there may be. That would result in an almost impossible situation. It would be a burden on commerce that would be unbearable and unrealistic, and could not be accepted.

That would be the effect if the amendment offered by the Senator from Maine is accepted. On the other hand, once a product is manufactured under the national standard and goes into commerce, and is located in a city, the local authorities can regulate its use.

For example, a locality can say at what times, if any, it may be used in the vicinity of the hospital, or in any other place, or at what hours of the night or day it can be used, and can set any other regulation or restriction of use affecting the noise that product produces. Any other approach to it would seem to me very unrealistic and would cause a variety of difficulties.

For example, let us suppose that a jackhammer was being used at a construction site in a city. Construction would have to stop—presuming it could—until a manufacturer could produce a jackhammer that met the city's or the State's particular qualifications. I do not know how unprofitable that would be or how it would run up the cost of the jackhammer for that particular construction job. That is just one example of the extreme results application of this amendment could produce.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. BOGGS. Mr. President, will the Senator yield to me 2 additional minutes?

Mr. TUNNEY. I yield.

Mr. BOGGS. I think I have expressed the committee's position fairly. The committee tried to balance this situation, tried to place all the authority and as much of the regulatory authority in the local authorities, in the State and local governments, as was possible consistent with a reasonable burden on commerce, while placing in the Federal Government the authority which the Federal Government, in behalf of the whole Nation, could properly exercise.

I think that is the situation presented by the amendment of the distinguished Senator from Maine, and I urge that the amendment be rejected.

Mr. MUSKIE. Mr. President, I yield myself 2 minutes for summation, and then I will be prepared to yield back the remainder of my time, if the Senator from California is willing to do so.

As the Senator from Delaware knows, I have always been for preemption provisions in our environmental laws whenever I felt that we had done an effective job of replacing local legislation with Federal legislation. The Senator and I have been together on that in air pollution and water pollution legislation for the last 8 to 10 years, and we will continue to be.

Where we disagree now is on this simple point: That in this legislation we preempt without substituting effective Federal legislation.

At least 32 States and many localities are moving actively in this field. Federal noise pollution responsibility is new, and little significant authority or responsibility exists. Conversely, a number of States have regulatory programs which impose emission controls on noisy products which controls are enforceable, both at the point of sale and the point of use.

I cannot support Federal preemption which protects product manufacturers and the air transportation industry without effective regulatory programs which will enhance the quality of the environment. Substitution of Federal law for State law without assurance that public health will be protected is, in my judgment, poor public policy.

For that reason, I urge the adoption of this amendment.

Mr. BOGGS. Mr. President, will the Senator yield me 2 minutes?

Mr. TUNNEY. I yield.

Mr. BOGGS. Mr. President, the bill provides that manufacturers must use the best available technology. What higher standard could one get for the national requirement on this?

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

Mr. BOGGS. I yield.

Mr. MUSKIE. As the Senator knows, that provision of the bill rests for its efficacy upon the state of the technology.

Mr. BOGGS. That is correct.

Mr. MUSKIE. What I have complained about in my earlier amendment is that that kind of regulation, depending upon technology, is not supplemented in this bill by adequate controls over cumulative noise levels; and it is because of the inefficacy of the technology that communities have to use supplementary controls of one kind or another to supplement inadequate technology. It is that which I refuse to see preempted, or at least which I refuse to support the preemption of.

Mr. President, I ask unanimous consent that the names of the Senator from California (Mr. CRANSTON) and the Senator from Massachusetts (Mr. KENNEDY) be added as cosponsors of the amendment.

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

Who yields time?

Mr. TUNNEY. I yield back the remainder of my time.

Mr. MUSKIE. I yield back the remainder of my time.

The PRESIDING OFFICER. All time on the amendment has been yielded back.

The question is on agreeing to the amendment of the Senator from Maine. 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 Nevada (Mr. CANNON), the Senator from Florida (Mr. CHILES), the Senator from Louisiana (Mrs. EDWARDS), the Senator from Oklahoma (Mr. HARRIS), the Senator from Massachusetts (Mr. KENNEDY), the Senator from South Dakota (Mr. MCGOVERN), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Montana (Mr. METCALF), the Senator from Minnesota (Mr. MONDALE), the Senator from Rhode Island (Mr. PELL), and the Senator from Virginia (Mr. SPONG) are necessarily absent.

I further announce that, if present and voting, the Senator from New Hampshire (Mr. MCINTYRE), and the Senator from Rhode Island (Mr. PELL) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Colorado (Mr. ALLOTT), the Senator from Tennessee (Mr. BAKER), the Senator from New York (Mr. BUCKLEY), the Senator from Nebraska (Mr. CURTIS), the Senator from Arizona (Mr. GOLDWATER), the Senator from Oregon (Mr. HATFIELD), the Senator from Iowa (Mr. MILLER), the Senator from Delaware (Mr. ROTH), the Senator from South Carolina (Mr. THURMOND), and the Senator from Texas (Mr. TOWER) are necessarily absent.

The Senator from Kentucky (Mr. COOK) is absent on official business.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Arizona (Mr. FANNIN) and the Senator from Ohio (Mr. SAXBE) are detained on official business.

If present and voting, the Senator from Nebraska (Mr. CURTIS), the Senator from Iowa (Mr. MILLER), and the Senator from Texas (Mr. TOWER) would each vote "nay."

On this vote, the Senator from Oregon (Mr. HATFIELD) is paired with the Senator from South Carolina (Mr. THURMOND). If present and voting, the Senator from Oregon would vote "yea" and the Senator from South Carolina would vote "nay."

The result was announced—yeas 30, nays 45, as follows:

[No. 548 Leg.]

YEAS—30

Aiken	Gravel	Packwood
Bayh	Hartke	Pastore
Bentsen	Hollings	Proxmire
Brock	Hughes	Ribicoff
Brooke	Inouye	Smith
Case	Mansfield	Stafford
Church	McClellan	Stevenson
Cranston	Moss	Symington
Eagleton	Muskie	Tunney
Fulbright	Nelson	Williams

NAYS—45

Allen	Bennett	Byrd, Harry F., Jr.
Anderson	Bible	Byrd, Robert C.
Beall	Boggs	Cooper
Bellmon	Burdick	Cotton
Dole	Jackson	Schweiker
Dominick	Javits	Scott
Eastland	Jordan, N.C.	Sparkman
Ervin	Jordan, Idaho	Stennis
Fong	Long	Stevens
Gambrell	Magnuson	Taft
Griffin	Mathias	Talmadge
Gurney	McGee	Weicker
Hansen	Montoya	Young
Hart	Pearson	
Hruska	Percy	

NOT VOTING—25

Allott	Goldwater	Mundt
Baker	Harris	Pell
Buckley	Hatfield	Roth
Cannon	Kennedy	Saxbe
Chiles	McGovern	Spong
Cook	McIntyre	Thurmond
Curtis	Metcalf	Tower
Edwards	Miller	
Fannin	Mondale	

So Mr. MUSKIE's amendment (No. 1740) was rejected.

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Berry, one of its reading clerks, announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 14370) to provide payments to localities for the high-priority expenditures, to encourage the States to supplement their revenue sources, and to authorize Federal collection of State individual income taxes; and that the House receded from its disagreement to the amendment of the Senate numbered 20 to the bill and concurred therein, with an amendment, in which it requested the concurrence of the Senate.

The message also announced that the House had passed a bill (H.R. 9554) to change the name of the Perry's Victory and International Peace Memorial National Monument, to provide for the acquisition of certain lands, and for other purposes, in which it requested the concurrence of the Senate.

ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED

The message further announced that the Speaker had affixed his signature to the following enrolled bills and joint resolutions:

S. 493. An act to authorize and direct the Secretary of the Treasury to classify as a wilderness area the national forest lands adjacent to the Eagle Cap Wilderness Area, known as the Minam River Canyon and adjoining area, in Oregon, and for other purposes;

S. 2700. An act to extend diplomatic privileges and immunities to the Mission to the United States of America of the Commission of the European Communities and to members thereof;

S.J. Res. 247. A joint resolution extending the duration of copyright protection in certain cases; and

S. J. Res. 265. A joint resolution to provide grants for Allen J. Ellender fellowships to disadvantaged secondary school students and their teachers to participate in a Washington public affairs program.

The enrolled bills and joint resolutions were subsequently signed by the President pro tempore.

SUPPLEMENTAL APPROPRIATIONS, 1973

The Senate continued with the consideration of the bill (H.R. 17034) making supplemental appropriations for the fiscal year ending June 30, 1973, and for other purposes.

The PRESIDING OFFICER. Under the previous order, the pending business will be set aside and the Senate will return to the unfinished business, which the clerk will state by title.

The legislative clerk read as follows:

A bill (H.R. 17034) making supplemental appropriations for the fiscal year ending June 30, 1973, and for other purposes.

The PRESIDING OFFICER. The Chair recognizes the Senator from Arkansas.

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

Mr. MCCLELLAN. I yield.

UNANIMOUS-CONSENT AGREEMENT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent—having consulted with the distinguished manager of the bill (Mr. MCCLELLAN), and the distinguished ranking member of the committee (Mr. YOUNG), and at the direction of the distinguished majority leader (Mr. MANSFIELD)—that time on the bill be limited to 2 hours, to be equally divided between the Senator from Arkansas (Mr. MCCLELLAN) and the Senator from North Dakota (Mr. YOUNG); that the time on any amendment be limited to 30 minutes, to be equally divided between the mover of such amendment and the manager of the bill; and that the time on any amendment to an amendment, debatable motion, or appeal, be limited to 20 minutes, to be equally divided in accordance with agreements in the usual form.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. MCCLELLAN. Mr. President, I ask unanimous consent that the 10 minutes I am about to yield to the Senator from North Carolina for the purpose of bringing up a conference report not be charged to the time on the supplemental appropriation bill or any amendment thereto.

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

PUBLIC WORKS AUTHORIZATIONS—CONFERENCE REPORT

Mr. JORDAN of North Carolina. Mr. President, I submit a report of the committee of conference on S. 4018, and ask for its immediate consideration.

The PRESIDING OFFICER (Mr. EAGLETON). 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 to the bill (S. 4018) authorizing the construction, repair, and preservation of certain public works on rivers and harbors for navigation, flood control, 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 of 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 today at p. 35476.)

Mr. JORDAN of North Carolina. Mr. President, I ask unanimous consent that Mr. Wes Hayden and Mr. John Purinton be permitted the privilege of the floor during the consideration of the conference report.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. JORDAN of North Carolina. Mr. President, the conference report on the Omnibus Rivers and Harbors-Flood Control Act of 1972 (S. 4018), authorizes continued Federal participation in the development of our country's vital water resources. This is a subject to which I have assigned a high priority during my service as a member of the Committee on Public Works. It is only through the continued operation of an orderly water resources development and conservation program that the people of our country can realize the full benefits and potential offered by our great abundance of water.

As chairman of our Subcommittee on Rivers and Harbors-Flood Control, I have been privleged to participate in the drafting and management of this important legislation, to take another step toward the realization of these objectives.

On October 10, Members of the Senate and House Public Works Committees met in conference to resolve their differences on this very important legislation. I am gratified to report to the Senate that these differences were few. The great majority of provisions in the two bills were similar so that we could concentrate our efforts on those few instances in which the two bodies had taken different approaches. The end result of the conferees' deliberations is legislation that continues the goals we have established for water resources development. I was privileged to be elected chairman of the conference and was honored to have as fellow conferees from the Senate, Senator BENTSEN, Senator EDWARDS, Senator COOPER, and Senator DOLE.

Authorizations in this bill are for projects and activities located throughout the United States. Included are new projects and modifications to previously authorized projects. We also reached agreement on changes in the basic statutes that govern rivers and harbors and flood control activities.

In development of this legislation, the Senate Public Works Committee included in the bill a number of water resource projects with an estimated cost of less than $10 million each. These were made a part of S. 4018 even though existing authority—section 201 or Public Law 89–298—permits them to be undertaken without specific authorization legislation. These projects can be initiated by resolution of the Senate and House Public Works Committees. We included them in our bill, however, because we felt that they were fully justified and important projects, that could be authorized as a group in this manner, rather than by adopting individual resolutions in the committee.

The House of Representatives chose not to adopt this approach and did not include any of the so-called section 201 projects in its bill. The Senate, therefore, agreed to delete these projects from the conference report with the understanding that it would expedite their individual consideration by the committee.

Inflationary pressures has made it necessary to increase the cost ceiling for certain types of small projects that may be undertaken by the Corps of Engineers without specific approval. The conference report increases from $100,000 to $250,000 each the authority for the Corps to carry out snagging and cleaning projects in streams. The total expenditures for this activity are also increased from $2 to $5 million per year. Similar increases were authorized for the corps to carry out emergency streambank protection projects with the individual cost limit increased from $50,000 to $250,000 and the yearly total for these activities from $1 to $5 million.

Aside from emergency streambank protection projects, the corps also is authorized to spend up to $250,000 each for projects to alleviate streambank erosion throughout the United States. A total of $10 million is authorized for this purpose annually.

An intensive program to further our knowledge about the causes and prevention of streambank erosion is authorized in this bill. The area selected is the Ohio River Valley where persistent and serious bank erosion is a constant threat to many communities.

The conferees recognized the need to consider the problem of projects that are authorized but which, for various reasons, are never begun. There exists a significant backlog of such projects. To help resolve this situation, S. 4018 contains provisions directing the Corps of Engineers to report to the Congress regularly on projects that have been authorized for at least 8 years but on which work has not begun. The Corps of Engineers is to make its recommendations to the two Public Works Committees as to whether such projects should be deauthorized. These projects will be automatically deauthorized unless either of the two committees, within 180 days, adopts a resolution stating that they should continue to be authorized projects.

Erosion problems of another type, those that inflict severe damage on great stretches of our country's shorelines, also are addressed by this bill. The deterioration of our shorelines due to erosion is felt in the lower water quality it can cause and in damage to marine life. Recreational facilities are damaged and there is great financial loss to private and public landowners because of shoreline erosion. The conferees believe it is essential to learn how shoreline erosion can be controlled at reasonable cost. Therefore, this bill authorizes a 5-year development and demonstration program with these goals in mind. Authorization for its first year is established by this bill at $6 million.

Congress this year has been very much aware of the great damage and suffering that is caused by natural disasters. Hurricane Agnes, which swept through much of the eastern part of the United States this summer, was described as the greatest natural disaster to strike the United States in its history. Earlier, the collapse of dams in South Dakota and West Virginia caused major floods and loss of life. The Congress responded by strengthening the ability of the Federal Government to cope with disasters in general and with recent ones in particular.

Provisions are included in S. 4018 to further our efforts in reducing potential damage from flooding. These provisions authorize small flood protection projects to be carried out in any area that has been declared a disaster area within the past 5 years, even though that area may not be one for which protection programs have been previously authorized. A total of $25 million yearly is provided for this work in disaster areas with a maximum of $2 million to be spent in any single area.

As part of the overall strategy for comprehensive and coordinated development within the Appalachia region, the Corps of Engineers was directed several years ago to prepare a plan for water resource development in the region. This plan was completed and submitted to the Congress 2 years ago. This bill authorizes nine of the recommended projects as a group and authorizes $50 million to begin their execution. This action is the first step toward implementing regional water resource development programs that is a unique endeavor in this country.

The conferees also addressed a matter that is of great concern to Members of the Congress. I refer to the proposed action for evaluating water resource projects. Particular concern is the interest rate used to determine economic justification for projects. Under the Council's proposal, this interest rate would increase without, in the opinion of the conferees, justification so that many badly needed projects could not be built. The bill directs that a moratorium be placed on any such changes by the Council until after December 31, 1973.

Mr. President, I spoke earlier of the harmony with which the Senate and House conferees were able to consider this bill. While we reached agreement with dispatch, I must report to the Senate that this conference report does not contain all of the provisions offered by either body. There were deletions and there were modifications in several instances.

It had been proposed that the authorization for the Pattonsburg Dam and Lake on the Grand River in Missouri be modified to include facilities for a hydroelectric powerplant. This was a controversial proposal and many questions about it had been raised both in the Congress and in the State of Missouri. The conferees agreed that the proposal, with the impact of this one, deserved additional study. At the same time, we recognize that the basic project should go ahead. Consequently, the conferees directed that the Pattonsburg Dam and

Lake project continue in such a manner so as not to preclude the installation of a hydroelectric generating facility if it is deemed necessary at some future time.

Another proposal relating to the State of Missouri also was deleted from the conference report. This was a section of the Senate bill which would have authorized the States of Missouri or Illinois to assume ownership of a toll bridge across the Mississippi River at Chester, Ill. The conferees concluded that this action required additional study and perhaps public hearings before final determination is reached.

Of particular interest to the Washington, D.C., area were projects in the Potomac River Basin intended to regulate the flow of water in the Potomac. These included the construction of the Verona Dam on the Middle River in Virginia, and the Sixes Bridge Dam on the Monocacy River in northern Maryland. The projects were included in the Senate version of the bill, but had not been approved by the House of Representatives. The conferees agreed not to authorize these two projects at this time, but instead to direct the Corps of Engineers to conduct additional studies on their need.

The projects were originally proposed and justified primarily on the basis of their ability to supply water for flushing pollutants from the lower Potomac. The Congress, however, recently adopted the Federal Water Quality Control Act Amendments of 1972 which specifically declares that this so-called pollution dilution is not an acceptable method of dealing with pollution problems or a substitute for waste treatment. The Corps of Engineers, therefore, was directed to reformulate the two Potomac projects on the basis of their need to provide an assured public water supply, particularly in the Washington metropolitan area.

Mr. President, this bill is comprehensive legislation. Its visions were carefully considered and I believe the recommendations of the conferees are consistent with the wishes of the Senate to develop our country's water resources in a proper manner.

Mr. President, I want to commend the staff of the House and of the Senate who worked diligently for several days to iron out the differences between the Senate bill and the House bill. I am delighted to report that at the end of the conference we had unanimous agreement on the report as it has been submitted.

The report takes in a great variety of public works which are scattered all over the United States: beach erosion, riverbank erosion, and other flood control projects which are badly needed throughout the Nation. The bill has been backed by the House and the Senate.

I ask that the Senate give its endorsement by approving the conference report.

But, first, the Senator from Nevada has a question. I would be glad to discuss it with him.

Mr. BIBLE. Mr. President, the item to which I am directing a question to the distinguished Senator from North Carolina is section 10 of the House version of the Omnibus Rivers and Harbors Act of 1972, section 10(a). It is a section with which the Senator from North Carolina is completely familiar. I expressed my concern to him at the time of the conference.

My problem was that it might adversely affect the Humboldt River project, which is in my State and was authorized in 1952.

On August 7, 1972, I added $100,000 to the Public Works appropriation bill to provide funds for preliminary engineering work on the proposed Humboldt River Storage Project. This amount was approved in the conference on that date.

In 1969, $15,000 was spent from Corps of Engineers general investigation funds on this same project.

My question to the distinguished Senator from North Carolina, the chairman of the conference, is whether or not, in view of that factual situation, this project is exempt from the House language that is contained in section 10(a).

Mr. JORDAN of North Carolina. Mr. President, I appreciate the Senator asking the question.

We discussed this matter before, when we went to conference. I took it up with the conferees and the Corps of Engineers.

The language that was in the bill (S. 4018) to help resolve this situation is a provision directing the Corps of Engineers to report to Congress a list of those authorized projects for works of improvement of rivers and harbors and other waterways for navigation, beach erosion, flood control, and other purposes, which have been authorized for a period of at least 8 years and which he determines, after appropriate review, should no longer be authorized.

The project to which the Senator refers is an active project. It does not include this item, because it is an active project. There is $100,000 authorized now for it, and, as the Senator has pointed out, $15,000 previously——

Mr. BIBLE. At an earlier date.

Mr. JORDAN of North Carolina. Yes. So it is an active project. It is an ongoing project and is not affected in this bill whatsoever.

Mr. BIBLE. That was my understanding, and I wanted the RECORD to speak out loudly and clearly on this point.

I thank the Senator from North Carolina.

Mr. RANDOLPH. Mr. President, the Congress has traditionally acted every 2 years to authorize projects for the development of our country's water resources for flood control and prevention, and for the improvement of waterway navigation. This is important legislation that is of long-lasting impact on every section of the country. What we do relative to our water resources has a profound influence on the growth and development of our country, both socially and economically.

The legislation before us today is the conference report on S. 4018, the Omnibus Rivers and Harbors-Flood Control Act of 1972. This important legislation has been explained in detail by the distinguished Senator from North Carolina (Mr. JORDAN), the chairman of our Subcommittee on Flood Control-Rivers and Harbors. This is a fitting opportunity to call attention to Senator JORDAN's long dedication to water resource development. As a member of our Committee on Public Works and as chairman of its Subcommittee on Flood Control-Rivers and Harbors, he has been a leading advocate not just of developing water resources, but of developing them in a way that insures that they will provide maximum benefits to the American people. He has provided us with vigorous leadership in this very important field, leadership that will surely be missed when Senator JORDAN retires from the Senate at the end of the 92d Congress.

This conference report was approved by Senate and House conferees on October 10, following a single meeting. While we were able to agree with a minimum of deliberations, the projects authorized by this bill and the changes in our basic water resources law were carefully considered by the Public Works Committees of both Senate and House, and by the full Membership of the two bodies.

I believe that what we have agreed to in S. 4018 will continue the progressive development of our water resources in the United States as well as improve our ability to control flooding that does considerable damage every year.

Mr. President, I am gratified that this conference agreed with the necessity to include in its report several activities of special relevance to the State of West Virginia. As a State of rugged mountains and narrow valleys, West Virginia is particularly sensitive to the potential dangers of flooding. These topographical situations also contribute to the difficulty we have in providing ample public water supplies and water-based recreational facilities. We West Virginians are thankful for our abundant water resources, but we know that they must be properly harnessed and developed to provide the maximum benefit to our citizens.

A major concern in my State is the serious erosion that is occurring along the banks of the Ohio River, which forms the western boundary of West Virginia. In response to the urgent requests of many people in my State, I visited the area last July to personally examine the encroachments of the Ohio River on communities in its valley. I learned much during that inspection trip and returned to Washington convinced that we could no longer let the uncontrolled wearing away of the river's banks continue without exerting every effort to alleviate this very serious situation. Members of the House of Representatives, including members of the House Public Works Committee, shared my concern. This concern was reflected in provisions in both the House and Senate versions of S. 4018 that were aimed at concentrating an attack on the erosion of the Ohio River banks.

This was an issue on which the conferees readily agreed. The conference report on S. 4018 therefore authorizes the Corps of Engineers to carry out an intensive study of streambank erosion along the Ohio River between Chester, W. Va., and Cincinnati, Ohio. This study is intended to determine the extent and severity of streambank erosion in this important valley and also to develop new techniques which, hopefully, can be ap-

plied economically to control this deterioration of riverbanks. As a part of the total program, demonstration projects are authorized to test the validity of the study's findings. It is only through such an intensive study, I believe, that we can properly marshall our resources to cope with the problem that is prevalent throughout the United States.

Related to this effort is another provision of this bill which increases the general authority of the Corps of Engineers to carry out emergency streambank erosion control projects without specific congressional authority.

The bill would permit the corps to execute projects with the Federal costs of up to $250,000 each. Total annual expenditure for these projects would be $5 million. The extent of the problem and rising costs make it necessary to raise the ceiling from the present limit of $50,000 per project, and an annual total of $1 million.

The 1970 Flood Control Act authorized urgently needed flood protection facilities in the Tug Fork Valley of West Virginia. Several communities in this region, particularly those of Williamson and Matewan, W. Va., have persistent and serious flooding problems. The 1970 act, however, authorized this work subject to the approval of the President and the Appalachian Regional Commission. Difficulty in justifying the projects economically, utilizing present formulaes for determining the cost-benefit ratio, has prevented the necessary approvals from being granted. These requirements do not take into consideration the necessity to protect lives and property in the Tug Fork Valley. The Senate Public Works Committee decided and the conferees agreed, that in this instance, the necessary protection facilities should be constructed regardless of any unfavorable cost-benefit ratio.

The conferees intended to expedite construction of these facilities by eliminating the requirement for executive department approval.

The Pocatalico River Basin of West Virginia is another area that is afflicted by frequent flooding. The water supply systems serving residents of this area also have uncertain sources of water. Long-needed relief is provided in S. 4018 through the authorization of a comprehensive program costing $3.7 million and including the construction of two multi-purpose dams as well as extensive land treatment activities.

The bill authorizes $2 million for cleaning and dredging the Guyandotte River in southern West Virginia. This is an interim measure intended to alleviate flood conditions until the R. D. Bailey Lake project is completed upstream on the Guyandotte.

The conferees acted to resolve, at least temporarily, serious problems that have the potential to sharply limit our ability to carry out needed water resources development. This situation arose nearly a year ago when the Water Resources Council proposed charges in its criteria whereby prospective projects are evaluated.

A critical feature of these proposed new standards was a change in the method of determining the interest rate used in computing the cost-benefit ratio of water resource projects. The Council proposed adopting as its interest rate the opportunity cost of borrowing money. This means that the commercial interest rate on the open market would be the one that applied to public investments in water resources. At the present time, the interest rate used is that charged to the Government. This rate is significantly lower than that applicable on the open market. Consequently, any increase in the interest rate would have the effect of making many badly needed projects incapable of economic justification. There is no reason why this should be so.

S. 4018, as approved by the conferees, directs that no changes in the present interest rate formulae be made by the Water Resources Council until December 31, 1972. This moratorium will provide time for thorough congressional review of the situation as it applies to all water resource criteria. We believe this is necessary so that we can properly develop the standards by which projects are measured in terms of contemporary need and financing capability.

Mr. President, the omnibus rivers and harbors bill continues the involvement of the Federal Government in water resource development. This is one of the oldest public works programs of the Federal Government and it is one that has, over the years, provided innumerable benefits to all American citizens. I know that my colleagues will vote to continue this program by approving the conference report on S. 4018.

Mr. JORDAN of North Carolina. Mr. President, I have no further remarks to make on the bill. I move the adoption of the report.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The report was agreed to.

ORDER OF BUSINESS

Mr. McCLELLAN. Mr. President, I yield to the distinguished Senator from Nevada (Mr. BIBLE) for the purpose of bringing up a series of conference reports.

The PRESIDING OFFICER. With the understanding that the time is not to be charged to the time on the appropriation bill?

Mr. McCLELLAN. With the understanding the time is not to be charged to the time on the appropriations bill.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

ESTABLISHMENT OF CUMBERLAND ISLAND NATIONAL SEASHORE, GA.

Mr. BIBLE. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 2411.

The PRESIDING OFFICER (Mr. EAGLETON) laid before the Senate the amendment of the House of Representatives to the bill (S. 2411) to establish the Cumberland Island National Seashore in the State of Georgia, and for other purposes, which was to strike out all after the enacting clause and insert:

That in order to provide for public outdoor recreation use and enjoyment of certain significant shoreline lands and waters of the United States, and to preserve related scenic, scientific, and historical values, there is established in the State of Georgia the Cumberland Island National Seashore (hereinafter referred to as the "seashore") consisting of the area generally depicted on the drawing entitled "Boundary Map, Cumberland Island National Seashore", numbered CUIS–40,000B, and dated June 1971, which shall be on file and available for public inspection in the offices of the National Park Service, Department of the Interior. The Secretary of the Interior (hereinafter referred to as the "Secretary") may after notifying the Committees on Interior and Insular Affairs of the United States House of Representatives and United States Senate in writing, make minor adjustments in the boundary of the seashore from time to time by publication of a revised drawing or other boundary description in the Federal Register, but the total acreage within the boundaries shall not exceed forty thousand five hundred acres.

SEC. 2. Within the boundaries of the seashore, the Secretary may acquire lands, waters, and interests therein by purchase, donation, transfer from any Federal agency, or exchange. The Secretary may also acquire not to exceed one hundred acres of lands or interests in lands on the mainland to provide access to the administrative and visitor facilities for the seashore. Any lands or interests therein owned by the State of Georgia, or any political subdivision thereof may be acquired only by donation. Notwithstanding any other provision of law, any Federal property located within the boundaries of the seashore may, with the concurrence of the agency having custody thereof, be transferred without transfer of funds to the administrative jurisdiction of the Secretary for the purposes of the seashore.

SEC. 3. For the purpose of providing access from Interstate 95 to the mainland administrative and visitor facilities of the seashore, the Secretary may designate as the Cumberland Island Parkway a right-of-way, together with adjacent or related sites for public noncommercial recreational use and for interpretation of scenic and historic values, of not more than one thousand acres of lands, waters, and interests therein. The Secretary is authorized to acquire only by donation those lands and interests therein, and other property comprising such right-of-way and adjacent or related sites as he may designate pursuant to this Act for the development, hereby authorized, of a road of parkway standards, including necessary bridges, spurs, connecting roads, access roads, and other facilities, and for the development and interpretation of recreation areas and historic sites in connection therewith. Lands acquired for the parkway shall be administered as a part of the seashore, subject to all laws and regulations applicable thereto, and subject to such special regulations as the Secretary may promulgate for the parkway.

SEC. 4. (a) With the exception of any property deemed necessary by the Secretary for visitor facilities or administration of the seashore, any owner or owners of improved property on the date of its acquisition by the Secretary may, as a condition of such acquisition, retain for themselves and their successors or assigns a right of use and occupancy of the property for noncommercial residential purposes, for twenty-five years, or, in lieu thereof, for a term ending at the death of the owner or his spouse, whichever is later. The owner shall elect the term to be reserved. The Secretary shall pay to the owner the fair market value of the property on the date of such acquisition less the fair mar-

ket value on such date of the right retained by the owner: *Provided, however,* That, in addition, for so long as a right of use and occupancy remains in effect by the donors of land of one hundred acres or more, the Secretary shall not, with respect to such lands, develop any public use facilities except for trails, road access, and utilities: *Provided further,* That when acquiring lands, waters, and interests therein from the National Park Foundation, its successors and assigns, the Secretary shall acquire such lands, waters, and interests subject to the written terms and conditions contained in those transactions, including but not limited to options, entered into by the National Park Foundation prior to January 1, 1973, and that such previous written rights and interests shall prevail over provisions of this paragraph.

(b) A right of use and occupancy retained or enjoyed pursuant to this section may be terminated with respect to the entire property by the Secretary upon his determination that the property or any portion thereof has ceased to be used for noncommercial residential purposes and upon tender to the holder of a right an amount equal to the fair market value, as of the date of tender, of that portion of the right which remains unexpired on the date of termination.

(c) The term "improved property", as used in this section shall mean a detached, noncommercial residential dwelling, the construction of which was begun before February 1, 1970 (hereinafter referred to as "dwelling"), together with so much of the land on which the dwelling is situated, the said land being in the same ownership as the dwelling, as the Secretary shall designate to be reasonably necessary for the enjoyment of the dwelling for the sole purpose of noncommercial residential use, together with any structures accessory to the dwelling which are situated on the land so designated.

(d) (1) In order to provide an opportunity for the establishment of a natural and scenic preserve by voluntary private action of certain owners of lands within the seashore, and notwithstanding anything to the contrary herein contained, no lands or interests in lands shall be acquired on Little Cumberland Island without the consent of the owner, for a period of one year from the date of enactment of this Act, except as specifically otherwise provided herein.

(2) In the event that the owners of land on Little Cumberland Island enter into an irrevocable trust or some other irrevocable agreement for the preservation of the resources of Little Cumberland Island which, in the judgment of the Secretary, assures the protection of the resources in a manner consistent with the purposes for which the seashore is established, the authority of the Secretary to acquire such lands shall be suspended for such time as the trust is in effect and the lands are used and occupied in accordance therewith.

(3) If, at any time during the one-year period following the date of enactment of this Act, the Secretary determines that any lands on Little Cumberland Island are threatened with development, or other uses, inconsistent with the establishment or continuation of the trust herein referred to, then the Secretary may acquire such lands, or interest therein, by any of the methods provided for in section 2 of this Act.

SEC. 5. The Secretary shall permit hunting, fishing, and trapping on lands and waters under his jurisdiction within the boundaries of the seashore in accordance with the appropriate laws of Georgia and the United States to the extent applicable, except that he may designate zones where, and establish periods when, no hunting, fishing, or trapping shall be permitted for reasons of public safety, administration, fish and wildlife management, or public use and enjoyment. Except in emergencies, any regulations prescribing any such restrictions shall be put into effect only after consultation with the appropriate State agency responsible for hunting, fishing, and trapping activities.

SEC. 6. (a) The seashore shall be administered, protected, and developed in accordance with the provisions of the Act of August 25, 1916 (39 Stat. 535; 16 U.S.C. 1, 2–4), as amended and supplemented, except that any other statutory authority available to the Secretary for the conservation and management of natural resources may be utilized to the extent he finds such authority will further the purposes of the Act.

(b) Except for certain portions of the seashore deemed to be especially adaptable for recreational uses, particularly swimming, boating, fishing, hiking, horseback riding, and other recreational activities of similar nature, which shall be developed for such uses as needed, the seashore shall be permanently preserved in its primitive state, and no development of the project or plan for the convenience of visitors shall be undertaken which would be incompatible with the preservation of the unique flora and fauna or the physiographic conditions not prevailing, nor shall any road or causeway connecting Cumberland Island to the mainland be constructed.

SEC. 7. Nothing in this Act shall deprive the State of Georgia or any political subdivision thereof of its civil or criminal jurisdiction over persons found, acts performed, and offenses committed within the boundaries of the seashore, or of its right to tax persons, corporations, franchises, or other non-Federal property on lands included therein.

SEC. 8. The authority of the Secretary of the Army to undertake or contribute to water resource developments, including shore erosion control, beach protection and navigation improvements on land and/or waters within the Cumberland Island National Seashore shall be exercised in accordance with plans which are mutually acceptable to the Secretary of the Interior and the Secretary of the Army and which are consistent with both the purpose of this Act and the purpose of existing statutes dealing with water and related land resource development.

SEC. 9. Within three years from the date of enactment of this Act, the Secretary of the Interior shall report to the President, in accordance with subsections 3(c) and 3(d) of the Wilderness Act (78 Stat. 890; 16 U.S.C. 1132 (c) and (d)), his recommendations as to the suitability or nonsuitability of any area within the national seashore for preservation as wilderness, and any designation of any such area as a wilderness shall be accomplished in accordance with said subsections of the Wilderness Act.

SEC. 10. There are authorized to be appropriated not to exceed $10,500,000 for the acquisition of lands and interests in lands and not to exceed $27,840,000 for development of the seashore.

Mr. BIBLE. Mr. President, the bill as amended by the House contains very few changes from that which the Senate passed earlier this year. The House might have improved the bill in some respects, although the development costs are nearly $9 million more than the amount authorized by the Senate-passed bill.

The Subcommittee on Interior Appropriations, which I have the honor to chair, will have every opportunity to oversee closely the expenditures in connection with the development of this national seashore, and therefore I am not disturbed by the increased amount provided for by the House.

I have conferred with the Senators from Georgia and with other members of the Georgia congressional delegation, as well as with my colleagues on the Interior and Insular Affairs Committee. Mr. President, since the differences between the two versions are not substantial enough to require a conference between the two Houses, I move that the Senate concur in the amendment of the House to S. 2411.

The motion was agreed to.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Nevada.

The motion was agreed to.

ESTABLISHMENT OF THE THADDEUS KOSCIUSZKO HOME NATIONAL HISTORIC SITE, PENNSYLVANIA

Mr. BIBLE. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 1973.

The PRESIDING OFFICER laid before the Senate the amendment of the House of Representatives to the bill (S. 1973) to provide for the establishment of the Thaddeus Kosciuszko Home National Historic Site in the State of Pennsylvania, and for other purposes, which was to strike out all after the enacting clause and insert:

That, in order to provide for the development of a suitable memorial to General Thaddeus Kosciuszko, great Polish patriot and hero of the American Revolution, the Secretary of the Interior is authorized to acquire by donation or purchase with donated funds the property at the northwest corner of Third and Pine Streets specifically designated as 301 Pine Street and/or 342 South Third Street, Philadelphia, Pennsylvania, including improvements thereon, together with such adjacent land and interests therein as the Secretary may deem necessary for the establishment and administration of the property as a national memorial.

SEC. 2. The property acquired pursuant to the first section of this Act shall be known as the Thaddeus Kosciuszko National Memorial and it shall be administered by the Secretary of the Interior in accordance with the Act of August 25, 1916 (39 Stat. 535), as amended and supplemented (16 U.S.C. 1, 2–4), and the Act of August 21, 1935 (49 Stat. 666; 16 U.S.C. 461–467).

SEC. 3. There are hereby authorized to be appropriated not more than $592,000 for the development of the national memorial.

Mr. BIBLE. Mr. President, the House amendment to S. 1973 changed the designation of the Kosciuszko Home from a national historic site to a national memorial. This conforms to the recommendation of the Secretary of the Interior's Advisory Board on National Parks, Historic Sites, Buildings and Monuments, which felt that this particular property did not meet the criteria for a national historic site.

In addition, the House amendment provides that the property is to be acquired either by donation or by purchase with donated funds. It has always been understood by the Senate Interior Committee that the present owner of the property intended to donate it, and if any funds are needed to acquire additional property, this also must be donated.

Therefore, Mr. President, since the differences in the two versions are not substantial enough to require a confer-

ence between the two Houses, I move that the Senate concur in the amendment of the House to S. 1973.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Nevada.

The motion was agreed to.

PERRY'S VICTORY AND INTERNATIONAL PEACE MEMORIAL NATIONAL MONUMENT

Mr. BIBLE. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on H.R. 9554.

The PRESIDING OFFICER laid before the Senate H.R. 9554, to change the name of the Perry's Victory and International Peace Memorial National Monument to provide for the acquisition of certain lands, and for other purposes, which was read twice by its title.

Mr. BIBLE. I ask unanimous consent that the Senate proceed to its immediate consideration.

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

There being no objection, the Senate proceeded to consider the bill.

Mr. BIBLE. Mr. President, the House of Representatives passed this bill by unanimous consent on October 10. The purpose of the measure is to authorize the Secretary of the Interior to acquire some 4 additional acres of needed land at the existing monument site. In addition, the bill redesignates the area as Perry's Victory and International Memorial, thus changing the status from that of national monument to that of national memorial.

In 1919 Congress accepted title to these lands which were ceded to the United States by the State of Ohio and created Perry's Victory Memorial Commission. Later in 1936 Congress provided for the establishment of the monument and authorized its administration and development as a part of the national park system. There is little need to remind the Senate of the great historical significance this memorial has in commemorating the victory of Oliver Hazard Perry during the battle of Lake Erie in the War of 1812. Ever since that time there has been established between the United States and our great neighbor to the north the longest unguarded boundary between two nations in the world.

Although the Senate Interior Committee has not had an opportunity to formally consider this legislation, public hearings were held by the House Interior Committee, and the bill has received the endorsement of the administration. In view of the fact that there is such a small amount of money involved for acquisition, the total of which does not exceed $370,000, and that the Appropriation Committees in both the House and the Senate will have an opportunity to take a careful look at the annual funds required for development, it is my judgment, as chairman of the Subcommittee on Parks and Recreation, that the Senate should proceed to pass this legislation and send it to the White House.

I have been requested to do this by the Senators from Ohio in whose State the memorial is located.

Mr. President, I ask unanimous consent that an excerpt from the House report be printed in the RECORD.

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

PURPOSE

The purpose of H.R. 9554 by Representative Latta is to authorize the Secretary of the Interior to acquire certain needed lands at the existing memorial site commemorating the Battle of Lake Erie. In addition, the legislation redesignates the area as Perry's Victory and International Memorial.

BACKGROUND

On two separate occasions, the Congress has taken cognizance of the international significance of the area presently known as Perry's Victory and International Memorial National Monument. In 1919 (40 Stat. 1322), the Congress accepted title to the memorial lands which were ceded to the United States by an Act of the Ohio Legislature and created the Perry's Victory Memorial Commission. Later in 1936 (49 Stat. 1393), the Congress provided for the establishment of the monument by Presidential Proclamation and authorized its administration and development as a part of the national parks system.

The equally important objectives of this memorial are: First, to commemorate a great naval victory which was critically important during the War of 1812; and second, to memorialize the lasting peace which has been maintained as a result of arbitration and disarmament along the unfortified boundary between the United States and Canada.

Constructed between 1912 and 1915, the memorial was built under the direction of the Perry's Victory Centennial Commission at a cost of nearly $1 million. Ohio, Pennsylvania, Illinois, Wisconsin, Michigan, New York, Rhode Island, Kentucky, Massachusetts, and the Federal government shared the burden of erecting the impressive 352 foot granite shaft. From the top of the memorial, visitors can view the site where the historic naval engagement took place.

The memorial is located on South Bass Island in the village of Put-in-Bay, Ohio, about four miles from the U.S. mainland and approximately five miles from the Canadian border. Automobile ferries operate regularly to the island and now carry almost 100,000 monument visitors to the area annually. These visitors (over 16 years of age) pay a nominal fee to ride the elevator to the observation deck which enables them to see many points of interest.

At the present time, the unit includes 21.44 acres of land; however, seasonal residences and commercial enterprises are encroaching upon the setting and detracting from the general appearance of the area causing a deterioration in its overall effectiveness as a meaningful symbol of peace. In order to reestabilsh the dominance of a memorial and to prevent other unsightly developments, it would be desirable to acquire such lands as are necessary to restore the setting. Under present law, however, lands for this memorial may be acquired only by donation or purchase with donated funds which have not been forthcoming. The enactment of H.R. 9554 will remedy this deficiency by authorizing the Secretary to acquire not more than 4 acres of land for addition to the existing unit.

When acquired, the objectionable structures will be removed and the area will be landscaped so that it will provide an approach mall which will be used by visitors arriving at the municipal docks. This addition will allow an unobstructed view of the memorial column which will add to the public enjoyment of the area.

HISTORICAL SIGNIFICANCE OF PERRY'S VICTORY

At the turn of the 19th Century, when the United States was emerging as a Nation, British and French conflicts were seriously threatening our national independence. Finally, on June 18, 1812, the United States declared war on England. In addition to establishing a coastline blockade, England had effective control of Lake Erie which was considered a vital lifeline for troops and supplies in the Old Northwest.

The task of freeing the lake of British domination fell on Oliver Hazard Perry who, with a fleet of nine vessels, left his headquarters on South Bass Island on September 9, 1813, to engage the six warships that made up the British fleet. The battle took place about 10 miles west-northwest of South Bass Island where Perry and his English counterpart locked forces at close range. When the battle was over, Perry announced his victory in a brief message . . . "We have met the enemy and they are ours: two Ships, two Brigs, one Schooner & one Sloop."

Twenty-seven Americans and forty-one Englishmen had died in combat—the remains of three officers from each side were later placed in the crypt beneath the floor of the memorial. Combined with the successful Battle of the River Thames which the naval victory had helped make possible, the United States hold on the Old Northwest was secured and the peace was sealed by the Treaty of Ghent in 1814. Shortly thereafter the Rush-Bagot Agreement, which limited the number of warships on the Great Lakes, and which led to the eventual establishment of the unfortified boundary between the United States and Canada, was signed.

COMMITTEE CONSIDERATION

Public hearings were held on H.R. 9554 by the Subcommittee on National Parks and Recreation and the spokesman for the Department of the Interior and the sponsor of the legislation both recommended that the addition contemplated should be reduced from 14 to 4 acres. Testimony indicated that this addition would permit an appropriate approach to the mall at a minimum cost. At the conclusion of its consideration of the legislation, the Committee approved H.R. 9554, with amendments, by a voice vote.

COMMITTEE AMENDMENTS

The Committee amendments, as indicated above, reduce the authority to acquire lands from 14 to 4 acres. After considering this revision, the Committee agreed that the usual provision limiting the amount authorized to be appropriated should also be included in the legislation. Two alternatives were available to the Committee in this respect:

It could recommend limiting the amount authorized for land acquisition and those developments directly associated with such lands (leaving the development costs attributable to the existing memorial unlimited); or

It could place a ceiling on the land acquisition program and a maximum limitation on the entire development program for the memorial. Testimony before the committee indicated that a substantial expenditure was contemplated for the landscaping, rehabilitation of the memorial, and development of visitor and administrative facilities on the existing site; consequently, the Members of the Committee agreed that the better approach would be to limit the entire development program ($5,177,000) rather than restricting it to the amount directly attributable to the acquired lands ($2,099,000).

COST

As explained above, the Committee recommendation would limit the total amounts to be expended for land acquisition and development at the Perry's Victory and International Peace Memorial. It should be noted that present law does not limit the amount

authorized to be appropriated for the development of the present site. If H.R. 9554 is enacted, all future appropriations will be charged against the $370,000 ceiling for land acquisition and $5,177,000 for development ($2,099,000 of which is directly attributable to the acquisition of lands authorized by the bill and $3,078,000 of which are costs attributable to the improvement of the existing site).

The development program contemplates the extension and reconstruction of the north and south seawalls, the restoration of the exterior of the memorial structure, the rehabilitation of the interior of the memorial complete landscaping and the construction of appropriate visitor facilities.

SECTION-BY-SECTION ANALYSIS OF H.R. 9554, AS AMENDED

Section 1 redesignates "Perry's Victory and International Peace Memorial National Monument" as Perry's Victory and International Peace Memorial".

Section 2 amends the original authorizing statute to authorize the Secretary of the Interior to acquire up to 4 acres of land for addition to the memorial.

Section 3 abolishes the Perry's Victory Memorial Commission which has not functioned as a group for more than 20 years by repealing those sections of existing law pertaining to it.

Section 4 authorizes the appropriation of not more than $370,000 for land acquisition and not more than $5,177,000 for development of the entire site (an amount which includes $2,099,000 attributable to developments which are to be made on the lands to be acquired pursuant to this legislation and $3,078,000 attributable to developments which are to be made on lands presently within the boundaries of the memorial).

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

Mr. BIBLE. I yield.

Mr. HANSEN. Mr. President, as a member of the Committee on Interior and Insular Affairs, which has the responsibility for considering legislation dealing with national parks, monuments, and memorials, I am pleased to support H.R. 9554.

The memorial to be improved by H.R. 9554 commemorates the victory of Admiral Perry in the Battle of Lake Erie in the War of 1812. In addition, it memorializes the 100 years of peace between the United States, Canada, and Great Britain after the War of 1812. It is a symbol of the longest unguarded boundary between two countries in the world.

The memorial at Put-in-Bay, Ohio, consists of 21.44 acres located on South Bass Island. It was constructed under the direction of the Perry's Victory Centennial Commission between October 1912 and June 1915, to commemorate Comdr. Oliver Hazard Perry's decisive victory in the Battle of Lake Erie on September 10, 1813, and the 100 years of peace the United States had enjoyed with Great Britain since the War of 1812. The memorial consists of a majestic column of granite 353 feet high and 45 feet in diameter at its base. From the top of the column one may view the spot, 6 miles to the west, where Commodore Perry won one of the most brilliant naval victories in our history. Under the floor of the rotunda at the base of the column are buried three British and three American officers killed in the Battle of Lake Erie.

Congress provided for United States acceptance of the memorial and adjacent lands from the State of Ohio on March 3, 1919. At the same time, the Perry's Victory Memorial Commission was created to administer the site. Then, in 1936, Congress provided for the creation of the Perry's Victory and International Peace Memorial National Monument and for its administration, protection, and development by the Department of the Interior, with the Perry's Victory National Commission serving as a board of advisers.

H.R. 9554 abolishes the Commission, which has not functioned as a group for more than 20 years. It also deletes the words "National Monument" from the area's present designation, since it is the spot 6 miles to the west rather than the area itself which has historical significance. The most important provisions of H.R. 9554, however, provide funds for the preservation and improvement of the memorial itself and the surrounding area.

The existing residential developments in the village of Put-in-Bay on the west side of the present memorial area encroach upon it to the extent of competing with and detracting from the general appearance and setting of the memorial column, and tend to destroy its overall effectiveness. If the view of the marble column, which dominates the memorial area, is to be preserved free from these existing obstructions or other undesirable developments in the future, additional lands should be purchased. H.R. 9554 amends the 1936 act to authorize the Secretary of the Interior to purchase with appropriated funds not more than 4 acres of land interests in land for additions to the area. The 4-acre area with improvements will cost about $370,000, of which $35,000 is attributable to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

H.R. 9554 also authorizes the appropriation of $5,177,000, for much needed development of the memorial, including improvements in the seawall and construction of a permanent visitors' center.

I agree with the Department of the Interior, the House of Representatives and the other members of my committee that this is important legislation which should be passed. I urge favorable consideration by the Senate of H.R. 9554.

Mr. TAFT. Mr. President, I support enactment of H.R. 9554, a bill "To change the name of the Perry Victory and International Peace Memorial National Monument, to provide for the acquisition of certain lands, and for other purposes."

This historic memorial is located on South Bass Island in Lake Erie and commemorates the decisive victory of Commodore Oliver Hazard Perry during the War of 1812. Many Senators no doubt recall the famous statement of Commodore Perry during this great naval victory: "We have met the enemy and they are ours."

The memorial, in addition to commemorating Perry's great victory, symbolizes the 3,000-mile unfortified boundary between the United States and Canada.

The Congress recognized the importance of this great memorial when it created a commission in 1962, known as the Battle of Lake Erie Sesquicentennial Celebration Commission, to celebrate the 150th anniversary of the Battle of Lake Erie and the 150 years of permanent peace and mutual respect between the United States and Canada.

Visitors from all over the world have come to view this great memorial—94,900 visited it in 1971. Problems, however, have arisen jeopardizing the future of the memorial. Residential developments in the area have begun to encroach upon the area to the extent that they detract from the memorial. Acquisition of additional lands is desperately needed to preserve the beauty of the memorial. Additionally, the seawall surrounding the memorial is in serious need of repair.

H. R. 9554 would provide funds for the repair and extension of the seawall and would additionally provide for the acquisition of portions of the two blocks to the west to extend the memorial area to the municipal docks of Put-in-Bay, which is the visitor approach to the memorial, and to an existing city park. The Department of the Interior also plans to use funds authorized under this legislation to develop a landscaped approach mall from these municipal sites to the memorial. This action will afford an unobstructed view of the memorial and also permit a better location for the installation of needed permanent visitors' facilities that would otherwise have to be placed in an area that would further detract from the appearance of the memorial.

H.R. 9554 authorizes the appropriation of not more than $5,177,000 for these development purposes, with $2,099,000 of this sum planned for the development of the acquired land.

Specifically the bill would require only 3.21 acres of land to be added to the existing memorial grounds at an estimated cost of $370,000 with $35,000 of this sum attributable to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

Mr. President, I wish to thank the distinguished chairman of the Interior Committee, Senator JACKSON, and other committee members, including the Senator from Wyoming, Senator HANSEN, for their cooperation and support in this matter.

I am hopeful the Senate will join the House of Representatives and the Department of the Interior in approving this legislation.

Mr. BIBLE. Mr. President, I move the passage of H.R. 9554.

The PRESIDING OFFICER. The bill is open to amendment. If there be no amendment to be proposed, the question is on the third reading and passage of the bill.

The bill (H.R. 9554) was ordered to a third reading, read the third time, and passed.

THE MAR-A-LAGO NATIONAL HISTORIC SITE

Mr. BIBLE. Mr. President, I move that the Committee on Interior and Insular Affairs be discharged from further consideration of H.R. 13067, the Mar-A-Lago National Historic Site bill, and that

the Senate proceed to its immediate consideration.

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

The legislative clerk read as follows:

A bill (H.R. 13067) to provide for the administration of the Mar-A-Lago National Historic Site, in Palm Beach, Florida.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Nevada.

The motion was agreed to. The committee was discharged from further consideration of the bill and the Senate proceeded to its immediate consideration.

Mr. BIBLE. Mr. President, this bill, as passed by the House is almost identical to S. 4019, introduced by Senator BIBLE, and which is now pending before the Committee on Interior and Insular Affairs.

Mar-A-Lago is one of the Nation's great mansions, and is truly deserving of the designation as a national historic site. Located on a coral reef between the Atlantic Ocean and Lake Worth in Palm Beach, Fla., this magnificent estate consists of approximately 17 acres of land. This property is recognized as one whose value will grow in future generations, and which is symbolic of a bygone era. The Secretary's Advisory Board on National Parks, Historic Sites, Buildings and Monuments, has approved its recognition. Because of the generosity of its owner, Mrs. Marjorie Merriweather Post, there will be no Federal funds required for the acquisition, or uniquely enough, for operation and management. This is truly a gift to the American people. Very few changes have been made in the main structure since it was originally built in 1927 except for the construction of the pavilion on the southwest corner of the house. It is intended that this mansion shall serve as a temporary residence for visiting foreign dignitaries and heads of State and for other selective purposes under the direction of the Secretary of the Interior, with the concurrence of the Mar-A-Lago National Historic Site Advisory Commission which is established by the legislation.

Mr. President, this, in my experience, is unique, not only in the gift of a great national resource, but in the money to maintain and operate it. Mrs. Post is to be commended for this great generosity.

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

Mr. BIBLE. I yield.

Mr. FULBRIGHT. It is not quite unique because Mrs. Post also gave her estate in Washington to the Smithsonian and endowed it with funds. So this is the second time she has made a similar arrangement.

Mr. BIBLE. I am happy to have my memory jogged. She is doubly entitled to our thanks.

Mr. FULBRIGHT. The one here was with a great selection of art, particularly Russian art outside of Russia, and she has given that with the endowment to maintain it.

Mr. BIBLE. It is truly appreciated. I am glad to have that brought to my attention. It contains money to maintain it for many years in the future.

The House bill is endorsed by the administration, and therefore, Mr. President, I move its passage by the Senate. I ask unanimous consent that an excerpt from the House committee report be printed in the RECORD.

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

PURPOSE

The purpose of H.R. 13067 by Representatives Aspinall, Taylor, and Rogers is to authorize the Secretary of the Interior to provide for the administration of the Mar-A-Lago National Historic Site in Palm Beach, Florida.

DESCRIPTION AND LOCATION

Mar-A-Lago is one of the Nation's great mansions. Located on a coral reef between the Atlantic Ocean and Lake Worth in Palm Beach, Florida, the estate consists of approximately seventeen acres of land. The meticulously manicured grounds emphasize the prominence of the carefully designed structure which has been molded to fit into the magnificent setting.

As one enters the grounds through the beautiful arched gate and proceeds along the coconut palm-lined driveway, the main features of the structure come into view. Probably the first feature to capture the visitor's eye is the enormous arched Romanesque style window that dominates the oceanfront side of the house, but it is not until he reaches the porte cochere that he is confronted with the elegance of the place.

Passing through the massive iron grille doorway into the elaborate entrance hall, the hooded fireplace captures the visitor's immediate attention, then his eyes begin to absorb the other impressive features of the room. Interesting old Spanish lanterns hang from the beamed ceiling to illuminate the large dresden urns that stand opposite a pair of Roman busts. At the other end of the entryway, a handsome pair of huge, carved, double doors with recessed panels—upon which carved and gilded cherubs are mounted—lead into the living room.

Topped with a high gold leaf ceiling from which massive Brystol crystal chandeliers are hung, the living room with its seven rare Venetian silk needlework panels and seven large archways, is for many people the most impressive room of all. From it, one can look out through the arched window across the grounds to the Atlantic Ocean. Four highly polished, black marble stairs lead to the small loggia where a Bengal tiger rug decorates the floor and artistic frescoes adorn the walls. Filled with priceless furnishings of the late Renaissance and 18th Century period, this living room is unique in the United States.

Near the hooded fireplace, an entrance leads into the relatively small, but impressive walnut panelled library which contains an interesting collection of books and some outstanding works of art.

On the other side of the living room, the entrance to the dining room is provided through one of the large archways. Adapted from a palace in Rome, this room is dominated by what is believed to be the only marble top extension table in the world. This massive table, which can be expanded from about 12 to 29 feet, weighs about 4000 pounds and can be used in a variety of combinations. Regardless of the length, however, the inlaid design of the top remains uninterrupted. The floor of the room consists of white and black marble blocks from an old Cuban castle and the walls are decorated with scenes painted on canvas which were copied from frescoes found in the original dining room of the Roman palace. Luxurious place settings of fine china, crystal, and golden tableware add to the rich atmosphere of the room and will remain as a part of the donated furnishings.

Altogether, the main residence contains more than a half dozen guest suites and sleeping rooms. All of the guest accommodations contain interesting furnishings and some are exquisitely decorated and contain valuable works of art and antiques. Perhaps the most unusual room in the house is the place known as "Deenie's House". Originally, it was the nursery. Its oval room remains today as it was when Dina Merrill was a child. A beehive fireplace with a rosebush molded in plaster relief "growing" across the dome to the windows on either side is the central feature of the room. The canopy bed has carved squirrels at the top of each post and the doors swing on hinges in the design of roses with door handles in the form of small squirrels whose tails are the levers. Inside the bathroom, two rows of tiles with illustrated nursery rhymes complete the youthful setting.

Outside, facing Lake Worth, a cloister abuts the inner side of the crescent-shaped structure providing its occupants with a pleasant atmosphere and view, but preserving their privacy and yielding them maximum security. In the foreground, a round patio surfaced with a pebble pavement consisting of uniform, highly polished black, yellow, white and multicolored glacial gravel has been installed to form an artistic geometric pattern. A small goldfish pool lined with waterlillies and adorned with sculptured birds forms the backdrop for the patio.

The view across the patio is magnificient. The grounds are perfectly landscaped and maintained. It is difficult to imagine that this land was once covered with a jungle of heavy underbrush almost too thick for penetration, because today it features a lush carpet of thick, verdant grass and a balanced setting of colorful gardens and graceful palm trees with Lake Worth in the distant background.

Taken altogether, Mar-A-Lago is truly one of America's greatest man-made treasures. It is a dream come true of one of the great ladies of the Land and it could probably never be duplicated—or, at least, it probably never will be. Very few changes have been made in the main structure since it was originally built in 1927, except for the construction of the pavillion on the southwest corner of the house. This addition can accommodate groups of modest size for social events or can serve as a meeting place for conferences, performances or other activities that might occur in the future if H.R. 13067 is enacted.

The Nation is indebted to Mrs. Post for creating this magnificent mansion and for her generosity in offering it to the Federal Government, without cost, so that it can be preserved in perpetuity. Like her Hillwood estate in Washington, D.C., which she has arranged to donate to the Smithsonian Institution, Mar-A-Lago contains a countless number of art objects of tremendous value which will be given with the property and will continue to be used in connection with it.

The PRESIDING OFFICER. The bill is open to amendment. If there be no amendment to be proposed, the question is on the third reading and passage of the bill.

The bill (H.R. 13067) was ordered to a third reading, was read the third time, and passed.

SUPPLEMENTAL APPROPRIATIONS, 1973

The Senate continued with the consideration of the bill (H.R. 17034) making supplemental appropriations for the fiscal year ending June 30, 1973, and for other purposes.

Mr. McCLELLAN. Mr. President, the pending business before the Senate is the supplemental appropriation bill, H.R. 17034, which passed the House of Representatives Wednesday and was reported to the Senate by the Committee on Appropriations on Thursday, October 12, 1972. The bill as reported to the Senate recommends new obligational authority in the amount of $5,204,690,610 and, although this sum recommended by the Senate committee is $1,639,641,785 over the amount of the bill as it passed the House of Representatives, there are several good reasons for this large increase.

In the first place, the House did not consider budget estimates for the higher education programs. Subsequent to consideration of the bill in the House committee, the President submitted a supplemental budget estimate to the Senate in Senate Document 92–91 on October 10, 1972, in which he requested $1,207,214,000 for the Office of Education. The committee has recommended the full amount of the President's request for the Office of Education. This accounts for a large part of the increase recommended by the committee over the bill as it passed the House of Representatives.

In addition, in Senate Document 92–91, after consideration of the bill in the House, the President requested $175,000,000 for the Maritime Administration, and the committee has recommended the full amount of this budget estimate to provide funds to continue the construction of additional modern and efficient merchant ships during the current fiscal year.

In addition, under the legislative chapter of this bill, the Senate committee has included $53,610,000 for construction of certain Senate buildings which were not considered by the House of Representatives; and, finally, in the Department of Transportation and related agencies appropriation bill, the committee included $68.4 million in items which were not considered by the House of Representatives. This explains to a great extent why the bill, as reported to the Senate, is in excess of the House figures.

This bill contains appropriations for several programs and activities which normally would have been included in the regular annual appropriation bills but which were omitted from these bills due to lack of authorization at the time. Among the items in this category are:

Manpower training programs in the Department of Labor;

Social and Rehabilitation Service and the Office of Child Development, both of which are in the Department of Health, Education, and Welfare;

The Domestic Programs of Action;

The Office of Economic Opportunity;

The traffic and motor vehicle safety programs of the Department of Transportation;

The American Revolution Bicentennial Commission; and

The appropriations for higher education and library resources.

Mr. President, before each Member is a detailed report from the Committee on Appropriations which explains at some length the recommendations made by the committee. I will now turn to the various chapters contained in this bill and give a brief explanation of some of the important items. I would be delighted to yield at any time to answer questions, and the chairmen of the various subcommittees in the Committee on Appropriations will be available to go into detail with respect to any of the individual items in the various chapters.

In chapter I, the committee concurs with the House of Representatives and recommends an appropriation of $16,500,000 for the Soil Conservation Service. These funds are to be utilized in areas damaged by natural disasters in several States earlier this calendar year. Also, $13.5 million will be utilized by the Soil Conservation Service and $3,000,000 by the Forest Service for emergency measures for runoff retardation and soil erosion prevention.

The committee has approved an appropriation of $250 million in chapter II for urban renewal programs. These funds are to be used to carry out conventional urban renewal programs in the area devastated by Hurricane Agnes. The sum recommended by the committee, when added to the $200 million provided in the regular bill, will make a total of $450 million available to assist the localities damaged as a result of Hurricane Agnes. The House bill contained $26,320,000 to purchase four C–130 ski-equipped airplanes for the National Science Foundation. The budget of the Department of Defense for fiscal year 1973 contained $32.9 million to purchase five of these airplanes. The request was denied by the House and the Senate in connection with the regular Department of Defense appropriation bill, and the two subcommittees at that time indicated the funding for these planes should be considered in connection with budget estimates for the National Science Foundation. The committee has reduced this sum to $13,160,000.

Chapter III contains appropriations for the Department of the Interior. The committee recommends an appropriation of $2 million, the same amount as the House allowance for the National Park Service for operations and maintenance of the nonperforming art functions of the John F. Kennedy Center for the Performing Arts. The authorization for this appropriation is contained in Public Law 92–313. It is estimated that the total operating budget of the Center will amount to $2,986,000, and the committee was advised that the Center will be responsible for somewhat less than one-fourth, or $586,000, as the performing arts portion of the total estimated budget. The committee recognizes the difficulty in accurately estimating costs of a new activity and expects the National Park Service to be in a position to reduce its share of expenditures at the Kennedy Center after the first year on the basis of actual experience in operations and maintenance management. For the American Revolution Bicentennial Commission, the committee recommends an appropriation of $3,356,000, which is one-half of the budget estimate for planning activities and State grants connected with staging the Nation's bicentennial observances. These funds will be available contingent upon enactment of the Authorization Act, which has passed the Senate and the House of Representatives.

The largest sums recommended in this bill are contained in chapter IV, the chapter relating to the Department of Labor and Health, Education, and Welfare. Beginning on page 15 of the report is a detailed explanation of each item. As I mentioned earlier in my statement, the bill contains $1,207,214,000 for the Office of Education. It also contains $856,464,000 for the Department of Labor, most of which is for Manpower Training Services. The bill also contains $840,000,000 for the Economic Opportunity Program and $899,268,000 for Social Rehabilitation Services. For Child Development—Headstart—the committee recommends $422,056,000.

The committee has approved an appropriation of $47,925,000 under chapter V, legislative branch, for completion of construction of the New Senate Office Building. The proposed addition would contain approximately 654,800 gross square feet of space, as compared to 712,900 gross square feet of space in the existing new building. Since studies indicate that the greatest need of the Senate is for additional office space, the new structure would have between 400 to 450 rooms with no additional hearing rooms. Except for property belonging to the National Women's Party, all of the land and buildings within square 725 belong to the Senate and it is upon this land that the extension will be constructed. In addition, the committee has recommended an appropriation of $4,125,000 for the acquisition of property in square 724, the demolition of buildings, and design competition for garage and related facilities.

There are 10 privately owned properties in Square 724 which will be purchased by the Senate, including the Monocle Restaurant, the Stanton Apartments, the Senate Court Apartments, and the Capitol Hill Hotel, formerly known as the Carroll Arms Hotel. Forty real properties in this Square are already owned by the Government and are now under the jurisdiction and control of the Architect of the Capitol. In addition, one large office building is owned by the U.S. Government and is under the jurisdiction and control of the General Services Administration.

The Architect of the Capitol, under the provisions of the Authorization Act which passed the Senate earlier this year, is authorized to initiate and conduct a study to explore design and cost alternatives for construction on this Square of a parking garage with limited commercial facilities and report his preliminary findings and recommendations to the Senate Committee on Public Works. The

Architect is also to conduct an architectural design competition in order to encourage the preparation of an imaginative design for the garage structure. The bill also includes $1,450,000 for the acquisition of Square 764, which is the Old Providence Hospital site. It is located in Southeast Washington and is bounded by D, Third, E, and Second Streets.

The site is now vacant land and contains approximately 95,000 square feet of space. The House Office Building Commission has approved this square as the site for facilities for the pages of the Senate, the House, and the Supreme Court. The committee has made a study of the senatorial allowance and is recommending a merger of the current allowances for long-distance telephone calls and telegram charges, stationery, airmail and special delivery stamps, transportation, home office expenses, subscriptions, State office rentals, and telephone charges incurred outside of Washington, D.C., into one consolidated allowance for the same purposes. This new multipurpose account will be placed on a calendar year basis, effective January 1, 1973, and will be rated, for each Senator, at the aggregate of the individual amounts currently in effect. There will be no increase in the overall amount allowed each Senator and there is no necessity for increasing the appropriation.

The two purposes of this action are to provide flexibility to each Senator in the management of his office and to establish the calendar year as the standard accounting period. The consolidated control account for each Senator will be maintained by the Disbursing Office, under the Office of the Secretary of the Senate, and this Office will advise Senators of the payments made from this account, when vouchers submitted exceed accruals, and of possible deficiencies at the earliest practical moment. An antideficiency provision has been included in the authorization which will preclude payment of any voucher which exceeds the Senator's accrued allowance through the month in which the voucher is received for payment. The consolidation does not involve any of the funds available for clerk hire.

With respect to the Capitol Police, the committee was advised that under a recent decision in the District of Columbia, members of the Capitol Police force who carry revolvers outside the Capitol grounds would be subject to prosecution for carrying an unregistered weapon. This results from an interpretation of the law that the Capitol Police force does not come within any of the classes set forth in 22 District of Columbia Code, sections 3204 and 3305 dealing, among other matters, with the carrying of firearms within the District of Columbia. The committee was advised that the Committee on Public Works of the Senate has been considering an amendment to the law in order to correct this situation, but that it was doubtful the law could be amended before adjournment.

The chairman of the Committee on Public Works, in a communication to the Committee on Appropriations, proposed that the supplemental appropriation bill be amended to authorize the Capitol Police to carry firearms under regulations to be prepared by the Sergeant at Arms of the Senate and the Sergeant at Arms of the House of Representatives. Language to carry out this recommendation has been included in the bill.

Under chapter VI, Public Works, the committee recommends an appropriation of $6,060,000. For the Corps of Engineers portion of this chapter, an appropriation of $3,775,000 is recommended for general investigations, construction, general and flood control, Mississippi River and tributaries. The bill also contains $1,435,000 for the Southwestern Power Administration. The Southwest has experienced abnormally low rainfall in recent years. As a result, the Southwestern Power Administration will not be able to market sufficient power from Federal reservoirs to its contract customers. The supplemental appropriation will be used to purchase power from other sources to meet contract commitments.

The bill contains $198,582,000 for appropriations financed under chapter VII, Departments of State, Justice, Commerce, judiciary. For the Law Enforcement Assistance Administration, the committee concurs with the House in recommending an appropriation of $5,000,000 for expenses of additional research and development to control the supply of illicit narcotics. The bill contains $11,500,000 not considered by the House for expenses of the U.S. Government's participation in the 1974 International Exposition on the Environment to be held in the city of Spokane, Wash. Since the authorization for this appropriation has not passed, the committee has included a proviso in the bill providing that none of the funds recommended shall be available for obligation until authorizing legislation has been enacted into law.

Earlier in my remarks I referred to the fact that $175 million had been requested by the President and included in the bill for ship construction under the Maritime Administration, which item had not been considered by the House. This sum is included within this chapter. The committee has also inserted in the bill a paragraph recommending an appropriation of $1 million for the Commission on the Organization of the Government for the Conduct of Foreign Policy. This sum was included in the bill upon the request of the chairman of the Committee on Foreign Relations of the Senate.

Chapter VIII of the bill relates to the Department of Transportation and related agencies. The committee included $11,400,000 in the bill for payments to air carriers under the Civil Aeronautics Board. The amount recommended covers retroactive payments to local service airlines, and the recommendation of the committee recognizes the obligations of the Government with respect to air carriers under the applicable law.

The bill also includes $12 million for the payment of loan guarantees under the Interstate Commerce Commission. This will permit repayment of a guaranteed loan made to the Erie-Lackawana Railway Co. The sum of $57 million has been recommended for grants to the National Railroad Passenger Corp. This sum includes $9.1 million for anticipated deficits from the international services and existing and proposed additional experimental services; $32 million for roadbed improvements; and $15 million for the purchase of four turbo trains.

Chapter IX relates to appropriations for the Treasury Department and related agencies. The sum recommended by the committee in this chapter is $65,569,000. For the Bureau of Customs, the sum of $2.7 million has been included in the bill to provide 310 additional customs patrol officers for increased surveillance of port and dock areas in an effort to reduce the smuggling of narcotics and dangerous drugs. The sum of $4 million is recommended for the Internal Revenue Service. This amount provides for examination, audit, and investigation of an increased number of income tax returns with the objective of intensifying efforts to suppress the illegal traffic in narcotics and dangerous drugs.

For the Office of the Secretary, the committee recommends an appropriation of $3.8 million for central direction and coordination of the Treasury Department's general revenue-sharing functions, and for reimbursement to the Bureau of the Census for the collection and tabulation of certain data needed to compute the revenue-sharing allocations. It also provides for the audit responsibilities placed on the Department by the general revenue-sharing legislation.

The committee concurs with the House and recommends an appropriation of $20 million for salaries and expenses of the Special Action Office for Drug Abuse Prevention. The amount recommended provides initial funds for implementation of section 224 of Public Law 92–255, the Drug Abuse Office and Treatment Act of 1972, which authorizes the encouragement and promotion of expanded research programs to create, develop, and test chemical substances for use in the treatment of addiction.

The committee bill also contains $30,000,000 for the special fund to assist other Federal agencies in developing more effective drug abuse prevention functions, as provided in section 233 of the Drug Abuse Office and Treatment Act of 1972.

Mr. President, I have attempted to give a brief explanation of many of the items in the bill, and the various subcommittee chairmen from the Committee on Appropriations will, I hope, be available to go into any detail which is desired by any Senator.

Mr. President, I ask unanimous consent that the committee amendments be agreed to en bloc, and that the bill as thus amended be regarded for the purpose of amendment as original text, provided that no point of order shall be considered to have been waived by reason of agreement to this order.

The PRESIDING OFFICER (Mr. HARRY F. BYRD, JR.). Is there objection to the request of the Senator from Arkan-

sas? The Chair hears none, and it is so ordered.

Mr. EAGLETON. Mr. President, I ask unanimous consent that during the further deliberations of the Senate on this measure, Mr. James Murphy and Mr. Mark Schneider of the Committee on Labor and Public Welfare be permitted to be present in the Chamber.

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

Mr. JAVITS. Mr. President, I make a similar request in behalf of Charles Warren and John K. Scales of my staff.

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

Mr. JAVITS. Mr. President, when the Senator from North Dakota (Mr. YOUNG) has finished his presentation, I have some questions of the chairman, but I am perfectly willing to await my time.

Mr. YOUNG. Mr. President, the chairman of the committee has explained the bill very well, particularly with reference to the various items. I can only add that the bill turned out better than I thought it would. It is only about $188 million over the budget. I expected that it might be $400 million or $500 million over. I think the committee did as well as it could with the bill, and I hope it will be approved.

Mr. JAVITS. Mr. President, if I could have the attention of the chairman——

Mr. McCLELLAN. Mr. President, I yield to the distinguished Senator from New York. How much time would he like?

Mr. JAVITS. Five minutes would be sufficient.

Mr. McCLELLAN. I yield 5 minutes on the bill.

Mr. JAVITS. I thank the chairman.

First, Mr. President, I would like to state that I think the committee did a splendid job. There are a few questions, and I have an amendment or two, but in view of the fact that we have just received the report, I would like to ask the Senator a few questions as to the purposes of the committee.

First, on that item which appears on page 47, line 22, at least in the bill of which we have a copy, dealing with a certain special fund in Special Action Office for Drug Abuse Prevention in the Executive Office of the President; if the Senator will be kind enough to turn to that, it is on page 61 of the Senate committee's report.

By the way, the Senator said that it was before all of us. My assistant happens to have a copy, but I do not know whether it has actually been distributed. The Senator might wish to inquire.

Mr. McCLELLAN. I understand that copies of the report have been distributed and are on Senators' desks.

Mr. JAVITS. I have one; I just wondered.

Mr. McCLELLAN. Does the Senator have one?

Mr. JAVITS. I happen to have a copy. I will be happy to make it available for any Senator who wishes to see it.

This is on the subject of the Special Action Office for Drug Abuse Prevention. If the chairman will give me his attention, the figure for the special fund has been set at $30 million. The amount which was requested for this special fund was $40 million.

Normally, one would say, "Great, you allowed 75 percent; who can argue about that?"

But I feel that this is a matter on which I would like to appeal to the chairman's sense of equity, rather than first submit an amendment, because I think it concerns us all.

This particular fund, essentially, is to clean up the waiting list for the methadone maintenance program. We have a chart from Dr. Jaffee, a very gifted man whom the President has put on this job, which shows the current waiting list to 27,940 persons, and that the amount required to clean up that waiting list comes to $69,850,000. I shall be very happy to have it inspected.

This appropriation of $30 million falls a bit short of actually enabling us to clean up the waiting list for the program. The amount really required would be somewhat in the area of $40 million. I will state the exact figures in a moment.

I think all of us would be appalled if we looked at the list of cities in which there are methadone maintenance waiting lists. I am not very proud of my home city of New York, which seems to have attracted narcotics addicts like honey does flies. It is unbelievable.

But when one sees that so many other States and so many other cities are involved in this scourge, ranging almost literally right across the country, I think it would appall any Senator. And, of course, right now, until we find an antagonist or some way of dealing with this current illness the only real thing we can do to take these narcotics addicts out of the criminal category is methadone maintenance, at least when they seek it, and all of these I have discussed are seeking it.

So I would like to ask the Senator this question: Is there some reason why the committee felt it should just provide the $30 million amount? Had the committee seen this list, which is certainly authoritative, and the amount which is required in order to do the job? Because if it was not before it, I think it would strongly appeal to judgment and reason that we should give them the necessary money at least to clean up these methadone maintenance waiting lists. That is an elementary precaution we could take to at least get rid of as many addicts as we could, with this treatment.

Mr. McCLELLAN. Mr. President, may I say to the distinguished Senator from New York, I do not think any Member of this body is opposed to making adequate appropriations in this field. It is true that the President requested in his budget $40 million for this purpose. The House of Representatives, after weighing it, allowed only $20 million, and made this statement in its report:

> The committee reluctantly recommends a reduction of $20 million in the funds requested for the special fund, simply because the special action office was unable to provide the committee with specific objective proposals, plans, or programs for the use of the funds requested.

I do not know just what the testimony showed before the House of Representatives, but that was the House's judgment.

This matter was handled by Senator MONTOYA's subcommittee. I do not see him in the Chamber now. He probably can give a further and better explanation.

It should also be borne in mind that 5 months of this year have already gone by. By the time this appropriation bill is passed, becomes law and the money becomes available, another month probably will expire. So if we can hold what we have here, the $30 million, we will have done pretty well, taking into account that they have no programs. They have no report to us about how they can effectively and judiciously expend this amount of money. I think that under the circumstances we are being very liberal.

Mr. JAVITS. The Senator would be right if we had no facts, but now we do. So may I submit the facts we have to the Senator from Arkansas, the Senator from North Dakota, and the Senator from New Mexico (Mr. MONTOYA), because now we have the certified facts as to what is to be done and what it costs. If they look favorably upon it, I would—or perhaps even the committee would—consider an amendment which would bring the money up to what is really needed, based now upon a firm representation of fact. I will submit that to all the Senators concerned, in the hope that they will examine it from that point of view.

Mr. McCLELLAN. I would suggest that the Senator submit those facts to the committee. I do not believe they have been made available.

Mr. JAVITS. That is correct.

Mr. McCLELLAN. They have not been made available to the committee, so the Senator can understand the reason for the judgment of the committee, not having the facts which you refer to.

But I would say to the distinguished Senator that unless there is an amendment, the $30 million is the most that can be agreed to in conference. The facts he submits no doubt will be helpful and will reinforce the Senate committee in supporting the amount it appropriates and in sustaining its position for $30 million instead of $20 million. It would be helpful to us that way, certainly; but without an amendment, the Senator knows that is the limit which we can achieve in conference.

Mr. JAVITS. I am quite prepared to submit an amendment, but I think this matter commends itself so much to equity that I would like to submit it in the next few minutes.

Mr. McCLELLAN. If the Senator is going to submit an amendment, I wish he would wait for a little while, until Senator MONTOYA can come to the floor. He is the chairman of the subcommittee and held the hearings, and he is more familiar with the matter than I am. I would like for him to be present.

Mr. JAVITS. Mr. President, one other observation: The committee made an increase to $840 million basic in the appropriation for various titles of OEO for the war on poverty, as I requested, and

thus accommodated the items that I had testified to relating to an increase for community economic development, for legal services, the administration requested $760 million for these items and that was the House allowance.

Within the $840 million, I requested totals of $69,750,000 for community economic development, an amount $39.05 million above the $40.7 million requested by the administration. This was made on behalf of myself and Senator KENNEDY. And $94.346 million for legal services, an amount $22.846 million above the $71.5 million requested by the administration. This was made on behalf of myself, Senator CASE, Senator MONDALE, and Senator CRANSTON.

I ask unanimous consent that excerpts from my testimony before the Subcommittee on Labor-HEW on October 6, 1972, be printed at this point in the RECORD.

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

COMMUNITY ECONOMIC DEVELOPMENT

The Economic Opportunity Amendments of 1972 added a new title VII, "Community Economic Development" to the Economic Opportunity Act.

This new title—which I co-authorized with Senator Kennedy and Senator Nelson, the Chairman of the Subcommittee on Employment, Manpower and Poverty of the Senate Committee on Labor and Public Welfare—is designed to support the efforts of community economic development corporations and rural cooperatives, in working with the private sector to reduce poverty in low-income urban and rural areas.

The new authority brings together programs previously conducted under Title ID, "Special Impact" which the late Senator Robert Kennedy and I added to the Economic Opportunity Act in 1967, taking as our model a very successful program in Bedford-Stuyvesant in New York.

Mr. Chairman, our request—which I make on behalf of myself and Senators Nelson and Kennedy—consists of three basic elements as follows:

$64,900,000 merely to implement the completed plans of 39 existing community development corporations to be funded under Part A of the new title; these programs are currently funded under title ID of the Act, Special Impact. The $63,900,000 includes $43,200,000 for urban grantees, $17,100,000 for rural grantees, and $4,600,000 for support activities, such as training, technical assistance, evaluation and research.

$3,850,000 for the maintenance of rural cooperatives projects under Part B of the new title and related rural projects. These activities are currently funded under Section 232 of the Economic Opportunity Act (research and development) and title III a (rural loans) respectively.

$1,000,000 for the revolving loan fund to be established under Part C of the new title VII.

These essential needs are documented on a project and item basis in a letter dated September 25, 1972 to me from the Center for Community Economic Development, Cambridge, Massachusetts, based on a survey conducted at my request. The Center is a non-profit organization chartered to provide policy research and information with respect to community economic development programs.

I ask that this letter from Geoffrey Faux, Executive Director of the Center for Community Economic Development, together with tables and charts be included in the Hearing Record.

As a co-author of the new title, I believe that the activities conducted thereunder have already been proven under existing law as extremely cost-effective means of dealing with the problems of poverty and decay in our inner cities and depressed rural areas.

In a 1971 task force report, the Twentieth Century Fund of New York concluded on the basis of a review of these programs that:

Community Economic Development Corporations have demonstrated: "unique capacity for pooling a community's talents and resources . . . for linking together a variety of businesses and projects . . . and for organizing the community to accept and effectively utilize resources and assistance from outside the poverty area."

The program in Bedford-Stuyvesant, New York—upon which the original Kennedy-Javits title I D was based—is particular testimony to the effectiveness of the program. For a $25 million federal investment during the first four years the Bedford-Stuyvesant program can directly point to over $31 million in non-federal loans and investments, to increased payrolls of over $25 million per year, to private contributions of $8.5 million and to investments in real estate and other assets of $12 million.

This experience is borne out throughout the Nation. ABT Associates of Cambridge, Massachusetts, which has just completed a study of the existing 39 Community Development Corporations concludes that every dollar of Federal money has generated 80 cents in private and 17 cents in "other public" investment, roughly doubling the return.

Thus, we urge the Subcommittee to consider our request for $69,750,000 as one that will be worth at least twice its cost as an anti-poverty effort.

LEGAL SERVICE PROGRAM

Second, on behalf of Senator Case, Senator Mondale, Senator Cranston, and myself I request an earmarking of $94,346,000 for the legal services program.

Mr. Chairman, one of the greatest disappointments in the recent Conference on the Economic Opportunity Amendments of 1972 was the decision to drop from the bill the new proposal for a National Legal Services Corporation, which had the general support of the Congress and the Administration.

Despite this accord on the desire to expand the program and raise its status by putting it into a non-profit corporation, we just could not reach agreement on key elements, such as the composition of the Board of Directors and related questions of organization.

But notwithstanding that fact, the Conferees did express their support for the existing program and their desire to see it expanded.

The statement of the Conferees appearing at page 26 of the Joint Explanatory Statement of the Conferees (Report No. 92–1086) states:

"The Conferees continue to strongly support the existing legal services program . . . and intend to continue to seek . . . appropriate means of expanding the program . . . to provide the poor greater access to our system of justice under law."

Mr. Chairman, the needs of the program during fiscal year 1973 have been carefully defined by a survey conducted by the National Legal Aid and Defenders Association, at my request.

The NLADA—which is made up of distinguished members of the bar reports that "a total of $94,346 million may be effectively utilized"—and I emphasize those words—"toward meeting basic minimal needs."

This consists of $77,030,000 for projects in the field and $17,316,000 for administration, research and development, support and evaluation and technical assistance.

They are documented on a state, regional and item basis in a letter dated October 2, 1972 from Frank N. Jones, Executive Director of the National Legal Aid and Defender Association.

The letter includes in each case the comparable budget allocation for fiscal year 1973, and the amounts made available in fiscal year 1972 and the amounts needed to maintain programs at the current level throughout the remainder of this fiscal year.

To merely maintain programs at current levels, the National Legal Aid and Defender Association indicates that $78,622,000 would be necessary; this would exceed by $7,150,000 the amount reserved.

I ask unanimous consent that the letter be printed in the Hearing Record.

Mr. JAVITS. The full testimony and documents appear beginning at page 34827 of the CONGRESSIONAL RECORD of October 11, 1972.

I also requested in the same testimony that approximately $25 million additional be made available to prevent cutbacks in many of the 50 States for community action and Headstart due to the treatment of Puerto Rico as a State under my amendment included in the Economic Opportunity Amendments of 1972.

The committee dealt with this item completely.

I am very pleased also that the committee report urges greater funding for OIC—Opportunities Industrial Centers—programs, as requested by Senator BOGGS and myself so that they can implement their plans throughout the country.

I wanted to express my great appreciation to the committee for this very humane approach to these problems.

I thank the chairman and the members of the committee, including particularly Senator CASE, who joined with me in the legal services request.

Mr. EAGLETON. Mr. President, I call up my amendment at the desk.

The PRESIDING OFFICER. The amendment will be stated.

The amendment was read, as follows:

On page 11, following line 2, insert the following sentence:

"In addition to the sums provided in the previous sentence for carrying out the Older Americans Act of 1965 as amended, $17,000,000 to carry out Title IV of such Act: Provided, that funds contained herein to carry out Title IV of the Older Americans Act of 1965 as amended shall be available upon enactment into law of authorizing legislation."

Mr. EAGLETON. Mr. President, the purpose of this amendment is to provide research and training funds under the Older Americans Act. This item was requested in the budget, but has not been included in any of the appropriations bills, because the authorizing legislation had not been enacted. The Senate acted this afternoon to approve the conference report on H.R. 15657, the Older Americans Act Amendments of 1972, and the House is expected to follow suit tomorrow.

Mr. President, I have discussed this amendment with the Senator from Washington (Mr. MAGNUSON), and it is my expectation that it meets with his approval.

Mr. MAGNUSON. Mr. President, as I understand, the Bureau of the Budget has approved this amendment.

Mr. EAGLETON. The Senator is correct.

Mr. MAGNUSON. And they would have sent it up, but there was a delay in the authorization. Yesterday or today, the Senate agreed to the conference report.

Mr. EAGLETON. That is correct.

Mr. MAGNUSON. This is part of the amount we wanted to use to do more about the objectives of the Older Americans Act of 1965, which now has been amended and brought up to date.

If the distinguished chairman of the committee and the Senator from North Dakota would agree, I would like to take this amendment to conference. It has been approved by the Bureau of the Budget.

Mr. McCLELLAN. Do we have the approval of the Bureau of the Budget? Can we include that approval in the RECORD?

Mr. EAGLETON. I do not have the approval before me, but the item was approved by the Bureau of the Budget.

Mr. McCLELLAN. Do you have a letter written to someone? We do not have it.

Mr. EAGLETON. It is in the budget as submitted. The problem was the delay in the authorizing legislation, which was not passed until today.

Mr. MAGNUSON. A number of items like this were included in the January budget and because of the delay in the authorization, we did not get at them in the regular Labor-HEW bill.

Mr. McCLELLAN. I inquired because, if we have the approval of the Bureau of the Budget, we ought to make it a matter of record, in order to reinforce us when we go to conference.

Mr. MAGNUSON. I think the House Members would be agreeable to this matter, because there has been great interest in this part of the program.

Mr. YOUNG. I will be glad to take it to conference.

Mr. McCLELLAN. Mr. President, I have no objection to taking this amendment to conference, if there is approval of the Bureau of the Budget. Under the circumstances, I am sure that had the authorization bill been passed, and if it occurred before the committee's consideration of this title of the bill, it no doubt would have been approved by the committee.

Unless there is objection on the part of a Senator, I will be glad to take it to conference.

Mr. EAGLETON. I thank the Senator from Arkansas, the Senator from Washington, and the Senator from North Dakota.

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

Mr. EAGLETON. I yield back the remainder of my time.

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

The amendment was agreed to.

Mr. PROXMIRE. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The amendment was read, as follows:

On page 2, strike out lines 15 through 22.

Mr. PROXMIRE. Mr. President, I intend to ask for the yeas and nays on this amendment at the appropriate time. I do not know whether a sufficient number of Senators are in the Chamber at this time.

This amendment would strike the $250 million for urban renewal that is in the supplemental appropriation.

Mr. President, I ask for the yeas and nays on the amendment.

The yeas and nays were ordered.

Mr. PROXMIRE. Mr. President, I chaired the hearings on this matter, as chairman of the Subcommittee on Housing, Urban Development, and other matters, and it seems to me that there just is no justification for including this $250 million in a supplemental appropriation. A supplemental appropriation is justified only on the basis of an urgent, immediate, or emergency need. This request for $250 million in urban renewal funds does not remotely meet that test. This is why.

First, the immediate or emergency needs for Hurricane Agnes have been supplied through $153 million of OEP—Office of Emergency Planning—funds for temporary housing, trailers, motel rents, and immediate repair and rehabilitation funds. The other major amount, $1.3 billion was provided through an appropriation for small business and this should take care of virtually all of the housing and virtually all the business devastation wrought, and enable people to rebuild their homes and their businesses. This was provided on a very generous basis with a large forgiveness—by far the most generous disaster appropriation in the history of Congress—far more money and more generous terms.

In addition, the Red Cross provided for immediate emergency needs. There was relief for highways from HEW, and so forth—almost $2 billion provided, as I say, the most generous in history.

The Small Business Administration has supplied additional funds; $1.3 billion authorized for Agnes and Rapid City. The Red Cross and others met immediate emergency needs. The total for relief, $386 million; highways, $109 million; funds from HEW, $58 million; and Corps of Engineers, $16 million—totals almost $2 billion.

The funds supplied were the most generous in the history of the Federal Government.

Second, the $250 million request is for the "regular" or "conventional" urban renewal program. These funds cannot possibly be disbursed. There is no way to disburse them in the present fiscal year. I submit that under the circumstances, it does not make any sense for us to provide $250 million which will not be spent. It is not an emergency. There is no way the money can be expended.

Here is why.

Planning proposals have just begun—not planning but planning proposals, and they will not be completed for another 60 days or 6 months. The initial planning money is available under the 701 planning grants. The time necessary to put even the planning stage into effect takes years. The Douglas Commission on Urban Renewal found that the "survey and planning" stage of an urban renewal project took a year and a half on the average because, first, we have to pass on the loans and the grants and that takes an average of 2 years, and then there is the final stages of the loans and the grants and that takes a year. Therefore, it takes 4⅓ years to put projects into "contract" form. Only then, after 4⅓ years, can we possibly spend the money and all of this for new urban renewal proposals. Only then could land be acquired, demolition take place, land disposition be made, and new construction start. And that all took another 5 years.

As I say, they have not begun the planning stages yet, because Hurricane Agnes has just wrought this devastation.

CANNOT USE EVEN WITH SPEED-UP

Even with the speed up proposed by HUD, there is no way these funds could be used now. They are not needed. It will be years before the funds are disbursed.

Third, the urban renewal program is not an instrument for immediate and urgent needs in an emergency. It can only function in the long term. Traditionally, the program has destroyed more housing units than it has built. It has displaced existing small businessmen through demolition, land write down, and new construction.

The conventional urban renewal program, which this money is for, clears land and builds new. Thousand of houses and thousands of businesses have been destroyed, not built.

For instance, 400,000 housing units have been destroyed and it has put back only 20,000 and that is 20 times more units that it has constructed.

Fourth, and this should concern every Member of this body, because tomorrow we will take up a bill which I understand purports to provide a ceiling on all Federal spending in the present fiscal year, and the President will be empowered one way or the other to reduce programs to bring it under the $250 billion ceiling, or the $245 billion ceiling. If we provide this $250 million now in this bill and it is committed, we will be put in a position of knocking out other programs which Congress supports.

This is not an emergency request. It is an attempt to get a commitment of $250 million now which will limit programs elsewhere but which cannot be used for months and years ahead. It should be rejected and brought back for action in the regular appropriation bill.

Mr. President, I ask unanimous consent that a table from the Douglas Commission report, "Building the American City," indicating the time necessary for each urban renewal step, be printed in the RECORD.

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

[From the Douglas Commission Report, Building The American City]

TABLE 14.—PROCESSING TIME INVOLVED IN URBAN RENEWAL PROGRAM

Step	Agency and office	Action taken	Days for— S. & P.	L. & G. I	L. & G. II [1]
1	Local urban renewal agency	Prepare analysis, coordinate planning	45	245	60
2	Mayor and council	Authorize filing, S. & P. approval			
3	Local urban renewal agency	Forward S. & P. to regional office; submit L. & G. I and L. & G. II to regional office when local action complete.			
4	Regional office:				
	Renewal assistance office:				
	Process control and reports	Receive, log in, check for completeness, route available copies of application to staff	3	8	5
5a	Program planning and engineering	Review, comment	30	45	10
5b	Rehabilitation and codes	do	5	15	10
5c	Social services	do	27	25	12
	Real estate:				
5d	Acquisition	do	22	15	18
5e	Disposition	do	15	20	22
5f	Fiscal management	Review, prepare budget	21	20	1
5g	Equal opportunity (intergroup relations)	Review, comment	25	32	15
5h	Regional counsel	do	24	48	12
5i	Program coordination and services division:				
	Relocation	do	10	25	12
5j	Plan	do	35	43	18
5k	Economic and market analysis	do	15	21	10
6	Renewal assistance office: Processing control and reports	Resolved comments determine if application should be returned; require additional information f needed; prepare wrapup; routing.	40	43	16
7	Local urban renewal agency	Respond to regional request	(2)	(2)	(2)
8	Assistant regional administrator for renewal	Review and sign off	1	1	1
9	Regional administrator	Review	1	1	1
10	Central office:				
	Renewal and housing assistance:				
	RAA: Program control and statistics	Receive, log, and review for submission requirements	(3)	(3)	(3)
11	Office of Community Development (relocation)	Review for adequacy of relocation plan		20	16
12	RAA: Program control and statistics	Get additional information if needed or prepare for RHA approval and validation	(3)	(3)	(3)
13	Administration: Fiscal services	Prevalidation of funds	3	3	2
14	Renewal and housing assistance: Assistant secretary	Final approval	4	4	4
15a	Public affairs and congressional relations	Review press release; advise appropriate elements and publish	13	13	9
15b	Renewal and housing assistance: RAA, program and statistics.	Record approval and prepare memo to region	(3)	(3)	(3)
16	Regional office: Renewal assistance office, processing control and reports.	Send additional letter to locality	10	10	10

[1] Legend: S. & P., survey and planning application; L. & G. I, pt. 1, application for loan and grant; L. & G. II, pt. II, application for loan and grant.

[2] Varies. RAA records do not show the amount of time the application is held awaiting grant funds—only the total time and the time spent in various offices; all "hold time" is reflected in the program control office even though only 3 to 5 days processing time is actually spent there. Total elapsed time is shown in recap.

[3] Recap: Regional office processing: S. & P., 76 days; L. & G. I, 91 days; L. & G. II, 47 days. Central office processing: S. & P., 192 days; L. & G. I, 49 days; L. & G. II, 40 days. HUD processing time per application: 495 days. Time in locality (after S. & P. approval): 305 days. Urban renewal project processing time from receipt in regional office to approval of pt. II, 800 days.

Source: Study by Model Cities Systems Improvement Team, HUD, June 20, 1967.

Mr. President, I am chairman of the subcommittee and I sat through the hearings and listened very carefully to the testimony given by Mr. Romney and his assistants, and they were unable to show that there is an immediate or urgent need for these funds; indeed, that there will be any need for the funds during the current fiscal year.

As I say, we are really providing a quarter of a billion dollars which will mean that other programs which Congress has appropriated funds for will be reduced—not of our own volition, but on the volition of the President.

Mr. HART. Mr. President, will the distinguished Senator from Wisconsin yield?

Mr. PROXMIRE. I yield.

Mr. HART. Do I correctly understand the $250 million is available only to the half a dozen areas where there has been a national disaster?

Mr. PROXMIRE. That is the purpose of it. I am quite sure that that is the intention. I think that is correct, yes.

Mr. HART. I would be anxious to join the Senator in that effort, if we were not doing more harm than good. Some of us have read—some of us on the Senator's committee—that certain of these areas devastated by natural forces have found that the rehabilitation effort has been limited, inadequate, and unsatisfactory. The Governor of Pennsylvania got into a great jawboning with the Secretary of HUD on a "Who shot John" level.

If we eliminate the $250 million, will the Secretary of HUD then go back to Pottstown, or wherever it was, and say, "It is the Senate's fault?"

Are we able in the Senator's record to establish that by eliminating the $250 million it will have no effect on the efforts which I hope are genuine and effective to give rehabilitation and help promptly to the devastated areas.

Mr. PROXMIRE. There is $2 billion in emergency funds presently appropriated and available for any need for any homeowner or any businessman to rebuild his home or business. So what I am asking for is that the urban renewal funds be provided in an orderly way on the basis of having a considered plan, so that we have some idea of whether the $250 billion ceiling should be adopted. On the other hand, we will be in a far better position after we have hearings next year, when we come back, and the funds will be available in plenty of time, if we wait until next year, because there is no way the funds can be expended before the end of the fiscal year.

Mr. HART. That is what I wanted to be sure of. It is one thing to plead for orderly programs but another to tell that to a mayor whose city has just been devastated by a flood.

Mr. PROXMIRE. That is why the planning money has been made available. He can proceed. He can go right ahead. He can do everything right up to making the application.

Mr. HART. It is the judgment of the able chairman that if any city devastated by a natural disaster had a recent commitment which would still be in this present plan, which will enable it to shelter its people and provide the services which have been destroyed, they will find that there is money available for it, even though we cut this $250 million out?

Mr. PROXMIRE. Absolutely. There is no question about it. In the first place, the urban renewal funds would be involved in a different kind of process in restoring a home or in restoring a business or engaging in anything of that kind.

Mr. PASTORE. Mr. President, will the Senator from Arkansas yield some time to me?

Mr. McCLELLAN. I yield 5 minutes to the Senator from Rhode Island.

The PRESIDING OFFICER (Mr. HARRY F. BYRD, Jr.). The Senator from Rhode Island is recognized for 5 minutes.

Mr. PASTORE. Mr. President, when the Senator from Wisconsin says categorically and without question, I have a question.

Mr. President, up until recently the responsibility for this particular bill has been mine, and what agonies I have suffered over the years when being told by the Senator from Michigan and the Senator from New York that we have authorized a certain amount of money for urban renewal, and that we have never met those obligations in the way of funding on urban renewal.

Let us face it. What are we up against? We have had a very devastating blow to

our country because of the tragedy caused by Agnes. And because of Agnes, certain localities were hit a lot harder than others. None of this money is going to come to Rhode Island.

Mr. President, unless we appropriate the money to meet the amount we have authorized for urban renewal, the money would be spent for other purposes and would be taken away from other localities.

The argument is made that we have planning money. There is a difference between that and a contract to construct. Unless we appropriate, we cannot enter into that contract.

That is why we are up against this dilemma. This administration has never been overly generous in submitting a budget estimate that would justify the authorizations we have passed in Congress for urban renewal. However, the fact that they are asking for this money impresses me very, very much, because I tell the Senate very frankly that the situation must be very tragic for them to come in and ask for a supplemental estimate for urban renewal.

I tell the Senate very frankly that this money will be appropriated whether it is today, tomorrow, or next year. However, the question is that the tragedy is now. The relief must be now. And the estimate is now and the appropriation must be now. And that is what we are up against.

This idea that they have planning money does not impress me. Planning for what? We have more plans down there and we have not enough money to fund them. We have plans even going beyond the authorization and funded under the authorization.

That is what we are up against. As a practical proposition, this means nothing to my State. Does anyone mean to tell me that we can postpone this? This would be pennywise and pound foolish. In the end we have to rehabilitate America and we have to rehabilitate these cities that have been struck so hard.

We can always find money for foreign aid programs. We can always find money for Vietnam. However, when it comes to helping the people of our country who have been hit by a tragedy, they say that we can postpone that and bring up some planning money. Planning for what?

What we need to do here is to get going and rehabilitate these cities that have been struck by disaster. I would hope that the amendment would be defeated.

Mr. McCLELLAN. Mr. President, I ask unanimous consent to have printed at this point in the RECORD pages 7 and 8 of the Senate report on this bill. I believe it states some of the facts sufficiently so that it will sustain the action of the committee in making this appropriation.

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

CHAPTER 7

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

COMMUNITY DEVELOPMENT

Urban renewal programs

1973 appropriations to date	$1,200,000,000
1973 supplemental estimate (H. Doc. 92-368)	250,000,000
House allowance	250,000,000
Committee recommendation	250,000,000

The Committee recommends an appropriation of $250,000,000 for Urban Renewal Programs, which is the same as the budget estimate and the House allowance. These funds are to be used to carry out conventional urban renewal programs in the area devastated by Hurricane Agnes.

The original budget request for this program for fiscal year 1973 was $1,000,000,000, and needless to say, did not anticipate the need for disaster assistance. In the regular appropriation bill, approved August 14, 1972, the Congress provided $1,200,000,000, and in the Conference Report thereon, House Report 92-1261, dated July 22, 1972, included the following language:

"The committee of conference intends for the funds provided in the bill for urban renewal to be used to provide for this program as described in the budget request. The Department is directed to administratively expedite and process the seven-state Agnes flood area urban renewal applications. A supplemental budget request should be developed to replenish the funds necessary to provide for both the ongoing and emergency programs."

The sum recommended by the Committee, when added to the $200,000,000 over the budget estimate provided in the regular bill, will make a total of $450,000,000 available to assist the localities damaged as a result of Hurricane Agnes.

The Urban Renewal Program was brought into being by the Housing Act of 1949, and at that time, the program's main thrust was directed towards the clearance of slum areas. At the present time, the program combines and integrates a broad array of activities in order that slum areas may be prepared for new uses meeting national and local economic and social objectives.

The conventional Urban Renewal Program presently has a fivefold purpose, namely:

1. The preservation and restoration of the urban environment through the elimination of slums, blight, and pollution causing conditions;

2. The preservation of our nation's existing low- and moderate-income housing supply through rehabilitation;

3. The prevention of the spread of slums and blight in marginal neighborhoods;

4. Provision of maximum opportunity for private enterprise to redevelop areas on a planned and protected basis; and

5. Assurance that prior to demolition or removal of residential structures in an urban renewal project, standard housing units for occupancy by low- and moderate-income families are provided for those families being displaced.

NATIONAL SCIENCE FOUNDATION

Salaries and expenses

1973 appropriations to date	$619,000,000
1973 supplemental estimate	[1](32,900,000)
House allowance	26,320,000
Committee recommendation	26,320,000

[1] Original estimate submitted as part of Department of Defense budget in the amount of $32,900,000.

The Committee recommends an appropriation of $26,320,000, which is the same as the House allowance, and $26,320,000 above the budget estimate.

A formal estimate for five C-130 ski-equipped planes was requested in the budget of the Department of Defense. This request was denied by both the House and the Senate when the Department of Defense budget was considered earlier this session. In denying these funds, both the House and Senate Department of Defense Appropriations Subcommittees indicated that funding for these planes should be provided in the budget of the National Science Foundation. Thus, on the basis of an informal request from the Director of the Office of Management and Budget, the Committee has considered this an estimate of the National Science Foundation and has allowed funding for four of the five planes requested.

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

Mr. PROXMIRE. Mr. President, I yield back the remainder of my time, but before I do so, I ask unanimous consent that my administrative assistant, Howard Shuman, be granted the privilege of the floor during the consideration of this measure.

The PRESIDING OFFICER (Mr. JORDAN of North Carolina). Without objection, it is so ordered.

The question is on agreeing to the amendment of the Senator from Wisconsin. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Nevada (Mr. CANNON), the Senator from Florida (Mr. CHILES), the Senator from Louisiana (Mrs. EDWARDS), the Senator from Oklahoma (Mr. HARRIS), the Senator from Minnesota Mr. HUMPHREY), the Senator from Massachusetts (Mr. KENNEDY), the Senator from South Dakota (Mr. McGOVERN), the Senator from New Hampshire (Mr. McINTYRE), the Senator from Montana (Mr. METCALF), the Senator from Maine (Mr. MUSKIE), the Senator from Rhode Island (Mr. PELL), the Senator from Virginia (Mr. SPONG), and the Senator from California (Mr. TUNNEY) are necessarily absent.

I further announce that the Senator from Wyoming (Mr. McGEE), is absent on official business.

I further announce that if present and voting, the Senator from California (Mr. TUNNEY), and the Senator from Rhode Island (Mr. PELL) would each vote "nay."

Mr. GRIFFIN. I announce that the Senator from Colorado (Mr. ALLOTT), the Senator from Tennessee (Mr. BAKER), the Senator from New York (Mr. BUCKLEY), the Senator from Nebraska (Mr. CURTIS), the Senator from Arizona (Mr. GOLDWATER), the Senator from Oregon (Mr. HATFIELD), the Senator from Iowa (Mr. MILLER), the Senator from Delaware (Mr. ROTH), the Senator from Ohio (Mr. SAXBE), the Senator from South Carolina (Mr. THURMOND), and the Senator from Texas (Mr. TOWER) are necessarily absent.

The Senator from Kentucky (Mr. COOK) is absent on official business.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

If present and voting, the Senator from Nebraska (Mr. CURTIS), the Senator from Iowa (Mr. MILLER), the Senator from Oregon (Mr. HATFIELD), and the Senator from Texas (Mr. TOWER) would each vote "nay."

The result was announced—yeas 10, nays 63, as follows:

[No. 549 Leg.]

YEAS—10

Allen	Eagleton	Nelson
Byrd, Harry F., Jr.	Fulbright	Proxmire
Cranston	Hollings	Symington
	Hughes	

NAYS—63

Aiken	Fannin	Montoya
Anderson	Fong	Moss
Bayh	Gambrell	Packwood
Beall	Gravel	Pastore
Bellmon	Griffin	Pearson
Bennett	Gurney	Percy
Bentsen	Hansen	Randolph
Bible	Hart	Ribicoff
Boggs	Hartke	Schweiker
Brock	Hruska	Scott
Brooke	Inouye	Smith
Burdick	Jackson	Sparkman
Byrd, Robert C.	Javits	Stafford
Case	Jordan, N.C.	Stennis
Church	Jordan, Idaho	Stevens
Cooper	Long	Stevenson
Cotton	Magnuson	Taft
Dole	Mansfield	Talmadge
Dominick	Mathias	Weicker
Eastland	McClellan	Williams
Ervin	Mondale	Young

NOT VOTING—27

Allott	Harris	Mundt
Baker	Hatfield	Muskie
Buckley	Humphrey	Pell
Cannon	Kennedy	Roth
Chiles	McGee	Saxbe
Cook	McGovern	Spong
Curtis	McIntyre	Thurmond
Edwards	Metcalf	Tower
Goldwater	Miller	Tunney

So Mr. PROXMIRE's amendment was rejected.

Mr. PASTORE. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. McCLELLAN. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. McCLELLAN. Mr. President, I ask for the yeas and nays on final passage.

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

Mr. McCLELLAN. Mr. President, I yield 2 minutes to the distinguished Senator from Nevada (Mr. BIBLE). I ask unanimous consent that the time not be taken out of the time allotted on the supplemental appropriation bill. The Senator wishes to bring up a privileged matter.

GOLDEN GATE NATIONAL RECREATION AREA, CALIF.

Mr. BIBLE. I thank the Senator from Arkansas.

Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on H.R. 16444, and ask unanimous consent for its immediate consideration.

The PRESIDING OFFICER. The Chair lays before the Senate H.R. 16444, which will be stated by title.

The assistant legislative clerk read as follows:

A bill to establish the Golden Gate National Recreation Area in the State of California, and for other purposes.

The bill was read the second time.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. BIBLE. Mr. President, the Senate Interior Committee previously reported a bill, S. 3174, Calendar No. 1217, which also would establish the Golden Gate National Recreation Area in San Francisco and Marin Counties, Calif. The House Interior Committee reconsidered their bill before final passage and amended it to make it conform in great detail to the Senate bill which has been reported.

The military lands which will be utilized as part of the national recreation area are now identical in both bills. These lands are made up from the Presidio of San Francisco and other forts close by, portions of which are no longer needed for reasons of national security, and, therefore, will contribute greatly toward providing recreational opportunities for the millions of people in the San Francisco metropolitan area.

In addition, the House has added 300 acres in three tracts in Marin County to which the Senate would have no objection. There are two other parcels within the boundaries of the area known as the Cliff House and Sutro Baths which the Senate Interior Committee excluded, but which the House believes should be included. The House did remove a condition which had bothered the Senate committee in that the lands could not be acquired unless certain State and city lands were donated to the United States. This uncertainty has been removed and now the owners of these lands are free to negotiate with the Secretary of the Interior, thus removing the major objection which the Senate Interior Committee had to that provision.

Therefore, Mr. President, since most of the main provisions of both bills are identical, I see no need to require a conference on the differences which remain. I move the passage of H.R. 16444.

The PRESIDING OFFICER. The bill is open to amendment.

If there be no amendment to be proposed, the question is on the third reading of the bill.

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

Mr. BIBLE. Mr. President, I ask unanimous consent that S. 3174, the Senate bill which is at the desk, be indefinitely postponed.

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

PUBLIC SAFETY OFFICERS BENEFITS ACT OF 1972

Mr. McCLELLAN. Mr. President, I ask unanimous consent that I may call up a message from the House.

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

Mr. McCLELLAN. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 2087.

The PRESIDING OFFICER laid before the Senate the amendment of the House of Representatives to the bill (S. 2087) to amend the Omnibus Crime Control and Safe Streets Act of 1968 to provide a Federal minimum death and dismemberment benefit to public safety officers or their surviving dependents, which was to strike out all after the enacting clause and insert:

That this Act may be cited as the "Public Safety Officers Benefits Act of 1972".

SEC. 2. Title I of the Omnibus Crime Control and Safe Streets Act of 1968 is amended by adding at the end thereof the following new part:

"PART J.—PUBLIC SAFETY OFFICERS DEATH BENEFITS

"SEC. 701. (a) In any case in which the Administration determines, under regulations issued under part F of this title, that an eligible public safety officer has died as the direct and proximate result of a personal injury sustained in the performance of duty, leaving a spouse or one or more eligible dependents, the Administration shall pay a gratuity of $50,000, in the following order of procedure:

"(1) If there is no dependent child, to the spouse.

"(2) If there is no spouse, to the dependent child or children, in equal shares.

"(3) If there are both a spouse and one or more dependent children, one-half to the spouse and one-half to the child or children, in equal shares.

"(4) If there is no survivor in the above classes, to the parent or parents dependent for support on the decedent, in equal shares.

"(b) As used in this section, a dependent child is any natural, adopted, or posthumous child of the decedent who is—

"(1) under eighteen years of age; or

"(2) over eighteen years of age and incapable of self-support because of physical or mental disability; or

"(3) over eighteen years of age and a student as defined by section 8101 of title 5, United States Code.

"(c) As used in this section, spouse includes a surviving husband or wife living with or dependent for support on the decedent at the time of his death, or living apart for reasonable cause or because of desertion by the decedent.

"(d) As used in this section, the term 'dependent for support' means more than one-half of the support of the dependent concerned.

"(e) As used in this section, the term 'eligible public safety officer' means any individual employed by a public agency as a law enforcement officer or as a fireman (including any individual serving as an officially recognized or designated member of a legally organized volunteer fire department) who is determined by the Administration to have been, at the time of his injury—

"(1) a law enforcement officer engaged in—

"(A) the apprehension or attempted apprehension of any person—

"(i) for the commission of a crime, or

"(ii) who at that time was sought as a material witness in a criminal proceeding; or

"(B) protecting or guarding a person held for the commission of a crime or held as a material witness in connection with a crime; or

"(C) the lawful prevention of, or lawful attempt to prevent, the commission of a crime or was otherwise engaged in the performance of his duty and such injury was the result of a criminal act, or an apparent criminal act; or

"(2) a fireman engaged in the protection of life or property from fire.

"SEC. 702. The gratuity payable to any person under this part is in addition to any benefits to which he may be entitled under any other law.

"SEC. 703. The provisions of this part shall apply with respect to any eligible public safety officer who dies as the direct and proximate result of a personal injury which is sustained on or after the date of enactment of this Act."

SEC. 3. Section 520 of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, is amended by adding at the end of the section the following sentence: "In addition, there are authorized to be appropriated in each fiscal year such sums as may be necessary to carry out the purposes of part J."

SEC. 4. Section 601 of the Omnibus Crime Control and Safe Streets Act of 1968, as

amended, is amended by changing the period at the end of subsection (c) of that section to a comma and adding: "except that for the purposes of part J the term does not include the District of Columbia."

Mr. McCLELLAN. Mr. President, on September 5, 1972, the Senate passed by a record vote of 80 to 0 the Public Safety Officers Benefit Act of 1972 (S. 2087). This measure was the product of an extensive series of hearings held by the Subcommittee on Criminal Laws and Procedures, which I am privileged to chair, into the full range of problems associated with crime victimization.

As the measure passed the Senate, it provided a $50,000 gratuity to dependents of slain public safety officers, defined to include policemen, firefighters, correction guards, and others who perform law enforcement activities.

S. 2087 was one of four proposals to come out of the subcommittee's hearings, each dealing with a different aspect of the problem of victimization. The subcommittee also processed and the Senate passed:

S. 730, sponsored by the distinguished majority leader, Mr. MANSFIELD, to compensate innocent victims of violent crime: 60 to 8,

S. 33, sponsored by the distinguished Senator from Massachusetts (Mr. KENNEDY) to provide adequate group life insurance for public safety officers: 61 to 6,

S. 16, sponsored by myself and the distinguished Senator from Nebraska (Mr. HRUSKA) to secure for victims of racketeering activities antitrust type civil remedies: 81 to 0.

To facilitate the consideration of these various measures in the House, and to make it feasible to get them to the President for his signature before adjournment, each of these bills was incorporated and integrated into H.R. 8389, a house passed drug bill, and the bill was reconstituted as a comprehensive Victims of Crime Act of 1972. This measure, as so reconstituted, passed the Senate by a record vote of 74 to 0 on September 18, 1972.

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 Senate and that a mutually satisfactory compromise could be worked out. To date, the House has not appointed its conferees, and it appears that this comprehensive measure is going to die. Should this occur, it will be a sad and lamentable loss, indeed.

Mr. President, while the House has not acted upon the comprehensive measure, it did pass yesterday H.R. 16932, a similar but substantially different version of S. 2087, the Public Safety Officers Benefit Act of 1972. After acting on its own version of this measure, it then substituted the text of its bill for S. 2087, the measure that the distinguished Senator from Nebraska (Mr. HRUSKA) and I sponsored here in the Senate.

I would like to support the House version of this measure and to recommend to my colleagues that we accept the House version so that it could be passed and sent to the President without further delay. Having carefully examined and compared the two bills, however, I have concluded that this course of action would not be in the best interest of the public safety officers and their families. The differences between the two measures are too substantial, and militate against the interests of the officers and their families.

First, the House passed bill has no clause in it providng a measure of retroactivity. In contrast, S. 2087 would have authorized payments back to January 1, 1967, the date police assassination in this country began to rise at such an alarming rate.

I recognize, of course, that it is necessary to draw a line somewhere. But it is incongruous to me that the deaths of those police officers, firefighters, and correction guards that moved the President to recommend this legislation and both Houses of Congress to act, should not be included. Can we in good conscience exclude the policemen and firefighters who died in our recent urban riots? Can we properly exclude the prison guards who died in the Attica uprising? I do not think they should be excluded.

Second, the House passed bill gives the public safety office no flexibility to direct that the gratuity be paid to particular dependents. In contrast, S. 2087 gave each officer the option of making a selection that would tailor the operation of the bill to the particular facts and needs of each officer's family life. Suppose, for instance, that the officer was the sole means of support for an aged grandmother and a nephew, and he had no other family of his own. Under the House bill, no payment would be made to anyone, while under S. 2087, the officer could fill out a special designation with the Law Enforcement Assistance Administration that would meet this sort of special situation. How can we say that we have the best interest of the families of the officer in mind if we do not make provision for these sorts of contingencies. Unless something is done in this area, I am reluctant to support this bill.

Third, the House passed bill would award the gratuity to a spouse without regard to dependency. S. 2087 would have required that the spouse as well as the children or other recipients be dependent.

I recognize, of course, that for a man or woman to lose a husband or a wife slain in the line of duty by a criminal act is always a grevious loss, a loss that no mere sum of money, no matter how large, can adequately compensate for. But we must always remember that it is public funds, raised by taxation that we are distributing. If the wife of husband is not dependent on the slain officer for her or his support, why should the tax dollars of others be diverted from other public needs to compensate her or him. The cases are surely not numerous, but they are present, where public safety officers are independently wealthy. There is no need to pay special compensation where there is no financial loss. It would get the loss of a loved one, that is true, but it would not be a financial loss. And in the absence of such financial loss, I do not believe we can justify the expenditure of public funds.

Fourth, the House passed bill has no provision in it for interim payments. In contrast, S. 2087 would have authorized the administration to make an interim payment of up to $5,000 to a probable beneficiary.

The need for such interim payments was described in testimony before the subcommittee by Mr. Andrew T. Altman, a leader in Heroes, Inc., a private organization founded to help the families of slain policemen. He testified:

Heroes, Inc. bases its support of S. 2087 on their personal knowledge of the needs of widows of policemen killed in the line of duty.

Our organization has gone out and met with the widows after a policeman has been killed and we have found out almost invariably the officer is heavily in debt and he has had difficulty in getting insurance. . . .

The policeman normally has a small bank account. The widow finds herself cut off just like that. . . . In many cases they do not have money enough to pay the funeral bill. The mortgage payments must be paid.

The processes of government will always, it seems, be characterized by delay. But the needs of the officers' families will always be immediate. I hope that this provision could be included in the final legislation.

Fifth, the House-passed measure contains no limitation designed to exclude payments that would amount to unjust enrichment. S. 2087, on the other hand, excluded from its coverage deaths that were intentionally brough about by the officer's misconduct or intoxication. In this, it follows the provisions of section 8102 of title V, which are applicable to recovery for performance of duty injuries of Federal employees. It would also exclude from coverage a person who would otherwise be a beneficiary if he or she brought about the public safety officer's death. Would we really want to compensate the wife of an officer if she conspired with another to kill her husband to obtain the Federal benefit? The House-passed measure would authorize that kind of a payment.

Mr. President, there are other differences between the two bills. The House measure does not provide for dismemberment. It does not protect the benefit from execution or attachment. It sets up a double standard for coverage, allowing policemen to recover only if they are the victim of a crime, but permitting firefighters to recover from any death-causing injury that occurs in the line of duty.

But these five issues are the major points of difference, which are so substantial that I feel that my only recourse is to ask that conferees be appointed to work out these differences. I hope that this will be possible in the time that remains before adjournment. In any event, I want here and now to pledge to those that are interested in this legislation that should agreement in conference fail, I shall press for the enactment of this legislation—properly drafted—early in the next Congress.

Mr. President, I move that the Senate disagree to the amendment of the House and request a conference with the House

on the disagreeing votes thereon, and that the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to, and the Presiding Officer appointed Mr. McCLELLAN, Mr. ERVIN, Mr. HART, Mr. HRUSKA, and Mr. SCOTT 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 has passed the following bills in which the concurrence of the Senate is requested:

H.R. 15965. An act to amend the District of Columbia Teachers' Salary Act of 1955 to increase salaries, to provide certain revisions in the retirement benefits of public school teachers, and for other purposes.

H.R. 16444. An act to establish the Golden Gate National Recreation Area in the State of California, and for other purposes.

The message also announced that the House has 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. 16593) entitled "An act making appropriations for the Department of Defense for the fiscal year ending June 30, 1973, and for other purposes"; that the House has receded from its disagreement to the amendment of the Senate numbered 90 to the bill and concurred therein; that the House has receded from its disagreement to the amendments of the Senate numbered 3, 7, 19, 24, 30, 34, 55, and 89 and concurred therein, each with an amendment, in which it requests the concurrence of the Senate.

The message further announced that the House has 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. 16754) making appropriations for military construction for the Department of Defense for the fiscal year ending June 30, 1973, and for other purposes; that the House has receded from its disagreement to the amendments of the Senate numbered 1, 2, and 3 and concurred in each with an amendment in which it requests the concurrence of the Senate.

The message also announced that the House has agreed to the amendments of the Senate to the bill (H.R. 12828) to amend chapters 31, 34, and 35 of title 38, United States Code, to increase the rates of vocational rehabilitation, educational assistance, and special training allowances paid to eligible veterans and persons; to provide for advance educational assistance payments to certain veterans; to make improvements in the educational assistance programs; and for other purposes, with an amendment in the nature of a substitute in which the concurrence of the Senate is requested.

HOUSE BILL REFERRED

The bill (H.R. 15965) to amend the District of Columbia Teachers' Salary Act of 1955 to increase salaries, to provide certain revisions in the retirement benefits of the public school teachers, and for other purposes, was read twice by its title and referred to the Committee on the District of Columbia.

SUPPLEMENTAL APPROPRIATIONS, 1973

The Senate continued with the consideration of the bill (H.R. 17034) making supplemental appropriations for the fiscal year ending June 30, 1973, and for other purposes.

Mr. WEICKER. Mr. President, I rise in strong support of one specific item in this bill—the appropriation of $57 million for Amtrak which was authorized by the Congress earlier this year.

I rise also to express my deep appreciation to the Senator from Arkansas (Mr. McCLELLAN) and the Senator from West Virginia (Mr. ROBERT C. BYRD) on their efforts to have these funds approved.

As the Senator from West Virginia will recall, we discussed appropriating these funds when the regular Department of Transportation appropriation bill reached the floor of the Senate on June 16. At that time, we agreed that the appropriate time to approve the $57 million would be in the supplemental bill which we are now considering.

Indeed, Mr. President, the Senator from West Virginia has been better than his word for he indicated that he would consider the additional funds "provided a budget estimate comes up."

Unfortunately, no budget estimate ever arrived, but the Senator, recognizing the urgent necessity for creating a truly high quality intercity rail system, urged his subcommittee and the full Appropriations Committee to approve the funds anyway. I congratulate the Senator for his farsightedness and thank him, on behalf of all the American people, for his efforts to bring balance to our national transportation system.

Mr. PROXMIRE. Mr. President, I send to the desk an amendment, which I ask to have stated. It would delete $4,125,000 from H.R. 17034, the supplemental appropriations bill. These funds would be used to acquire property in square 724—the land just north of the New Senate Office Building—at a total cost of $3,800,000. Another $275,000 of the amount appropriated would be spent on the demolition of existing structures in this square. Finally, $50,000 would be used for the initiation and conduct of a study, after consultation with the appropriate Federal agencies and individuals experienced in the design of vehicle parking structures, to explore design and cost alternatives for the construction on square 724 of a parking garage.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read the amendment, as follows:

On page 32, beginning with line 21, strike all through line 3 on page 37.

Mr. COTTON. Mr. President, will the Senator permit the Senator from North Dakota to yield me half a minute?

Mr. PROXMIRE. Mr. President, I yield myself such time as I may require, and I yield to the Senator from New Hampshire such time as he may require, with the understanding that I do not lose my right to the floor.

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

Mr. COTTON. Mr. President, I ask unanimous consent that I may be permitted to have my legislative assistant, Mr. Kane, on the floor during the consideration of those parts of the supplemental appropriation bill that pertain to Labor-HEW and to legislative, including amendments thereto.

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

Mr. PROXMIRE. Mr. President, this amendment knocks out some $4 million, which is the initial down payment for a garage for the Senate, a garage where they now have the Monocle Restaurant and the Carroll Arms, or the Capitol Hill Hotel, and so forth. The cost of this garage would be anywhere from $27 to $34 million, depending on whether an extra story is put on it.

I ask for the yeas and nays on this amendment. I shall not take very long.

The yeas and nays were ordered.

Mr. PROXMIRE. Mr. President, in plain language this appropriation of $4,125,000 is the down payment on a parking garage that will cost a grand total of $27,075,000, according to testimony presented to the Legislative Appropriations Subcommittee of the Senate Appropriations Committee by the Architect of the Capitol. If an extra story is added above ground for commercial uses, the cost would go up by $7 million for a total cost of $34,075,000.

Current plans call for the use of the entire block for this garage.

In addition to the $4,125,000 we may provide here today, an additional $17,567,000 will be needed for construction of the garage, $340,000 would be spent on an underground tunnel to the New Senate Office Building, $3,386,000 would be the cost of landscaping the roof of the garage and $1,707,000 would be expended for planning and administration.

The accommodations envisaged would include allowances for necessary entrances, ramps, exit stairways, mechanical equipment spaces, vent shafts, control rooms, and toilets for parking attendants—in other words, all the expensive paraphernalia that go with a handsome underground parking garage.

Mr. President, this is the wrong project, at the wrong time, in the wrong place, and for the wrong cost. After all, the Federal Government is in the process of running up the largest peacetime budget deficit in the Nation's history. We are asking our people to hold the line on wages and prices. Yet if we approve this item, we will be embarking on perhaps the most expensive parking complex ever constructed. And whom will it serve? Not the people of the United States. Not even visitors to the Nation's Capitol. But our own staffs. We will be catering to ourselves at great expense while asking the American people to follow a different standard.

How much would a comparable project cost? The only figures I have been able to obtain on commercial parking garages indicate that in 1965 costs for construction per parking space ranged from a low

of $1,700 to a high of $3,582 with an average cost of $2,270. If we apply an inflationary factor of 5 per cent a year to the average $2,270 cost, the cost of a commercial parking space in 1972 including land and construction would be $3,064.50.

How about comparable garage construction on Capitol Hill? The two new underground garages on the House side of the Hill cost a total of $13.4 million. They have a total of 1,267 parking spaces. This means that the cost per parking space is a high $10,576.

Now let us look at the proposed Senate underground garage. It would provide 1,725 parking spaces. The total cost, as I said before, would be $27,075,000. The cost per parking space would be—if you can believe it—$15,700, five times as high as a commercial space and 50 percent higher than the underground House parking garage and, I submit, about the cost of a modest home. The average home in Wisconsin costs $16,000 or $17,000. I am not talking about a new home, but the average home one would go out and buy on the used home market.

We are providing $15,000 a space for people to park—people who, in my view, could take the subway we are providing $2.5 billion to build, to come to work. They will not take it if they have a parking space available.

Are there any alternatives? Of course there are.

Other alternatives suggested by the Architect of the Capitol are far superior to the choice we are confronted with today. True, one would provide spaces for only 855 cars and a second would allow for the parking of just 1,000 cars—substantially less than the 1,725 cars that would be accommodated by the proposed garage we are considering now. However, the cost would be substantially less, $8,200,000 in the case of proposal No. 5 and $9,589,000 in the case of proposal No. 7.

These are construction costs and should be compared with the $17,234,000 the construction of the project we are considering today would cost. It should also be noted that the Senate already holds the land that would be utilized by proposals 5 and 7. So no land acquisition costs would be involved.

These alternatives, it seems to me, should be considered in a regular appropriation next year. Once again, I cannot see any reason why the Senate should proceed, in a supplemental bill, to commit ourselves to a cost that will be between $27 and $34 million, particularly under present circumstances, when it means very likely that the President will cut that amount of money from other projects which I am sure are far closer to the hearts of the country and of most of the Members of the Senate.

These are just some of the reasons why in my estimation it would be extremely foolish for us to commit ourselves to a program of this magnitude in a supplemental appropriations bill which has come to the floor within hours of the time this item was approved by the Appropriations Committee. We owe the American taxpayer more—much more—in the way of a reasoned approach to such an extraordinarily expensive white elephant.

I reserve the remainder of my time.

Mr. McCLELLAN. Mr. President, I yield to the subcommittee chairman who handled this matter, the Senator from South Carolina (Mr. HOLLINGS).

Mr. HOLLINGS. Mr. President, the chairman of the Rules Committee and our distinguished Senator from West Virginia, the chairman of the Committee on Public Works, presented this matter to the committee in the same light that the Senator presents his amendment, that is, that the Senate does not spend a lot of money for a parking garage. The fact is that this is not a $34 million appropriation, but $4 million, for the acquisition of the land.

As stated in the committee report, the committee believes that the cost estimates provided by the Architect of the Capitol in 1971 are excessive in comparison to the cost of comparable facilities constructed elsewhere, and that further study must be made. Then they go on.

So what the Public Works Committee has said is exactly what the Senator from Wisconsin has said and exactly what the Senate said on page 12 when we considered the authorizing legislation and passed it by a vote of some 67 to 17. We are only carrying out the will of the Committee on Public Works, and helping them to acquire the land and properties of which acquisition commenced prior to 1960. During the last 12 years, they have gotten practically all of the sites except the Monocle Restaurant and the Carroll Arms Hotel, and two other little lots. If we transfer the GSA Building, we will have the entire block. This is to help them acquire that, plan for it, and then have a sort of $50,000 program or contest of some kind to present a plan for a esthetically approved garage.

It is good to come down on the SST and insert the environment, but then when we get to the parking garage, the Senator wants to disregard the environment. Yes, these parking spaces are going to cost more than the average parking garage. These are what you might call ecological parking spaces. They are to go under a covered-over area. They have all the kind of grass I do not have, or even the Senator in his yard—beautiful flowers, fountains squirting water, and everything.

It is going to cost money, but we are going to try to bring it within reason, because we have a tremendously acute shortage of parking spaces. On the House side, they have 4,125 parking spaces, and we have, including—we had only 1,726, and we added to that total 350, but actually it was only 325, on what we on the Appropriations Committee, Mr. President, called the Jordan lot, named after the counsel for the Appropriations Committee. We found that we were going to have to cut down about 27 trees one day, and we went back to the Architect of the Capitol and saved the 27 trees in exchange for about 25 parking spaces, so there are about 25 parking spaces less on the Jordan lot; but with it all, we have only half on the Senate side of what they have on the House side.

We have only 405 parking spaces for the two Senate Office Buildings, and when it comes to the outside parking space that Senator GRAVEL presented on behalf of the Committee on Public Works, there are five vehicles per parking space, and they are out there early fighting for them every morning. My staff, most of them, come down early every morning to be able to get a parking space.

When the Senator says it is the wrong time, I agree, but in a different sense. We are late, 5 or 6 years late. It is the right idea at a late time; but the later we go, the higher the cost will be, and in the name of economy we would be engaging in extravagance by agreeing to this particular amendment.

I hope the Senate will vote the amendment down, and go along with the Committee on Public Works, but not to pay $34 million. Senators will see that the language the Senator asks to be knocked out amounts to $4 million, plus some $50,000 for architect's planning.

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

Mr. HOLLINGS. I yield.

Mr. PROXMIRE. Is the Senator really serious——

Mr. HOLLINGS. I am serious.

Mr. PROXMIRE. About proceeding on this basis for environmental purposes?

Mr. HOLLINGS. Oh, yes.

Mr. PROXMIRE. Will not the Senator agree that if we build this garage we will have hundreds of additional cars being driven to the Capitol every day, that that is the real contaminator, and that if those cars were left at home and the new subway used, there would be less environmental pollution?

Mr. HOLLINGS. I agree on the subway; if we had a subway built I would vote for it.

Mr. PROXMIRE. We have a subway being built.

Mr. HOLLINGS. As the Senators know, the new tourist center down there is planned for visitors passing through there at the rate of 5,000 an hour, who are coming here for the bicentennial in about 3 years' time. When they start coming in, here will really be a crush. And 1,700 spaces will not solve the parking problem, but it is a little bit in the right direction, toward acquiring the land completely and starting the planning to get one that the Public Works Committee and the Senate will approve.

We are not approving tonight what was originally designed at $23 million. I do not know where the $34 million figure came from, but we said in the hearings before the Legislative Appropriations Subcommittee that we thought the $23 million was high.

Mr. PROXMIRE. Will not the Senator agree that if we provide 1,700 parking spaces immediately adjacent to the New Senate Office Building and the Old Senate Office Building, to be made available to the staffs, we will have many more people who will drive their cars down instead of taking the subway, which, as I say, though we may not have it for several years, we will have eventually? We are providing a garage now for 40, or 50 years into the future,

and we will have the subway for many more years after that.

Mr. HOLLINGS. I wish the staffs and the Senators were like my colleague, and could come to work otherwise, but most of us arrive in automobiles, and the Senator and I are not going to change that unless we get a good subway, and then the subway is not going to go out to the hinterlands and all the little places where the staff members stay.

We are trying to arrange to use the RFK Stadium parking lot with commuter buses; we are still looking into that.

This is an absolute must. It would be an extravagance to knock it out of this bill and fail to acquire the lots the Senate found, in its wisdom, should have been acquired back in 1960.

Mr. PROXMIRE. One other point. The funds provided would, as the Senator says, include $50,000 for the initial plans and designs for the garage, a garage which would provide 1,700 parking spaces. Is that not premature? Should we not give much more careful consideration to a 1,000 or 800 parking-space garage, which the Architect of the Capitol testified would cost a great deal less money, $8 or $9 million less money?

Mr. HOLLINGS. I agree that the 800 spaces should be less than the 1,700 spaces. But the need is more nearly for 2,000 or 3,000 parking spaces. That is what we are using right now.

Mr. PROXMIRE. The need is comparatively indefinite. We not only can take care of our whole staffs, but our constituents; we can go on forever with this the way we are doing.

Mr. HOLLINGS. Well, I respectfully submit that we have gone forever in the other direction, and a constituent cannot now call on a Senator unless he wants to violate the law and park in a no-parking space. That is the only way they can get in here now, and that is a disgrace, really. A Senator is supposed to be running the affairs of the country, and we ought to arrange some better parking facilities.

Here is a square, and we are just completing plans that have been in course—not premature—for some 12 years. We want to clean it up and get it prepared and bring back to the Senate a plan for a parking facility of which we can approve, a plan that is economically sound.

I do not want to get into the top part of this matter; but, overall, on topside, we have designed some eating facilities, a place for a bank, and a place for other facilities, and it had to be all set with shrubbery on the outside. This is the additional cost. They are going to rent those and take care of the eating facilities that some wanted to put into the Capitol Building itself.

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

Mr. HOLLINGS. I yield back the remainder of my time.

The PRESIDING OFFICER. All time on the amendment has been yielded back.

The question is on agreeing to the amendment of the Senator from Wisconsin. 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 Nevada (Mr. CANNON), the Senator from Florida (Mr. CHILES), the Senator from Louisiana (Mr. EDWARDS), the Senator from Oklahoma (Mr. HARRIS), 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 Maine (Mr. MUSKIE), the Senator from Rhode Island (Mr. PELL), the Senator from Virginia (Mr. SPONG), and the Senator from California (Mr. TUNNEY) are necessarily absent.

I further announce that the Senator from Wyoming (Mr. MCGEE) is absent on official business.

I further announce that, if present and voting, the Senator from California (Mr. TUNNEY), and the Senator from Rhode Island (Mr. PELL), would each vote "nay."

Mr. SCOTT. I announce that the Senator from Colorado (Mr. ALLOTT), the Senator from Tennessee (Mr. BAKER), the Senator from Nebraska (Mr. CURTIS), the Senator from Arizona (Mr. GOLDWATER), the Senator from Oregon (Mr. HATFIELD), the Senator from Iowa (Mr. MILLER), the Senator from South Carolina (Mr. THURMOND), and the Senator from Texas (Mr. TOWER) are necessarily absent.

The Senator from Kentucky (Mr. COOK) is absent on official business.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

I further announce that the Senator from Oklahoma (Mr. BELLMON), the Senator from New York (Mr. BUCKLEY), the Senator from Michigan (Mr. GRIFFIN), the Senator from Kansas (Mr. PEARSON), the Senator from Delaware (Mr. ROTH), the Senator from Ohio (Mr. SAXBE), and the Senator from Connecticut (Mr. WEICKER) are necessarily absent.

If present and voting, the Senator from Nebraska (Mr. CURTIS) would vote "nay."

On this vote, the Senator from Iowa (Mr. MILLER) is paired with the Senator from Oregon (Mr. HATFIELD). If present and voting, the Senator from Iowa would vote "yea" and the Senator from Oregon would vote "nay."

The result was announced—yeas 13, nays 55, as follows:

[No. 550 Leg.]

YEAS—13

Allen	Cooper	Nelson
Byrd, Harry F., Jr.	Dominick	Packwood
Case	Hughes	Proxmire
Church	Jordan, Idaho	Talmadge
	Mondale	

NAYS—55

Aiken	Burdick	Fulbright
Anderson	Byrd, Robert C.	Gambrell
Bayh	Cotton	Gravel
Beall	Cranston	Gurney
Bennett	Dole	Hansen
Bentsen	Eagleton	Hart
Bible	Eastland	Hartke
Boggs	Ervin	Hollings
Brock	Fannin	Hruska
Brooke	Fong	Inouye
Jackson	Pastore	Stennis
Javits	Percy	Stevens
Jordan, N.C.	Randolph	Stevenson
Magnuson	Ribicoff	Symington
Mansfield	Schweiker	Taft
Mathias	Scott	Williams
McClellan	Smith	Young
Montoya	Sparkman	
Moss	Stafford	

NOT VOTING—32

Allott	Harris	Muskie
Baker	Hatfield	Pearson
Bellmon	Humphrey	Pell
Buckley	Kennedy	Roth
Cannon	Long	Saxbe
Chiles	McGee	Spong
Cook	McGovern	Thurmond
Curtis	McIntyre	Tower
Edwards	Metcalf	Tunney
Goldwater	Miller	Weicker
Griffin	Mundt	

So Mr. PROXMIRE's amendment was rejected.

The PRESIDING OFFICER (Mr. INOUYE). Who yields time?

Mr. AIKEN. Mr. President, on behalf of the distinguished senior Senator from Georgia (Mr. TALMADGE), the chairman of the Committee on Agriculture and Forestry and myself, I send to the desk an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will state the amendment.

The legislative clerk read as follows:

At the appropriate place, insert the following:

1972 RURAL ENVIRONMENTAL ASSISTANCE PROGRAM

The 1972 program of soil-building and soil- and water-conserving practices previously authorized to be carried out under sections 7 to 15, 16(a), and 17 of the Soil Conservation and Domestic Allotment Act, approved February 29, 1936, as amended (16 U.S.C. 590g–590o, 590p(a), and 590q) may be carried out through June 30, 1973, and sums appropriated by Public Law 92–399 (86 Stat. 607) for such program may be used for practices carried out under such program through June 30, 1973.

Mr. AIKEN. Mr. President, because of weather conditions this past summer and spring, many parts of the country were declared disaster areas, and in those areas many farmers were unable to carry out the contracts they had made with the rural environmental assistance program, because their work could not be completed.

The pending amendment would simply give them until next June 1973, to complete that work.

No additional money is requested in this amendment. This would simply give the administrators the right to use the funds which would have been used last summer had the farmers been able to get on their land.

Mr. President, I showed this amendment to the distinguished chairman of the Committee on Agriculture and Forestry and assured him that it does not call for any increased funds. I know of many places myself where the farmers were unable to carry out their work because of weather conditions.

Mr. YOUNG. Mr. President, this is a typical amendment of the distinguished Senator from Vermont (Mr. AIKEN). It is a necessary one which will help the farmers a good deal. It is a good amendment and it will not cost any money.

Mr. AIKEN. The amendment is not

intended to help the farmers who deliberately abandoned their contracts and ran off to Europe or other places. It would apply only to those who, because of weather conditions, were unable to carry out their contracts.

Mr. McCLELLAN. Mr. President, there is no objection on my part to the amendment. I feel that we should accept it. It calls for no funds. It would simply be a matter of accommodation to the farmers with respect to time. The money is already available. Weather conditions prevented carrying out the execution of the contracts, so this amendment just provides for additional time.

Mr. AIKEN. I thank the distinguished Senator from Arkansas. I yield back my time.

Mr. McCLELLAN. I yield back my time.

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

The amendment was agreed to.

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Berry, one of its reading clerks, announced that the House has 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. 14989) making appropriations for the Departments of State, Justice, and Commerce, the Judiciary, and related agencies for the fiscal year ending June 30, 1973, and for other purposes; that the House has receded from its disagreement to the amendments of the Senate numbered 3, 10, 17, 20, 22, 33, and 37 to the bill and concurred therein; that the House has receded from its disagreement to the amendment of the Senate numbered 9 to the bill and concurred therein with an amendment in which it requests the concurrence of the Senate.

The message further announced that the House has agreed to the amendment of the Senate to the bill (H.R. 10880) to amend title 38 of the United States Code to provide improved medical care to veterans; to provide hospital and medical care to certain dependents and survivors of veterans; to improve recruitment and retention of career personnel in the Department of Medicine and Surgery with an amendment in which it requests the concurrence of the Senate.

The message also announced that the House had agreed to the amendments of the Senate to the joint resolution (H.J. Res. 748) amending title 38 of the United States Code to authorize the Administrator of Veterans' Affairs to provide certain assistance in the establishment of new State medical schools; the improvement of existing medical schools affiliated with the Veterans' Administration; and to develop cooperative arrangements between institutions of higher education, hospitals, and other public or nonprofit health service institutions, and the Veterans' Administration to develop and conduct educational and training programs for health care personnel, with amendments in which it requests the concurrence of the Senate.

ENROLLED BILLS SIGNED

The message further announced that the Speaker had affixed his signature to the following enrolled bills:

H.R. 7117. An act to amend the Fishermen's Protective Act of 1967 to expedite the reimbursement of United States vessel owners for charges paid by them for the release of vessels and crews illegally seized by foreign countries, to strengthen the provisions therein relating to the collection of claims against such foreign countries for amounts so reimbursed and for certain other amounts, and for other purposes.

H.R. 13694. An act to amend the joint resolution establishing the American Revolution Bicentennial Commission, as amended.

H.R. 15641. An act to authorize certain construction at military installations, and for other purposes.

SUPPLEMENTAL APPROPRIATIONS, 1973

The Senate continued with the consideration of the bill (H.R. 17034) making supplemental appropriations for the fiscal year ending June 30, 1973, and for other purposes.

Mr. JAVITS. Mr. President, I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

On page 47, line 24, strike out "$30,000,000" and insert $35,000,000.

Mr. JAVITS. Mr. President, this amendment is offered on behalf of myself and Senators RIBICOFF, PERCY, MUSKIE, and HUGHES. The amendment relates to a colloquy I had with the chairman, about which I have also talked with the Senator from New Mexico (Mr. MONTOYA). The special fund for which is provided in the bill, $30 million, is designed to take up the methadone waiting list in respect of narcotics addiction.

The description given us by the Deputy Director of the Executive Office of the President is to the effect that every one of these people are narcotics addicts, and each untreated individual represents a possible overdose and a source of continued criminal activity.

These are all people who want methadone medication. It is the only way that we can keep them out of the criminal syndrome. The cost of taking them off the waiting list is $69,850,000.

Mr. President, I ask unanimous consent that the letter from Mr. Paul L. Perito, Deputy Director of the Special Action Office together with a chart showing every city and the number of people on the waiting list in that city and the cost of taking them off the waiting list be printed in the RECORD at this point.

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

EXECUTIVE OFFICE OF THE PRESIDENT, SPECIAL ACTION OFFICE FOR DRUG ABUSE PREVENTION,
Washington, D.C., October 11, 1972.

Hon. JOSEPH M. MONTOYA,
Chairman, Subcommittee on Treasury, Post Office and General Government, Washington, D.C.

DEAR MR. CHAIRMAN: Certain questions have been raised by Mr. Joseph Gonzales concerning our request for supplemental appropriations of $60 million, pursuant to § 223 and 224 of P.L. 92-255 (Drug Abuse Office and Treatment Act of 1972). My purpose in writing to you is to respond to these questions and to expand upon the statements which Dr. Jaffe and I made before your Committee on October 3, 1972.

Initially, I want to assure you that we intend to assiduously avoid duplication of effort and expenditures involving these two key areas of concentration. Although there may be instances where similar tasks within the drug abuse prevention field will be performed by more than one agency, we would hope that our role as the chief coordinating Office would keep such duplication to an absolute minimum. Dr. Jaffe, in his capacity as Director of the Special Action Office, is charged with the statutory responsibility of reviewing budget requests from all agencies which have drug abuse prevention programs. This review will enable our Office to prevent unnecessary and unwanted duplication wherever possible.

With regard to pharmacological research, it is not our intent to establish another operating agency in the field of basic research, but rather to obtain complete managerial control of the crucial area of applied research involving development, testing, and clinical evaluation of the effectiveness of new pharmacological agents. It is in this area that breakthroughs will hopefully occur which will give us much needed alternatives to the present forms of chemo-therapeutic treatment, namely methadone. It is imperative to get new and proven agents into the hands of treatment personnel as soon as it is medically feasible.

I am enclosing for your consideration exhibit A which sets forth the anticipated recipient of budgeted funds in the area of applied research. Enclosure A also indicates the type of institution involved, i.e., private institution, non-profit or Government facility. Since we intend to utilize the competitive procurement process, wherever possible, it is impossible at this time to be more explicit with respect to the ultimate recipient of these funds.

It is our opinion that the staffing requirements to fulfill the mandate under § 224 can be met by the judicious application of staff within our present staff ceiling of 174 positions. Moreover, since we have not yet reached our staff ceiling, we think that it would be completely inappropriate to ask for additional funds for staff salaries at this time. The Office of Management and Budget concurs with this interpretation. Accordingly, the $20 million requested for applied research will be used primarily for expenses associated with contracts, interagency agreements, and grants in this vital area.

I am concerned that our position with respect to how our Office would fully and efficiently utilize funds under § 223 has not been made sufficiently clear. I would respectfully suggest that this misunderstanding may be due, in part, to the rather unique legislative history surrounding the creation of the Special Fund concept. In the Administration's original bill (S. 2097) the Special Action Office requested extraordinary authority to transfer appropriations and programs from one agency to another. After extensive Congressional inquiry, it was decided by the Congress that such transfer authority should be deleted and in its place should be added a "Special Fund" wherein the Director of the Office would use such funds as an incentive to rapidly expand in those critical areas where expansion was necessary to effect the overall purposes of the Act. Further, the legislative history attests to the interests which Congress had in giving the Special Action Office the flexibility to target Federal monies and thereby rapidly expand critical programs in the areas of treatment, rehabilitation and prevention. It

is to this end that our Office is attempting to effect these legislative directives by closing the treatment gap which now exists. I am cognizant of the fact that such flexibility departs from the traditional budgetary concepts, but unfortunately, the specific section mandates flexibility and precludes reliance on the traditional line item budgetary concept.

Enclosure B reveals that 27,940 people are still waiting for treatment throughout the United States. We critically need the $40 million to further expand treatment so that these individuals will get the care they need. Every untreated individual represents a possible overdose death and a source of continuing criminal activity.

We know of no other method of presenting the costs involved in closing this existing treatment gap than by utilizing this simple formulae: 16,000 treatment slots x $2,500 per patient=$40 million. If one calculates into this equation this figure of 1.7 which is the turnover rate for each treatment slot over a one year period, one arrives at the figure of 27,200 drug dependent persons who could benefit from treatment. Compared to the costs of arrest, trial, appeal, imprisonment and parole, the costs of treatment are modest indeed.

Our first priority, by necessity, must be to deliver quality treatment and rehabilitation services to narcotics abusers who want and need it. It is only after this emergency has been successfully met and dealt with that we would consider other programs in the prevention analysis field. These programs, such as the proper use of media, social and epidemiological research, credentialing studies, and training and technical assistance, would be governed by paragraph (c) of § 223 which states: "Not more than 10 per centum of such sums as are appropriated to the fund may be expended by the Director through the Office to develop and demonstrate promising new concepts or methods in respect of drug abuse prevention functions." Critical clinical testing under stringent controls must commence, and the waiting list problem must be alleviated. There are literally hundreds of programs like LaLLave (formerly Quebrar, Inc.) that are administratively and professionally sound and worthy of our support.

I trust that this information will serve to clarify further our position with respect to § 223 and 224 of P.L. 92-255.

Respectively,

PAUL L. PERITO,
Deputy Director.

	Current waiting list	Estimated amount per area
SMSA:		
1. Albany-Schenectady-Troy, N.Y.	25	$62,500
2. Albuquerque, N. Mex.	30	75,000
3 Allentown-Bethlehem-Easton, Pa.-N.J.	10	25,000
4. Atlanta, Ga.	25	62,500
5. Atlantic City, N.J.	75	187,500
6. Baltimore, Md.	290	725,000
7. Birmingham, Ala.	10	25,000
8. Boston, Mass.	827	2,067,500
9. Buffalo, N.Y.	57	142,500
10. Chicago, Ill.	40	100,000
11. Cleveland, Ohio	85	212,500
12. Dallas, Tex.	60	150,000
13. Denver, Colo.	50	125,000
14. Detroit, Mich.	931	2,327,500
15. Fort Worth, Tex.	35	87,500
16. Fresno, Calif.	195	487,500
17. Hartford, Conn.	213	532,500
18. Houston, Tex.	50	125,000
19. Indianapolis, Ind.	10	25,000
20. Jacksonville Fla.	38	95,000
21. Lansing-East Lansing, Mich.	11	27,500
22. Los Angeles, Calif.	4,168	10,420,000
23. Memphis, Tennessee-Ark.	30	75,000
24. Miami, Fla.	30	75,000
25. Milwaukee, Wis.	25	62,500
26. Minneapolis-St. Paul, Minn.	65	162,500
27. New Bedford, Mass.	30	75,000
28. New York, N.Y.	16,713	41,782,500
29. Newark, N.J.	40	100,000
30. Philadelphia, Pa.	685	1,712,500
31. Phoenix, Ariz.	30	$75,000
32. Pittsburgh, Pa.	97	242,500
33. Poughkeepsie, N.Y.	5	12,500
34. Providence-Warwick-Pawtucket, R.I.	75	187,500
35. Riverside-San Bernardino-Ontario, Calif.	486	1,215,000
36. St. Louis Mo.-Ill.	150	375,000
37. Salinas-Seaside-Monterey, Calif.	50	125,000
38. San Antonio, Tex.	232	580,000
39. San Diego, Calif.	395	987,500
40. San Francisco-Oakland, Calif.	1,064	2,660,000
41. San Jose, Calif.	83	207,500
42. Santa Barbara-Santa Maria-Lompoc, Calif.	106	265,000
43. Seattle-Everett, Wash.	87	217,500
44. Stockton, Calif.	30	75,000
45 Trenton, N.J.	75	187,500
46. Tucson, Ariz.	75	187,500
47. Washington, D.C.-Maryland-Virginia	28	70,000
48. Waterbury, Conn.	10	25,000
Non-SMSA 1. Largo Florida	9	22,500
Total	27,940	[1] 69,850,000

[1] The amount requested herein ($40,000,000) together with funds requested by NIMH ($42,800,000) under sec. 410 of Public Law 92-255 will provide treatment slots for current needs ($70,000,000) and anticipated expansion ($13,000,000) during the current fiscal year.

ENCLOSURE A—ANTICIPATED RECIPIENTS OF SAODAP'S RESEARCH AND DEVELOPMENT (SEC. 224) FUNDS

Brief Description of Items for Research and Clinical Testing

1. New Development of Pharmacological Agents—These funds will be channeled to universities and pharmacological research firms by awarding these organizations contracts and grants. Effort generated from these awards require the chemical manipulation of molecular structures.

Examples of Names and Locations Major Firms and Institutions in These Special Areas

Mallinkrodt Chemical Works, St. Louis, Missouri, 63160

Endo Laboratories Inc., subsidiary of E.I. duPont de Nemours Co., Garden City, New York, 11530

Department of Biochemistry of Albert Einstein Medical School, New York, New York

Bristol Laboratories, Division of Bristol Meyers Co. Syracuse, New York, 13201

Budget funding requests: $1,000,000.

Brief description

2. Purchase of Drug Supplies.

Examples

Bristol Laboratories, Division of Bristol Meyers Co., Syracuse, New York.

S.B. Penick and Company, New York, New York

Ely Lily and Company, Indianapolis, Indiana

A.H. Robbins Company, Richmond, Virginia

Budget funding requests: $950,000.

3. Development of chemical and/or physical vehicles to make pharmacological agents long lasting. Antagonists will be placed in plastic or combined with other vehicles to determine if such combinations will prolong action.

Dyratech, Cambridge, Massachusetts

University of Delaware, Newark, Delaware

Batelle Memorial Institute, Columbus, Ohio

Budget funding requests: $500,000.

4. Toxicity in Animals. Studies will be carried on in educational, industrial and government laboratories.

Woodard Research Corp., Herndon, Virginia

Parke Davis, Detroit, Michigan

Food and Drug Research Laboratories, New York, New York

Industrial Biotest Laboratories, Northbrook, Illinois

Edgewood Arsenal, Maryland

University of Michigan, Ann Arbor, Michigan

Budget funding requests: $800,000.

5. Clinical Research. A. *Preliminary clinical testing* (Phase I and II) will be undertaken in rigidly controlled human trials at experienced university research centers and government facilities.

Stanford University, Palo Alto, California.

University of Oregon Medical School, Portland, Oregon

New York University, School of Medicine, New York, New York

State of Illinois Drug Abuse Program, Chicago, Illinois

Veterans Administration Hospitals

Budget funding requests: $1,400,000.

5. B. Definitive Determination of Safety and Efficacy of New Agents (Phase III). New agents for safety and efficacy will be undertaken in existing treatment programs. Well known research capabilities will be utilized for this endeavor.

Stanford University, Palo Alto, California

University of Oregon Medical School, Portland, Oregon

New York University, School of Medicine, New York, New York

State of Illinois Drug Abuse Program, Chicago, Illinois

Veterans Administration Hospitals

Narcotics Treatment Administration, Washington, D.C.

Budget funding requests: $8,000,000.

6. Development of innovative treatment approaches with pharmacological agents will be experimented at existing Federal and private supported treatment programs.

(See listing under 5 above)

Budget funding requests: $1,000,000.

7. Prevention as well as treatment will be carried out in model community groups in high risk areas.

Large treatment programs in appropriate communities throughout the United States.

Budget funding requests: $2,000,000.

8. Studies of biological complications will be analyzed in university based medical centers and government facilities.

Qualified medical schools and/or hospitals throughout the United States.

Budget funding requests: $1,000,000.

9. Drug detection in biological fluids involving qualitative and quantitative control methods will be conducted in university, government and other research centers.

College of American Pathologists, Chicago, Illinois

Cornell University Medical Center, New York, New York

Addiction Research Center, Lexington, Kentucky

Center for Disease Control, Atlanta, Georgia

Testing and Research Laboratories, Narcotics Addiction and Control Commission of the State of New York

United States Pharmacopeial Convention, Inc., Rockville, Maryland

Budget funding requests: $1,350,000.

10. Measurements of Effectiveness to determine receptivity of various populations to particular approaches entails additional university based analysis.

Communications Research Institute, Stanford University, Palo Alto, California

Harvard University, Cambridge, Massachusetts

Budget funding requests: $1,800,000.

11. Information dissemination will be accomplished through a whole host of private and government supported scientific periodicals.

Budget funding requests: $100,000.

12. *Advisory Groups* to be composed of outside consultants and advisors.

Budget funding requests: $100,000.

Total Amount Requested: $20,000,000.

Mr. JAVITS. Mr. President, the aggregate sum required, including anticipated expansion in the current fiscal year, as compared with the amount requested in the budget and the funds also requested

for the National Institutes of Mental Health balance out at exactly $82.8 million if the $40 million were granted in the supplemental.

Having discussed this with my cosponsors and with the Senator from Arkansas (Mr. McCLELLAN), the Senator from North Dakota (Mr. YOUNG) and the Senator from New Mexico (Mr. MONTOYA), notwithstanding the urgent need of these people who will be potential criminals, we will take the figure of $35,000,000 that my colleagues have suggested.

I hope and pray that the Senators have before them the picture of a distinguished professor who was brutally murdered in Morningside Heights, N.Y. Every Senator can give us a similar picture of what it means to take each of these people off the methadone waiting list. And then we should not yield any part of this $35 million.

Mr. President, I yield to the distinguished Senator from Connecticut.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. RIBICOFF. Mr. President, I support the amendment to increase the appropriation for the Director's special fund under the Drug Abuse Office and Treatment Act, in the amount of $35 million.

The legislation establishing the Special Action Office of Drug Abuse Prevention was considered and reported earlier this year by the Committee on Government Operations. The members believed that the special fund was one of the most important, innovative features of the bill. It was intended to provide flexibility and leverage for the Director in dealing with the problems of drug abuse.

This year the Director has determined that these funds should be used for expanding local treatment programs in order to reduce the waiting list of those seeking treatment. This effort should receive our full support. It has been reliably estimated that one-half of all property crime is drug related. Providing treatment to addicts who need it will reduce crimes by those who must resort to this method of obtaining money for drugs.

The Special Action Office has found that there are nearly 28,000 people awaiting treatment in the 48 largest standard metropolitan statistical areas in the country. More than 200 of these people are in my own State of Connecticut. I ask unanimous consent that the chart detailing the numbers of those awaiting treatment in each SMSA be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. RIBICOFF. Mr. President, the extra appropriation for the special fund will enable treatment to be extended to nearly all those now desiring it. Approval of the $30 million reported by the committee, however, would mean that thousands of drug addicts will be denied the treatment they need and want.

Mr. President, there is much talk about giving drug abuse prevention a high national priority. Here is an opportunity to put our money behind our speeches and expand local treatment programs, thereby reducing crime. I urge the adoption of this amendment.

EXHIBIT 1

Current waiting list

Albany-Schenectady-Troy, N.Y.	25
Albuquerque, N. Mex.	30
Allentown-Bethlehem-Easton, Pa.-N.J.	10
Atlanta, Ga.	25
Atlantic City, N.J.	75
Baltimore, Md.	290
Birmingham, Ala.	10
Boston, Mass.	827
Buffalo, N.Y.	57
Chicago, Ill.	40
Cleveland, Ohio	85
Dallas, Texas	60
Denver, Colo.	50
Detroit, Mich.	931
Fort Worth, Tex.	35
Fresno, Calif.	195
Hartford, Conn.	213
Houston, Tex.	50
Indianapolis, Ind.	10
Jacksonville, Fla.	38
Lansing-East Lansing, Mich.	11
Los Angeles, Calif.	4,168
Memphis, Tenn.-Arkansas	30
Miami, Fla.	30
Milwaukee, Wisc.	25
Minneapolis-St. Paul, Minn.	65
New Bedford, Mass.	30
New York, N.Y.	16,713
Newark, N.J.	40
Philadelphia, Pa.	685
Phoenix, Ariz.	30
Pittsburgh, Pa.	97
Poughkeepsie, N.Y.	5
Providence-Warwick-Pawtucket, R.I.-Mass	75
Riverside-San Bernardino-Ontario, Calif	486
St. Louis, Mo.-Illinois	150
Salinas-Seaside-Monterey, Calif.	50
San Antonio, Tex.	232
San Diego, Calif.	395
San Francisco-Oakland, Calif.	1,064
San Jose, Calif.	83
Santa Barbara-Santa Maria-Lompoc, Calif.	106
Seattle-Everett, Wash.	87
Stockton, Calif.	30
Trenton, N.J.	75
Tucson, Ariz.	75
Washington, D.C.-Maryland-Virginia	28
Waterbury, Conn.	10
Non-SMSA: Largo, Fla.	9
Total number of individuals on waiting list	27,940

Mr. McCLELLAN. Mr. President, I yield to the Senator from New Mexico.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

Mr. MONTOYA. Mr. President, I would like to state that I think the Appropriations Committee was very generous in regard to this item. The House cut the budget request by $20 million. And we have recommended a restoration of $10 million of that cut or a total of $30 million.

I want it known here that the reason that we did not give the full amount was because Dr. Jaffe, who came before our committee, did not explain fully what he was going to do with the $40 million requested. In a general statement he said that he would spend it for the establishment of treatment centers and therapy throughout the United States to take care of those who remained untreated.

We will have people in the future who will not accept treatment and people that will not be reached for treatment. We will have that gap in America throughout the years in the future.

Mr. President, I want it clearly understood that we are not unsympathetic to the treatment of these addicts. However, we want and expect the witnesses to tell us how they will spend the money requested. There are two appropriation requests for the Special Action Office for Drug Abuse Prevention. For pharmacological research they are asking $20 million.

I questioned Dr. Jaffe about his general statement on research of $20 million. And he admitted to me that this sum could be used together with amounts made available to other agencies also engaged in this endeavor. He has the same authority to use the $30 million that we recommend, in a similar manner and for the very same things which the Senator from New York is speaking.

So the $5 million additional that the Senator requests is fine with me. However, I leave it up to my chairman of the Appropriations Committee.

Mr. McCLELLAN. Mr. President, I am quite certain that the distinguished Senator from New Mexico who held hearings on this matter is more competent to pass upon the justification for this additional $5 million than I am. However, I have no objection to taking it to conference.

I do not know but that even if we were to go to conference with the $30 million that the committee recommended as a likely and proper amount, that we would not be confronted with suggestions for a further reduction or a split or some other proposition when we got into conference.

I am willing to take it to conference and insist upon the full amount. However, I do need to give further consideration to it. It appears on its face to have enough merit that we ought to take it to conference. And certainly we will try at least to hold the $30 million which in the judgment of the Appropriations Committee should be in the bill.

I make that statement. I do not want to make the promise that we will never yield on it. I do not know. However, we all know, as the distinguished Senator from New Mexico said, that none of us are unsympathetic to this objective. We all support it and are willing to appropriate whatever funds are necessary and that can be judicially and effectively expended to get results.

As the distinguished Senator from New Mexico said, when they appeared before the subcommittee, they were not clear themselves what they would do with the additional money. So, I think it is well that we go a little slow in those instances until at least those who administer the funds have a positive program and can tell us why they need it and what they will do with it when they get it.

I am willing, if there is no objection on the part of the other members of the Appropriations Committee, to take it to conference.

Mr. President, I yield to the Senator from North Dakota.

Mr. YOUNG. Mr. President, the greatest problem in this country is that of drug abuse. Unfortunately, the course of this problem has fallen heavier on the younger people. I would rather err on the side of appropriating too much money than on the side of not appropriating enough money.

I think that with the additional evidence that the Senator from New York has provided, we should approve his amendment of $5 million more.

Mr. JAVITS. Mr. President, may I point out that we now have the very same figures that the administration asked for, $40 million. And they are certainly not known as big spenders. That provides for treatment of 27,940 people throughout the country.

I think some Members of the Senate might be surprised if they were to see their own cities on this tragic list and the number of people involved who want to go on methadone treatment. However, the money is not there. Many of these people may be vicious criminals. They are sick. But as far as the public is concerned, it hurts just the same whether the man performing the crime is sick or not.

Mr. President, I hope very much that the deep feelings of the Senator from North Dakota (Mr. YOUNG) on this matter will prevail in the conference. We are cutting this really below the amount that it should be cut, if we are going to do what we should. I know that it is better to do this in deference to the committee. Methadone itself causes problems but it is just a way of allowing people to exist as human beings. That is all it is.

The $20 million for research is essential for finding an antogonist or some way to deal with this, and the $40 million is needed for people who want to go on treatment that we cannot accommodate.

I hope the Senator from North Dakota (Mr. YOUNG) and the Senator from Arkansas (Mr. MCCLELLAN) will see the benefit of this program and stick with $35 million in conference.

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

The PRESIDING OFFICER. All time is yielded back. The question is on agreeing to the amendment of the Senator from New York.

The amendment was agreed to.

Mr. FONG. Mr. President, I send to the desk an amendment.

The PRESIDING OFFICER. The amendment will be stated.

The amendment was read as follows:

On page 3, line 4: substitute "four" for "two" and on line 5, substitute "$26,320,000" for "$13,160,000".

Mr. FONG. Mr. President, this amendment is submitted on behalf of myself and Senators DOMINICK and KENNEDY. The proposed amendment would increase the number of LC–130 ski-equipped aircraft from two to four, the number passed by the House. The original request was for five airplanes. These planes are to be used by the National Science Foundation which directs this country's program of scientific research and exploration on the South Polar Cap.

The Appropriations Subcommittee approved four aircraft, the same figure approved by the House Appropriation Committee. The full Appropriations Committee, however, has cut this figure to two.

This is not the time to cut back our activities in Antarctica where the Soviet Union and the Japanese are planning expansion of their activities and stations there. This cutback places the Nation's Antarctic program in serious jeopardy.

Too many of us are not aware of the tremendous importance of Antarctica and the reasons the United States is maintaining its exploration there.

First. Antarctica dominates one-fifth of the area of the world, including the southern Oceans. This continent has a major influence on world weather and climate. It is the world's richest area in protein production. It contains valuable mineral and petroleum deposits. Antarctica is an area of potentially serious international discord, with seven nations having overlapping territorial claims. At present, political stability has been provided by the Antarctic treaty. The Soviet Union has carried out a program of constant expansion from two stations in 1957 to six stations in 1970. A seventh station is under construction.

The U.S. political and scientific leadership in this area stems from its singular ability to move its personnel about and concentrate its resources at will, a capability which offsets the influence of strategically located Soviet stations.

This U.S. capability is totally dependent on the availability of long-range, ski-equipped transport aircraft. Support of sustained U.S. presence at the South Pole is entirely by aircraft. The U.S. South Pole Station sits astride and effectively challenges all sector claims to territory asserted by other nations.

Only 2 years ago, in the 1970–71 season, the National Science Foundation had seven aircraft for Antarctic research. Since then, two have been retired from service, two were lost—one last year and one the year before—leaving only three planes operating.

Of the remaining three planes, two are beyond the design life of the airframes. They are vintage 1961 aircraft.

While it is possible to refurbish these planes, they will still be overage aircraft in terms of service life. No amount of refurbishing can lengthen the life of the airframes.

To expect our scientists and aircrews to use overage aircraft is to subject them to a dangerous situation, particularly in the extremely severe environment of the Antarctic.

The new aircraft requested would have a useful life of 10 years, I am informed. I believe from the standpoint of safety for our men and of wise use of our dollar resources we should authorize the additional two new aircraft to be used in this most important and expanding research program.

Mr. President, the impact of our failure to procure these replacement aircraft will be: First, a severe curtailment in the level of U.S. effort in Antarctica; second, a dramatic change in U.S. posture in Antarctica, including abandonment of inland stations at South Pole and Siple; third, a substantial diminishment of U.S. influence on the Antarctic Continent and the arousal of suspicions and speculations regarding U.S. intentions; fourth, a yielding of our position of dominance in Antarctic affairs to the Soviet Union; and fifth, a probable renewal of political rivalry and competition, and eventual dissolution, of the Antarctic Treaty.

Mr. President, the Antarctic Treaty, which is for a period of 30 years and which was entered into in 1962, will be reviewed in another 20 years. After that time there may be many claims in the nations of the world to parts of Antarctica. Our continual strong presence there will give us a strong position and strong influence in what will be due to that continent which comprises one-fifth of the world's area and which is rich in protein production and contains valuable mineral and petroleum deposits.

Mr. President, in view of the fact that the House has already passed an appropriation for four airplanes, and in view of the urgency of getting this bill to conference so that we may adjourn Saturday, I will not press for the adoption of my amendment. I wanted to place on the RECORD the harm that will come to our position and influence in Antarctica should we not restore the number of airplanes to four.

I hope the conferees on the part of the Senate will note the importance of our planes to our activity in Antarctica and will recede from our position on this item.

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

Mr. FONG. I yield.

Mr. DOMINICK. Mr. President, I am very glad the Senator has brought up this amendment. As the ranking member of the National Science Foundation Authorization Committee, I have discussed this with members of the National Science Foundation at some length, as well as with the Senator from Massachusetts (Mr. KENNEDY) who was chairman of that subcommittee.

Mr. President, I rise in support of the amendment offered by my distinguished colleague, the Senator from Hawaii.

This Nation's Antarctic program is one of its finest scientific endeavors. The work being conducted in the Antarctic is vital to our geological understanding of global climate and weather changes, to our understanding of this planet's geological past and future, and to our search for increasingly scarce natural resources, most important of which is oil, but also iron and copper.

The Foundation's operation of this program deserves very high commendation for its efficiency of management and its extroardinarily high quality of scientific work under the most rigorous and spartan conditions. The men who work there through the Antarctic winter are dedicated men.

The program is currently operating at great risk to the lives of the men who fly the present planes—which have more hours of service than any C–130's ever built. Without the four planes provided

in the House bill and recommended by the Senate subcommittee, NSF will have to commence an immediate curtailment of its Antarctic program. Even this figure of four planes is below the five requested by the administration in a personal letter from Mr. Weinberger who, I believe, is a match for any of us in budget-cutting.

I strongly urge my distinguished colleagues to support this amendment and not place this program in jeopardy.

Mr. President, I ask unanimous consent to have printed in the RECORD a compendium of problems which the National Science Foundation will suffer if this is not brought about; namely, an increase to at least four or five planes.

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

LC-130 AIRCRAFT FOR SUPPORT OF ANTARCTIC PROGRAM

IMPACT OF CONGRESSIONAL APPROPRIATIONS COMMITTEES' DECISIONS ON THE U.S. ANTARCTIC PROGRAM

1. Only the ski-equipped C-130 aircraft are now available for U.S. program support in Antarctica. Two of these have ten years of antarctic service and over 15,000 hours of flight time. The third aircraft, with a greater payload/range capability, has four years of antarctic service and about 6000 hours of flight time on its airframe. These three aircraft are not adequate to support the U.S. program in Antarctica because:

(a) They do not provide a flying capability that sustains the desired scientific program and the U.S. policy direction in that region.

(b) Two of the three aircraft must be retired from antarctic service because of age, or, reworked at a cost of about $6,000,000 to extend their life. Navy and DOD authorities did not find that alternative cost effective, considering the age of the two older aircraft.

Alternative airframes are not cost effective, especially because of the need to duplicate the already completed engineering effort to develop skis for the C-130. Ski aircraft must be available for intercontinental and intracontinental flying as there are no permanent runways on land. Wheel aircraft can operate only a month to two months a year.

2. While the provision of two new aircraft would meet the needed replacement, it would not return the aircraft resources to the level needed to carry out the program at the level of effort specified by the President to maintain an effective U.S. role in Antarctica. This specified level of effort requires the following effort:

[In hours]

New Pole Station resupply	1100
Siple Station resupply	450
McMurdo-New Zealand flights	1450
Remote Sensing	725
Field Party transport and support	625
Total flight hours	4350

The level of effort has been progressively reduced by reduction in aircraft inventory due to attrition, to the point that less than 50% of the required flight hours.

3. Within the prospect of two instead of five new aircraft NSF in consultation with other agencies would be forced to:

(a) Close Siple Station in November 1973 after its initial year of operation.

(b) Abandon plans to finish construction of the new station at the South Pole and abandon the Pole Station site.

(c) Limit U.S. activities in the continental interior of Antarctica to modest summer field programs. It would not be possible to execute substantial inland summer programs such as the planned drilling program in the Dufek Massif to explore potentially important economic resources.

4. The substantial reduction of the level of U.S. activity in Antarctica will dramatically shift the U.S. posture in that region. Scientifically the U.S. capability of fully participating in investigations of influential processes in the global environment will be reduced. The U.S. leadership in international decisions affecting the future management of Antarctica politically and economically will be jeopardized. The basic tenet of the U.S. policy is insurance that this nation fully participates in the harmonious and equitable solution of matters affecting that region. This objective will not be met.

Mr. DOMINICK. Mr. President, the chairman of the Subcommittee on the National Science Foundation (Mr. KENNEDY) joins me in emphasizing the importance to the Nation's scientific strength of the supplemental appropriation for the National Science Foundation. He shares my view that the Foundation should receive the full supplemental appropriation for four aircraft—$26,320,000—which was voted by the House. Unfortunately, it is impossible for him to be present for this debate, and I ask unanimous consent that his statement be printed in the RECORD at this point.

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

STATEMENT BY SENATOR KENNEDY

Last June the Senate passed an authorization of $727 million for the National Science Foundation. After compromise with the House, the final authorization act provided $704 million for National Science Foundation programs in fiscal year 1973. Yet the amount appropriated for the Foundation was only $626 million, or $78 million below the amount authorized. This 11% reduction in the amount authorized for the Foundation represents a curtailment of important programs on which the Nation's scientific strength depends.

Since its creation as an independent agency in 1950, the National Science Foundation has carried out the extremely important mission of maintaining the Nation's scientific strength. The Foundation operates no laboratories or scientific facilities of its own, but through grants and contracts supports programs of scientific research and education in thousands of universities, research institutes, and other organizations. These programs cover all fields of science and engineering, encompassing the mathematical and physical sciences, engineering, social sciences, biological and medical sciences, materials research and the environmental sciences. They cover all levels of science education from elementary school through postdoctoral fellowships. And these programs are carried out in all of the 50 States to assure a strong, broadly based national scientific enterprise.

The impact of the Foundation's programs is both pervasive and profound on the Nation and on the future of mankind. For we live in an age of science—from the computers that increasingly manage our transactions to the transistors that power our electronic devices to the advanced medical technoolgy which promises profoundly to affect the maintenance of man's health. Science has become essential to the Nation's military security, to the strength of its domestic economy and international economic position, and, indeed, to set the resolution of the widespread social problems which beset our Nation.

But scientific research is not a spigot which can be turned on and off at will. Before scientific know-how can be effectively applied to particular problems in areas such as transportation, health care, housing, communication, energy resources, nutrition, and pollution control, the underlying foundation of basic research must be patiently and continuously built over the years, and the Nation's scientific and technical talent must be carefully nutured and trained.

This is the key task to which the Foundation has directed its principal efforts over the years; but in recent years the Foundation has also expanded its programs with respect to applied research which is relevant to the Nation's social problems. Although the various Federal agencies sponsor some applied research relevant to their particular missions, there remains a considerable amount of extremely important applied research which is too broad in scope or too fundamental in substance to fall within the mandate or resources of the mission agencies. The National Science Foundation is the only agency which can tackle these problems. So the role of the National Science Foundation is to keep the Nation strong in basic science, sponsor the applied research which cannot be effectively handled by other agencies, and assure the Nation an adequate supply of scientific talent.

But the appropriation of $78 million less than the amount authorized makes it extremely difficult for the Foundation to carry out its mission successfully this fiscal year. The problem is exacerbated by the action of the appropriations committees with respect to the appropriation for the Defense Department.

The Defense Department has traditionally provided logistic support to the U.S. Antarctic Research Program. In particular, the Defense Department has been responsible for the procurement of ski-equipped C-130 transport aircraft which are essential to the operations of the Antarctic Program and especially to the safety of the personnel engaged in the program. An item for the procurement of such aircraft was originally in the fiscal year 1973 Defense Appropriations bill. However, the appropriations committees in both Houses struck this item from the bill. The committees indicated in their reports that the need for this item was unquestioned, but stated their view that the funds should be appropriated to the National Science Foundation directly, rather than to the Defense Department.

Unless funds for such aircraft are provided in supplemental appropriations to the National Science Foundation, the United States is likely to lose its ability to conduct effective research operations on the Antarctic continent. It is clear from this year's authorization record that the Antarctic Research Program is of great importance to many areas of science, including a better understanding of environmental problems. In addition, our knowledge of this continent could be of significant strategic importance to the United States in the years ahead.

The National Science Foundation requested a supplemental appropriation of $32,900,000 for the purchase of five ski-equipped aircraft. The House yesterday voted a supplemental appropriation for the Foundation of $26,320,000 for the purchase of four aircraft. But the Senate Appropriations Committee today voted to recommend a supplemental appropriation for only two aircraft.

I believe that the four ski-equipped aircraft voted by the House represent the minimum necessary for effective operation of the Nation's Antarctic Research Program. I regret that the Senate Appropriations Committee recommended only two aircraft, and I would hope that the Senate might vote the full four aircraft voted by the House. In the event the Senate votes only the two aircraft, I would hope that the Conference Committee might choose the higher figure in its recommendations to the Senate and the House.

Mr. DOMINICK. Mr. President, I think it is worthwhile to explain to my col-

leagues, not to be critical of the Committee on Appropriations, how this came about.

The funding for support of the naval operations in the Antarctic originally came through the Defense appropriations. For a considerable period of time the Committee on Appropriations has been trying under the leadership of my colleague from Colorado (Mr. ALLOTT) to get together the National Science Foundation expenditures and get it into their budget.

The defense appropriation originally asked for five aircraft. This was in the budget until the last minute and then dropped. At that point the request was made through the National Science Foundation but the National Science Foundation was caught a little short on this and did not think there was any problem. As a result, although the subcommittee did request four, and did so almost unanimously, it was cut in the full committee to two without full consideration of the valid points brought up by my colleague from Hawaii.

I can say as a pilot, which I still have the honor of being, that the aircraft which are now being used in the impossibly difficult situations in the Antarctic are antique, they are decrepit, they are not in any kind of condition to keep going at all; and if we are going to continue our efforts in that area, we are going to need in the end at least five new aircraft, if not more.

So I would urge the conferees to go along with the House when they have a chance to review the record a little more.

Mr. FONG. I thank my colleague from Colorado.

I do hope the conferees, under the leadership of the Senator from Arkansas (Mr. MCCLELLAN), will give serious consideration to what has been said on the floor tonight.

Mr. MCCLELLAN. Mr. President, I want to assure the distinguished Senator from Hawaii that we will do just that. He said the House approved four. As I recall, there was a motion in committee to strike the four. We compromised on keeping two, especially because a loss of two had been sustained. We felt that they should be replaced immediately. We can still consider whether we should go to four or not in conference.

I do not think anyone opposes this amendment, but there may not be the urgency now for the other two that it cannot wait for another appropriation.

I am not irrevocably committed either way, and I will have an open mind in listening in conference, but I do feel, in the interest of moving along here, that we should proceed in this way.

I want to express my appreciation to the distinguished Senators from Hawaii and Colorado.

Mr. FONG. I thank the Senator. I want to say, in closing, that in 1970 and in 1971 there were seven airplanes. Two were lost, so they had five. Two were put out of commission. Now they have three. Of the three, two are obsolete.

Mr. President, I ask unanimous consent that I be allowed to withdraw my amendment.

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

Mr. MCCLELLAN. Mr. President, I would like to inquire at this time if there are any other amendments.

Mr. JAVITS. Mr. President, I am sending an amendment to the desk, but I shall not be more than a few minutes.

Mr. MCCLELLAN. Mr. President, I would like to make an announcement, if the Senator will yield to me. It is the intention of the Senator from Arkansas, as chairman of the Appropriations Committee, to ask that the conference report on the Defense appropriation bill be laid before the Senate immediately after the vote on this bill. I would hope we could conclude it tonight, and therefore clear the docket for other matters tomorrow. Since we are all here, I do not think it will take too long.

Mr. JAVITS. Mr. President, I call up my amendment.

The PRESIDING OFFICER. The amendment offered by the Senator from New York will be stated.

The legislative clerk proceeded to read the amendment.

Mr. JAVITS. 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 49, between lines 9 and 10 add the following:

NATIONAL COMMISSION ON PRODUCTIVITY

Salaries and Expenses

For additional expenses of the National Commission on Productivity, including services as authorized by 5 U.S.C. 3109, but at rates for individuals not to exceed the per diem rate equivalent to the rate for GS–18, and hire of passenger motor vehicles, $400,000, to remain available until expended: provided that these funds will be used to finance the extension of the Quality of Work Councils.

Mr. JAVITS. Mr. President, this amendment, which I shall not press for reasons which I will explain, would supply the necessary resources to allow an experiment to go forward in organizing the quality of work councils. These are labor-management councils which deal with the broad subject of the improvement of the work environment through job enrichment and humanization of work techniques. It would be composed equally of labor and management.

This idea originates from the organization of the National Commission on Productivity, which I have had a good deal to do with, and the appropriate authorization and the appropriation subsequently made to it, and is put forth as a project of the Commission, but with the Price Commission headed by Mr. Grayson as its agent, in order to deal with a subject which troubles many of us very deeply, the erosion of morale in the American worker. We all know about it, and it is one of the most serious problems troubling this country.

I used to call it a labor-management council, but I like their idea of a productivity council better than mine because they are going not only into the question of productivity but productivity as it relates to interest in the job, attractiveness of the job, and conditions of the job, in terms of quality.

The idea is to experiment with 10 of these councils, which would be either on an area basis or a plant basis, depending on the size of the enterprise. Each of the 10 would cost $10,000. The National Commission on Productivity is ready to contribute $100,000. My amendment would call for $400,000 in order to enable the project to properly start off.

I was going to press this amendment today, because I think it is so critical to get at this job, though I had just learned about the project within the last 24 hours, in order to avoid the 3 or 4 months which must elapse until we get another supplemental bill. However, having discussed it with the Senator from New Mexico (Mr. MONTOYA), I am persuaded that it is really too quick to ask the Appropriations Committee and the Senate to act on it solely on the recognizance of Mr. Grayson and the persons who are working on the task.

The Senator from New Mexico (Mr. MONTOYA) takes this very seriously. It certainly must be taken very seriously. It is one of the most critical problems in our country. He tells me he will give the parties a very good hearing immediately after we reconvene.

So, much as I regret what may have to be the lapse of a few months, I express the hope that the climate which will have been created for the project will induce the National Commission on Productivity to put up its $100,000 so they can get started now, and then the Senator from New Mexico (Mr. MONTOYA) can give them a hearing. Then, we have every hope, as this looks very sound to me, that we will be able to furnish the additional resources required to proceed with this program.

I yield to the Senator from New Mexico.

Mr. MONTOYA. Mr. President, I want to thank the Senator from New York for following this particular procedure and calling to our attention his desires in this matter, but I would like the RECORD also to show that in the supplemental bill for 1972 we recommended and appropriated $2.5 million for this Commission for the varied activities under the enabling legislation. This was in addition to $800,000 transferred to the Commission from another account.

The particular goal of the Commission for which we appropriated $2.5 million was to provide advice on policies and programs that promote productivity growth in the private and public sectors of the economy. Initially this action was taken to counteract rising costs and prices, but the objectives were soon broadened to take account of the need for maintaining and improving the quality of life, including real income, and the physical environment. The objective of this particular Commission is to make studies and recommendations to improve the lot of the working people as well as to promote the growth of the economy and productivity of business.

We have had no oversight hearings on what they have done with the initial appropriation, and I think we should wait

so we can find out from the Commission what they have done with this particular money.

I am advised that they do have money left from the initial appropriation, and the appropriation has a carryover effect up to April 30, 1973.

So I can assure the Senator from New York that when we do have hearings next year and if they come before us with another budget request, we will certainly give them our attention, and we will certainly want to inquire from them as to the propriety of the expenditures up to that time.

Mr. JAVITS. Mr. President, I hope, too, that the Senator's statement would include going into this quality of work project as soon as they are ready to present it to the Senator's subcommittee.

Mr. MONTOYA. Certainly.

Mr. JAVITS. I thank my colleagues.

Mr. President, I point out that the President asked for $5 million for the Productivity Commission this fiscal year. He got $2.5 million. So even our $400,000 request would be well within the budget limit.

But my point is to get the job done, and I think this is the best way to get it done.

So I shall follow the course suggested by the Senator from New Mexico. I ask unanimous consent that the Price Commission description of the project entitled "Quality of Work Project," as described by Chairman Grayson of the Price Commission, be printed in the RECORD, together with a letter, to which I direct the attention of Senator MONTOYA and other Senators particularly, from the chairman of the National Commission on Productivity, the Secretary of Commerce, in which he says he likes the idea very much, and that the Commission plans to devote more than $100,000 of its budget to the Quality of Work Councils.

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

PRICE COMMISSION DESCRIPTION OF PROJECT QUALITY OF WORK PROJECT

BACKGROUND

A greatly increased rate of American productivity is the only long term way of avoiding inflation—and the best hope for reviving our competitiveness in world markets. American productivity has been lagging its previous rate—and that of the rest of the world—for half a dozen years. The sharp rise in output per man hour reported recently is a temporary and cyclical phenomenon, reflecting greater plant and labor utilization rather than any change in the basic trend. Without a major change in that trend, inflation will remain a permanent threat to American consumers and our foreign trade position will continue to erode.

PURPOSE

The Quality of Work project was initiated in the belief that lagging American productivity is caused at least as much by widespread, and growing, worker alienation and disaffection with work and the workplace, as by traditional economic factors. While business investment must be stimulated, it seems clear that permanent productivity gains will also require a major redesign and enrichment of jobs.

The project is an experiment designed to test methods of reducing apathy and boredon and gaining greater involvement and satisfaction in work. The project is being sponsored by various units of the federal government because an increased rate of American productivity as well as the greater effectiveness and satisfaction of American workers, are vital national concerns.

PROJECT DESIGN

The program will conduct its tests through demonstration projects in selected companies and units of government. In each pilot project, worker-management councils, or committees, will be formed which will be responsible for improving the quality of work through various forms of job enrichment and humanization. The participative quality of the council structure will, in itself, be a form of humanization of work. The program will select project sites to obtain a balanced mix between manufacturing and service companies and state or local government agencies as well as between white collar, blue collar and management employees. Geographic and ethnic diversity also will be sought.

The activities of the worker-management councils will be carefully observed and evaluated. Case histories will be documented from the demonstration projects and the results will be communicated to leaders in business, labor and government.

ORGANIZATION

The Quality of Work project will be under the overall direction of the National Commission on Productivity, which was given statutory authority to carry out such activities by the Economic Stabilization Act Amendments of 1971. The project staff, which will report to the Executive Director of the National Commission on Productivity, will consist of a program director, deputy director, associate director, and program managers, with supporting secretarial and clerical help.

The Price Commission, which has already contributed considerable developmental work on the Quality of Work project, will continue to provide administrative and personnel support to the project and will act as an agent on behalf of the NCOP whenever required.

FUNDING

The authorizing legislation for the National Commission on Productivity (Economic Stabilization Act Amendments of 1971) terminates on April 30, 1973. Therefore, all cost estimates for the Quality of Work project are computed on the basis of the six-month period—November 1, 1972 to April 30, 1973.

The Quality of Work project is designed to encompass ten demonstration projects. This is the minimum number necessary to provide for a proper mix between the types of companies and workers selected as well as geographic and ethnic diversity. The estimated cost for each demonstration project, including start-up costs, is $50,000.00. This includes personnel compensation, training, travel expenses, and miscellaneous services and supplies. The total six-month cost of the project is estimated at $500,000, as detailed below:—Productivity Commission will fund $100,000.

	Costs		
	Total	Startup	Project
Personnel compensation	$425,000	$31,000	$394,000
Travel	47,000	2,000	45,000
Miscellaneous service and supplies	28,000	17,000	11,000
Total	500,000	50,000	450,000

SECRETARY OF COMMERCE,
Washington, D.C., October 12, 1972.

Hon. JACOB K. JAVITS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR JAVITS: In response to your request concerning the Quality of Work Council, I would like to offer my enthusiastic endorsement of the program. As you know, the National Commission on Productivity has been and continues to be vitally interested in the subject of labor and management cooperation and the application of new techniques to improve the quality of the working day and the productivity of all working people—management and labor alike.

In the National Commission on Productivity meeting of September 29 there was strong agreement that greater research was needed concerning the relationship between motivation and productivity. The Quality of Work Councils properly designed can provide the Commission with important data concerning this relationship.

As you know, the Commission plans to devote more than $100,000 of its budget to the Quality of Work Councils. This however is inadequate to meet the full requirement of the program.

I believe that if we do a good job of selecting each site, if the change agents are properly chosen, selected and coached, and if we devote the requisite time and skill to evaluation of the program—then we shall have a very useful insight into the power of labor-management councils in improving both work environment and the quality of the output.

I appreciate, Senator, your efforts on behalf of the Commission and will be happy to assist you in any way that I can.

Sincerely,

PETER G. PETERSON,
Chairman, National Commission on Productivity.

Mr. JAVITS. I think, having introduced the subject in this way, we will begin to see some results, and this may act as a goad to the Commission itself, which would be a very good thing.

I withdraw the amendment.

Mr. HART. I have examined the bill and do not find reference to money for payment of a claims settlement award to the Chippewa and Ottawa Indians of Michigan. But it is my understanding that the committee does provide $10,109,003.55 for that award. May I ask the chairman, Mr. MCCLELLAN, if my understanding is correct?

Mr. MCCLELLAN. Yes; the bill contains $10,109,003.55 on page 49 under "Claims and judgments" for this purpose.

Mr. HART. I thank the able Senator from Arkansas. This claims settlement represents long and difficult efforts by many people and I am grateful the committee has made this provision. I also thank the committee for adding $36 million to implement Public Law 92–318, the new Indian Education Act. I support this action, urge the Senate to adopt it and that, in conference, it be accepted.

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Hackney, one of its reading clerks, announced that the House had passed without amendment the following Senate joint resolutions:

S.J. Res. 199. A joint resolution to recognize Thomas Jefferson University, Philadelphia, Pa., as the first university in the United States to bear the full name of the third President of the United States; and

S.J. Res. 236. A joint resolution to authorize and request the President to proclaim the week beginning October 15, 1972, as "National Drug Abuse Prevention Week."

The message also announced that the House has agreed to the report of the

committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 3507) to establish a national policy and develop a national program for the management, beneficial use, protection, and development of the land and water resources of the Nation's coastal zones, and for other purposes.

The message further announced that the House has agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 10729) to amend the Federal Insecticide, Fungicide, and Rodenticide Act, and for other purposes.

SUPPLEMENTAL APPROPRIATIONS, 1973

The Senate continued with the consideration of the bill (H.R. 17034) making supplemental appropriations for the fiscal year ending June 30, 1973, and for other purposes.

Mr. McCLELLAN. Mr. President, if there are no further amendments I ask for third reading. Does the Senator from California have an amendment?

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

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

At the end of chapter II, add the following:

Veterans' Administration assistance in establishing new State medical schools; grants to affiliated medical schools; assistance to health manpower training institutions

For carrying out chapter 82 of title 38, United States Code, $40,000,000 of which $25,000,000 shall be for carrying out subchapter I of such chapter.

Mr. CRANSTON. Mr. President, I yield to the Senator from West Virginia.

ORDER FOR ADJOURNMENT UNTIL 8 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 8 a.m. tomorrow.

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

SUPPLEMENTAL APPROPRIATIONS, 1973

The Senate continued with the consideration of the bill (H.R. 17034) making supplemental appropriations for the fiscal year ending June 30, 1973, and for other purposes.

Mr. CRANSTON. Mr. President, I ask unanimous consent that Louise Ringwalt of the staff of the Committee on Labor and Public Welfare be permitted to be present in the Chamber during the consideration of this amendment.

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

Mr. CRANSTON. Mr. President, I am joined in the sponsorship of this amendment by 14 Senators from both sides of the aisle: Senators HARTKE, THURMOND, RANDOLPH, TALMADGE, TOWER, MCINTYRE, HUMPHREY, BENTSEN, BAKER, BROCK, BURDICK, INOUYE, BYRD of West Virginia, and WILLIAMS.

The amendment would provide $40 million to the Veterans' Administration to carry out programs authorized by new legislation in House Joint Resolution 748, the "Veterans' Administration Medical School Assistance and Health Manpower Training Act of 1972." The amendment would earmark no less than $25 million to be used for establishing up to eight new medical schools.

That authorizing legislation was approved unanimously by both Veterans' Committees. It was approved unanimously by the Senate, and it was approved unanimously by the House of Representatives.

The program it authorizes would benefit every veteran who needs medical care. It would benefit medical care generally in our country, helping bring medical care to communities where there are not enough or in some cases no doctors, and it would benefit every State where there is a VA hospital now operating.

The authorizing legislation provides new authority to the Veterans' Administration to support pilot programs for the establishment of eight new medical schools at State colleges or universities, which schools will be affiliated with a Veterans' Administration hospital. It will also authorize the support of medical schools, nursing schools, and schools of the health and allied health professions, which are affiliated with Veterans' Administration facilities for the improvement and expansion of their ability to train health care personnel. The Veterans' Administration is also authorized to make expenditures to remodel facilities and allocate funds for the improvement of its own health training programs at the VA facilities.

Great interest has been expressed across the country by State colleges and universities in establishing new medical schools which would utilize the Veterans' Administration hospital as their clinical facility. I have personally discussed this interest with many Senators and Congressman.

An appropriation of funds this fiscal year will enable the Veterans' Administration to begin implementing this new authority immediately. Any school which is able to begin initial organization this year, will be that much farther ahead in its ability to recruit students for its first class. Initial estimates are that any school supported by this program would have a small class the first year, limited to perhaps 25 students, while the second year entering class could enroll 50. Thus, the earlier we can start this program, the greater the number of graduates that will be realized sooner.

Another major new program which this supplemental appropriation would support is that of aiding existing medical schools, schools of nursing, other health professions schools, and schools of the allied health professions affiliated with VA hospitals in expanding and improving their ability to train health care personnel. The Veterans' Administration hospitals are affiliated with 84 medical schools, 52 dental schools, 304 nursing schools, 75 schools of social work, and 93 graduate departments of psychology.

These affiliations have been of mutual benefit to both the institution and the Veterans' Administration facility with which they are affiliated. The VA hospital has gained in having the services of faculty members assisting in the treatment of VA patients, providing the hospitalized veteran with the outstanding skills available at major university medical centers. The medical school has gained by its ability to utilize the VA hospital as a training center for its interns and other health care trainees. The Veterans' Administration is also better able to recruit highly skilled professionals as employees at its hospitals where they will have the opportunity to be associated with a medical school and to serve in a faculty capacity at the school in addition to caring for the veteran patient.

The Veterans' Administration through these affiliations trains approximately one-half of all physicians entering practice each year. Many VA trainees are thereafter recruited for employment in the VA itself.

An untapped potential exists in the VA hospitals which are not now affiliated with medical schools.

In addition, there is considerable room for expansion of training programs in the VA itself and in institutions presently affiliated with the VA.

Well over 50,000 individuals are currently being trained for health care careers each year in VA facilities. The potential exists for doubling this number over the next 5 years.

A survey conducted a little over a year ago indicated that with additional funds for trainee stipends, instructor salaries, and space modification, some 12,000 additional health professions trainees could be accommodated immediately. The appropriation of the $40 million I am requesting today will enable the VA to make a substantial beginning toward this expanded training program. It will also enable the affiliated medical education institution to undertake innovative training programs, and to expand and improve its capacity to train health care manpower jointly with the Veterans' Administration.

A very important dividend which can be realized from implementation of the authorities in the legislation is the opportunity which will be provided for returning veterans who have been trained in military occupation specialties to participate in education and training programs leading to a civilian career in health.

In the programs which will be supported by this appropriation, the Veterans' Administration has been directed to encourage to the maximum extent the participation of these veterans in those training programs.

A great potential exists in utilizing these veterans who have been highly trained and have experience in performing tasks which normally fall within the responsibility of the physician, to develop new types of health careers in conjunction with medical schools, where they can be trained with other members

of the health professions to work together in a team effort to care for the patient.

I believe new types of health careers can provide a large part of the answer to the shortage of physicians, by making available the skills of an individual highly trained in one aspect of care, who can alleviate the burden placed upon the physician, in acting as a physician extender.

In summary, by appropriating $40 million for these authorities—for which the full authorization is $75 million—we will enable the VA to make an early start in developing the new medical schools authorized, to take the necessary steps to provide additional assistance to existing affiliated educational institutions to improve and expand their programs, to upgrade and expand the VA's own training programs, and to expand the opportunities for health careers for returning veterans. The greatest need in health care in the Nation is for more and better trained health manpower.

This amendment seeks to utilize to the fullest the potential of the Veterans' Administration for the education and training of these vital resources to assist in the care of disabled veterans and to expand the health care capacity of the entire Nation.

Mr. President, I wish to note that this amendment is strongly supported by the chairman of the Veterans' Affairs Committee (Mr. HARTKE), who has played such a vital role in development of the authorizing legislation, and by the ranking minority member of the committee (Mr. THURMOND). Also, I discussed this amendment this afternoon with the chairman of the Veterans' Affairs Committee in the other body (Mr. TEAGUE) who assured me of his full support for it.

The PRESIDING OFFICER. Who yields time?

Mr. COTTON. Mr. President, I would like 4 minutes.

Mr. McCLELLAN. Mr. President, I yield the distinguished Senator from New Hampshire 4 minutes from the time in opposition to the amendment.

Mr. COTTON. Mr. President, I commend the idea and the purpose of the distinguished Senator from California in seeking to inaugurate such a program. No one knows and realizes more deeply the need for more medical schools and for the capacity to produce more doctors than those of us who have been serving through the years on the Subcommittee on Health, Education, and Welfare.

I wonder, however—and I make this inquiry—how much the Veterans' Affairs Committee went into the problem of the cost of starting any kind of real medical school. The matter of developing medical care and that sort of thing is very practical.

As a matter of fact, many years ago—as many as 10 years ago—I was brought into consultation in the matter of simply expanding a 2-year medical school, which had been in existence for many years, to a 4-year course, with the idea of obtaining some Federal aid. Such aid has now been authorized, I believe, for six or seven universities that had such schools, and one by one they are expanding. But I discovered at the very outset that to expand this school from a 2-year to a 4-year course, a school that had some 35 or 45 students at the very beginning, was going to cost a minimum of $10 million, to make that expansion, with all the equipment and the laboratories and the addition of competent faculty. Providing the various components that make up a real medical school and real training of physicians runs into a great deal of money.

I do not want to oppose any project that would produce more doctors in this country; God knows we need them. But I wonder how deeply the legislative committee investigated the idea of taking $25 million out of $40 million, if I understand it correctly, to start eight new medical schools in connection with veterans' hospitals. It would seem to me that it is a complete waste of money. You could not even start one for that amount of money, in view of the experience we have acquired. If the Senator from Washington, the chairman of the committee, were in the Chamber, he would corroborate that statement. We have had a great deal of evidence on the matter.

Perhaps I am wrong. Perhaps the committee went into this, or perhaps the intention is to use this money for medical assistance.

By adopting this amendment, we would hold out hopes all over the country that pretty soon every State is going to have a medical school in connection with their veterans' hospital. I think those hopes would be a great delusion.

It seems to me that to attempt to launch in a supplemental appropriation bill a program that, if carried through, would require millions and millions of dollars is moving too hastily. Much as I sympathize with the purpose of the distinguished Senator, I think it is very impractical.

Mr. McCLELLAN. I yield 3 minutes to the Senator from Wisconsin.

Mr. PROXMIRE. Mr. President, I support what the Senator from New Hampshire has just said. He is completely right on almost every score.

I have opposed many spending requests in the Appropriations Committee and on the floor, but I think this is one of the most worthy purposes we could find. We need more doctors. We need more medical facilities. We are never going to solve our health problems until we get at them, and this is a very good way to do it.

Here is an amendment which is offered to us on which we have no budget request, No. 1. Number 2, the authorization has not been signed. The authorization passed the House and the Senate, but it was never signed. We have had no hearings before the committee.

As the Senator from New Hampshire said, this is an enormously complicated subject. It is highly costly and could commit us to a great deal of money.

I tell the Senator from California that if he would withdraw his amendment, as chairman of the Subcommittee of the Appropriations Committee, I would be happy to schedule hearings on this matter, and I would be most sympathetic to this kind of request. But I would plead with him to give us a chance to have orderly hearings on this matter early next year. There would be a delay, but the delay would be very short, and it would give us an opportunity to go into detail and to find out the very issues the Senator from New Hampshire has properly raised. It is only a matter of a relatively few months, and it is something that could commit this country to a big program that could be enormously costly.

Would the Senator from California consider withdrawing his amendment, with the understanding that we would have hearings early next year and invite him to testify and bring in other witnesses?

Mr. CRANSTON. Mr. President, I should like to recount the background with respect to this amendment. It is not something that has popped up all of a sudden.

There has been a long, serious study, beginning 2 years ago, when Representative TEAGUE of Texas, chairman of the House Veterans' Committee, and I worked together in developing this proposed legislation. There have been extensive hearings in the House and very extensive hearings in the Senate, with a very long record, indicating that the VA would be able to proceed to use this money wisely and well. There are 31 communities which have been identified as possibilities immediately to begin this program. They could narrow it down to the very best. The expenditure of some $15 million now would make it possible to train 5,000 more people in health manpower.

The Appropriations Committee has not been neglected during the time we have been seeking to get the authorization through. It was passed unanimously by both bodies. More than a year ago, I first talked with Senator PASTORE, who, prior to the shift in subcommittee assignments, chaired the subcommittee of the Appropriations Committee handling this matter. He was highly sympathetic and very interested that this matter was going to come to him. I presented testimony to the committee last summer about this matter. Many Senators are committed to this legislation now, and I believe we should proceed now.

Mr. PROXMIRE. I say to the Senator that there were no hearings. When Senator PASTORE was chairman of the subcommittee, he was sympathetic, of course; but he had no opportunity to hold hearings on this matter. There is no record.

There is a difference between the authorization process and the actual appropriation which commits the money finally and definitively. I think we would get a far better opportunity to act on this matter if we could hold formal hearings next year and handle it in the regular appropriation bill.

Mr. CRANSTON. With respect to the matter of economy, if I may respond to what the Senator from New Hampshire said, I should like to read testimony from the authorization committee's hearings by Dr. Benjamin Wells, Deputy Chief Medical Director of the VA, speak-

ing of an experience at Shreveport, La., that exemplifies exactly what we are talking about now. He said this about that experience:

Some years ago I visited Shreveport, at the time the State was thinking of a new medical school. We found that our hospital there had some excess space because of the fact that it had originally contained a regional office and clinic and these were not functional at the time. This gave us a unique opportunity to invite the school to work with us, and us with them, in the development of spaces in that hospital, which included offices, laboratories for teaching, and so on.

This very quickly became an active affiliation between us and the medical school at Shreveport. Our staff was changed in such a way as to have most of our members on the faculty of the new medical school and to increase the amount of research that was being done at that institution as well.

We think that we accomplished a rather outstanding goal here inasmuch as the new medical school was able to swing into action and to accept medical students in a much shorter time than is usually possible in new medical schools.

In an analysis of some 16 medical schools established after World War II, it was the experience that it took about 3½ to 5 years before medical students could be admitted. In this particular situation medical students were admitted approximately 14 months after the initial resolution to have the school. So this of itself was a rather outstanding result. There was also the fact that by having the VA facility, we materially reduced the cost of initiating this medical school for the University of Louisiana. This process has gone on. There have been two classes now of approximately 33 each. It is a very successful operation; successful from both the standpoint of the medical school for the University of Louisiana, and successful from our standpoint by upgrading the quality of care in our Shreveport hospital.

Mr. PROXMIRE. I ask the Senator once more: We did not have a chance to have any hearings on this matter. Senator CRANSTON did talk to me about it on the floor of the Senate about 3 or 4 days ago. That was the first I heard of it. That was after the hearings had been concluded.

There was no opportunity to examine this matter, to go into any kind of consideration of it, to get the views of the administration on it, to get an opportunity to discuss it with other members of the subcommittee or other members of the full committee. It comes on the floor in the closing 2 or 3 days of the session. It seems to me that we would be far better served and we would have a far better program if we would have an opportunity to consider it in an orderly way early next year.

Mr. CRANSTON. May I ask the Senator whether he would be willing to consider accepting some money now—a reasonable amount, less than we are asking in this amendment—to insure that we get the program started, with assurance that there will be a full study early by his subcommittee in the coming year, to see how much further we could go?

Mr. PROXMIRE. Speaking only for myself—I do not know what Senator COTTON or Senator MCCLELLAN want to do—I would feel strongly that we cannot begin a new program. It seems to me that the important thing is not the $40 million, big as that is, but it is the commitment that we move into a new program, without hearings, without a budget estimate, without authorizations being signed. Under these circumstances, I regret to say that, although it is one of the most worthy proposals we could have, I must say I just could not do that.

Mr. COTTON. Mr. President, I agree completely with the distinguished Senator from Wisconsin. It is all right to talk about getting into action and admitting students, but when we talk about going through the necessary 4-year course to confer the M.D. degree, we are starting up a long and expensive road. I do not say that this cannot be worked out. I think it is a most commendable idea. But I think that to appropriate 1 cent to launch this kind of program with no more background, investigation, or study, and with the strong disapproval of the Budget Bureau and the administration would be too hasty. As I said earlier, to start this would simply raise false hope in the minds of the various communities that they were going to have a full-fledged medical school turning out properly trained M.D.'s able to treat and act as doctors.

I join in expressing the hope that the Senator will not press it at this time. The Senator from Washington and I could assure the Senator that we have been working on this in the HEW Subcommittee for years. One by one we are appropriating money to enlarge present medical schools at the cost of a great deal of money. The Senator from Wisconsin has indicated he will hold hearings, and perhaps I could be more favorable when we have the facts. But this is too hasty.

Mr. President, with all admiration for the idea, I think that this is—to use a longstanding expression in New Hampshire—"going off half-cocked."

Mr. CRANSTON. Mr. President, I think the distinguished Senator from West Virginia (Mr. RANDOLPH) wishes to speak.

Mr. RANDOLPH. Mr. President, I support the amendment offered by the able Senator from California (Mr. CRANSTON). I am a cosponsor of the amendment. I realize that the statements of those Senators who oppose this amendment are well considered. They suggest delayed approaches to the problems which the pending amendment is designed to help alleviate. The Senate has heard arguments that presentation of this amendment is premature, since the authorizing legislation has not been enacted into law. I want to comment on that point.

It is my belief, Mr. President, that the effort to more fully utilize the Veterans' Administration facilities and programs and personnel in the education and training of health care personnel presents, I say to my diligent colleague from Wisconsin, a very unique opportunity to help alleviate what we know to be a critical shortage in health manpower.

That shortage is one of crisis proportions, I say to my colleague from New Hampshire. It is a very urgent matter in every State of the Union, including, I am sure, Wisconsin, New Hampshire, and West Virginia.

I believe that in the consideration of this amendment, we should realize that we have this problem. I do not hesitate to point out—and I say this conscious of the fact that there is opposition to the amendment—that here we have a responsibility which we should take hold of and be eager to grasp. We should not be reluctant to move. The Senate should act affirmatively tonight on this challenge by approving $40 million to start implementation of House Joint Resolution 748.

Mr. President, the compromise version of House Joint Resolution 748, the Veterans' Administration Medical School Assistance and Health Manpower Training Act, has been approved by the House and returned to the Senate. This progressive and innovative measure should receive final approval by the Senate and be sent to the President by the end of the week. Thus, we know the elements of this legislation.

It authorizes $25 million for pilot programs for the establishment of eight new medical schools affiliated with VA facilities and $50 million to be used for these new schools or to expand and improve programs at existing medical schools or at other health manpower institutions affiliated with VA hospitals.

This legislation is designed to utilize the resources of the Veterans' Administration to help solve our health manpower crisis. It will not, however, detract from the primary responsibility of the VA to provide services and health care for our veterans. Rather, I believe House Joint Resolution 748 will lead to improved health care under the VA programs. The cooperative effort between the VA and institutions of higher learning envisioned in this legislation will hopefully lead to the full utilization of VA facilities, personnel, and programs, so that more efficient and effective health manpower education and training efforts will be brought into being.

Our country needs additional physicians, dentists, nurses, other health professionals, allied health professionals and paraprofessionals and other health manpower, including new types of health-care personnel such as physicians' assistants, dentists' assistants, and nurse practitioners.

To meet these manpower shortages requires the establishment of additional institutions and programs to provide the necessary training and education and innovative leadership. The VA is uniquely qualified to work toward this goal. It has the nationwide network of hospitals, clinics, and extended care facilities and ongoing reputable training and education programs. In House Joint Resolution 748 we are challenging the VA and charging it with the responsibility to be the leader in putting its medical resources to work in meeting the great national need for additional and new types of health manpower.

It is my belief that the VA stands ready to meet this challenge and we should give them the funds to begin this vital endeavor.

The amendment which is pending will allow the VA to move forward with the important planning and implementation process without delay. I do not deny that

there is the element of rapidity here, but there is also the element of urgency, and that is the reason for the attempt to move with this amendment. Just as the Senator from Wisconsin has amendments prepared and has asked of us to act on them, we urge approval of this amendment. The Senate, of course, will work its will for or against an amendment offered by the Senator from Wisconsin or the Senator from California or any other Senator. Often we have an amendment offered on which we have no notice until it is offered on the floor of the Senate. That is understandable because it is what the rules of the Senate provide. In this instance the issue and urgency are such that we should move forward now. We are attempting to work within the framework of the Veterans' Administration in the training of urgently needed health care personnel in this country. I strongly support and cosponsor the pending amendment.

I appreciate the opportunity to join in discussion of this matter. I hope that we will have support of the Senate for the amendment.

Mr. CRANSTON. I thank the Senator from West Virginia very much.

Mr. COTTON. Mr. President, while this debate is taking place, and I have verified this, I wonder whether Senators realize, as they consider this amendment, that in the regular HEW appropriation bill which has just been approved in conference today, we have appropriated——

The PRESIDING OFFICER (Mr. ALLEN). All time on the amendment has now expired.

Mr. McCLELLAN. Mr. President, I yield the Senator 2 minutes on the bill.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized for 2 additional minutes.

Mr. COTTON. On the training of health manpower, we have appropriated $846,428,000. $846 million. That approaches $1 billion. That is $170 million more than we appropriated last year. It runs $312 million over the budget which had something to do, of course, with construction.

Now, to come in here on this supplemental—and again I have great respect for the Senator from California. And I have great respect for my friend, the Senator from West Virginia. But to come in talking about $40 million to start medical schools when the subcommittee, the full committee, and the Senate has already covered the training of medexs and has covered aid to enlarge existing medical schools and has covered the whole field of health manpower and, when we have already exceeded the budget, and exceeded last year's amount by $170 million, it seems to me, is not a very wise or prudent procedure to rush into the appropriation of $40 million with such a vague idea of what is going to be done.

We are certainly, every member of our subcommittee and full committee, keenly aware of this need. And we think we have been very generous.

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

Mr. CRANSTON. Mr. President, I yield 1 minute to the Senator from West Virginia.

Mr. RANDOLPH. Mr. President, I respect the position of my colleague, the Senator from New Hampshire. I know when he emphasizes the amount of money involved that this is a stumbling block to him in the consideration of the proposal. I was not present on the floor at the time. However, I believe that the Senator from California directed an inquiry to the Senator from Wisconsin as to whether he would think in terms of supporting the amendment if there was a modification of the amount. I am not sure that was done.

Mr. CRANSTON. The Senator is correct. I asked if the Senator from Wisconsin was willing to ask for enough money now to get the program started and to get the assurance that the program would start.

Mr. PROXMIRE. Mr. President, the problem is that there have been no hearings on this matter.

I ask the Senator from West Virginia if someone were to come on the floor with an amendment pertaining to the Committee on Public Works, which he so ably heads, and it had had no chance to have any hearings, was a new program, and would involve many millions of dollars in the future, if he would not request that the Senator give him an opportunity to have some hearings so that we would have some general idea where we were going in that program?

Mr. RANDOLPH. Mr. President, I would say to the Senator from Wisconsin that I would consider what the amendment contained. Many, many times I have agreed to an amendment which has been offered to some public works measure when there had not been hearings. I consider the appeal and the strength of the argument for the amendment. I cannot cite illustrations tonight. However, there are many of them, and I could supply them for the record.

Mr. PROXMIRE. If the Senator will yield on that point, in this case there are not only no hearings, but it also is not authorized and there is no budget request. It is a new program.

Mr. RANDOLPH. It is an innovative program and it is urgently needed.

Mr. PROXMIRE. Yes. I am for that. I think the program makes a lot of sense, and I would perhaps vote for it. I may even be enthusiastic for such an amendment next year. However, I plead with the Senate to let us make a record on this matter.

Mr. RANDOLPH. Mr. President, I thank the Senator from Wisconsin.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. CRANSTON. Mr. President, I yield the Senator from West Virginia 1 additional minute.

The PRESIDING OFFICER. All time of the Senator from California has expired.

Mr. COTTON. Mr. President, I yield 3 minutes on the bill.

The PRESIDING OFFICER. The Senator from West Virginia is recognized for 3 minutes on the bill.

Mr. RANDOLPH. Mr. President, even in good humor, the Senator from Wisconsin will not scale down the figure. Would the Senator from New Hampshire think in terms of a lesser amount and then not oppose the amendment?

Mr. COTTON. Mr. President, I wish I could take that position because everything that my friend, the Senator from West Virginia, has said is true. Many, many times on the floor of the Senate we have taken such innovative proposals and started toward our goal. And that is fine. However, I would not be willing to do so in this case.

As a matter of fact, the Senator from New Hampshire has, on the Appropriations Committee, been one of the foremost in pushing and pushing for more money for this very purpose. That is one reason that we have helped so much. However, I must say to my good friend, the Senator from West Virginia, that after we have carefully thought out the matter and raised every cent that we thought we could and gone beyond the recommendations of the budget and raised more than three-fourths of a billion dollars for this very project, to hastily start to throw in $40 million with some vague idea of starting medical schools in connection with veterans' hospitals to me is just bad legislative procedure and a waste of money.

I am all for doing this very thing if we can look before we leap.

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

Mr. YOUNG. Mr. President, I yield 2 minutes to the Senator from West Virginia.

Mr. RANDOLPH. Mr. President, I recall that on a recent night the Senator from Nebraska (Mr. CURTIS) started with one figure and we had several rollcall votes as he adjusted the figure downward. I will not go into details. However, he was attempting to get something. He did not get it. And he came back and attempted to get something else.

Mr. President, I do not have a right to speak for the chief sponsor of the amendment, but I know he shares with me the hope that we might at least have an amount that is somewhat less than the amount offered in the amendment, hoping that the hardhearted operation would soften a little bit so that we could go ahead with the planned program for the education and training of health care personnel in our country in connection with VA hospital facilities.

Mr. COTTON. Mr. President, I would be for it if I knew what we were going to do with it. However, we are not going to accomplish anything if we take $20 million or $18 million of our money and put it in a field that is extremely expensive. We have been watching this and pushing it as long as we could. I regret that the Senator from Washington is not here to reinforce his testimony.

Mr. RANDOLPH. Mr. President, as I recall it, President Lincoln said:

> The dogmas of the quiet past are inadequate to the stormy present. As our case is new, so we must think anew and act anew. We must disenthrall ourselves.

And that is, I think, in a sense what we must do here, think anew and, I hope, act anew and support the amendment under consideration.

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

Mr. McCLELLAN. Mr. President, I yield 2 minutes to the Senator from New Jersey on the bill.

The PRESIDING OFFICER. The Senator from New Jersey is recognized for 2 minutes on the bill.

Mr. WILLIAMS. Mr. President, I strongly support the Senator from California in his amendment. The funds he proposes will supplement and complement HEW health manpower programs, and will be used to maximize the potential in these programs through the establishment of new medical schools and the expansion of training at existing medical schools. Such programs in affiliation with VA hospitals are not now funded by HEW.

I would suggest to the chairman of the committee, who has so ably handled the pending bill all the way through and brought it here, that there is an area in the bill in which some money can be saved. I do not propose to offer an amendment to do this. I know that the bill will have to go to conference. Under salaries and expenses, Assistant Secretary for Education, the committee report states:

> The committee has included the full supplemental estimate of $2,242,000. The $2,242,000 will provide funding for 99 positions and related costs for the recently established office of the Assistant Secretary for Education. The committee has serious reservations about the need for yet another large staff to further complicate the administration of the programs of the Department of Health, Education, and Welfare.

I want to advise the chairman of the Appropriations Committee that the Labor and Public Welfare Committee has similar reservations. While an Assistant Secretary has been nominated, he has not yet been confirmed. One of the reasons that his confirmation has been delayed is a difference of view on what the content of that office will be.

The Committee on Labor and Public Welfare has in view a more restricted office than the Assistant Secretary-designate has. It is our strong view that 99 positions will not be needed to do the job that was contemplated in creating this new office. Most of the new programs provided by Public Law 92-318 are to be administered by the Office of Education —not the Assistant Secretary—and I would hope that the Department would demonstrate more interest in implementing such programs in the Office of Education rather than establishing unnecessary and duplicative positions in the Office of the Assistant Secretary.

Mr. McCLELLAN. I yield myself 1 minute, Mr. President. I appreciate the remarks of the distinguished Senator. I am glad to have his suggestion regarding this particular amendment.

The committee did have, as indicated here, some reservations about it; but in view of its being a budget request, we need to get it into conference and give it further study. I am very glad to have his comments about it. They merit our consideration and will be appropriately considered.

Mr. CRANSTON. Will the Senator yield?

Mr. McCLELLAN. I yield.

Mr. CRANSTON. I have been talking about this over a 2-year period with Senator PASTORE, who was chairman of the relevant subcommittee. We submitted our reports to the Appropriations Committee last June for their review. We advised them of this pending legislation and of the probable need for funding this year. We have done all we could.

I talked with the Senator from Wisconsin (Mr. PROXMIRE) last week.

I would say to the Senator from New Hampshire (Mr. COTTON), I am well aware of the amount of money in the bill for HEW, both for medical care and hospital care. But HEW has refused to work with the Veterans' Administration.

The reason for that, many believe, is that they want to abolish the VA and to integrate it into a national health care system.

I stand for a strong and independent VA medical system, to help disabled veterans and all Americans with their expertise. I know my distinguished colleagues agree on this point. We should proceed in that direction, and this amendment will help in that regard by strengthening the quality of care and education and keeping programs at VA hospitals.

Mr. President, on this amendment I ask for the yeas and nays.

The yeas and nays were ordered.

The PRESIDING OFFICER. All time on the amendment has expired. 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 Nevada (Mr. CANNON), the Senator from Florida (Mr. CHILES), the Senator from Louisiana (Mrs. EDWARDS), the Senator from Oklahoma (Mr. HARRIS), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Massachusetts (Mr. KENNEDY), the Senator from South Dakota (Mr. McGOVERN), the Senator from New Hampshire (Mr. McINTYRE), the Senator from Montana (Mr. METCALF), the Senator from Maine (Mr. MUSKIE), the Senator from Rhode Island (Mr. PELL), the Senator from Virginia (Mr. SPONG), the Senator from California (Mr. TUNNEY), the Senator from Nevada (Mr. ANDERSON), the Senator from Idaho (Mr. CHURCH), the Senator from Mississippi (Mr. EASTLAND), the Senator from Georgia (Mr. GAMBRELL), the Senator from Louisiana (Mr. LONG), the Senator from Connecticut (Mr. RIBICOFF), are necessarily absent.

I also announce that the Senator from Wyoming (Mr. McGEE) is absent on official business.

I further announce that, if present and voting, the Senator from Minnesota (Mr. HUMPHREY), the Senator from New Hampshire (Mr. McINTYRE), the Senator from Rhode Island (Mr. PELL), the Senator from California (Mr. TUNNEY), would each vote "yea."

Mr. SCOTT. I announce that the Senator from Colorado (Mr. ALLOTT), the Senator from Tennessee (Mr. BAKER), the Senator from Nebraska (Mr. CURTIS), the Senator from Arizona (Mr. GOLDWATER), the Senator from Oregon (Mr. HATFIELD), the Senator from Iowa (Mr. MILLER), the Senator from South Carolina (Mr. THURMOND), and the Senator from Texas (Mr. TOWER) are necessarily absent.

The Senator from Kentucky (Mr. COOK) is absent on official business.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

If present and voting, the Senator from Oregon (Mr. HATFIELD), the Senator from South Carolina (Mr. THURMOND), and the Senator from Texas (Mr. TOWER) would each vote "yea."

I further announce that the Senator from Oklahoma (Mr. BELLMON), the Senator from New York (Mr. BUCKLEY), the Senator from Michigan (Mr. GRIFFIN), the Senator from Kansas (Mr. PEARSON), the Senator from Delaware (Mr. ROTH), the Senator from Ohio (Mr. SAXBE), the Senator from Maryland (Mr. BEALL), the Senator from Delaware (Mr. BOGGS), the Senator from Maryland (Mr. MATHIAS), and the Senator from Vermont (Mr. STAFFORD) are necessarily absent.

On this vote, the Senator from Delaware (Mr. BOGGS) is paired with the Senator from Nebraska (Mr. CURTIS). If present and voting, the Senator from Delaware would vote "yea" and the Senator from Nebraska would vote "nay."

The result was announced—yeas 32, nays 28, as follows:

[No. 551 Leg.]

YEAS—32

Bayh	Gurney	Nelson
Bentsen	Hart	Percy
Brock	Hartke	Randolph
Brooke	Hollings	Schweiker
Burdick	Hughes	Smith
Byrd, Robert C.	Inouye	Sparkman
Case	Jackson	Stevenson
Cooper	Javits	Talmadge
Cranston	Mondale	Weicker
Eagleton	Montoya	Williams
Gravel	Moss	

NAYS—28

Aiken	Fannin	Packwood
Allen	Fong	Pastore
Bennett	Fulbright	Proxmire
Bible	Hansen	Scott
Byrd, Harry F., Jr.	Hruska	Stennis
Cotton	Jordan, N.C.	Stevens
Dole	Jordan, Idaho	Symington
Dominick	Magnuson	Taft
Ervin	Mansfield	Young
	McClellan	

NOT VOTING—40

Allott	Gambrell	Mundt
Anderson	Goldwater	Muskie
Baker	Griffin	Pearson
Beall	Harris	Pell
Bellmon	Hatfield	Ribicoff
Boggs	Humphrey	Roth
Buckley	Kennedy	Saxbe
Cannon	Long	Spong
Chiles	Mathias	Stafford
Church	McGee	Thurmond
Cook	McGovern	Tower
Curtis	McIntyre	Tunney
Eastland	Metcalf	
Edwards	Miller	

So Mr. CRANSTON's amendment was agreed to.

Mr. RANDOLPH. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. CRANSTON. Mr. President, I move to lay that motion on the table.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table the motion to reconsider.

Putting the question.

The PRESIDING OFFICER. The ayes seem to have it. The ayes have it.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Are there further amendments? If there be no further amendments to be proposed, the question is on the engrossment of the amendments and the third reading of the bill.

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

The engrossed amendments are as follows:

(1) Page 2, after line 5, insert:

AGRICULTURAL PROGRAMS

Agricultural Research Service

For an additional amount for "Agricultural Research Service", $388,000, of which $88,000 shall remain available until expended for plans, construction and improvement of facilities: *Provided,* That not to exceed $18,000 of appropriations hereunder shall be available for offsite improvements on property adjoining the boundary of the Grain Marketing Research Laboratory, Manhattan, Kansas.

(2) Page 2, after line 5, insert:

RURAL DEVELOPMENT

Farmers Home Administration

For an additional amount for "Salaries and expenses", $1,250,000.

(3) Page 2, after line 16, insert:

1972 RURAL ENVIRONMENTAL ASSISTANCE PROGRAM

The 1972 program of soil-building and soil-and-water-conserving practices previously authorized to be carried out under sections 7 to 15, 16(a), and 17 of the Soil Conservation and Domestic Allotment Act, approved February 29, 1936, as amended (16 U.S.C. 590g–590o, 590p (a), and 590q) may be carried out through June 30, 1973, and sums appropriated by Public Law 92–399 (86 Stat. 607) for such program may be used for practices carried out under such program through June 30, 1973.

(4) Page 2, after line 16, insert:

NATIONAL STUDY COMMISSION

For an additional amount for the National Study Commission authorized by Section 315 of the Federal Water Pollution Control Act Amendments of 1972, $200,000: *Provided,* That this sum shall be available only to the extent authorized by law.

(5) Page 3, line 4, strike out "four" and insert: "two".

(6) Page 3, line 5, strike out "$26,320,000" and insert: "$13,160,000".

(7) Page 3, after line 6, insert:

VETERANS' ADMINISTRATION

ASSISTANCE IN ESTABLISHING NEW STATE MEDICAL SCHOOLS; GRANTS TO AFFILIATED MEDICAL SCHOOLS; ASSISTANCE TO HEALTH MANPOWER TRAINING INSTITUTIONS

For carrying out chapter 82 of title 38, United States Code, $40,000,000, of which $25,000,000 shall be for carrying out subchapter I of such chapter.

(8) Page 3, after line 9, insert:

EDUCATION AND WELFARE SERVICES

For an additional amount for "Education and Welfare Services", $4,500,000.

(9) Page 3, after line 9, insert:

CONSTRUCTION

For an additional amount for "Construction," $118,000, to remain available until expended: *Provided,* That these funds shall be available to assist the Lummi Tribe of Indians in the construction of a fish hatchery.

(10) Page 3, after line 9, insert:

ALASKA NATIVE FUND

Any of the funds heretofore or hereafter advanced under authority of the Second Supplemental Appropriations Act, 1972 (Public Law 92–306), or the Act of August 10, 1972 (Public Law 92–369), to a regional corporation organized pursuant to the Alaska Native Claims Settlement Act of December 18, 1971 (Public Law 92–203), may be used by such regional corporations to contribute or lend to, and such regional corporation may also guarantee loans by third parties to, the Alaska Federation of Natives or the Alaska Federation of Natives, Inc., in such amounts and upon such terms and conditions as may be determined by such regional corporation, and in recognition of the services of the Alaska Federation of Natives or the Alaska Federation of Natives, Inc., in advancing land claims settlement legislation.

(11) Page 3, after line 14, insert:

CONSTRUCTION

For an additional amount for "Construction", $350,000, to remain available until expended.

(12) Page 3, line 18, strike out all after "$2,000,000" down to and including "1972" in line 21 and insert: , of which not to exceed $630,000 shall be available for reimbursement to the Board of Trustees of the John F. Kennedy Center for operation and maintenance costs incurred for the period July 1 to October 31, 1972.

(13) Page 4, after line 4, insert:

RELATED AGENCIES HISTORICAL AND MEMORIAL COMMISSIONS

AMERICAN REVOLUTION BICENTENNIAL COMMISSION

SALARIES AND EXPENSES

For expenses to carry out the provisions of the Act of July 4, 1966 (P.L. 89–491), as amended, through February 15, 1973, $3,356,000, of which not to exceed $1,200,000 shall be for grants-in-aid as authorized by section 9(1) of the said Act, to remain available until expended: Provided, That none of the funds available for obligation except upon the enactment into law of authorizing legislation.

(14) Page 5, after line 18, insert:

EDUCATION DIVISION

SALARIES AND EXPENSES, ASSISTANT SECRETARY FOR EDUCATION

For necessary expenses to carry out Section 402 of the General Education Provisions Act, $2,242,000.

(15) page 5, after line 18, insert:

OFFICE OF EDUCATION

(16) Page 5, after line 18, insert:

EMERGENCY SCHOOL ASSISTANCE

For carrying out the Emergency School Aid Act, Title IV of the Civil Rights Act of 1964 relating to functions of the Commissioner of Education, and emergency school assistance activities for which provision was made in the Joint Resolution of July 1, 1972 (Public Law 92–334), $270,640,000.

(17) Page 5, after line 18, insert:

INDIAN EDUCATION

For carrying out, to the extent not otherwise provided, part A ($24,000,000), part B ($10,000,000), and part C ($1,000,000) of the Indian Education Act, and General Education Provisions Act ($1,000,000), $36,000,000.

(18) Page 5, after line 18, insert:

HIGHER EDUCATION

For carrying out, to the extent not otherwise provided, titles I, III, parts A, section 420, B, and E of title IV, and section 1202, of the Higher Education Act, as amended, section 506(b) of the Education Amendments of 1972, the Emergency Insured Student Loan Act of 1969, as amended, and sections 400, 404, and 421 of the General Education Provisions Act, section 207 of the National Defense Education Act, section 22 of the Act of June 29, 1935, as amended (7 U.S.C. 329), and S.J. Resolution 265, $689,960,000, of which $75,000,000 shall be for Veterans Cost of Instruction payments to institutions of higher education, and $215,000,000 to remain available until expended shall be for subsidies on guaranteed student loans: *Provided,* That the funds to carry out S.J. Resolution 265 shall be available only upon enactment of authorizing legislation.

(19) Page 5, after line 18, insert:

LIBRARY RESOURCES

For an additional amount for "Library resources", including carrying out to the extent not otherwise provided for, title II (except section 231) of the Higher Education Act of 1965, as amended, $17,857,000.

(20) Page 5, after line 18, insert:

NATIONAL COMMISSION ON THE FINANCING OF POSTSECONDARY EDUCATION

For expenses necessary to carry out section 140 of the Education Amendments of 1972, including compensation for members of the Commission at rates not to exceed the per diem equivalent for grade GS–18, $1,500,000, to remain available until June 30, 1974.

(21) Page 5, after line 18, insert:

EDUCATIONAL RENEWAL

For an additional amount for "Educational renewal", including sections 502 and 504, parts B–1, C, D, E, and F of the Education Professions Development Act, and section 400 of the General Education Provisions Act, $81,165,000.

(22) Page 5, after line 18, insert:

SALARIES AND EXPENSES

For an additional amount for "Salaries and expenses", $13,905,000 of which $300,000 shall be transferred to Health Services and Mental Health Administrtaion for expenses of the Youth Camp Safety Study.

(23) Page 5, after line 18, insert:

NATIONAL INSTITUTE OF EDUCATION

For carrying out section 405 of the General Education Provisions Act, and for the necessary expenses of the National Institute of Education, including rental of conference rooms in the District of Columbia; and not to exceed $500 for official reception and representation expenses; $92,082,000, which shall remain available until expended: *Provided,* That funds include in the regular fiscal year 1973 appropriation for "Educational renewal" and "Salaries and expenses, Office of Education" for dissemination activities, except general program dissemination, and the District of Columbia schools project shall be transferred to the National Institute of Education.

(24) Page 6, line 1, strike out [$893,448,000] and insert: *$899,268,000.*

(25) Page 6, line 9, after "$645,000,000" insert: *Provided further,* That the $5,000,000 contained within this appropriation for the construction of the National Center for Deaf/Blind youths and adults shall remain available until expended

(26) Page 6, line 9, after "$645,000,000" insert: In addition to the sums provided in the previous sentence for carrying out the Older Americans Act of 1965 as amended, $17,000,000 to carry out title IV of such Act: *Provided,* That funds contained herein to carry out title IV of the Older Americans Act of 1965 as amended shall be available upon enactment into law of authorizing legislation.

(27) Page 6, after line 9, insert:

SPECIAL INSTRUCTIONS

MODEL SECONDARY SCHOOL FOR THE DEAF

For carrying out the Model Secondary School for the Deaf Act (80 Stat. 1027), to the extent not otherwise provided, $7,545,000, which shall remain available until expended.

(28) Page 6, line 14, strike out [$393,255,000] and insert *$407,255,000*

(29) Page 6, line 16, strike out [$408,056,000] and insert: *$422,056,000*

(30) Page 6, after line 16, insert:

OFFICE OF THE SECRETARY

(31) Page 6, after line 16, insert:

OFFICE FOR CIVIL RIGHTS

For an additional amount for "Office for Civil Rights", $1,322,000.

(32) Page 6, after line 16, insert:

DEPARTMENTAL MANAGEMENT

For an additional amount for "Departmental management", $541,000.

(33) Page 7, lines 5 and 6, strike out ($760,200,000) and insert:

(34) Page 7, line 18, after "grant" insert: *Provided further,* That the assets and liabilities of the revolving fund established under section 306 of the Economic Opportunity Act of 1964, as amended (42 U.S.C. 2855) shall be transferred, effective September 19, 1972, to the Rural Development Loan Fund established under section 733(c) of such Act (as added by section 25(a) of the Economic Opportunity Amendments of 1972 (Public Law 92-424, enacted September 19, 1972))

(35) Page 7, line 18, after "grant" insert: *Provided further,* That repayments of principal and interest and other receipts from the lending and guaranty operations of the revolving fund previously established under section 306 of such Act and the Rural Development Loan Fund established under section 7(c) of such Act shall be credited to such Rural Development Loan Fund

(36) Page 7, after line 18, insert:

GENERAL PROVISIONS

(37) Page 7, after line 18, insert:

SEC. 401. (a) In the administration of section 1130 of the Social Security Act, the limitation imposed by subsection (a)(2) of such section shall not apply to expenditures incurred prior to the date of enactment of such section, and the allotment of each State (as determined under subsection (b) of such section) for the fiscal year ending June 30, 1973, shall (notwithstanding any provision of such section 1130) be adjusted so that the amount of such allotment for such year consists of the sum of the following:

(1) the amount of the total expenditures, not to exceed $50,000,000, incurred by the State for services under the State program approved under title I, X, XIV, XVI, or Part A of title IV of the Social Security Act for the period commencing July 1, 1972, and ending on the date of enactment of such section 1130, plus

(2) an amount which bears the same ratio to the allotment of such State (as determined under subsection (b)), but without application of the provisions of this section as the remaining period (as defined in subsection (b)), bears to a period of twelve months: *Provided, however,* That no State shall receive less under this section than the amount to which it would have been entitled otherwise under section 1130 of the Social Security Act.

(b) The term "remaining period" means a twelve-month period reduced by a number of days equal to the number of days in the period commencing July 1, 1972, and ending on the date of enactment of section 1130 of the Social Security Act.

(38) Page 7, after line 18, insert:

SEC. 402. (a) If the Secretary determines that, for any calendar quarter before July 1, 1973 (commencing with the first calendar quarter which begins more than 30 days after the date of the enactment of this section) that the amount equal to one-fourth of the allotment (as determined without regard to this paragraph) of any State is in excess of the total of the expenditures (of the type, and under the programs, to which the allotment under this subsection applies) which will be incurred by the State for such calendar quarter, then the allotment of such State for fiscal year 1973 shall be reduced by the amount of such excess and an amount equal to the amount of such excess shall be available, for reallotment among the States, by the Secretary for such fiscal year but only for social services provided recipients of assistance under State plans approved under titles I, X, XIV, XVI, or part A of title IV of this Act.

(b) From the amounts made available for reallotment under this paragraph for fiscal year 1973, the Secretary may increase the allotment of any State (but not by more than $15,000,000) which he determines will incur, during such fiscal year, expenditures (of the type, and under the programs, to which the allotment under this section applies) the total of which is in excess of the amount of the allotment of such State (as determined without regard to this paragraph.)

(c) Each State shall, prior to each calendar quarter (commencing with the first calendar quarter which begins more than 30 days after the date of the enactment of this section) certify to the Secretary (in such form and manner and containing such information as the Secretary shall by regulations prescribe) the total amount of the expenditures (of the type, and under the programs, to which the allotment under this section applies) which will be incurred by the State for such calendar quarter; and the Secretary shall conclusively presume for purposes of subparagraph (A), that the amount so certified will be the amount which will be expended for such quarter. If any State fails to make timely certification of such expenditures for any calendar quarter, the Secretary shall conclusively presume, for purposes of this paragraph, that the amount of such expenditures for such quarter will be equal to the amount of such expenditures for the preceding calendar quarter.

(39) Page 7, after line 20, insert:

SENATE

(40) Page 7, after line 20, insert:

For payment to Allen J. Ellender, Jr., son of Allen J. Ellender, late a Senator from the State of Louisiana, $49,500.

(41) Page 7, after line 20, insert:

SALARIES, OFFICERS AND EMPLOYEES

(42) Page 7, after line 20, insert:

OFFICE OF THE SECRETARY

For an additional amount for "Office of the Secretary", $8,980: *Provided,* That effective November 1, 1972, the Secretary may appoint and fix the compensation of a clerk in the office of the official reporters of debates at not to exceed $13,468 per annum, an assistant librarian at not to exceed $17,871 per annum in lieu of a senior reference assistant at not to exceed such rate, a senior reference assistant at not to exceed $12,691 per annum in lieu of an assistant librarian at not to exceed such rate, a clerk at not to exceed $9,583 per annum in lieu of a messenger at not to exceed such rate, seven clerks at not to exceed $8,806 per annum each in lieu of seven messengers at not to exceed such rate, and the title of the position chief messenger in the Secretary's office is hereby changed to deputy special assistant.

(43) Page 7, after line 20, insert:

OFFICE OF SERGEANT AT ARMS AND DOORKEEPER

For an additional amount for "Office of Sergeant at Arms and Doorkeeper", $42,305: *Provided,* That effective November 1, 1972, the Sergeant at Arms may appoint and fix the compensation of a manager programer at not to exceed $22,533 per annum and two senior programer analysts at not to exceed $20,461 per annum each.

(44) Page 7, after line 20, insert:

CONTINGENT EXPENSES OF THE SENATE

(45) Page 7, after line 20, insert:

INQUIRIES AND INVESTIGATIONS

For an additional amount for "Inquiries and Investigations", fiscal year 1972, $140,000, to be derived by transfer from the appropriation "Salaries, Officers and Employees", fiscal year 1972.

(46) page 7, after line 20, insert:

MISCELLANEOUS ITEMS

For an additional amount for "Miscellaneous Item", fiscal year 1972, $1,020,000, to be derived by transfer from the appropriation "Salaries, Officers and Employees", fiscal year 1972.

(47) Page 7, after line 20, insert:

ADMINISTRATIVE PROVISIONS

(48) Page 7, after line 20, insert:

SEC. 501. Clause (2) of the fourth paragraph under the heading "Administrative Provisions" in the appropriations for the Senate in the Legislative Branch Appropriation Act, 1972, is amended by striking out "Federal Code Annotated" wherever it appears and inserting in lieu thereof "United States Code Service".

(49) Page 7, after line 20, insert:

SEC. 502. The first sentence of the third paragraph under the heading "Administrative Provisions" in the appropriations for the Senate in the Legislative Branch Appropriation Act, 1959, as amended by the Legislative Branch Appropriation Act, 1972 (2 U.S.C. 43b), is amended to read as follows:

"The contingent fund of the Senate is hereby made available for reimbursement of actual transportation expenses incurred by each Senator in traveling on official business and such expenses incurred by employees in that Senator's office in making round trips on official business by the nearest usual route between Washington, District of Columbia, and the home State of the Senator involved, and in traveling within that State (other than transportation expenses incurred by an employee assigned to a Senator's office within that State (A) while traveling in the general vicinity of such office, (B) pursuant to a change of assignment within such State, or (C) in commuting between home and office)."

(50) Page 7, after line 20, insert:

SEC. 503. The first paragraph under the heading "Payment of Sums Due Deceased Congressional Personnel" in the appropriation for the Legislative Branch in the Second Supplemental Appropriation Act, 1951 (2 U.S.C. 36a), is amended to read as follows:

"Under regulations prescribed by the Secretary of the Senate, a person serving as a Senator or officer or employee whose compensation is disbursed by the Secretary of the Senate may designate a beneficiary or beneficiaries to be paid any unpaid balance of salary or other sums due such person at the time of his death. When any person dies while so serving, any such unpaid balance shall be paid by the disbursing officer of the Senate to the designated beneficiary or beneficiaries. If no designation has been made, such unpaid balance shall be paid to the widow or widower of that person, or if there is no widow or widower, to the next of kin or heirs at law of that person."

(51) Page 7, after line 20, insert:

SEC. 504. The Secretary of the Senate is hereafter authorized to advance, in his discretion, to any designated employee under his jurisdiction, such sums as may be necessary, not exceeding $1,500, to defray official travel expenses in assisting the Secretary in carrying out his duties under the Federal Election Campaign Act of 1971. Any such employee shall, as soon as practicable, furnish to the Secretary a detailed voucher for such

expenses incurred and make settlement with respect to any amount so advanced.

(52) Page 7, after line 20, insert:

SEC. 505. Subsection (e)(3)(B) of section 105 of the Legislative Branch Appropriation Act, 1968, as amended, and as modified by Orders of the President pro tempore of the Senate (2 U.S.C. 61–1), is amended by striking out the word "two" and inserting in lieu thereof "three".

(53) Page 7, after line 20, insert:

SEC. 506. (a) Effective January 1, 1973, and thereafter, the contingent fund of the Senate is made available for payment to or on behalf of each Senator, upon certification of the Senator, for the following expenses incurred by the Senator and his staff:

(1) official telegrams and long-distance telephone calls and related services (in the manner authorized immediately prior to January 1, 1973, by the Committee on Rules and Administration, or as may be hereafter authorized by that committee);

(2) stationery and other office supplies procured through the Senate stationery room for use for official business;

(3) reimbursement to each Senator for air mail and special delivery postage expenses incurred in the mailing of postal matters relating to official business;

(4) rental charges for office space at not more than three places designated by the Senator in the State he represents;

(5) reimbursement to each Senator for official office expenses incurred in his State (other than equipment and furniture);

(6) reimbursement to each Senator for telephone service charges officially incurred outside Washington, District of Columbia;

(7) reimbursement to each Senator for charges for subscriptions to magazines, periodicals, or clipping or similar services; and

(8) reimbursement of actual transportation expenses incurred by the Senator in traveling on official business by the nearest usual route between Washington, District of Columbia, and the State he represents and within such State, and actual transportation expenses incurred by employees in that Senator's office subject to the provisions of subsection (e) of this section.

Reimbursement to a Senator and his employees under this section shall be made only upon presentation of itemized vouchers for expenses incurred.

(b)(1) Except as otherwise provided in paragraph (2) of this subsection, the total amount of expenses authorized to be paid to or on behalf of a Senator under this section shall not exceed for calendar year 1973 or any calendar year thereafter the aggregate of the following, rounded to the next higher multiple of $12:

(A) the applicable amount authorized for official telegrams and long-distance telephone calls and related services under rules and regulations of the Committee on Rules and Administration in effect immediately prior to January 1, 1973, or such different amount as may be authorized for such purposes under rules and regulations hereafter prescribed by that committee;

(B) the applicable full fiscal year amount authorized by the proviso under the heading "Stationery (Revolving Fund)" appearing under the heading "SENATE" in chapter IV of the Supplemental Appropriations Act, 1972 (2 U.S.C. 46a), as in effect immediately prior to January 1, 1973;

(C) the applicable full fiscal year amount authorized by the proviso under the heading "Postage Stamps" appearing under the heading "SENATE" in the Legislative Branch Appropriation Act, 1972 (2 U.S.C. 42a), as in effect immediately prior to January 1, 1973;

(D) the amount authorized a Senator for home offices and home office expenses for a full calendar year in the fourth sentence following the proviso in the second full paragraph under the heading "Miscellaneous Items" appearing under the heading "SENATE" in chapter IV of the Supplemental Appropriations Act, 1972 (2 U.S.C. 53), as in effect immediately prior to January 1, 1973; and

(E) the applicable full fiscal year amount authorized by the third paragraph, relating to reimbursement of transportation expenses to Senators and their staff, under the heading "ADMINISTRATIVE PROVISIONS" appearing under the heading "SENATE" in the Legislative Branch Appropriation Act, 1959, as amended (2 U.S.C. 43b), as in effect immediately prior to January 1, 1973.

(2) In any such calendar year in which a Senator does not hold the office of Senator at least part of each month of that year, the aggregate amount available to the Senator shall be the aggregate amount computed under paragraph (1) of this subsection, divided by 12, and multiplied by the number of months the Senator holds such office during that year, counting any fraction of a month as a full month.

(c) The aggregate of payments made to or on behalf of a Senator under this section shall not exceed at any time during each calendar year one-twelfth of the amount computed under subsection (b)(1) of this section multiplied by the number of months (counting a fraction of a month as a month) elapsing from the first month in that calendar year in which the Senator holds the office of Senator through the date of payment. Payments for rentals due for office space occupied in the State which the Senator represents shall not exceed at any time during each calendar year $300 multiplied by the number of months (counting a fraction of a month as a month) elapsing from the first month in that calendar year in which the Senator holds the office of Senator through the month of payment.

(d) The Sergeant at Arms shall secure for each Senator office space suitable for the Senator's official use at not more than three places designated by him in the State he represents. That space shall be secured in post offices or other Federal buildings at such places. In the event suitable office space is not available in post offices or Federal buildings, the amount made available to the Senator under this section may, subject to subsection (c), be expended to secure other office space in such places.

(e) Actual transportation expenses incurred by an employee in a Senator's office shall be paid under this section only for such expenses incurred in making round trips on official business by the nearest usual route between Washington, District of Columbia, and the home State of the Senator involved, and in traveling within that State (other than transportation expenses incurred by employee assigned to a Senator's office within that State (1) while traveling in the general vicinity of such office, (2) pursuant to a change of assignment within such State, or (3) in commuting between home and office). No payment shall be made under this section to or on behalf of a newly appointed employee to travel to his place of employment.

(f) The amount available to each Senator during fiscal year 1973, (1) for air mail and special delivery postage by the proviso under the heading "POSTAGE STAMPS" appearing under the heading "SENATE" in the Legislative Branch Appropriation Act, 1972 (2 U.S.C. 42a), as in effect immediately prior to January 1, 1973, (2) for actual transportation expenses under the third paragraph under the heading "ADMINISTRATIVE PROVISIONS" appearing under the heading "SENATE" in the Legislative Branch Appropriation Act, 1959, as amended (2 U.S.C. 43b), as in effect immediately prior to January 1, 1973, and (3) for stationery by the proviso under the heading "STATIONERY (REVOLVING FUND)" appearing under the heading "SENATE" in chapter IV of the Supplemental Appropriations Act, 1972 (2 U.S.C. 46a), as in effect immediately prior to January 1, 1973, shall be, notwithstanding such paragraph and provisos, reduced by 50 percent of the applicable amount made available to a Senator under such paragraph and provisos for the entire fiscal year. If, immediately prior to January 1, 1973, any Senator has expended any sum in excess of an amount made available as the result of the reduction made in clause (2) or (3) by this subsection, and such excess sum (but not more than the applicable amount of the reduction) shall be charged against the amount made available to that Senator under this section for calendar year 1973.

(g) In the case of the death of any Senator, the chairman of the Committee on Rules and Administration may certify for such deceased Senator for any portion of such sum already obligated but not certified to at the time of such Senator's death, and for any additional amount which may be reasonably needed for the purpose of closing such deceased Senator's State offices, for payment to the person or persons designated as entitled to such payment by such chairman.

(h) Effective January 1, 1973, the following provisions of law are repealed:

(1) that part of the paragraph under the heading "Contingent Expenses of the Senate", relating to the procurement of air mail and special delivery postage stamps by the Secretary of the Senate, appearing under the heading "SENATE" in the Legislative Branch Appropriation Act, 1942, as amended and supplemented (2 U.S.C. 42a), insofar as such part and any such amendment and supplement relate to Senators;

(2) the third paragraph, relating to reimbursement of transportation expenses to Senators and their staff, under the heading "Administrative Provisions" appearing under the heading "SENATE" in the Legislative Branch Appropriation Act, 1959, as amended (2 U.S.C. 43b);

(3) the paragraph relating to stationery expenses under the heading "SENATE" in the Act entitled "An Act making appropriations for the Legislative, Executive, and Judicial Expenses of the Government for the year ending the thirtieth of June, eighteen hundred and seventy", approved March 3, 1869, as amended and supplemented (2 U.S.C. 46a), insofar as such paragraph and any such amendment and supplement relate to Senators;

(4) section 106 of the Legislative Branch Appropriation Act, 1969 (2 U.S.C. 46a–3);

(5) the last paragraph under the heading "Administrative Provisions" appearing under the heading "SENATE" in the Legislative Branch Appropriations Act, 1968 (2 U.S.C. 46d–4);

(6) the paragraph relating to the payment from the Senate contingent fund of telegrams under the heading "CONTINGENT EXPENSES OF THE SENATE" appearing under the heading "SENATE" in the Legislative Branch Appropriation Act, 1947 (2 U.S.C. 46e); and

(7) the proviso and the succeeding six sentences relating to home offices and home office expenses under the heading "MISCELLANEOUS ITEMS" appearing under the heading "SENATE" in chapter IV of the Supplemental Appropriations Act, 1972 (2 U.S.C. 53).

(i) Effective January 1, 1973, clause (2) of the last paragraph under the heading "CONTINGENT EXPENSES OF THE SENATE" appearing under the heading "SENATE" in chapter XI of the Third Supplemental Appropriation Act, 1957 (2 U.S.C. 46a–1), is amended by striking out "and of Senators".

(j)(1) $191,100 of the funds appropriated for "STATIONERY (REVOLVING FUND)", fiscal year 1973, and $55,495 of the funds appropriated for "POSTAGE STAMPS", fiscal year 1973, are hereby transferred to the appropriation "MISCELLANEOUS ITEMS", fiscal year 1973.

(2) $12,575 of the funds appropriated for "POSTAGE STAMPS", fiscal year 1973, are hereby made available for the maintenance of a supply of stamps in the Senate Post Office.

(54) Page 7, after line 20, insert:

SEC. 507. Section 1824 of the Revised Statutes (40 U.S.C. 210), is amended by adding at the end thereof the following new sentence: "Such arms so furnished shall be carried by each officer and member of the Capitol Police, while in the Capitol Buildings (as defined in section 16(a) (1) of the Act of July 31, 1946, as amended (40 U.S.C. 193m)), and while within or outside of the boundaries of the United States Capitol Grounds (as defined in the first section of the Act of July 31, 1946, as amended (40 U.S.C. 193a)), in such manner and at such times as the Sergeant at Arms of the Senate and the Sergeant at Arms of the House of Representatives may, by regulations, prescribe."

(55) Page 8, strike out lines 9 to 14, inclusive, and insert:

The provisions of House Resolution 890, Ninety-second Congress, relating to compensation of the Clerk, the Doorkeeper, and the Sergeant at Arms of the House of Representatives, and the Chief of Staff of the Joint Committee on Internal Revenue Taxation, shall be the permanent law only with respect to the compensation of the Clerk, the Doorkeeper, and the Sergeant at Arms of the House of Representatives. Such House Resolution 890 shall not apply with respect to the compensation of the Chief of Staff of the Joint Committee on Internal Revenue Taxation.

(56) Page 8, after line 19, insert:

OFFICE OF THE ATTENDING PHYSICIAN

For an additional amount for the "Office of the Attending Physician", $5,000, to be available as an allowance for a medical consultant.

Upon assuming his duty as Attending Physician to the United States Congress, and while so serving, the incumbent shall be considered to hold the rank of Rear Admiral, Medical Corps, United States Naval Reserve, for all purposes, and shall receive the pay and allowances with his length of service of an officer of the upper half of that grade (O–8) and when retired under any provision of law shall be advanced on the retired list to such grade and shall receive retired pay based on that grade.

(57) Page 8, after line 26, insert:

SENATE OFFICE BUILDINGS

For an additional amount for "Senate Office Buildings," $110,000, to remain available until expended.

(58) Page 8, after line 26, insert:

CONSTRUCTION OF AN EXTENSION TO THE NEW SENATE OFFICE BUILDING

To enable the Architect of the Capitol, under the direction of the Senate Office Building Commission, to provide for the construction and equipment of an extension to the New Senate Office Building, in accordance with plans approved by such Commission and by the Senate Committee on Public Works, on the east half of square 725 including the public alley separating the east and west halves of such square, but excluding lot 885 in such square, containing office rooms and such other rooms and accommodations as may be approved by the Senate Office Building Commission and by the Senate Committee on Public Works, including structural and other changes in the existing New Senate Office Building necessitated by such construction, together with approaches, connections with the Capitol Power Plant and public utilities, and architectural landscape treatment of the grounds: *Provided*, That upon completion of the project, the building and the grounds and sidewalks surrounding the same shall be subject to the provisions of the Act of June 8, 1942 (40 U.S.C. 174(c) and (d)), and the Act of July 31, 1946 (40 U.S.C. 193a–193m, 212a and 212b) in the same manner and to the same extent as the present Senate Office Buildings and the grounds and sidewalks surrounding the same: *Provided further*, That during each fiscal year, the Senate Committee on Public Works shall examine the progress and costs of construction of such building and take such steps as are necessary to insure its economical construction: *Provided further*, That the Architect of the Capitol, under the direction of the Senate Office Building Commission, is authorized and directed to enter into such contracts, incur such obligations, and make such expenditures, including expenditures for personal and other services, as may be necessary to carry out the provisions of this paragraph; $47,925,000, to remain available until expended.

(59) Page 8, afer line 26, insert:

ACQUISITION OF PROPERTY AS A SITE FOR PARKING FACILITIES FOR THE UNITED STATES SENATE

To enable the Architect of the Capitol, under the direction of the Senate Office Building Commission, in addition to the real property contained in square 724 in the District of Columbia heretofore acquired under Public Law 85–429, approved May 29, 1958 (72 Stat. 148–149), Public Law 91–382, approved August 18, 1970, (84 Stat. 819), and Public Law 92–184, approved December 15, 1971 (85 Stat. 637), to acquire, on behalf of the United States, by purchase, condemnation, transfer, or otherwise, as a site for parking facilities for the United States Senate, all publicly or privately owned real property contained in lots 79, 80, 86, 94, 805, 806, 833, 838, 839, 840, and 844 in square 724 in the District of Columbia, and all alleys or parts of alleys and streets contained within the curblines surrounding such square, as such square appears on the records in the office of the surveyor of the District of Columbia as of the date of the approval of this Act: *Provided*, That for the purposes of this paragraph, square 724 shall be deemed to extend to the outer face of the curbs surrounding such square: *Provided further*, That, upon acquisition of any real property under this paragraph, the jurisdiction of the Capital Police shall extend over such property, and any property acquired under this paragraph shall become a part of the United States Capitol Grounds and be subject to the provisions of sections 193a–193m, 212a, and 212b of title 40, United States Code: *Provided further*, That any proceeding for condemnation brought under this paragraph shall be conducted in accordance with the Act of December 23, 1963 (16 D.C. Code, secs. 1351–1368): *Provided further*, That, notwithstanding any other provision of law, any real property owned by the United States and any public alleys or parts of alleys and streets contained within the curblines surrounding square 724, shall, upon request of the Architect of the Capitol, made with the approval of the Senate Office Building Commission, be transferred to the jurisdiction and control of the Architect of the Capitol without reimbursement or transfer of funds, and any alleys or parts of alleys or streets contained within the curblines of said square shall be closed and vacated by the Commissioner of the District of Columbia, appointed pursuant to part III of Reorganization Plan numbered 3 of 1967, in accordance with any request therefor made by the Architect of the Capitol with the approval of such Commission: *Provided further*, That, upon acquisition of any real property pursuant to this paragraph, the Architect of the Capitol, when directed by the Senate Office Building Commission to so act, is authorized to provide for the demolition and/or removal of any buildings or other structures, on or constituting a part of, such property and, pending demolition, to use the property for Government purposes or to lease any or all of such property for such periods and under such terms and conditions as he may deem most advantageous to the United States and to incur any necessary expenses in connection therewith: *Provided further*, That nothing herein shall be construed to prohibit the continued use of areas in square 724, acquired under authority of the Acts of May 29, 1958, August 18, 1970, and December 15, 1971, hereinbefore cited, for the parking of automobiles, until such times as such areas may be required for construction purposes: *Provided further*, That the Architect of the Capitol, under the direction of the Senate Office Building Commission, is authorized to enter into such contracts, incur such obligations, and make such expenditures, including expenditures for personal and other services, and expenditures authorized by Public Law 91–646, approved January 2, 1971 (84 Stat. 1894–1907) applicable to the Architect of the Capitol, as may be necessary to carry out the provisions of this paragraph; $4,075,000, to remain available until expended.

(60) Page 8, after line 26, insert:

PLANS FOR GARAGE AND RELATED FACILITIES FOR THE UNITED STATES SENATE

To enable the Architect of the Capitol to initiate and conduct a study, after consultation with the appropriate Federal agencies and individuals experienced in the design of vehicle parking structures, to explore design and cost alternatives for construction, on square 724, of a parking garage with limited commercial facilities, and report his preliminary findings and recommendations to the Senate Committee on Public Works: *Provided*, That the Architect of the Capitol, concurrently with such study, is authorized to establish, for the purpose of development of a basic concept therefor, an architectural design competition, in order to encourage the preparation of an imaginative design for the garage structure, including limited commercial facilities and landscaping and to assure a pleasant transition to and maximum coordination with the surrounding residential and commercial community in that area of Northeast Washington within sight of or adjoining the Capitol Grounds: *Provided, further*, That such design concept may consider and include existing and future land use and structures in said surrounding community, and shall consider any existing model cities or other governmental planning for such Northeast area, including that of the National Capital Planning Commission: *Provided further*, That such design concept specifically defining the limits, scope, and all aspects of the competition shall be developed and promulgated by the Architect of the Capitol, with the approval of the Senate Office Building Commission, and an award for the best design or designs shall be determined by a committee jointly designated for this purpose by the Architect of the Capitol and the Senate Office Building Commission, in such amount as they may deem to be appropriate: *Provided further*, That the Architect of the Capitol, under the direction of the Senate Office Building Commission, is authorized and directed to enter into such contracts, incur such obligations, and make such expenditures, including expenditures for personal and other services, as may be necessary to carry out the provisions of this paragraph; $50,000, to remain available until expended.

(61) Page 8, after line 26, insert:

ACQUISITION OF PROPERTY AS AN ADDITION TO THE CAPITOL GROUNDS

To enable the Architect of the Capitol to acquire on behalf of the United States, as an addition to the United States Capitol Grounds, by purchase, condemnation, transfer, or otherwise, all publicly or privately owned property contained in square 764

in the District of Columbia, and all alleys or parts of alleys contained within the curblines surrounding such square, as such square appears on the records in the office of the surveyor of the District of Columbia as of the date of the approval of this Act: *Provided*, That any proceeding for condemnation brought under this paragraph shall be conducted in accordance with the Act of December 23, 1963 (16 D.C. Code, secs. 1351–1368): *Provided further*, That for the purposes of this paragraph, square 764 shall be deemed to extend to the outer face of the curbs surrounding such square: *Provided further*, That, notwithstanding any other provision of law, any real property owned by the United States and any public alleys or parts of alleys and streets contained within the curblines surrounding such square shall, upon request of the Architect of the Capitol, be transferred to the jurisdiction and control of the Architect of the Capitol without reimbursement or transfer of funds, any alleys or parts of alleys or streets contained wtihin the curblines of said square shall be closed and vacated by the Commissioner of the District of Columbia, appointed pursuant to part III of Reorganization Plan numbered 3 of 1967, in accordance with any request therefor made by the Architect of the Capitol: *Provided further*, That, upon acquisition of such real property pursuant to this paragraph, the Architect of the Capitol is authorized to use such property as a green park area, pending its development for permanent use as the site of the John W. McCormack Residential Page School, subject to the approval of the Senate Office Building Commission and the House Office Building Commission: *Provided further*, That the jurisdiction of the Capitol Police shall extend over any real property acquired under this paragraph and such property shall become a part of the United States Capitol Grounds and be subject to the provisions of section 193a–193m, 212a, and 212b of title 40, United States Code: *Provided further*, That the Architect of the Capitol, under the direction of the Senate Office Building Commission, is authorized and directed to enter into such contracts, incur such obligations, and make such expenditures, including expenditures for personal and other services, as may be necessary to carry out the provisions of this paragraph; $1,450,000, to remain available until expended.

(62) Page 10, after line 10, insert:

PUBLIC WORKS

DEPARTMENT OF DEFENSE—CIVIL

DEPARTMENT OF THE ARMY

CORPS OF ENGINEERS—CIVIL

(63) Page 10, after line 10, insert:

GENERAL INVESTIGATIONS

For an additional amount for "General investigations", $1,705,000, to remain available until expended.

(64) Page 10, after line 10, insert:

CONSTRUCTION, GENERAL

For an additional amount for "Construction, general", $1,070,000, to remain available until expended.

(65) Page 10, after line 10, insert:

FLOOD CONTROL, MISSISSIPPI RIVER AND TRIBUTARIES

For an additional amount for "Flood control, Mississippi River and tributaries", $1,000,000, to remain available until expended.

(66) Page 10, after line 15, insert:

INDEPENDENT AGENCIES

WATER RESOURCES COUNCIL

WATER RESOURCES PLANNING

For an additional amount for "Water resources planning", for preparation of assessments, $850,000, to remain available until expended.

(67) Page 11, line 21, strike out [$2,100,000] and insert: $2,000,000.

(68) Page 12, line 4, strike out [$1,200,000] and insert: $1,300,000.

(69) Page 12, after line 8, insert:

DEPARTMENT OF COMMERCE

(70) Page 12, after line 8, insert:

PARTICIPATION IN UNITED STATES EXPOSITIONS

For expenses necessary for Federal participation in the 1974 International Exposition on the Environment, $11,500,000, to remain available until expended: Provided, That none of the funds appropriated in this paragraph shall be available for obligation except upon the enactment into law of authorizing legislation.

(71) Page 12, after line 8, insert:

MARITIME ADMINISTRATION

SHIP CONSTRUCTION

For an additional amount for "Ship Construction", $175,000,000, to remain available until expended: *Provided*, That this appropriation shall be available only upon the enactment into law of S. 4036, 92d Congress, or similar legislation.

(72) Page 12, after line 16, insert:

RELATED AGENCIES

COMMISSION ON THE ORGANIZATION OF THE GOVERNMENT FOR THE CONDUCT OF FOREIGN POLICY

For necessary expenses of the Commission on the Organization of the Government for the Conduct of Foreign Policy, authorized by title VI of the Foreign Relations Authorization Act of 1972, $1,000,000.

(73) Page 12, line 22, strike out [$32,200,000] and insert: $37,300,000.

(74) Page 13, after line 6, insert:

FEDERAL RAILROAD ADMINISTRATION

GRANTS TO NATIONAL RAILROAD PASSENGER CORPORATION

For an additional amount for "Grants to National railroad Corporation", $57,000,000, to remain available until expended.

(75) Page 13, after line 7, insert:

CIVIL AERONAUTICS BOARD

PAYMENTS TO AIR CARRIERS

For an additional amount for "Payments to Air Carriers", $11,400,000, to remain available until expended.

(76) Page 13, after line 14, insert:

COMMISSION ON HIGHWAY BEAUTIFICATION

For necessary expenses of the Commission on Highway Beautification, established by section 123 of the Federal-Aid Highway Act of 1970 (84 Stat. 1727–1728), an additional $250,000, to remain available until expended: Provided, That this appropriation shall be available only upon the enactment into law of authorizing legislation by the 92d Congress.

(77) Page 13, line 20, strike out [$4,000,000] and insert: $3,800,000.

(78) Page 14, line 5, after "$2,700,000" insert: : *Provided*, That section 102 of the Treasury, Postal Service, and General Government Appropriation Act, 1973, is amended by striking out "March 31, 1973" and inserting in lieu thereof "June 30, 1973".

(79) Page 14, line 8, strike out all after " "Compliance"," down to and including "$5,000,000" in line 11 and insert: $4,000,000.

(80) Page 14, line 16, strike out all after "Policy," down to and including line 18.

(81) Page 15, line 10, strike out [$20,000,000] and insert: $35,000,000

(82) Page 15, strike out line 19 to 25, inclusive.

(83) Page 17, line 17, strike out [1001] and insert: 1101

(84) Page 17, after line 19, insert:

SEC. 1102. Each department, agency or corporation shall report to the Congress no later than July 31, 1973, the total amount of appropriated funds used for the support (direct or indirect) of executive dining rooms or similar facilities during the fiscal year ending June 30, 1973.

The bill was read the third time.

The PRESIDING OFFICER. Is all time yielded back on the bill?

Mr. McCLELLAN. Mr. President, I yield back my time.

Mr. YOUNG. Mr. President, I yield myself 1 minute on the bill.

Mr. President, I had intended to vote for this bill, but it has gone so far at least $250 million over the budget estimates that I do not feel that it would be right that I do so.

With reference to the last amendment, it is a good program and it would be very helpful to my State. No State is shorter of doctors than mine. We have a 2-year medical school now that we may have to go to a 4-year school, at great expense. This will have to be done if we are ever going to have the doctors we need, but to appropriate money now for this program before the authorization is even signed or any hearing held is not good legislation.

I feel compelled to vote against the bill.

Mr. PASTORE. Mr. President, will the Senator yield to me?

Mr. YOUNG. I yield.

Mr. PASTORE. Let us be fair and practical about this. There is no question about this in my mind. As a matter of fact, my name was mentioned. The Senator from California has talked to me from time to time about this matter. We have not had hearings on it. I think in due time a proposal of this kind is absolutely necessary. But when it goes to conference it will be deleted, in my humble opinion. There is no authorization for it. The House has not had hearings on it. We are putting this provision in as a floor amendment.

I hope the Senator will reconsider his intention, because I do not think he is going to be disappointed.

Mr. COTTON. Mr. President, will the Senator yield me half a minute?

Mr. YOUNG. I yield to the Senator from New Hampshire.

Mr. COTTON. Mr. President, the Senator from Rhode Island is probably correct when he says it is going to be deleted, but it is painful to me to think that the House of Representatives is much more responsible than the Senate of the United States. I am proud to be a Senator of the United States.

This is the most ridiculous, absurd, impractical amendment that I have ever seen adopted. Anyone who has served on the Appropriations Committee, especially on HEW, knows that this would not build one medical school. I refuse to stultify myself by voting for a bill that has such an amendment. It will be passed, and the amendment will be dropped out in the conference. Everything will be fine; but I have gotten tired of depending on the House of Representatives to exercise the discretion and commonsense and courage that we should exercise over on this side of the Capitol.

Mr. McCLELLAN. Mr. President, I yield myself 1 minute on the bill.

Mr. HANSEN. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order.

Mr. McCLELLAN. I do not know of any Member of this body, and I cannot conceive that there is any Member of this body, who does not want to do everything that is practical and necessary for our veterans and to improve the health and welfare of our people, and particularly in providing improved and better medical care.

But I would remind our colleagues that we are faced with a resolution to hold the spending level to $250 billion. It is not just a matter that addresses itself to the President that we hold down spending. That problem addresses itself to us, and to us primarily. We are going to have to pass some kind of resolution to reduce the expenditures that result from our appropriations.

I think we are coming to this point, and I want to make this observation: Congress is going to have to take the responsibility for placing, some place, a limit on spending, and beginning next year I hope we can give more concerned attention to our responsibilities with respect to spending, to the end that we may begin to reduce the heavy deficits that we are now creating. I think it is imperative that we do that.

When we increase a bill with something that may be good, but that has not gone through the due processes, we are just simply piling up this problem that we already have. We are aggravating a situation that already exists.

I favor, certainly, whatever is necessary in this field. I went along because there had not been appropriate hearings and proper study, and we did not know exactly where this money was going. But I think we have to begin to address ourselves to the overall problem and the bigger problem of reducing the expenditures of our Government.

I cannot foretell the future, but I assume we will have great difficulty if we insist on retaining this amendment in the bill when we get to conference. I can appreciate how the House of Representatives will likely feel about it, but everyone has voted his sentiments.

I would like to have voted the other way. I would like to have voted for the proposal, and I may do so after we have had proper hearings, and due consideration. But I do feel constrained, as chairman of the Appropriations Committee, to make the observations that I have just made. We are going to have to assume and exercise greater responsibility in this field of public spending.

Mr. HANSEN. Mr. President, will the distinguished chairman of the Appropriations Committee yield me about 1 minute?

Mr. McCLELLAN. I yield a minute to the distinguished Senator from Wyoming.

Mr. HANSEN. Mr. President, I want to express my great appreciation to the distinguished chairman of the Appropriations Committee and the ranking Republican member for what they have said earlier this afternoon. As a member of the Finance Committee, I know we went through the agonizing exercise of trying to decide what might be done by way of action on the spending limitations bill.

I cannot think of any way in which the focus and the concern that was so much on all of our minds could be better expressed than it has just been expressed by the distinguished senior Senator from Arkansas and the distinguished senior Senator from North Dakota.

If we expect to measure up and have the right that we contend is ours as our constitutional heritage to decide what and how much shall be spent, we certainly have got to be more responsible than I feel our recent actions indicate. I regret that we seem to be beguiled into a position of doing what seemingly is the popular thing, and refusing to make the kind of decisions that I think this body should make.

I thank my distinguished chairman.

Mr. JAVITS. Mr. President, will the Senator yield me 2 minutes?

Mr. MANSFIELD. I yield the Senator 2 minutes.

Mr. JAVITS. Mr. President, I would appreciate the attention of the Senate, as I understand that during the time I was off some observations were made about the item for salaries and expenses for the Assistant Secretary for Education by the chairman of the Committee on Labor and Public Welfare. I am the ranking Republican member of that committee. Like every case, this has another side, and that side should be stated.

The fact is that the Assistant Secretary for Education is a new post which we created in the higher education bill to resolve a deep conflict between ourselves and the other body as to how two new agencies would be run. One was the Office of the Commissioner of Education; the other the National Institute of Education.

I though it was our purpose, and I was one of the principal conferees, to vest the authority to manage both these agencies in a policy sense in the new Assistant Secretary. I am all with the committee that you have got to cast a jaundiced eye on any new staff. That is what we said in the report.

But with the fact that this is a new post and a very responsible one, involving billions of dollars of expenditures and the educational policy of the whole United States, I hope very much—and this is just belaboring the obvious—that the committee will keep an open mind regarding Mr. Marlin, the man who has been nominated and I hope will be confirmed for the job, and let him come before the Senate and justify everything he wants, but without prejudicing the committee. If we are going to confirm a man to do a job, we cannot hobble him in advance with doubts about his ability to do it, or without the personnel he needs to do it with.

I ask unanimous consent that the statutory provisions regarding this new post and the history of how it came to be established be printed in the RECORD.

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

LEGISLATIVE HISTORY

The fundamental point of reference for determining the appropriate relationship of the Assistant Secretary to the Office of Education and the National Institute of Education must be what the law provides on this matter.

Section 401 of the General Education Provisions Act establishes an Education Division *composed of* the Office of Education and the National Institute of Education and *headed by* the Assistant Secretary for Education. Section 402(b) of the General Education Provisions Act provides: "The Assistant Secretary shall be the principal officer in the Department of whom the Secretary shall assign *responsibility for the direction and supervision of the Education Division.*" (Emphasis supplied.)

These provisions per se establish a line authority in the Assistant Secretary over the Commissioner of Education and over the Director of the National Council on Educational Research which comprise the National Institute of Education. They give to the Assistant Secretary ample authority to make broad educational policy for the components of the Education Division. To deny this is to fail to give any content to this basic organizational structure or to the concepts of "direction" and "supervision" which express the Assistant Secretary's relationship to the Office of Education and the National Institute of Education.

The notion that the Assistant Secretary should be, in effect, no more than a public relations officer with little or no substantive authority appears to be at odds wtih the explanations of the manager of the bill in the Senate, Senator Pell, who noted that the law provides for "what is in effect a complete restructuring of the Federal education bureaucracy." (Senator Pell, May 23, 1972, 118 Cong. Rec., p. 18438). It is also directly contrary to Representative Perkins' statement on the floor of the House concerning the Conference agreement:

Mr. Speaker, for the purpose of legislative history on this bill, I would like to comment briefly on a few items which might otherwise leave some confused about the intent of the conferees. Let me say that I have checked with Mr. Quie, the ranking minority member, on each of these items and he agrees with me on the interpretation of these provisions.

The conference report creates an education division within the Department of Health, Education, and Welfare, headed by an *assistant secretary to whom the Commissioner of Education and the Director of the National Institute of Education would report.* This assistant secretary should be the chief spokesman for education at the Federal level. *This bill makes him a line officer in HEW, rather than merely a staff person to the Secretary. The heads of both the Office of Education and the NIE will report to him.*

The assistant secretary would have administrative responsibility under this bill for the Emergency School Aid Act. I would assume that he would be free to administer the program within his own office or delegate that authority to the Commissioner of Education. *Similarly, the assistant secretary could administer other educational programs delegated to him by the Secretary.*

Mr. Speaker, we want to make clear, however, that the conferees did not intend to create a vast bureaucratic superstructure. Rather, the assistant secretary should require only the staff necessary to enable him to fulfill his responsibilities. I would assume that much of the supporting staff of the Office of the Secretary could be of assistance to him. *And, of course, the Office of Education and the NIE will have staffs able to carry out some of the policy decisions made by the assistant secretary,* 118 Cong. Rec., p. 20308 June 8, 1972). (Emphasis supplied.)

Mr. COTTON. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. COTTON. Has the third reading taken place?

The PRESIDING OFFICER. The third reading has taken place.

Mr. COTTON. Mr. President, I move that this bill be recommitted to the Committee on Appropriations, with instructions to report it back forthwith with the amendment of the Senator from California deleted. On that, I ask for the yeas and nays.

The PRESIDING OFFICER (Mr. ALLEN). The motion of the Senator from New Hampshire would not be in order, on the ground that the Senate just voted to put that amendment in the bill, and the Senator from New Hampshire now moves to strike out only that amendment in the exact words just adopted by the Senate; a motion to reconsider was made, and a motion to lay on the table was made and agreed to. Therefore, the motion of the Senator from New Hampshire would seek to accomplish indirectly what he could not do directly. So the motion is out of order.

Mr. COTTON. I thank the Chair for the information. It is in order to vote "nay" on the bill, is it not?

The PRESIDING OFFICER. That is the Senator's privilege.

Do the Senators yield back the remainder of their time?

Mr. YOUNG. I yield back the remainder of my time.

Mr. McCLELLAN. I yield back the remainder of my time.

The PRESIDING OFFICER (Mr. ALLEN). All remaining time having been yielded back, the bill having been read the third time, the question is, Shall it pass? On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from New Mexico (Mr. ANDERSON), the Senator from Nevada (Mr. CANNON), the Senator from Florida (Mr. CHILES), the Senator from Idaho (Mr. CHURCH), the Senator from Mississippi (Mr. EASTLAND), the Senator from Louisiana (Mrs. EDWARDS), the Senator from Georgia (Mr. GAMBRELL), the Senator from Oklahoma (Mr. HARRIS), 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 Maine (Mr. MUSKIE), the Senator from Washington (Mr. MAGNUSON), the Senator from Rhode Island (Mr. PELL), the Senator from Connecticut (Mr. RIBICOFF), the Senator from Virginia (Mr. SPONG), and the Senator from California (Mr. TUNNEY) are necessarily absent.

I also announce that the Senator from Wyoming (Mr. McGEE) is absent on official business.

I further announce that, if present and voting, the Senator from Minnesota (Mr. HUMPHREY), the Senator from New Hampshire (Mr. McINTYRE), the Senator from Rhode Island (Mr. PELL), the Senator from Connecticut (Mr. RIBICOFF), the Senator from Virginia (Mr. SPONG), the Senator from California (Mr. TUNNEY), would each vote "yea."

Mr. SCOTT. I announce that the Senator from Colorado (Mr. ALLOTT), the Senator from Tennessee (Mr. BAKER), the Senator from Nebraska (Mr. CURTIS), the Senator from Arizona (Mr. GOLDWATER), the Senator from Oregon (Mr. HATFIELD), the Senator from Iowa (Mr. MILLER), the Senator from South Carolina (Mr. THURMOND), and the Senator from Texas (Mr. TOWER) are necessarily absent.

The Senator from Kentucky (Mr. COOK) is absent on official business.

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 Nebraska (Mr. CURTIS), the Senator from Oregon (Mr. HATFIELD), the Senator from Iowa (Mr. MILLER), the Senator from South Carolina (Mr. THURMOND) and the Senator from Texas (Mr. TOWER) would each vote "yea."

I further announce that, the Senator from Oklahoma (Mr. BELLMON), the Senator from New York (Mr. BUCKLEY), the Senator from Michigan (Mr. GRIFFIN), the Senator from Kansas (Mr. PEARSON), the Senator from Delaware (Mr. ROTH), the Senator from Ohio (Mr. SAXBE), the Senator from Maryland (Mr. BEALL), the Senator from Delaware (Mr. BOGGS), the Senator from Maryland (Mr. MATTHIAS), the Senator from Vermont (Mr. STAFFORD) are necessarily absent.

The result was announced—yeas 52, nays 7, as follows:

[No. 552 Leg.]

YEAS—52

Aiken	Fulbright	Packwood
Bayh	Gravel	Pastore
Bentsen	Gurney	Percy
Bible	Hart	Proxmire
Brock	Hartke	Randolph
Brooke	Hollings	Schweiker
Burdick	Hruska	Scott
Byrd, Harry F., Jr.	Hughes	Smith
	Inouye	Sparkman
Byrd, Robert C.	Jackson	Stennis
Case	Javits	Stevens
Cooper	Jordan, N.C.	Stevenson
Cranston	Jordan, Idaho	Symington
Dole	McClellan	Taft
Dominick	Mondale	Talmadge
Eagleton	Montoya	Weicker
Ervin	Moss	Williams
Fong	Nelson	

NAYS—7

Allen	Fannin	Young
Bennett	Hansen	
Cotton	Mansfield	

NOT VOTING—41

Allott	Gambrell	Miller
Anderson	Goldwater	Mundt
Baker	Griffin	Muskie
Beall	Harris	Pearson
Bellmon	Hatfield	Pell
Boggs	Humphrey	Ribicoff
Buckley	Kennedy	Roth
Cannon	Long	Saxbe
Chiles	Magnuson	Spong
Church	Mathias	Stafford
Cook	McGee	Thurmond
Curtis	McGovern	Tower
Eastland	McIntyre	Tunney
Edwards	Metcalf	

So the bill (H.R. 17034) was passed.

Mr. McCLELLAN. Mr. President, I move that the Senate insist on its amendments and request a conference with the House thereon, and that the Presiding Officer be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to and the Presiding Officer (Mr. ALLEN) appointed Senators McCLELLAN, MAGNUSON, STENNIS, PASTORE, ROBERT C. BYRD, PROXMIRE, MONTOYA, HOLLINGS, YOUNG, SMITH, HRUSKA, COTTON, CASE, and STEVENS conferees on the part of the Senate.

DEFENSE DEPARTMENT APPROPRIATIONS

Mr. MANSFIELD. Mr. President, before the distinguished chairman of the Committee on Appropriations and the ranking Republican member, the Senator from North Dakota (Mr. YOUNG), leave the Chamber, there are some figures which should be a part of the record on the conference report on the defense budget which will be taken up in the Senate tomorrow.

The distinguished chairman of the committee, the Senator from Arkansas (Mr. McCLELLAN), will point out that the conference report on the Department of Defense bill is $5,221,208,000 below the budget request of the administration, and the bill which we are about to take up, the military construction bill, shows, on the basis of the conference report, a savings of $337,981,000 below the budget.

If we add up what Congress has done in the matter of budget requests as they covered the defense appropriation bill and the military construction appropriation bill, the total under the defense budget presented to Congress by the administration—the total below that budget—is $5,559,189,000.

I think that is most interesting and, as a matter of fact, I think it is newsworthy.

Mr. President, I now yield to the distinguished Senator from Wisconsin (Mr. NELSON).

SENATE RESOLUTION 379—TO REFER THE BILL S. 4097 TO THE CHIEF COMMISSIONER OF THE U.S. COURT OF CLAIMS FOR A REPORT THEREON

Mr. NELSON. Mr. President, I send to the desk Senate Resolution No. 379, and ask for its immediate consideration.

The PRESIDING OFFICER. The resolution will be stated.

The legislative clerk read as follows:

S. RES. 379

Resolved, That the bill (S. 4097) entitled "A bill for the relief of Doctor Donald J. Alm", now pending in the Senate, together with all the accompanying papers, is hereby referred to the chief commissioner of the United States Court of Claims. The chief commissioner shall proceed with that bill in accordance with the provisions of sections 1492 and 2509 of title 28, United States Code, and report thereon to the Senate, at the earliest practicable date, giving such findings of fact and conclusions thereon as shall be sufficient to inform the Congress of the nature and character of the demand as a claim, legal or equitable, against the United States or a gratuity and the amount, if any,

legally or equitably due from the United States to the claimant.

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

There being no objection, the Senate proceeded to consider the resolution.

Mr. NELSON. Mr. President, this resolution simply directs the Court of Claims to make an appropriate investigation of a claim that I have filed and which has gone to the committee, to determine the nature, character, and validity of the claim for reimbursement of a constituent of mine, and to report back to the appropriate committee, pursuant to statute, at the earliest possible day.

The resolution (S. Res. 379) was agreed to.

COASTAL ZONE MANAGEMENT ACT OF 1972—CONFERENCE REPORT

Mr. HOLLINGS. Mr. President, I submit a report of the committee of conference on S. 3507, and ask for its immediate consideration.

The PRESIDING OFFICER (Mr. ALLEN). 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. 3507) to establish a national policy and develop a national program for the management, beneficial use, protection, and development of the land and water resources of the Nation's coastal zones, 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 a majority of 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 October 5, 1972, at pp. 34183–86.)

Mr. HOLLINGS. Mr. President, the final version of the National Coastal Zone Management Act, S. 3507, will provide up to $200 million over the next 5 years to help States protect, preserve, and restore the quality of their coastal areas.

The bill is the product of nearly 4 years of work by the House Merchant Marine and Fisheries Committee and the Senate Commerce Committee. For the first time, Federal aid will be available to the coastal and Great Lakes States to plan and manage the future growth of their shorelands so as to protect coastal waters.

The bill is designed to complement the proposed National Land Use Policy Act which would affect land everywhere in the United States. The Coastal Zone Act, however, focuses on the Nation's ocean and Great Lakes shorelines. It is here that land-use conflicts are most intense and most destructive of vitally rich resources.

The bill provides States with national policy goals to control those land uses which have a direct and significant impact upon coastal waters. The States will establish a framework for a commonsense balance between the many competing activities within the coastal zone, which range from industrial development to wildlife conservation to recreational needs. The goal is to protect the beaches, estuarines, tidelands, bays, lagoons, bayous, and marshes of the coastal areas.

Additionally, the bill provides $6 million in matching funds to help States establish estuarine sanctuaries to study the effects of pollution within coastal estuaries.

This is one of the most important pieces of environmental legislation to come out of the 92d Congress. It gives Federal direction and assistance to the States, for the first time, to begin establishing authority over the reckless growth and sprawl in our coastal areas. More than half the population of the United States now lives within 50 miles of the coasts. Estimates are that by the year 2000, perhaps 225 million citizens will be clustered in cities and counties within the coastal area. The States are faced by insurmountable financial problems in assuming responsibility for dealing with the continuing onslaught against the coastal environment. Management systems are the key to providing present and future generations of Americans access to and use of beaches, wetlands, and other coastal waters before it is too late to reverse the wrongs of the past. Our coastal areas are a priceless heritage, and they must be protected.

At this point, I would like to insert in the RECORD a list of organizations supporting this legislation:

ORGANIZATIONS SUPPORTING COASTAL ZONE MANAGEMENT ON FINAL PASSAGE

National Governors' Conference, Council of State Governments, Coastal States Organization.
Southern Governors' Conference.
National Advisory Committee on the Oceans and Atmosphere.
National Wildlife Federation.
Shellfish Institute of North America.
Sierra Club.
American Oceanic Association.
Marine Technology Society.
Council of State Planning Agencies.
Coastal Coordinating Council, Florida.
Resources Advisory Board, Southeast River Basins.
National Congress of American Indians.
American Tunaboat Association.
National Canners Association.
National Fisheries Institute.
Southeastern Fisheries Association.
League of Women Voters of U.S.
International Longshoremen and Warehousemen's Union.
AFL-CIO.
Maritime Trades Union, AFL–CIO.
Citizens Committee on Natural Resources.
International Association of Game Fish and Conservation Commissioners.
California Coastal Alliance.
Association of Pacific Fisheries.
Oceanography Commission of Washington State.
National Federation of Fishermen.
Friends of the Earth.
Atlantic Offshore Fish and Lobster Association.
National Fish Meal and Oil Association.

The coastal zone bill passed the Senate 68 to 0 on April 25. It was adopted 376 to 6 by the House of Representatives on August 2. However, the House adopted an amendment withdrawing administrative authority of the program from the National Oceanic and Atmospheric Administration—NOAA—and vesting it in the Department of the Interior.

This matter has been resolved by granting NOAA administrative agency responsibility, but requiring the prior concurrence of the Secretary of the Interior as to any portion of a State's management program submitted pursuant to section 306 affects the use of lands which are included in any national land-use program which may be enacted.

The argument made in the House, upon adoption of the previous amendment, claimed that the Department of the Interior was the only agency which has the expertise and experience qualifying it to handle the coastal zone management program. I agree that the Department of the Interior does have significant expertise. But at the same time, this legislation recognizes the special capabilities of the National Oceanic and Atmospheric Administration of the Department of Commerce. The authors of this legislation believe quite firmly that NOAA possesses the special qualifications necessary to deal with land and water use activities within the coastal zone. At the same time, we recognized that should a national land-use policy be enacted by Congress, the Secretary of the Interior or the Federal official in charge of such program must cooperate with and grant his concurrence in the matter of land uses which may become part of a State's federally approved land-use program. Of course, until a State actually begins its participation in any national land-use program, the question of concurrence will not arise. But at such time as it does, it is expected that coastal zone management and land-use management will be fully compatible, making use of the land-use agency's expertise as well as the technical competence of the National Oceanic and Atmospheric Administration in managing the Nation's coastal zones.

Mr. President, I move adoption of the conference report.

The motion was agreed to.

MILITARY CONSTRUCTION APPROPRIATIONS, 1973—CONFERENCE REPORT

Mr. MANSFIELD. Mr. President, I submit a report of the committee of conference on H.R. 16754, and ask for its immediate consideration.

The PRESIDING OFFICER (Mr. ALLEN). 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 Senate to the bill (H.R. 16754) making appropriations for military construction for the Department of Defense for the fiscal year ending June 30, 1973, 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 October 11, 1972, part II on page 35163.)

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the requirement that the conference report be printed as a Senate report be waived, inasmuch as under the rules of the House of Representatives it has been printed as a report of the House.

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

Mr. MANSFIELD. Mr. President, the conference committee agreed on an overall figure of $2,323,403,000 in new obligational authority for the military construction appropriation bill for fiscal year 1973. This is $337,981,000 under the budget request for fiscal year 1973 of $2,661,384,000. The amount agreed to by the conferees is $14,323,000 under the Senate Bill of $2,337,726,000 and $42,619,000 over the House bill of $2,280,784,000. The conference committee agreed on the following amounts for the military services:

Army, $413,955,000; Navy, $517,830,000; Air Force, $265,552,000.

Mr. President, I wish to emphasize that there is no money contained in this bill for Southeast Asia or Okinawa. I also wish to state that insofar as possible the conferees agreed that our NATO allies should help with construction projects for both the Army and the Air Force in Europe.

Mr. President, the conferees agreed on a bill which will provide for the construction requirements for the military services for the ensuing year. It is true the conference committee did disallow a number of projects that it was felt could wait a year, or the services failed to furnish information completely justifying them.

I do not intend to make a long involved statement on this action of the conference committee. The conference report explained in a succinct manner the complete actions of the conference committee.

Mr. President, this completes my statement. I will be glad to answer any questions which individual Senators may have concerning construction projects in their State which were items of conference.

But on the whole, I feel they will be satisfied with what the distinguished Senator from Massachusetts (Mr. BROOKE) and I did during the hearings.

Once again, I extend my personal thanks to the Senator from Massachusetts (Mr. BROOKE) for the understanding, cooperation, diligence, and integrity he displayed so consistently during the conference.

Mr. President, I ask unanimous consent, on behalf of the distinguished Senator from Massachusetts (Mr. BROOKE) and myself, that a tabulation containing a summary of the conference action on the military construction appropriation bill for fiscal year 1973 be printed in the RECORD.

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

COMPARATIVE STATEMENT OF NEW BUDGET (OBLIGATIONAL) AUTHORITY FOR 1972 AND BUDGET ESTIMATES AND AMOUNTS RECOMMENDED IN THE BILL FOR 1973

[In dollars]

Item	New budget (obligational) authority, fiscal year 1972	Budget estimates of new (obligational) authority, fiscal year 1973	New budget (obligational) authority recommended in House bill	New budget (obligational) authority recommended in Senate bill	New budget (obligational) authority recommended by conference action	Conference action compared with— New budget (obligational) authority, fiscal year 1972	Budget estimates of new (obligational) authority, fiscal year 1973	New budget (obligational) authority recommended in House bill	New budget (obligational) authority recommended in Senate bill
Military construction, Army	[1] 438,316,000	[2] 619,200,000	405,264,000	421,879,000	413,955,000	−24,361,000	−205,245,000	+8,691,000	−7,924,000
Military construction, Navy	355,500,000	554,200,000	500,871,000	520,612,000	517,830,000	+162,330,000	−36,370,000	+16,959,000	−2,782,000
Military construction, Air Force	[3] 289,851,000	[4] 357,200,000	250,483,000	269,169,000	265,552,000	−24,299,000	−91,648,000	+15,069,000	−3,617,000
Military construction, Defense agencies	[3] 14,139,000	48,200,000	34,804,000	36,704,000	36,704,000	+22,565,000	−11,496,000	+1,900,000	
Transfer, not to exceed	(20,000,000)	(20,000,000)	(20,000,000)	(20,000,000)	(20,000,000)				
Military construction, Army National Guard	29,000,000	40,000,000	40,000,000	40,000,000	40,000,000	+11,000,000			
Military construction, Air National Guard	10,600,000	10,600,000	16,100,000	16,100,000	16,100,000	+5,500,000	+5,500,000		
Military construction, Army Reserve	33,500,000	38,200,000	38,200,000	38,200,000	38,200,000	+4,700,000			
Military construction, Naval Reserve	10,900,000	16,000,000	20,500,000	20,500,000	20,500,000	+9,600,000	+4,500,000		
Military construction, Air Force Reserve	6,581,000	7,000,000	7,000,000	7,000,000	7,000,000	+419,000			
Total, military construction	1,188,387,000	1,690,600,000	1,313,222,000	1,370,164,000	1,355,841,000	+167,454,000	−334,759,000	+42,619,000	−14,323,000
Family housing, defense	[5] 933,955,000	[6] 1,067,268,000	1,064,046,000	1,064,046,000	1,064,046,000	+130,091,000	−3,222,000		
Portion applied to debt reduction	−94,152,000	−96,484,000	−96,484,000	−96,484,000	−96,484,000	−2,332,000			
Subtotal, family housing	839,803,000	970,784,000	967,562,000	967,562,000	967,562,000	+127,759,000	−3,222,000		
Homeowners assistance fund, defense	7,575,000					−7,575,000			
Grand total, new budget (obligational) authority	2,035,765,000	2,661,384,000	2,280,784,000	2,337,726,000	2,323,403,000	+287,638,000	−337,981,000	−42,619,000	−14,323,000

[1] Excludes $98,500,000 contained in Defense appropriation bill for Safeguard construction.
[2] Budget estimate of $1,009,200,000 amended by H. Doc. 92-321 to delete $390,000,000 for Safeguard construction.
[3] Reflects $662,000 transferred to military construction, Air Force from military construction, Defense agencies.
[4] Budget estimate of $317,200,000 amended by H. Doc. 92-321 to add $40,000,000 for satellite basing.
[5] Excludes $11,070,000 contained in Defense appropriation bill for Safeguard family housing.
[6] Budget estimate of $1,073,684,000 amended by H. Doc. 92-321 to delete $6,416,000 for Safeguard family housing.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

The PRESIDING OFFICER. The clerk will state the amendments in disagreement.

The legislative clerk read as follows:

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 sum proposed, insert: "$413,955,000".

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 sum proposed, insert: "$517,830,000".

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 3 to the aforesaid bill, and concur therein with an amendment, as follows: In lieu of the sum proposed, insert: "$265,552,000".

Mr. MANSFIELD. Mr. President, I move that the Senate concur in the House amendments.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Montana.

The motion was agreed to.

H.R. 16071—CORRECTION OF AMENDMENT

Mr. WILLIAMS. Mr. President, by inadvertence, four lines of the House-passed bill, H.R. 16071, were deleted from the amendment offered by the Senator from New Jersey to the Senate provisions agreed to this afternoon. The amend-

ment should have begun with the following:

SEC. 9. The Public Works and Economic Development Act of 1965 is amended by adding at the end thereof the following new title:

"TITLE VIII—ENVIRONMENTAL EFFECTS"

I ask unanimous consent that these four lines be added at the beginning of the amendment as agreed to.

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

TITLE TO CERTAIN LANDS IN NEW MEXICO

Mr. JACKSON. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 2674.

The PRESIDING OFFICER (Mr. ALLEN) laid before the Senate the amendment of the House of Representatives to the bill (S. 2674) to remove a cloud on the title to certain lands located in the State of New Mexico, which was to strike out all after the enacting clause and insert:

That (a) the United States disclaims any right, title, or interest in the following-described tract of land situated within the Carson National Forest, New Mexico, such tract of land being more particularly described as follows:

A tract of land containing 66.78 acres, more or less, beginning at corner numbered 1, which is located on the northerly line of the Antoine Leroux grant, as shown on official survey plat approved by the United States Surveyor General on August 25, 1909, whence corner numbered 69 of the Leroux grant survey bears south 79 degrees 45 minutes west, 20.14 chains;

thence north 79 degrees 45 minutes east, 6.06 chains (400 feet) to corner numbered 2, which is identical with the Leroux grant corner numbered 70 and located at the confluence of South Fork Canyon and the Rio Hondo;

thence north 61 degrees 30 minutes east, 4.20 chains (277.20 feet) to corner numbered 3 which is identical with corner numbered 71 and mile corner numbered 13 of the Leroux grant survey;

thence north 44 degrees 30 minutes east, 27.70 chains (1,828.20 feet) continuing along the northerly line of the Leroux grant survey to corner numbered 4;

thence south 09 degree 47 minutes east, 22.73 chains (1,500 feet) to corner numbered 5;

thence south 51 degrees 23 minutes west, 36.36 chains (2,400 feet) to corner numbered 6;

thence north 11 degrees 15 minutes west, 22.73 chains (1,500 feet) to corner numbered 1, the point of beginning.

(b) The Secretary of the Interior is authorized and directed to prepare and execute without consideration any instrument necessary to carry out the purposes of subsection (a).

Mr. JACKSON. Mr. President, the amendment of the House to S. 2674 is technical in nature, and in my judgment, would pose no problem. For all practical purposes the two versions are identical, and the senior member of the Interior and Insular Affairs and senior Senator from New Mexico (Mr. ANDERSON) has informed me that the House amendment is acceptable to him. Therefore, Mr. President, I move that the Senate concur in the amendment of the House to S. 2674.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Washington.

The motion was agreed to.

AMENDMENT OF YOUTH CONSERVATION CORPS ACT OF 1970

Mr. JACKSON. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 2454.

The PRESIDING OFFICER (Mr. ALLEN) laid before the Senate the amendment of the House of Representatives to the bill (S. 2454) to amend the Youth Conservation Corps Act of 1970 (Public Law 91–378, 84 Stat. 794) to expand the Youth Conservation Corps pilot program and for other purposes, which was to strike out all after the enacting clause, and insert:

That the Act of August 13, 1970 (84 Stat. 794) is amended to read as follows:

"POLICY AND PURPOSE

"SECTION 1. The Congress finds that the gainful employment during the summer months of American youth, representing all segments of society, in the healthful outdoor atmosphere afforded in the national park system, the national forest system, the national wildlife refuge system, and other public land and water areas of the United States creates an opportunity for understanding and appreciation of the Nation's natural environment and heritage. Accordingly, it is the purpose of this Act to further the development and maintenance of the natural resources of the United States by the youth, upon whom will fall the ultimate responsibility for maintaining and managing these resources for the American people.

"YOUTH CONSERVATION CORPS

"SEC. 2. (a) To carry out the purposes of this Act, there is established in the Department of the Interior and the Department of Agriculture a Youth Conservation Corps (hereinafter referred to as the 'Corps'). The Corps shall consist of young men and women who are permanent residents of the United States, its territories, possessions, or trust territories, who have attained age fifteen but have not attained age nineteen, and whom the Secretary of the Interior or the Secretary of Agriculture may employ during the summer months, without regard to the civil service or classification laws, rules, or regulations, for the purpose of developing, preserving, or maintaining the lands and waters of the United States under his jurisdiction.

"(b) The Corps shall be open to youth of both sexes and youth of all social, economic, and racial classifications, with no person being employed as a member of the Corps for a term in excess of ninety days during any single year.

"SECRETARIAL DUTIES AND FUNCTIONS

"SEC. 3. (a) In carrying out this Act, the Secretary of the Interior and the Secretary of Agriculture shall—

"(1) determine, with other Federal agencies, the areas under the administrative jurisdiction of the Secretaries which are appropriate for carrying out programs using members of the Corps, and determine and select appropriate work and education programs and projects for participation by members of the Corps;

"(2) determine the rates of pay, hours, and other conditions of employment in the Corps, except that members of the Corps shall not be deemed to be Federal employees other than for the purposes of chapter 171 of title 28, United States Code, and chapter 81 of title 5, United States Code;

"(3) provide for such transportation, lodging, subsistence, and other services and equipment as they may deem necessary or appropriate for the needs of members of the Corps in their duties;

"(4) promulgate regulations to insure the safety, health, and welfare of the Corps members; and

"(5) provide, to the extent possible, that permanent or semipermanent facilities used as Corps camps be made available to local schools, school districts, State junior colleges and universities, and other educational institutions for use as environmental/ecological education camps during periods of nonuse by the Corps program.

Costs for operations, maintenance, and staffing of Corps camp facilities during periods of use by non-Corps programs as well as any liability for personal injury or property damage stemming from such use shall be the responsibility of the entity or organization using the facility and shall not be a responsibility of the Secretaries or the Corps.

"(b) Whenever economically feasible, existing but unoccupied Federal facilities and surplus or unused equipment (or both), of all types, including military facilities and equipment, shall be utilized for the purposes of the Corps, where appropriate and with the approval of the Federal agency involved. To minimize transportation costs, Corps members shall be employed on conservation projects as near to their places of residence as is feasible.

"(c) The Secretary of the Interior and the Secretary of Agriculture may contract with any public agency or organization or any private nonprofit agency or organization which has been in existence for at least five years for the operation of any Youth Conservation Corps project.

"PILOT GRANT PROGRAM FOR STATE PROJECTS

"SEC. 4. (a) The Secretary of the Interior and the Secretary of Agriculture shall jointly establish a pilot grant program under which grants shall be made to States to assist them in meeting the cost of projects for the employment of young men and women to develop, preserve, and maintain non-Federal public lands and waters within the States. For purposes of this section, the term 'States' includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands, and American Samoa.

"(b) (1) No grant may be made under this section unless an application therefor has been submitted to, and approved by, the Secretary of the Interior and the Secretary of Agriculture. Such application shall be in such form, and submitted in such manner, as the Secretaries shall jointly by regulation prescribe, and shall contain—

"(A) assurances satisfactory to the Secretaries that individuals employed under the project for which the application is submitted shall (i) have attained the age of fifteen but not attained the age of nineteen, (ii) be permanent residents of the United States or its territories, possessions, or the Trust Territory of the Pacific Islands, (iii) be employed without regard to the personnel laws, rules, and regulations applicable to full-time employees of the applicant, (iv) be employed for a period of not more than ninety days in any calendar year, and (v) be employed without regard to their sex or social, economic, or racial classification; and

"(B) such other information as the Secretaries may jointly by regulation prescribe.

"(2) The Secretaries may approve applications which they determine (A) meet the requirements of paragraph (1), and (B) are for projects which will further the development, preservation, or maintenance of non-Federal public lands or waters within the jurisdiction of the applicant.

"(c) (1) The amount of any grant under this section shall be determined jointly by

the Secretaries, except that no grant for any project may exceed 80 per centum of the cost (as determined by the Secretaries) of such project.

"(2) Payments under grants under this section may be made in advance or by way of reimbursement and at such intervals and on such conditions as the Secretaries find necessary.

"(d) Thirty per centum of the sums appropriated under section 6 for any fiscal year shall be used for making grants under this section for such fiscal year.

"SECRETARIAL REPORTS

"SEC. 5. The Secretary of the Interior and Secretary of Agriculture shall annually prepare a joint report detailing the activities carried out under this Act and providing recommendations. Each report for a fiscal year shall be submitted concurrently to the President and the Congress not later than one hundred and eighty days following the close of that fiscal year.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 6. There are authorized to be appropriated amounts not to exceed $30,000,000 for fiscal year ending June 30, 1973, and $60,000,000 for the fiscal year ending June 30, 1974, to be made available to the Secretary of the Interior and the Secretary of Agriculture to carry out the purposes of this Act. Notwithstanding any other provision of law, funds appropriated for any fiscal year to carry out this Act shall remain available for obligation and expenditure until the end of the fiscal year following the fiscal year for which appropriated."

Mr. JACKSON. Mr. President, the legislation which the House passed differs in several important respects from S. 2454 which I introduced in August of 1971 and which the Senate passed on May 23, 1972. However, Mr. President, I recommend that the Senate accept the House amendments on this legislation which is so important to the youth of America and to the preservation of our precious natural resources. I do not beleieve we should risk the possibility of losing this vital legislation by going to conference this late in the session.

In moving to accept the House bill, I want to emphasize that I will introduce legislation in the next Congress to expand this program beyond the limits as contained in this measure.

Mr. President, the basic differences between the House bill and the legislation which the Senate passed are:

First, the Senate-passed bill would have made the program permanent and provided an annual authorization of $150 million, enough to employ 120,000 to 150,000 young men and women each year. The House bill has only a 2-year authorization which would expand the pilot program to a level of $30 million in 1973 and $60 million in 1974.

Second, the Senate-passed bill made the pilot Federal-State cost sharing program—80 to 20 percent—a permanent part of the Youth Conservation Corps and would have provided that not more than 25 percent of the youth employed in any program year would be employed in such State programs. The House bill calls for a pilot Federal-State cost sharing program—80 to 20 percent—under which grants would be made to the States to assist them in meeting the cost of projects on State public lands and waters. Their bill also provides that 30 percent of the funds appropriated for any fiscal year shall be used for making such grants.

While there are other minor differences, I do not believe they are significant and in the interest of time I will not elaborate on them. What is important is that we move today to keep this highly commendable program alive. Even though the YCC bill is not as large or as permanent a step as I would like, it nonetheless expands the program by tenfold over the pilot Youth Conservation Corps Act of 1970.

In my 32 years in Congress I cannot recall sponsoring and guiding through Congress any bill which is more personally satisfying or beneficial to the future leaders of our Nation than the YCC Act of 1970 and the amendment to the act which we are considering today. The outstanding success that this program has achieved in its first 2 years speaks far more eloquently than I can for its immediate expansion.

Consider for example:

First, the work accomplished by the young men and women who participated in the 1971 and 1972 programs approximated the actual cost of employing them.

Second, the drop-out rate in this program has been less than 4 percent, a statement that cannot be made by most other Federal youth programs.

Third, in numerous cases the camp directors could not develop conservation projects fast enough to satisfy these energetic conservation workers.

Fourth, many corps members, as a result of their work, are considering careers in recreation, natural resources management and environmental protection—areas where there is a definite need for personnel.

As an indication of the immediate popularity of the YCC program, over 124,000 applications were received by the Departments of Interior and Agriculture in 1971 for the only 2,600 jobs available; 98 percent of the applicants had to be turned down. Additionally, all 50 States have indicated an interest in a Federal-State cost sharing program. With such a cost sharing provision they have indicated they could provide conservation jobs for 180,000 persons immediately.

Mr. President, there has been a recognition by Democrats and Republicans alike in the U.S. Congress that a program as useful and beneficial as the YCC should proceed in an expeditious and well organized manner. Congress determined, and wisely so, that the concern of our young people and the subject of conserving our natural resources is not a partisan issue. Based upon the program's tremendous success to date, it is my hope that the President will sign this legislation into law. Having the support of the administration is important to the future of the YCC, particularly in obtaining the necessary appropriations with which to implement this legislation.

Mr. President, I move the Senate concur in the amendments of the House.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Washington.

The motion was agreed to.

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.

ADDITIONAL INTRODUCTION OF A BILL

The following bill was introduced, read the first time and, by unanimous consent, the second time, and referred as indicated:

By Mr. NELSON:

S. 4097. A bill for the relief of Dr. Donald J. Alm. Referred to the Committee on the Judiciary.

TEMPORARY INCREASE IN PUBLIC DEBT LIMIT—AMENDMENT

AMENDMENT NO. 1755

(Ordered to be printed and to lie on the table.)

Mr. PERCY. Mr. President, I am submitting an amendment to H.R. 16810 which I believe will provide a mechanism for the congressional fundraising and appropriations process by which we can avoid successive budget crises of the kind we are attempting to address in this bill.

My amendment builds on past law. In brief, it provides that the House and Senate Appropriations Committees, and the Ways and Means Committee and the Finance Committee, meet, or designate subcommittees to meet, at the beginning of each regular session of Congress to report, after due study, a legislative budget containing an estimate of receipts, a statement of total allowable expenditures, and the amount of the debt increase, if any, necessary for the coming fiscal year. This budgetary statement would have to be prepared by March 30, and be expressed in a joint resolution passed by both Houses. No appropriations measure could be considered by either House until the joint resolution had passed.

Mr. President, I will explain my proposal in full in a further statement tomorrow.

NOMINATION OF GENERAL ABRAMS

Mr. COOPER. Mr. President, I regret that by reason of my attendance at a conference on the Federal Aid Highway Act with the House conferees, I was delayed and missed the vote on the confirmation of General Abrams.

I want to state that I would have voted to confirm General Abrams. I believe he follows the tradition of the great military leaders of our country. I do not believe he would knowingly violate either military rules or law.

I have some appreciation of his fine qualities as a leader as I was a member of the 3d U.S. Army during World War II under the leadership of Gen. George Patton. I did not know General Abrams, then a lieutenant colonel and then colonel, but the 3d Army was inspired by

his courage and leadership in 1944 and 1945 in the campaign across Europe.

RECISION OF ORDER FOR RECOGNITION OF SENATOR HUGHES TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the recognition of the Senator from Iowa (Mr. HUGHES) on tomorrow be vacated.

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

ORDER FOR RECOGNITION OF SENATORS SCOTT, BENTSEN, AND ROBERT C. BYRD TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that following the remarks of the Senator from Pennsylvania (Mr. SCOTT) on tomorrow, the distinguished Senator from Texas (Mr. BENTSEN) be recognized for not to exceed 15 minutes and that he be followed by the junior Senator from West Virginia (Mr. ROBERT C. BYRD) for not to exceed 15 minutes.

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

RELIEF OF APPALACHIAN REGIONAL HOSPITALS, INC.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 1231, S. 3326.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

Calendar No. 1231 (S. 3326) a bill for the relief of Appalachian Regional Hospitals, Inc.

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

The Senate proceeded to consider the bill.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

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

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

The bill (S. 3326) was passed, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Appalachian Regional Hospitals, Incorporated (hereinafter referred to as the "corporation"), a nonprofit, nonsectarian corporation organized under the laws of the State of Kentucky, is hereby relieved of all liability for repayment to the United States of the sum of $3,607,590, together with all interest accrued thereon, representing the amount owed by the corporation to the United States under the terms of a loan made to the corporation by the Area Redevelopment Administration on June 26, 1964, the forgiveness of such loan being necessary to the provision of needed hospital facilities in the Appalachian region of Kentucky, West Virginia, and Virginia.

Mr. ROBERT C. BYRD. Mr. President, by way of very brief explanation, earlier today I offered this bill as an amendment to H.R. 16071, an act to amend the Public Works and Economic Development Act of 1965. The amendment was adopted. I think it best, in view of the urgent need for passage of the measure, and owing to the lateness of the session, that both legislative routes be followed. This will explain why I have taken the bill up at this time for passage.

In order to save the time of the Senate, I ask unanimous consent that extracts from my explanation of the bill earlier today be inserted at this point in the RECORD.

There being no objection, the excerpts were ordered to be printed as follows:

This amendment was originally introduced in the form of a bill (S. 3326) by the Senator from Kentucky (Mr. Cooper) in March of this year, on behalf of himself, Mr. Byrd of West Virginia, Mr. Cook, Mr. Randolph, and Mr. Spong, for the relief of the Appalachian Regional Hospitals, Incorporated.

That bill was referred to the Committee on the Judiciary. Earlier this week, with the approval of the Chairman, I was able to poll the members of the Judiciary Committee, and as a result thereof, the bill was reported from the Committee on the Judiciary unanimously. The bill now appears on the calendar under Order No. 1231.

I am offering that bill in the form of an amendment to the pending legislation because of the fact that the pending legislation is a House bill, and it is hoped that if this amendment is accepted by the Senate it can then go to conference and possibly be enacted into law within the next two or three days, or as soon thereafter as the President can sign the bill.

The purpose of this legislation is to relieve Appalachian Regional Hospitals, Inc., a nonprofit, nonsectarian corporation organized under the laws of the State of Kentucky of all liability for repayment to the United States of the sum of $3,607,590, together with all interest accrued thereon, representing the amount owed by the corporation to the United States under the terms of a loan made to the corporation by the Area Redevelopment Administration on June 26, 1964.

The hospitals which make up the chain taken over by the Appalachian Regional Hospitals, Inc., have constituted a nonprofit, nonsectarian health care system of hospitals located in West Virginia, Virginia, and Kentucky. The hospitals were constructed originally as a part of a 10-hospital chain. They were built in 1955 and 1956 by the Miners Memorial Hospital Association, which was a subsidiary of the United Mine Workers Welfare and Retirement Fund. The hospitals were built originally to serve UMW Union members and pensioners, but because of a critical need of all residents in the areas served by the hospitals, the doors of the hospitals were opened to the public, and this decision to open the hospitals to the public, compelled by human need, was financially disastrous, in that a large number of patients were indigent, and the system began to experience substantial operating losses. The only source of moneys to cover these losses was the Welfare and Retirement Fund, and for a time the fund underwrote medical care expenses incurred by the general public. But in 1962, the trustees of the Welfare and Retirement Fund announced that the fund would have to divest itself of the hospitals or close the facilities if a suitable sponsor could not be found.

As a result, a nonprofit, nonsectarian corporation, Appalachian Regional Hospitals, Inc., was organized to own and operate the system.

Because of the limited funds available for Area Redevelopment Administration public facility grants—no funds were appropriated for this purpose in fiscal year 1965—the maximum grant available which would be approved was $3.9 million, which was slightly less than half the amount to cover even the substantially discounted price for the ten hospitals. These funds were accepted by ARH, Inc., and used to acquire five of the ten hospitals.

After several attempts were made to secure additional grant funds during the spring of 1964, and as a last resort, ARH, Inc., accepted a loan from the Area Redevelopment Administration in the amount of $4.1 million to cover the transfer of the remaining five hospitals, these five hospitals being located at Pikeville and South Williamson, Kentucky; Wise, Virginia; and Man and Beckley, West Virginia. The loan was made on June 26, 1964.

The acceptance of a loan was regarded by the trustees of the hospital system as an expedient. There was a clear understanding on the part of the ARH management and board that the loan would be converted to a grant when additional appropriations were made for ARA public facility grants. But the ARA did not receive additional grant funds in fiscal year 1965, and the loan therefore remained in existence.

The judiciary committee contacted the Department of Commerce for its views on the bill S. 3326—which I am now offering as an amendment to the pending measure—and Mr. William N. Letson, General Counsel of the Department of Commerce, on September 22 of this year, responded to Chairman Eastland by saying, in part, as follows:

The evidence submitted with respect to current and future programs and flows of funds shows that repayment of the ARA loan will greatly impair the hospitals' ability to meet the demands on them. Along with the social costs which would result if this occurs, there would also be serious economic development costs. The continuation of accessible hospital care is a necessity for existing local industries as well as for attracting new industries.

While it is easy to look back 10 years and be critical of actions taken at that time, nonetheless, the record does not indicate that this ARA loan to an extremely deprived area for a critically needed purpose ever enjoyed any reasonable prospects for repayment. It was therefore administratively inappropriate as a semi-substitute for a grant.

What is more important, however, is that EDA's legal authority and administrative guidelines presently prevent loans without reasonable prospects for repayment. Therefore, while we believe relief should be granted in this case, enactment of S. 3326 should not and will not serve as a precedent for forgiveness of any other existing or future EDA loans.

We have been advised by the Office of Management and Budget that there would be no objection to the submission of this report to your committee from the standpoint of the administration's program.

So, there we have it, Mr. President. The Department of Commerce has stated that relief should be granted in this case. The Department has also stated that such relief would not be a precedent for forgiveness of any other existing or future economic development administration loans, because EDA's real authorization and administrative guidelines presently prevent loans without reasonable prospects for repayment; and the record has indicated that the ARA loan, which was EDA's predecessor, never enjoyed any reasonable prospect for repayment.

Mr. President, that explains the amendment I am offering on behalf of myself and the other cosponsors.

I hope the Senate will adopt the amendment.

BILLS HELD AT DESK

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the following House bills and messages at the desk today be held at the desk temporarily: H.R. 15280, H.R. 16074, H.R. 16675, and H.R. 16883.

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

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the program for tomorrow is as follows:

The Senate will convene at 8 a.m. tomorrow. The following Senators will be recognized, each for not to exceed 15 minutes and in the sequence stated: Senators HANSEN, HARRY F. BYRD, JR., TALMADGE, FANNIN, SCOTT, BENTSEN, and ROBERT C. BYRD.

Following the foregoing, Mr. President, it is the intent of the leadership to return to the consideration of the Clean Air Act, and there being a time limitation thereon, it is hoped that not too much time will be needed for the completion of action on that bill.

Other conference reports will be called up tomorrow for example, the Defense appropriations conference report, and the State, Justice conference report. Yea-and-nay votes may occur thereon.

At some time during the afternoon, probably by 1 p.m. give or take, the debt limit bill will be called up. Amendments will be offered thereto. There will be considerable debate on that bill, and some votes, I am sure.

Senators should keep in mind that there are various measures on the calendar that may or may not be called up by the leadership at any time, depending on the circumstances.

"Holds" can no longer be recognized at this stage.

Mr. President, it is likely that the Senate will be in session reasonably late tomorrow. I would imagine the same could be said for Saturday.

ADJOURNMENT TO 8 A.M.

Mr. ROBERT C. BYRD. Mr. President, there being no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in adjournment until 8 a.m. tomorrow.

The motion was agreed to; and at 9:21 p.m., the Senate adjourned until tomorrow, Friday, October 13, 1972, at 8 a.m.

NOMINATIONS

Executive nominations received by the Senate October 12, 1972:

IN THE AIR FORCE

The following named officers for promotion in the United States Air Force, under the appropriate provisions of chapter 839, title 10, United States Code, as amended.

Lieutenant colonel to colonel

LINE OF THE AIR FORCE

Aaronson, Alvin D., xxx-xx-xxxx.
Ablett, Kenneth L., xxx-xx-xxxx.
Abreu, Ralph C., xxx-xx-xxxx.
Adams, Charles E., xxx-xx-xxxx.
Adams, Glen L., xxx-xx-xxxx.
Adams, Ralph E., xxx-xx-xxxx.
Adams, William R., xxx-xx-xxxx.
Addor, Henry S., xxx-xx-xxxx.
Addy, Gordon W., xxx-xx-xxxx.
Agre, Oscar W., Jr., xxx-xx-xxxx.
Aharonian, Aharon, xxx-xx-xxxx.
Aikman, Jams H., xxx-xx-xxxx.
Akers, George S., xxx-xx-xxxx.
Aldrich, Theodore B., xxx-xx-xxxx.
Alexander, Michael H., xxx-xx-xxxx.
Alkire, Melvin G., xxx-xx-xxxx.
Allen, Bart D., xxx-xx-xxxx.
Allen, Clifford H., Jr., xxx-xx-xxxx.
Allison, John V., xxx-xx-xxxx.
Allred, Elmer G., xxx-xx-xxxx.
Amodt, Paul W., xxx-xx-xxxx.
Anderson, Russell J., xxx-xx-xxxx.
Anderson, Don L., xxx-xx-xxxx.
Armstrong, Spence M., xxx-xx-xxxx.
Ashe, Mary E., xxx-xx-xxxx.
Astrella, Ralph J., xxx-xx-xxxx.
Atherton, Thomas L., xxx-xx-xxxx.
Atkinson, Richard L., xxx-xx-xxxx.
Atwell, Alfred L., xxx-xx-xxxx.
Ayo, Jackson J., III, xxx-xx-xxxx.
Babbitt, Louie A., xxx-xx-xxxx.
Babcock, Leon W., Jr., xxx-xx-xxxx.
Baggett, William D., xxx-xx-xxxx.
Bagley, Bobby R., xxx-xx-xxxx.
Bailey, Clentis W., xxx-xx-xxxx.
Bailey, William M., Jr., xxx-xx-xxxx.
Baily, Carl G., xxx-xx-xxxx.
Baisden, James K., xxx-xx-xxxx.
Balcer, Raymond L., xxx-xx-xxxx.
Baldner, John L., xxx-xx-xxxx.
Ballard, William T., xxx-xx-xxxx.
Banaszak, Merle E., xxx-xx-xxxx.
Barnes, Fred D., xxx-xx-xxxx.
Barnett, Earl S., III, xxx-xx-xxxx.
Barry, William D., xxx-xx-xxxx.
Bassett, Cecil A., Jr., xxx-xx-xxxx.
Bates, Albert R., xxx-xx-xxxx.
Bauman, Wendall C., xxx-xx-xxxx.
Baumann, John F., xxx-xx-xxxx.
Beale, Robert S., xxx-xx-xxxx.
Beatty, Bernard L., xxx-xx-xxxx.
Beavers, Shirley D., xxx-xx-xxxx.
Becker, Richard B., xxx-xx-xxxx.
Beene, Reagan H., Jr., xxx-xx-xxxx.
Benjamin, George D., xxx-xx-xxxx.
Benn, Bohden, xxx-xx-xxxx.
Benvenuti, John R. D., xxx-xx-xxxx.
Benz, Robert A., xxx-xx-xxxx.
Benziger, Alfred S., xxx-xx-xxxx.
Berkman, William W., xxx-xx-xxxx.
Berlette, John A., xxx-xx-xxxx.
Bernier, Francis W., xxx-xx-xxxx.
Berns, Robert J., xxx-xx-xxxx.
Beverly, Chester A., Jr., xxx-xx-xxxx.
Bierman, Donald J., xxx-xx-xxxx.
Binford, Donald D., xxx-xx-xxxx.
Biondo, Samuel A., xxx-xx-xxxx.
Bird, Ronald A., xxx-xx-xxxx.
Birge, Thomas W. C., xxx-xx-xxxx.
Blair, Charles E., xxx-xx-xxxx.
Blake, Charles R., xxx-xx-xxxx.
Blankenship, James R., xxx-xx-xxxx.
Blankfield, William H., Jr., xxx-xx-xxxx.
Boaz, Wilson J., xxx-xx-xxxx.
Bode, John R., xxx-xx-xxxx.
Bodkin, Joe E., xxx-xx-xxxx.
Boettcher, Hulbert L., xxxx.
Bohn, Lowell F., xxx-
Booth, Robert E., xxx-xx-xxxx.
Borland, Robert L., xxx-xx-xxxx.
Bosler, Robert J., xxx-xx-xxxx.
Boss, Luther D., xxx-xx-xxxx.
Boston, Hollis B., Jr., xxx-xx-xxxx.
Bounds, Jesse C., Jr., xxx-xx-xxxx.
Boverie, Richard T., xxx-xx-xxxx.
Bowen, Stuart W., xxx-xx-xxxx.
Bowles, Lamar D., xxx-xx-xxxx.
Boyd, Warren J., xxx-xx-xxxx.
Bozik, Edward E., xxx-xx-xxxx.
Bradley, Roland G., xxx-xx-xxxx.
Bradshaw, Mack L., xxx-xx-xxxx.
Braly, Harold C., xxx-xx-xxxx.
Breitling, Patrick J., xxx-xx-xxxx.
Brentnall, Burden, xxx-xx-xxxx.
Brett, Walter R., xxx-xx-xxxx.
Brevig, Berdell P., xxx-xx-xxxx.
Brewer, Donald W., xxx-xx-xxxx.
Brewer, William C., xxx-xx-xxxx.
Brewster, Philip L., xxx-xx-xxxx.
Brolin, James F., xxx-xx-xxxx.
Brown, Buddy L., xxx-xx-xxxx.
Brown, Harry L., xxx-xx-xxxx.
Brown, Ivan D., xxx-xx-xxxx.
Brown, Ralph E., xxx-xx-xxxx.
Bruenner, William, xxx-xx-xxxx.
Brunzell, Bryan W., xxx-xx-xxxx.
Bruss, Richard E., xxx-xx-xxxx.
Bryan, Austin R., xxx-xx-xxxx.
Bryan, Ronald E., xxx-xx-xxxx.
Bryant, Lucius G., Jr., xxx-xx-xxxx.
Buchanan, James N., xxx-xx-xxxx.
Buck, John T., xxx-xx-xxxx.
Budd, Roger, Jr., xxx-xx-xxxx.
Budde, Ralph C., xxx-xx-xxxx.
Buehler, Paul W., xxx-xx-xxxx.
Bullers, Joseph W., Jr., xxx-xx-xxxx.
Burdan, John W., Jr., xxx-xx-xxxx.
Burdick, Martin M., xxx-xx-xxxx.
Burkett, William M., xxx-xx-xxxx.
Burklund, John S., xxx-xx-xxxx.
Burney, George D., xxx-xx-xxxx.
Burns, Joe H., xxx-xx-xxxx.
Burpee, Richard A., xxx-xx-xxxx.
Burroughs, Lorenzo W., xxx-xx-xxxx.
Burwell, William D., xxx-xx-xxxx.
Bye, Donald R., xxx-xx-xxxx.
Byrd, Lee B., xxx-xx-xxxx.
Byrne, Ronald E., Jr., xxx-xx-xxxx.
Caldwell, Walter F., xxx-xx-xxxx.
Cale, Charles T., xxx-xx-xxxx.
Calhoun, Caryl W., xxx-xx-xxxx.
Calhoun, Cecil O., Jr., xxx-xx-xxxx.
Campbell, William E., xxx-xx-xxxx.
Campbell, Louis D., xxx-xx-xxxx.
Campfield, William Jr., xxx-xx-xxxx.
Carey, Robert L., xxx-xx-xxxx.
Carlone, Robert A., xxx-xx-xxxx.
Carmichael, Douglas W., xxx-xx-xxxx.
Carpenter, John A., xxx-xx-xxxx.
Carr, James I., xxx-xx-xxxx.
Carwhile, Elford L., xxx-xx-xxxx.
Casbeer, Arthur M., xxx-xx-xxxx.
Case, Ted K., xxx-xx-xxxx.
Casterlin, Harry B., Jr., xxx-xx-xxxx.
Castleman, Floyd D., xxx-xx-xxxx.
Caviness, Kenneth L., xxx-xx-xxxx.
Cawley, Terance E., xxx-xx-xxxx.
Chamberlain, Robert M., xxx-xx-xxxx.
Chellman, Chester E., Jr., xxx-xx-xxxx.
Cherry, Fred V., xxx-xx-xxxx.
Christiansen, von R., xxx-xx-xxxx.
Chubb, Melvin F., Jr., xxx-xx-xxxx.
Clark, Billy V., xxx-xx-xxxx.
Clark, Norman J., xxx-xx-xxxx.
Clausen, George G., xxx-xx-xxxx.
Clauson, Curtis S., xxx-xx-xxxx.
Clements, Ronald M., xxx-xx-xxxx.
Cler, Bernard J., xxx-xx-xxxx.
Clothier, Norman F., xxx-xx-xxxx.
Clouser, Robert E., xxx-xx-xxxx.
Clutter, William L., xxx-xx-xxxx.
Coburn, Harry L., xxx-xx-xxxx.
Coffin, Grange S., Jr., xxx-xx-xxxx.
Coleman, Paul R., xxx-xx-xxxx.
Coley, Rayh H., xxx-xx-xxxx.
Collins, Kenneth S., xxx-xx-xxxx.
Collins, Charles W., xxx-xx-xxxx.
Compton, Harold C., xxx-xx-xxxx.
Comte, Carlton P., xxx-xx-xxxx.
Conner, Doral G., xxx-xx-xxxx.
Conway, Don R., xxx-xx-xxxx.
Cook, James R., xxx-xx-xxxx.
Cook, Oliver J., Jr., xxx-xx-xxxx.
Cool, Brent A., xxx-xx-xxxx.
Coon, Richard D., xxx-xx-xxxx.
Cooney, James P., xxx-xx-xxxx.
Cooper, Larry T., xxx-xx-xxxx.
Cork, Clifford D., xxx-xx-xxxx.
Cosner, Wendell E., xxx-xx-xxxx.
Cottrell, Paul F., xxx-xx-xxxx.
Covington, James D., xxx-xx-xxxx.
Cragin, John R., xxx-xx-xxxx.
Craver, Joseph W., Jr., xxx-xx-xxxx.
Creekman, David B., xxx-xx-xxxx.
Creighton, Arthur F., Jr., xxx-xx-xxxx.
Crews, Albert H., Jr., xxx-xx-xxxx.
Crooke, William J., xxx-xx-xxxx.
Cross, Carleton G., xxx-xx-xxxx.

Crum, William P., xxx-xx-xxxx.
Crumbliss, James J., xxx-xx-xxxx.
Cunningham, Charles J. Jr., xxx-xx-xxxx.
Custer, Gerald B., xxx-xx-xxxx.
Dahler, Donald L., xxx-xx-xxxx.
Daigle, Joseph G., xxx-xx-xxxx.
Dalpra, Clarence E., xxx-xx-xxxx.
Daniel, James E., Jr., xxx-xx-xxxx.
Dardeau, Oscar M., Jr., xxx-xx-xxxx.
Daugherty, Robert G. Jr., xxx-xx-xxxx.
Davidson, William H., xxx-xx-xxxx.
Davies, Owen M., xxx-xx-xxxx.
Davis, Jake C., xxx-xx-xxxx.
Davis, James P., xxx-xx-xxxx.
Davis, Richard G., xxx-xx-xxxx.
Davis, Robert H., xxx-xx-xxxx.
Davis, Robert W., xxx-xx-xxxx.
Dearborn, James W., xxx-xx-xxxx.
Delaney, William J., xxx-xx-xxxx.
Delisio, Louis C., xxx-xx-xxxx.
Deluca, Jerry J., xxx-xx-xxxx.
Demasie, Riley D., xxx-xx-xxxx.
Denfeld, Richard E., xxx-xx-xxxx.
Dennis, Jeptha W., Jr., xxx-xx-xxxx.
Dennison, Jack E., xxx-xx-xxxx.
Denson, Lee A., Jr., xxx-xx-xxxx.
Deschamps, Melvin T., xxx-xx-xxxx.
Dibaggio, Anthony J., xxx-xx-xxxx.
Diddle, James A., xxx-xx-xxxx.
Dillingham, Wallace J., xxx-xx-xxxx.
Dimauro, Vincent A., xxx-xx-xxxx.
Dimon, George H., Jr., xxx-xx-xxxx.
Ditch, Robert A., xxx-xx-xxxx.
Diven, James E., xxx-xx-xxxx.
Duke, Charles R., xxx-xx-xxxx.
Dominguez, Luis F., xxx-xx-xxxx.
Doran, John J., Jr., xxx-xx-xxxx.
Dorris, Theodore E., xxx-xx-xxxx.
Dortch, Harold D., Jr., xxx-xx-xxxx.
Douglas, John W., xxx-xx-xxxx.
Dowd, Theodore, xxx-xx-xxxx.
Dowler, Donald A., xxx-xx-xxxx.
Drennon, Philip R., xxx-xx-xxxx.
Dreyer, Christian F., Jr., xxx-xx-xxxx.
Dunagan, Bobby J., xxx-xx-xxxx.
Dupree, Forist G., xxx-xx-xxxx.
Durden, Gene R., xxx-xx-xxxx.
Dutton, Richard A., xxx-xx-xxxx.
Eaton, Curtis A., xxx-xx-xxxx.
Edge, Robert E., xxx-xx-xxxx.
Edmunds, Earl A., xxx-xx-xxxx.
Edwards, Kenneth W., xxx-xx-xxxx.
Egan, William M., xxx-xx-xxxx.
Eiler, Jerome E., xxx-xx-xxxx.
Eklund, Lester E., xxx-xx-xxxx.
Elliott, Frank, xxx-xx-xxxx.
Elliott, John M., xxx-xx-xxxx.
Elmer, Dean A., xxx-xx-xxxx.
Emerson, Russell C., xxx-xx-xxxx.
Engle, Joe H., xxx-xx-xxxx.
Erikson, Keith A., xxx-xx-xxxx.
Erlinger, Charles R., xxx-xx-xxxx.
Ertel, Kenneth E., xxx-xx-xxxx.
Evans, Lucius O., xxx-xx-xxxx.
Evans, William A., Jr., xxx-xx-xxxx.
Ezelle, Henry L., Jr., xxx-xx-xxxx.
Falgoust, Jean B., xxx-xx-xxxx.
Felber, Joseph E., xxx-xx-xxxx.
Felix, Daniel T., xxx-xx-xxxx.
Fellows, Allen E., xxx-xx-xxxx.
Ferguson, Alonzo L., xxx-xx-xxxx.
Fessenden, Delmore L., xxx-xx-xxxx.
Fisher, John L., xxx-xx-xxxx.
Fisher, Ralph E., xxx-xx-xxxx.
Fix, Oliver W., xxx-xx-xxxx.
Flanigin, William E., xxx-xx-xxxx.
Fleenor, Kenneth R., xxx-xx-xxxx.
Fletcher, John L., xxx-xx-xxxx.
Fondren, John H., xxx-xx-xxxx.
Ford, William, xxx-xx-xxxx.
Forgan, David W., xxx-xx-xxxx.
Fox, James K., xxx-xx-xxxx.
Foy, Robert J., xxx-xx-xxxx.
Fraley, George A., xxx-xx-xxxx.
Frederick, Henry L., xxx-xx-xxxx.
Freeman, Frederick C., Jr., xxx-xx-xxxx.
Freeman, Robert F., xxx-xx-xxxx.
Frew, Donald V., xxx-xx-xxxx.
Fridley, Howard E., Jr., xxx-xx-xxxx.
Friedman, Stanley A., xxx-xx-xxxx.
Fronzuto, Charles M., xxx-xx-xxxx.
Gallenberger, Darrell A., xxx-xx-xxxx.
Gant, Mason W., III, xxx-xx-xxxx.
Gardner, Robert E., xxx-xx-xxxx.
Gargiulo, Alphonse, Jr., xxx-xx-xxxx.
Garland, John K., xxx-xx-xxxx.
Garren, Roland R., xxx-xx-xxxx.
Garrison, Lawrence O., xxx-xx-xxxx.
Geer, Lyle A., xxx-xx-xxxx.
Gentry, Roy L., Jr., xxx-xx-xxxx.
Gentzel, Charles R., xxx-xx-xxxx.
Giddings, Edward N., xxx-xx-xxxx.
Giese, Carl R., xxx-xx-xxxx.
Giffin, Roderick G., xxx-xx-xxxx.
Gifford, Robert N., xxx-xx-xxxx.
Giles, John K., xxx-xx-xxxx.
Gilk, Frank E., xxx-xx-xxxx.
Gilkey, Raymond R., xxx-xx-xxxx.
Giltner, William C., xxx-xx-xxxx.
Ginsburg, Gordon A., xxx-xx-xxxx.
Girard, Raymond F., Jr., xxx-xx-xxxx.
Girton, Larry V., xxx-xx-xxxx.
Glanville, Paul D., xxx-xx-xxxx.
Glossbrenner, John L., xxx-xx-xxxx.
Goelz, Raymond F., xxx-xx-xxxx.
Goldacker, Clarence B., xxx-xx-xxxx.
Gomez, Raymond V., xxx-xx-xxxx.
Goodwin, David A., xxx-xx-xxxx.
Gordon, John W., xxx-xx-xxxx.
Gores, Vernon D., xxx-xx-xxxx.
Gori, Floyd E., xxx-xx-xxxx.
Gorton, William A., xxx-xx-xxxx.
Goss, Bernard J., xxx-xx-xxxx.
Guttuso, Robert M., xxx-xx-xxxx.
Graham, Dwight R., Jr., xxx-xx-xxxx.
Grant, John F., xxx-xx-xxxx.
Gratch, Archie W., xxx-xx-xxxx.
Gravette, James A., xxx-xx-xxxx.
Grazier, Raymond C., xxx-xx-xxxx.
Gregory, Jack I., xxx-xx-xxxx.
Greiner, Russell D., xxx-xx-xxxx.
Grill, Alan J., xxx-xx-xxxx.
Griswold, Frederick C., xxx-xx-xxxx.
Guastella, Joseph T., xxx-xx-xxxx.
Gunter, Virginia L., xxx-xx-xxxx.
Guttersen, Laird, xxx-xx-xxxx.
Haaren, John A., xxx-xx-xxxx.
Hackley, William A., xxx-xx-xxxx.
Haff, Wallace K., xxx-xx-xxxx.
Hagenbrock, Harry H., xxx-xx-xxxx.
Hagerman, Robert W., xxx-xx-xxxx.
Haggard, Gordon M., xxx-xx-xxxx.
Hale, John W., xxx-xx-xxxx.
Haley, Robert D., xxx-xx-xxxx.
Hall, George R., xxx-xx-xxxx.
Hall, Titus C., xxx-xx-xxxx.
Hamilton, Ercell C., Jr., xxx-xx-xxxx.
Hamm, John R., xxx-xx-xxxx.
Hammond, Felton L., xxx-xx-xxxx.
Hammond, Henry L., xxx-xx-xxxx.
Hamrick, Asa P., Jr., xxx-xx-xxxx.
Hanna, Robert K., xxx-xx-xxxx.
Harding, Robert C., xxx-xx-xxxx.
Hardy, Alton D., xxx-xx-xxxx.
Harrington, Charles F., Jr., xxx-xx-xxxx.
Harris, Kenneth G., xxx-xx-xxxx.
Harris, William M., IV, xxx-xx-xxxx.
Harrison, Bogue P., xxx-xx-xxxx.
Harrison, James W., Jr., xxx-xx-xxxx.
Hart, Jack W., xxx-xx-xxxx.
Hartney, James C., xxx-xx-xxxx.
Hastler, Russell C., Jr., xxx-xx-xxxx.
Hauss, Edward A., xxx-xx-xxxx.
Hawkins, Luther M., xxx-xx-xxxx.
Hayes, Robert K., xxx-xx-xxxx.
Haymaker, Ralph W., xxx-xx-xxxx.
Haynes, Robert E., xxx-xx-xxxx.
Healy, Michael J., xxx-xx-xxxx.
Hedges, John D., xxx-xx-xxxx.
Heinle, Leon C., xxx-xx-xxxx.
Henderson, William S., Jr., xxxx.
Henkel, Francis B., xxx-xx-xxxx.
Hense, Frank F. E., Jr., xxx-xx-xxxx.
Hermann, Robert, xxx-xx-xxxx.
Herriott, Judson A., xxx-xx-xxxx.
Hetherington, Charles W., xxx-xx-xxxx.
Hickey, Thomas J., xxx-xx-xxxx.
Higginson, Glenn A., xxx-xx-xxxx.
Hill, Rex A., xxx-xx-xxxx.
Hilland, Carl B., xxx-xx-xxxx.
Hillard, Stephen D., xxx-xx-xxxx.
Hillebrandt, Leonard G., Jr., xxx-xx-xxxx.
Hillock, Joseph P., Jr., xxx-xx-xxxx.
Hilton, Richard D., xxx-xx-xxxx.
Hines, James M., xxx-xx-xxxx.
Hines Olive J., xxx-xx-xxxx.
Hobart, Donald W., xxx-xx-xxxx.
Hocken, Robert W., xxx-xx-xxxx.
Hodge, James L., xxx-xx-xxxx.
Hoenniger, Frederick B., xxx-xx-xxxx.
Holbrook, Roy L., Jr., xxx-xx-xxxx.
Holmberg, John B., xxx-xx-xxxx.
Holmes, Herbert H., xxx-xx-xxxx.
Holton, Carl E., xxx-xx-xxxx.
Homan, Harold A., xxx-xx-xxxx.
Hooper, Claren B., Jr., xxx-xx-xxxx.
Horne, Terrell E., xxx-xx-xxxx.
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McManus, Robert T., xxx-xx-xxxx
Moreau, Ernest P., xxx-xx-xxxx
Mundinger, Carl S., Jr., xxx-xx-xxxx
O'Connor, Maurice J., xxx-xx-xxxx
Pressly, John E., xxx-xx-xxxx
Rice, Frank A., xxx-xx-xxxx
Roberts, John B. G., Jr., xxx-xx-xxxx
Smith, Eldon R., Jr., xxx-xx-xxxx
Smith, Malcom E., xxx-xx-xxxx
Sprowl, Richard E., xxx-xx-xxxx
Verbrugghe, Albert E., xxx-xx-xxxx

DENTAL CORPS

Amy, Donald H., xxx-xx-xxxx
Baer, Marvin L., xxx-xx-xxxx
Battock, Richard D., xxx-xx-xxxx
Beardslee, Eric E., xxx-xx-xxxx
Berte, Joseph J., xxx-xx-xxxx
Boyle, William D., Jr., xxx-xx-xxxx
Burch, Robert A., xxx-xx-xxxx
Calem, Herbert M., xxx-xx-xxxx
Corrigan, William J., xxx-xx-xxxx
Durkin, William J., Jr., xxx-xx-xxxx
Franciose, Angelo, xxx-xx-xxxx
Francis, Evan D., xxx-xx-xxxx
Gibson, Ronald M. E., xxx-xx-xxxx
Gordon, Glenn E., xxx-xx-xxxx
Granger, Dale T., xxx-xx-xxxx
Grayson, Frank W., xxx-xx-xxxx
Grochowski, Daniel C., xxx-xx-xxxx
Infeld, Paul, xxx-xx-xxxx
Krenzel, Daniel J., xxx-xx-xxxx
Krusee, Paul A., xxx-xx-xxxx
Labarge, Robert L., xxx-xx-xxxx
Lee, Lawrence M. H., xxx-xx-xxxx
Lehman, Carl A., xxx-xx-xxxx
Leichtman, William S., xxx-xx-xxxx
Lepore, Marion, xxx-xx-xxxx
Marks, Thomas C., xxx-xx-xxxx
McKinney, James F., xxx-xx-xxxx
Miller, Charles D., xxx-xx-xxxx
Morgan, John P., xxx-xx-xxxx
Neurock, Isadore, xxx-xx-xxxx
Orman, Albert G., xxx-xx-xxxx
Park, Paul R., xxx-xx-xxxx
Richardson, William O., xxx-xx-xxxx
Shiller, Edwin B., xxx-xx-xxxx
Skweir, Michael J., Jr., xxx-xx-xxxx
Steed, Donald L., xxx-xx-xxxx
Wee, Clifford G. H., xxx-xx-xxxx
Wysocki, Stanley F., xxx-xx-xxxx

NURSE CORPS

Bennett, Leland R., xxx-xx-xxxx
Bergeron, Francis R., xxx-xx-xxxx
Biangardi, George A., xxx-xx-xxxx
Black, Raymond E., xxx-xx-xxxx
Dean, Charlene R., xxx-xx-xxxx
Ellis, Pauline V., xxx-xx-xxxx
Engle, Raye C., xxx-xx-xxxx
Farrell, George E., II, xxx-xx-xxxx
Farrell, Patricia A., xxx-xx-xxxx
Fleming, Alma M., xxx-xx-xxxx
Freeman, Charles E., xxx-xx-xxxx
Gilbertson, Joan C., xxx-xx-xxxx
Graham, Ivra M., xxx-xx-...
Hamberger, Margaret K., xxx-xx-xxxx
Hardin, Doris A., xxx-xx-xxxx
Harris, Nancy S., xxx-xx-xxxx
Heath, Lois M., xxx-xx-xxxx
Huffman, Marcia C., xxx-xx-xxxx
Hunt, Maureen A., xxx-xx-xxxx
Kelly, Gerald W., xxx-xx-xxxx
Kirby, Dennis J., xxx-xx-xxxx
Larscheid, Jon L., xxx-xx-xxxx
Lofstrom, Mary M., xxx-xx-xxxx
Logan, Bertha A., xxx-xx-xxxx
Maine, Hugh C., xxx-xx-xxxx
Makowski, Mary H., xxx-xx-xxxx
McDowell, Nina E., xxx-xx-xxxx
McLaughlin, Mary L., xxx-xx-xxxx
Miyagawa, Cora H., xxx-xx-xxxx
Moran, Barbara M., xxx-xx-xxxx
Mumper, Monna L., xxx-xx-xxxx
Navarro, Pete, xxx-xx-xxxx
Oakes, Rosa, xxx-xx-xxxx
Overacre, Robert C., xxx-xx-xxxx
Palombo, Edward A., xxx-xx-xxxx
Pearce, Warren T., xxx-xx-xxxx
Plott, Clarideth J., xxx-xx-xxxx
Pratt, Leroy O., xxx-xx-xxxx
Robertson, Elwin G., xxx-xx-xxxx
Sargent, Arlene M., xxx-xx-xxxx
Schimmenti, Carmelita, xxx-xx-xxxx
Shaffer, Joan A., xxx-xx-xxxx
Smith, Mary L., xxx-xx-xxxx
Sturim, Constance R., xxx-xx-xxxx
Wetherby, Shirley M., xxx-xx-xxxx
White, Betty J., xxx-xx-xxxx
Wickizer, Russell R., xxx-xx-xxxx
Withington, Clarence M., xxx-xx-xxxx
Wright, Evelyn J., xxx-xx-xxxx
Zablocki, Dorothy N., xxx-xx-xxxx

MEDICAL SERVICE CORPS

Bluhm, John L., xxx-xx-xxxx
Corum, B. H., xxx-xx-xxxx
Dansby, Bradley L., Jr., xxx-xx-xxxx
Dellefield, Douglas M., xxx-xx-xxxx
Dickes, David W., xxx-xx-xxxx
Dunn, Norwood C., xxx-xx-xxxx
Farringer, John R., xxx-xx-xxxx
Gardner, Raymond A., xxx-xx-xxxx
Gibson, Charles H., xxx-xx-xxxx
Grady, Eddie L., Jr., xxx-xx-xxxx
Graves, Frederick J., xxx-xx-xxxx
Hendley, James W., xxx-xx-xxxx
Hentz, David E., xxx-xx-xxxx
Kehoe, Francis J., xxx-xx-xxxx
Kelsey, Donn R., xxx-xx-xxxx
Penner, Norman R., xxx-xx-xxxx
Pomeroy, Gary J., xxx-xx-xxxx
Reevesman, Sanford L., xxx-xx-xxxx
Scheihing, Theodore R., xxx-xx-xxxx
Slagel, Ronald V., Jr., xxx-xx-xxxx
Straughn, Herbert E., xxx-xx-xxxx

VETERINARY CORPS

Blackman, Daniel A., xxx-xx-xxxx
Britz, William E., Jr., xxx-xx-xxxx
Haines, Richard J., Jr., xxx-xx-xxxx
Kupper, James L., xxx-xx-xxxx
Olson, Roland C., xxx-xx-xxxx
Pryor, William H., Jr., xxx-xx-xxxx
Rhoads, Dallas W., xxx-xx-xxxx
Still, Edwin T., xxx-xx-xxxx
Taylor, Gale D., xxx-xx-xxxx
Tom, Henry K., Jr., xxx-xx-xxxx

BIOMEDICAL SCIENCES CORPS

Foley, Thomas J., Jr., xxx-xx-xxxx
Hartley, James E., xxx-xx-xxxx
McKinney, Vernor L., xxx-xx-xxxx
Meade, John P., xxx-xx-xxxx
Parrish, Dale W., xxx-xx-xxxx
Pizzuto, Joseph S., xxx-xx-xxxx
Rubin, Martin G., xxx-xx-xxxx
Stansell, Marion J., xxx-xx-xxxx

PUBLIC HEALTH SERVICES

The following candidates for personnel action in the Regular Corps of the Public Health Service subject to qualifications therefor as provided by law and regulations:

I. FOR APPOINTMENT

To be senior surgeons

Vivian Chang
David W. Johnson
Lawrence R. Rose

To be surgeons

Robert L. Bergman — Richard T. Light
Harry L. Braeuer — Harold D. McDonald
Floyd M. Kregenow — Wandyr J. Moore

To be senior assistant surgeons

Burton H. Baker — Sanford S. Leffingwell
Antonio M. Carbonell — David L. Levin
Joe H. Davis — Betty A. Paeth
Barry S. Dorfman — George F. Scheckleton
Mitchell H. Gail — John W. Tull
George W. Koehl — Howard S. Yager

To be dental surgeon

John Folio

To be senior assistant dental surgeons

John L. Drager — Laurence R. Sarmiere
David L. Evans — John R. Sundell
Gary L. Howell — David W. Trussell
Michael P. Klaff — Charles R. Wanner
William J. Kline — William J. L. Williams
Lance A. McGannon — Charles H. Wolf III
Terry J. Ortman

To be nurse officer

Claire M. Coppage — Susan E. Milman
Celeste B. Evans — Jane A. Moretto
Virginia E. Flynn — Elizabeth D. Watrous
Margaret A. McCombs

To be senior assistant nurse officer

Robert L. Oshins

To be assistant nurse officer

Paul A. DuCommun

To be sanitary engineer director

Aleck Alexander

To be senior assistant sanitary engineers

David W. Alton — Ira J. Somerset
Gunther F. Craun — Linden E. Witherell
Robert E. Hatten — Thomas J. Sorg

To be assistant sanitary engineers

Norman D. LaFrance
Ralph C. Olsen

To be scientist

Martin I. Goldenberg

To be senior assistant scientists

William A. Betts
Bobby D. Brayboy
Larry K. Lowry

To be sanitarians

H. Harold Lehman
Robert J. Weatherby

To be senior assistant sanitarians

Donald W. Payne — Jerome J. Smith
Darrell J. Schwalm — Joseph W. Winkler
Laren J. Sickles

To be veterinary officer

Charles G. Liddle

To be senior assistant veterinary officers

John R. Broderson
Russell W. Currier II

To be senior assistant pharmacists

Alvin E. Arneson — William H. Kehoe, Jr.
John S. Cipriano — Larry M. Kleinman
James C. Cradock — Harry A. Milman
Aubrie L. Duncan — Johnny R. Peebles
Archie R. Hill — Joseph A. Tangrea

To be assistant pharmacists

Robert J. Aleksun — Edgar R. Jeter
Gerald M. Burge — Dale L. Johnson
Gary L. Chadwick — Robert W. Merz
David C. Ewing — Charles J. Petersen
Alan L. Hanson — William C. Porter
Paul K. Hiranaka — Thomas R. Simpson III
James K. Hooper

To be assistant dietitians

Carol P. Hale
William J. Jajesnica

To be senior assistant therapist

Walter P. Schneiderwind

To be assistant therapists

Robert B. Beach — Barbara A. Sloop
Gary C. Hunt — Robert P. Yarris

To be junior assistant therapist

W. James Downs, Jr.

To be health services officers

Arthur N Jarvis
Michael J. Speshock

To be senior assistant health services officers

John C. Bernson — William E. Murray, Jr.
John N. Bowden — Martiniano R. Sandoval
Stephen D. Finstein — Dale F. Schramm
Elwood R. Hamlin II — Edwin L. Sensintaffar
Norbert P. Heib, Jr. — George L. Vasconcelos
Joseph G. Holty — Samuel T. Windham
Gordon G. McLain

To be assistant health services officers

Robert J. Battjes — Daniel L. Mintz
John J. Cohn — William M. Wagner

CONFIRMATION

Executive nominations confirmed by the Senate October 12, 1972:

IN THE ARMY

Gen. Creighton W. Abrams, 226541073, Army of the United States (major general, U.S. Army), for appointment as Chief of Staff, U.S. Army, under the provisions of title 10, United States Code, section 3034.

U.S. COURTS

H. Emory Widener, Jr., of Virginia, to be a U.S. circuit judge, fourth circuit.

Frank H. Freedman, of Massachusetts, to be a United States District Judge for the District of Massachusetts.

Herman G. Pesquera, of Puerto Rico, to be U.S. district judge for the District of Puerto Rico.

Joseph L. Tauro, of Massachusetts, to be a U.S. district judge for the district of Massachusetts.

Kevin Thomas Duffy, of New York, to be U.S. district judge for the southern district of New York.

Robert J. Ward, of New York, to be a U.S. district judge for the southern district of New York.

James C. Turk, of Virginia, to be a U.S. district judge for the western district of Virginia.

DEPARTMENT OF JUSTICE

Donald D. Forsht, of Florida, to be U.S. marshal for the Southern District of Florida for the term of 4 years.

HOUSE OF REPRESENTATIVES—*Thursday, October 12, 1972*

The House met at 12 o'clock noon.

The Chaplain, Rev. Edward G. Latch, D.D., offered the following prayer:

Cast all your care upon God, for He careth for you.—I Peter 5: 7.

Gracious Father of our spirits, move within us that we may know Thy loving kindness in the morning for unto Thee do we lift up our souls, that we may see the way we should take and with courage walk in it and that we may receive Thy peace which passes understanding when evening comes for with Thee we have lived throughout the day. Grant unto us a steady and sustaining sense of our relationship with Thee.

Lift us out of doubt and discouragement by a simple reliance on Thy sure will. Teach us once again that only as we lose ourselves in something greater than ourselves do we ever find ourselves.

We pray for our President, our Speaker, and all who hold positions of leadership in our Republic. May they be motivated by worthy and wholesome desires in the endeavor to make our Nation good in greatness and great in goodness. In the spirit of the Master we pray. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Without objection, the Journal stands approved.

There was no objection.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Arrington, one of its clerks, announced that the Senate had passed without amendment bills and a concurrent resolution of the House of the following titles:

H.R. 10556. An act to authorize the Secretary of the Interior to sell reserved mineral interests of the United States in certain land in Georgia to Thomas A. Buiso, the record owner of the surface thereof;

H.R. 13694. An act to amend the joint resolution establishing the American Revolution Bicentennial Commission, as amended; and

H. Con. Res. 717. Concurrent resolution authorizing the Clerk of the House to make a correction in the enrollment of the bill (H.R. 10420) to protect marine mammals; to establish a Marine Mammal Commission; and for other purposes.

The message also announced that the Senate agrees to the amendment of the House to a bill of the Senate of the following title:

S. 493. An act to authorize and direct the Secretary of Agriculture to classify as a wilderness area the national forest lands adjacent to the Eagle Cap Wilderness Area, known as the Minam River Canyon and adjoining area, in Oregon, and for other purposes.

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 10420) entitled "An act to protect marine mammals; to establish a Marine Mammal Commission; and for other purposes."

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 635) entitled "An act to amend the Mining and Minerals Policy Act of 1970".

The message also anounced that the Senate had passed with amendments in which the concurrence of the House is