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Congressional Record

PROCEEDINGS AND DEBATES OF THE 92d CONGRESS, SECOND SESSION

SENATE—*Monday, March 13, 1972*

The Senate met at 12 o'clock meridian and was called to order by Hon. DAVID H. GAMBRELL, a Senator from the State of Georgia.

PRAYER

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

Almighty God, Father of our spirits, Giver of all wisdom from whom all power and authority proceeds, we pray for Thy servants in the Government of this Nation. Rule their hearts, control their wills, employ their minds, direct their actions for the welfare of all the people. May days of uncertainty become the time for renewing the moral fiber and deepening the spiritual life of the Nation. Bind together in firm affinity all elements of the population that each may serve the other and all may bring to fulfillment the kingdom of justice and peace. Amen.

DESIGNATION OF THE ACTING PRESIDENT PRO TEMPORE

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

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., March 13, 1972.

To the Senate:

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

ALLEN J. ELLENDER,
President pro tempore.

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

MESSAGES FROM THE PRESIDENT

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

EXECUTIVE MESSAGES REFERRED

As in executive session, the Acting President pro tempore (Mr. GAMBRELL) 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.)

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Berry, one of its reading clerks, announced that the House had passed the bill (H.R. 10420) to protect marine mammals; to establish a Marine Mammal Commission; and for other purposes, in which the concurrence of the Senate is requested.

ENROLLED BILL SIGNED

The message also announced that the Speaker had affixed his signature to the enrolled bill (H.R. 1746), an act to further promote equal employment opportunities for American workers.

The enrolled bill was signed by the Acting President pro tempore (Mr. GAMBRELL).

HOUSE BILL REFERRED

The bill (H.R. 10420) to protect marine mammals; to establish a Marine Mammal Commission; and for other purposes, was read twice by its title and referred to the Committee on Commerce.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Thursday, March 9, 1972, be dispensed with.

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

COMMITTEE MEETINGS DURING SENATE SESSION

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

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

EDUCATION AMENDMENTS OF 1972

Mr. MANSFIELD. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 659.

The ACTING PRESIDENT pro tempore (Mr. GAMBRELL) laid before the Senate a message from the House of Representatives announcing its disagreement to the amendment of the Senate to the bill (S. 659) to amend the Higher Education Act of 1965, the Vocational Education Act of 1963, the General Education Provisions Act—creating a National Foundation for Postsecondary Education and a National Institute of Education—the Elementary and Secondary Education Act of 1965, Public Law 874, 81st Congress, and related acts, and for other purposes, and requesting a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. MANSFIELD. I move that the Senate insist upon its amendment and agree to the request of the House for a conference on the disagreeing votes of the two Houses thereon, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Acting President pro tempore appointed Mr. PELL, Mr. RANDOLPH, Mr. WILLIAMS, Mr. KENNEDY, Mr. MONDALE, Mr. EAGLETON, Mr. CRANSTON, Mr. DOMINICK, Mr. JAVITS, Mr. SCHWEIKER, Mr. BEALL, and Mr. STAFFORD conferees on the part of the Senate.

Mr. MANSFIELD. Mr. President, this is on the higher education bill which will now go to conference.

INTERNATIONAL COFFEE AGREEMENT ACT OF 1968

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 656, H.R. 8293.

The ACTING PRESIDENT pro tempore. The bill will be stated by title.

The assistant legislative clerk read as follows:

H.R. 8293, to continue until the close of September 30, 1973, the International Coffee Agreement Act of 1968.

The ACTING PRESIDENT pro tempore. Is there objection to the present consideration of the bill?

There being no objection, the bill was considered, ordered to a third reading, read the third time, and passed.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Does the Senator from Michigan (Mr. GRIFFIN) desire to be recognized at this time?

Mr. GRIFFIN. No, Mr. President.

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

(The remarks Mr. KENNEDY made at this point on the introduction of S. 3327 are printed in the RECORD under Statements on Introduced Bills and Joint Resolutions.)

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Maryland is recognized for not to exceed 15 minutes.

(The remarks Mr. BEALL made at this point on the introduction of S. 3329 are printed in the RECORD under Statements on Introduced Bills and Joint Resolutions.)

AUTHORIZATION FOR SECRETARY OF THE SENATE TO MAKE TECHNICAL CORRECTIONS IN S. 888

Mr. MANSFIELD. Mr. President, I send to the desk a concurrent resolution authorizing the Secretary of the Senate to make technical corrections in the enrollment of the bill S. 888, and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The concurrent resolution will be stated.

The assistant legislative clerk read as follows:

S. CON. RES. 67

Resolved by the Senate (the House of Representatives concurring), That the Secretary of the Senate, in the enrollment of the bill (S. 888), providing for the relief of David J. Crumb, is hereby authorized and directed to make the following correction:

Strike out "5742(a)" and insert "5724a".

The ACTING PRESIDENT pro tempore. Is there objection to the present consideration of the concurrent resolution.

There being no objection, the concurrent resolution (S. Con. Res. 67) was considered and agreed to.

AUTHORIZATION FOR PREPARATION OF OFFICIAL DUPLICATES OF CONFERENCE PAPERS ON S. 2097

Mr. MANSFIELD. Mr. President, it is my understanding that the conference papers on S. 2097, to establish a Special Action Office for Drug Abuse Prevention, have been lost. I send to the desk a concurrent resolution and I ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The resolution will be stated.

The assistant legislative clerk read as follows:

S. CON. RES 68

Resolved by the Senate (the House of Representatives concurring), That the Secretary of the Senate and the Clerk of the House of Representatives are authorized and directed to prepare and sign official duplicates of the conference papers of the bill (S. 2097) to establish a Special Action Office for Drug Abuse Prevention and to concentrate the resources of the Nation against the problem of drug abuse.

The ACTING PRESIDENT pro tempore. Is there objection to the present consideration of the concurrent resolution?

There being no objection, the concurrent resolution (S. Con. Res. 68) was considered and agreed to.

TRANSACTION OF ROUTINE MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of routine morning business, not to exceed 30 minutes, with a limitation of 3 minutes on statements therein.

WAIVER OF CALL OF THE CALENDAR UNDER RULE VIII

Mr. MANSFIELD. Mr. President, I ask unanimous consent to waive the call of the calendar for unobjected to measures under rule VIII.

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

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. The Senator from Montana is recognized.

(The remarks of Mr. MANSFIELD and Mr. AIKEN on the introduction of Senate Joint Resolution 215 and the ensuing discussion are printed in the RECORD under Statements on Introduced Bills and Joint Resolutions.)

THE UNITED STATES AND THE SOVIET UNION: POTENTIALS FOR PEACE

Mr. TAFT. Mr. President, this past Friday evening I had the opportunity to listen to a major address presented by the Secretary of Defense to the Cincinnati Council on World Affairs concerning the relationship between the Soviet Union and the United States. In describing this relationship, the Secretary presented in the clearest terms that I can recall the potentials for peace that it provides the world. He did not mince words with platitudes and bouquets. He did not try to gloss over the eminent facts of life and history that the differences that exist between our two great nations are not real; are not apparent; or will disappear overnight. Rather, Mel Laird, as he always has done in Congress and as Secretary of Defense, faced up to the issues. He highlighted for everyone to see the support that the Soviet Union continues to provide the North Vietnamese; the Soviets tremendous maritime expansion; its strategic arms buildup; and its growing political presence in the Middle East, the Mediterranean, the Indian Ocean, and closer to home, the Caribbean.

He stated carefully what has to be done. Our people must know what the score is. We must not be wishful thinkers. A visit to China and a visit to Moscow cannot erase the threat involved, even though they represent a truly giant step toward the generation of peace the whole world cherishes. Our position must be one of negotiation from strength. The Secretary has outlined why.

As we continue to improve the communications with the Soviet Union and China, the relationship expounded by the Defense Secretary as one "based on reciprocal self-restraint and mutual accommodation of interests" has a reasonable chance of success.

This is a good speech. It is a hard, nononsense speech. And it is one to which we all can relate. Mr. President, I ask unanimous consent to have printed in the RECORD the address by the Secretary of Defense.

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

THE UNITED STATES AND THE SOVIET UNION: POTENTIALS FOR PEACE

I commend the Cincinnati Council on World Affairs on the timing and scope of this Conference. No better moment could have been chosen for a serious and thorough study of the Soviet Union with emphasis on our country's relations with that country.

In little more than two months, President Nixon will visit Moscow. As in the case of his recent visit to Mainland China, the President's trip is part of this Administration's steady effort to achieve our nation's main foreign policy goal: a generation of peace.

President Nixon has repeatedly emphasized his hope of bringing about a basic change in our relations with the USSR—a change from confrontation to negotiation. If a generation of peace is to be realized, nothing is more important than the relationship between the United States and the Soviet Union.

There are profound differences and disagreement between us and the Soviet Union which cannot simply be ascribed to historical accidents or misunderstandings. They are rooted in different conceptions of the rights and responsibilities of men and of governments. They are rooted in different approaches in dealing with other nations. They manifest themselves in conflicting interests in different regions of the world.

Accordingly, we cannot eliminate overnight the profound differences that separate us. We and the Soviets are now and will remain for some time, if not adversaries, then at least political-military opponents with different global policies. Unless we accept these strategic and political realities and make this recognition the starting point for our efforts toward peace, we diminish the chances to achieve peace and increase the risks to our own basic interests.

I believe great nations today can be peaceful adversaries without being belligerent antagonists.

The true question confronting us is not whether it is possible to have instant revolution in our relations with the Soviet Union. The question instead is whether we can manage our relationship so that we resolve what can be resolved and control what cannot.

That is what the President's Strategy for Peace is all about.

That strategy is based on three pillars. Willingness to negotiate is one of those pillars.

The other two—the pillars that can change meaningful negotiations from an elusive hope to a potential reality—are strength and partnership.

The Nixon Doctrine and the Strategy of Realistic Deterrence are derived from the strength and partnership pillars of the President's Strategy for Peace.

The Nixon Doctrine and its supporting national security strategy strike a balance between what America should do and what our friends can do. This policy allows us to do enough, without doing or attempting to do too much. It pledges that we will keep our treaty commitments; that we will provide a nuclear shield; that we will assist our friends in safeguarding world stability—but without doing everything ourselves.

It is only through the support of continued strength and strong partnership that the third pillar of the President's Strategy for Peace can stand. Strength and partnership form the indispensible foundation for meaningful and successful negotiations.

The potential for successful talks is possible, because we realistically proceed to negotiations from a position of strength and because we refuse to put negotiations and strength into separate and isolated compartments.

Some want us to negotiate by unilaterally disarming. I strongly believe that such a course of action would be counter-productive and dangerous to the security of our country and the safety of our people.

We wish to move from an era of confrontation to an era of negotiation. But to put it simply and candidly, we are not going to place our destiny or that of our friends or allies at the mercy of the hoped-for goodwill of any other power. We will pursue two courses of action that are mutually supporting:

First, we must maintain adequate strength to deter war. In this way, we reduce the likelihood of war and remain prepared should war come.

Second, we must demonstrate, as we are doing, a willingness to negotiate agreements that can lead to arms limitation instead of arms competition and that can help achieve peace.

But a cardinal rule guiding our Strategy of Realistic Deterrence is that our essential strength will not be reduced unilaterally in the absence of agreements that reduce the need for our strength.

This is not to say that we are unprepared to take every reasonable risk for peace. On the contrary, we are trying to build a new relationship with the Soviet Union; a relationship based on *reciprocal* self-restraint and *mutual* accommodation of interests. But, however ready the U.S. may be to base its policies on these principles, that alone will not suffice to create a more stable and positive relationship with the Soviet Union. These are principles that *both* sides must observe or nothing will be changed.

There are encouraging signs. We see those signs in agreements relating to Berlin, in the banning of biological and toxin weapons, in improved communications to diminish the danger of nuclear conflict, and in provisions for cooperation in space exploration and in medical research.

But just as we must give full weight to those positive elements, so we cannot ignore other less promising but equally real facts which bear on our hopes for a better relationship with the Soviet Union:

We cannot shut our eyes to the rapid and sustained Soviet strategic arms build-up in recent years.

We cannot ignore the world-wide expansion of Soviet maritime activity.

We cannot disregard their growing military presence and involvement in the Middle East, the Mediterranean, the Indian Ocean and the Caribbean.

We cannot discount the large, highly capable and improving forces they maintain in Europe that exert a constant political pressure against both Western and Eastern Europe.

We cannot discount the fact that the Soviet Union has been and remains the major supplier of military arms and munitions to the North Vietnamese and is thereby a major contributor to continued conflict in Southeast Asia.

Against this background, we must recognize that the prospects for ultimate peace in areas like Southeast Asia rest, to a major degree, with the Soviet Union. Against this background too, we must recognize the need for maintaining military power—ours and our Allies. For a stable military balance between us and the Soviets is and will continue to be for the foreseeable future a necessary condition. It is necessary not only for protecting our interests, but also for achieving the more stable and positive relationship with the Soviet Union that is so important to our hopes for a generation of peace.

Under the National Security Strategy of Realistic Deterrence we do not build military power to threaten anyone. We build and maintain military power to convince others that there is no profit in threatening or using force in an attempt to impose their political will on us and to advance their interests at the expense of ours.

We are, at the same time, prepared to extend the principles of self-restraint and accommodation in seeking agreements that would limit or reduce the burdens and dangers that large military forces represent for both sides. In this spirit, we hope for agreements stemming from the on-going Strategic Arms Limitation Talks and for a response from the Soviets to NATO's designation of Manlio Brosio last October to engage in exploratory talks on Mutual and Balanced Force Reductions (MBFR).

Any agreement, whether relating to strategic weapons, to mutual and balanced force reductions, or to other subjects, must be based on mutual concessions of relatively equal magnitude and importance which are subject to adequate verification. Any agreement must provide for reciprocal reduction or limitation so that its effect will not be to tilt the existing balance of strength to the advantage of either signatory.

To make the transition from confrontation to negotiation in our relations with the Soviet Union, the American people must continue to be ready to accept the long term challenges and responsibilities of world leadership. To build a world of stable peace, we shall need all of the patience, persistence, and resoluteness we can muster.

That is why our nation must continue to strengthen our strategic forces—until by mutual action, restraints are accepted by both the Soviet Union and ourselves. That is why we must maintain our troop strength in Europe—until by mutual action both NATO and Warsaw Pact forces are reduced.

What breakthroughs, what obstacles, what frustrations, may lie ahead as we pursue this difficult and lengthy transition, no one can foretell. We are pursuing this course not with euphoria or pessimism, but with hopeful realism.

The President's journey to Moscow will, we hope, open new avenues to peace. But whatever the progress we have made or will make sufficient military strength and national resolve will be necessary.

In our continuing efforts to achieve the goal of lasting peace, we need and ask for the understanding and support of such citizens as are represented in this meeting of the Cincinnati World Affairs Council and of all Americans.

QUORUM CALL

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

VICE PRESIDENT AGNEW'S SHOWING IN NEW HAMPSHIRE

Mr. GRIFFIN. Mr. President, if Vice President AGNEW had made a showing in the New Hampshire primary which by any standard of comparison could have been overlooked by the news media in its imagine that the fact would not have been overlooked by the news media in its coverage. If the Vice President's showing had been only good or about what might be expected under such circumstances, the lack of press notice could be understood, of course.

But now that I have had the opportunity to review the New Hampshire primary statistics, I find it rather difficult to understand why the news media has all but ignored the spectacular vote chalked up by Vice President AGNEW last Tuesday.

Considering that the Vice President's name did not even appear on any of the ballots, and that every vote for him had to be a conscious, deliberate write-in effort, it is interesting—and should be noteworthy—that Mr. AGNEW received more votes for Vice President on a write-in basis than Senator MUSKIE received for President with his name on the ballot.

Not only did Mr. AGNEW receive 70 percent of all Republican votes for Vice President in the New Hampshire primary, but in addition, 5 percent of the Democrats who voted for Vice President took the trouble to write in Mr. AGNEW's name.

Looking over the New Hampshire statistics, I also notice not only that President Nixon's vote was impressive, but also that he received more votes than Senator MUSKIE and Senator MCGOVERN combined.

Mr. President, I ask unanimous consent that a tabulation of the New Hampshire primary results be printed in the RECORD.

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

NEW HAMPSHIRE PRIMARY RESULTS—WITH 99 PERCENT OF THE VOTE TALLIED AT MONDAY PRESS TIME, THE RESULTS OF THE NEW HAMPSHIRE PRIMARY ARE AS FOLLOWS—

	Number	Percent
Republican:		
Nixon	77,398	69
McCloskey	22,678	20
Ashbrook	10,740	10
Paulsen	1,146	1
Democrat:		
Muskie	40,425	48
McGovern	31,812	37
Yorty	5,244	6
Mills	3,508	4
Hartke	2,326	3
Kennedy	794	1
Humphrey	292	0
Coll	256	0
Jackson	87	0
McCarthy	39	
Vice President—Republican:		
Agnew	42,830	70
Burton	10,843	18
Brooke	7,196	12
Democrat:		
Peabody	36,443	95
Agnew	1,837	5

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

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

REPORT OF NATIONAL COMMISSION ON PRODUCTIVITY

A letter from the Chairman, National Commission on Productivity, transmitting, pursuant to law, a report of that Commission, for the period from July 1970 through February 1972 (with an accompanying report); to the Committee on Banking, Housing and Urban Affairs.

PROPOSED AMENDMENT OF TITLE III OF THE INTERNATIONAL CLAIMS SETTLEMENT ACT OF 1949

A letter from the Chairman, Foreign Claims Settlement Commission of the United States, transmitting a draft of proposed legislation

to amend section 304, title III of the International Claims Settlement Act of 1949, as amended, to provide for additional claims for payment out of the Italian Claims Fund (with an accompanying paper); to the Committee on Foreign Relations.

PROPOSED AMERICAN-MEXICAN BOUNDARY TREATY ACT OF 1972

A letter from the Assistant Secretary for Congressional Relations, Department of State, transmitting a draft of proposed legislation 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 (with accompanying papers); to the Committee on Foreign Relations.

REPORT ON ANTHRACITE MINE WATER CONTROL AND MINE SEALING AND FILLING PROGRAM

A letter from the Secretary of the Interior, transmitting, pursuant to law, a report on the Anthracite mine water control and mine sealing and filling program (with an accompanying report); to the Committee on Interior and Insular Affairs.

PROPOSED AMENDMENT OF WATER RESOURCES PLANNING ACT

A letter from the Chairman, U.S. Water Resources Council, Washington, D.C., transmitting a draft of proposed legislation to amend the Water Resources Planning Act to authorize increased appropriations (with accompanying papers); to the Committee on Interior and Insular Affairs.

REPORT ON MODIFICATION OF CERTAIN CONTRACTS RELATING TO NATIONAL DEFENSE

A letter from the General Manager, U.S. Atomic Energy Commission, reporting, pursuant to law, on the modification of contracts relating to national defense, for the calendar year 1971; to the Committee on the Judiciary.

REPORT OF COMMISSION ON POPULATION GROWTH AND THE AMERICAN FUTURE

A letter from the Chairman, Commission on Population Growth and the American Future, Washington, D.C., transmitting, pursuant to law, a report of that Commission, dated March 10, 1972 (with an accompanying report); to the Committee on Labor and Public Welfare.

REPORT OF NATIONAL COMMISSION ON SCHOOL FINANCE

A letter from the Commissioner of Education, Department of Health, Education, and Welfare, transmitting, pursuant to law, the final report and recommendations of the National Commission on School Finance (with an accompanying report); to the Committee on Labor and Public Welfare.

PROPOSED INCREASE OF COMPENSATION FOR DISABLED VETERANS

A letter from the Administrator of Veterans Affairs, transmitting a draft of proposed legislation to amend title 38, United States Code, to increase the rates of compensation for disabled veterans (with an accompanying paper); to the Committee on Veterans' Affairs.

PETITIONS

Petitions were laid before the Senate and referred as indicated:

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

Resolutions of the Commonwealth of Massachusetts; to the Committee on Finance:

"RESOLUTIONS MEMORIALIZING THE CONGRESS OF THE UNITED STATES TO ENACT LEGISLATION EXPANDING THE MEDICARE PROGRAM AND INCREASING THE FUNDING OF MEDICAL RESEARCH

"Resolved, That the General Court of Massachusetts respectfully urges the Congress of the United States to enact legislation providing for the funding of medical research, with particular emphasis on research into kidney diseases, in an amount equal to that requested in the first session of the Ninety-first Congress; expanding the Medicare program to include the cost of drugs: providing that all persons in the United States shall, upon attaining sixty-five years of age, be eligible for Medicare coverage; providing for the payment by the federal government of all medical expenses incurred by members of the Medicare program and expanding the Medicare program to include persons who are receiving funds under the special security program because they are permanently and totally disabled; and be it further

Resolved, That copies of these resolutions be transmitted forthwith by the Secretary of the Commonwealth to the President of the United States, the presiding officer of each branch of Congress and to the members thereof from the Commonwealth.

"Senate, adopted, February 14, 1972.

"NORMAN L. PIDGEON, *Clerk*.

"House of Representatives, adopted in concurrence, February 17, 1972.

"WALLACE C. MILLS, *Clerk*.

"Attest:

"JOHN F. X. DAVOREN,
"Secretary of the Commonwealth."

Resolutions of the Commonwealth of Massachusetts; to the Committee on Veterans' Affairs:

"RESOLUTIONS MEMORIALIZING THE CONGRESS OF THE UNITED STATES TO ESTABLISH A NATIONAL CEMETERY IN THE COMMONWEALTH

"Whereas, It is the right of every veteran to be accorded the honor of a burial in a national place of honor; and

"Whereas, Out of the ninety-eight national cemeteries in the United States, there is none in the New England area; and

"Whereas, The saturation point of these cemeteries is rapidly being reached and the need for new land is pressing; now, therefore, be it

"Resolved, That the General Court of Massachusetts respectfully urges the Congress of the United States to enact such legislation as may be necessary to establish a National Cemetery in the Commonwealth of Massachusetts! and be it further

"Resolved, That copies of these resolutions be transmitted forthwith by the Secretary of the Commonwealth to the President of the United States, to the presiding officer of each branch of the Congress and to each branch of the Congress and to each member thereof from the Commonwealth.

"House of Representatives, adopted, February 28, 1972.

"WALLACE C. MILLS, *Clerk*.

"Senate, adopted in concurrence, March 1, 1972.

"NORMAN L. PIDGEON, *Clerk*.

"Attest:

"JOHN F. X. DAVOREN,
"Secretary of the Commonwealth."

"RESOLUTIONS MEMORIALIZING THE CONGRESS OF THE UNITED STATES TO ENACT LEGISLATION PROVIDING THAT THE FEDERAL GOVERNMENT ASSUME THE FULL COST OF VETERANS' SERVICES

"Whereas, The cost of providing veterans' services has put a serious financial burden on both the cities and towns of Massachusetts and the commonwealth itself; now, therefore, be it

"Resolved, That the General Court of Massachusetts respectfully urges the Congress of the United States to enact legislation providing that the federal government assume the cost of veterans' services; and be it further

"Resolved, That copies of these resolutions be sent forthwith by the Secretary of the Commonwealth to the President of the United States, to the presiding officer of each branch of Congress and to each member thereof from the Commonwealth.

"Senate, adopted, February 14, 1972.

"NORMAN L. PIDGEON, *Clerk*.

"House of Representatives, adopted in concurrence, February 17, 1972.

"WALLACE C. MILLS, *Clerk*.

"Attest:

"JOHN F. X. DAVOREN,
"Secretary of the Commonwealth."

A joint memorial of the Legislature of the State of New Mexico; to the Committee on Interior and Insular Affairs:

"A JOINT MEMORIAL REQUESTING THE CONGRESS OF THE UNITED STATES TO AMEND THE MINERAL LEASING ACT TO PROVIDE THAT ALL STATES IN WHICH ARE LOCATED FEDERAL LANDS BE ALLOCATED 90 PERCENT OF THE REVENUE REALIZED FROM MINIMAL LEASES AND PERMITS ON SUCH LANDS

"Whereas, under the federal Mineral Leasing Act, the state of New Mexico is allocated thirty-seven and one-half percent of the revenue from mineral leases and permits on federal lands within the state boundaries; and

"Whereas, the state of Alaska is allocated ninety percent of the revenue from mineral leases and permits on federal lands in Alaska; and

"Whereas, the state of Alaska has over thirteen times more federal acreage than New Mexico has, but less than one-third of New Mexico's population; and

"Whereas, the per capita income of residents of the state of Alaska is almost twice the amount of residents of New Mexico;

"Now, therefore, be it resolved by the Legislature of the State of New Mexico that the Congress of the United States is requested to amend the Mineral Leasing Act to provide that all states in which federal lands are located shall be allocated ninety percent of all revenue from mineral leases and permits on such lands; and

"Be it further resolved that copies of this memorial be transmitted to the speaker of the United States house of representatives, the president pro tempore of the United States senate and to the members of New Mexico's delegation to the Congress of the United States."

A resolution adopted by the city council, San Francisco, Calif., praying for the enactment of legislation to provide funds for continuation of the survey of streams at and in the vicinity of south San Francisco; to the Committee on Appropriations.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

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

S. 2895. A bill to enable producers of commercial eggs to consistently provide an adequate but not excessive supply of eggs to meet the needs of consumers for eggs and to stabilize, maintain, and develop orderly marketing conditions for eggs at prices reasonable to the consumers and producers (Rept. No. 92-686).

ENROLLED BILLS AND JOINT RESOLUTION PRESENTED

The Secretary of the Senate reported that on March 10, 1972, he presented to the President of the United States the following enrolled bills and joint resolution:

S. 602. An act to provide for the disposition of judgments, when appropriated, recovered by the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Mont., in paragraphs 7 and 10, docket numbered

50233, U.S. Court of Claims, and for other purposes;

S. 671. An act to provide for division and for the disposition of the funds appropriated to pay a judgment in favor of the Blackfeet Tribe of the Blackfeet Reservation, Mont., and the Gros Ventre Tribe of the Fort Belknap Reservation, Mont., in Indian Claims Commission docket numbered 279–A, and for other purposes;

S. 860. An act relating to the Trust Territory of the Pacific Islands;

S. 996. An act relating to the transportation of mail by the U.S. Postal Service;

S. 1163. An act to amend the Older Americans Act of 1965 to provide grants to States for the establishment, maintenance, and operation, and expansion of low-cost meal projects, nutrition training, and education projects, opportunity for social contacts, and for other purposes;

S. 2423. An act to amend the Federal Aviation Act of 1958 to provide for the suspension and rejection of rates and practices of air carriers and foreign air carriers in foreign air transportation, and for other purposes;

S. 3244. An act to amend the Military Construction Authorization Act, 1970, to authorize additional funds for the conduct of an international aeronautical exposition; and

S.J. Res. 190. Joint resolution to provide for an extension of the term of the Commission on the Bankruptcy Laws of the United States, and for other purposes.

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. KENNEDY (for himself, Mr. JAVITS, Mr. MAGNUSON, Mr. CRANSTON, Mr. EAGLETON, Mr. HUGHES, Mr. MONDALE, and Mr. STEVENSON):

S. 3327. A bill to amend the Public Health Service Act to provide assistance and encouragement for the establishment and expansion of health maintenance organizations, health care resources, and the establishment of a Quality Health Care Commission, and for other purposes. Referred to the Committee on Labor and Public Welfare, by unanimous consent, and, if and when reported, to the Committee on Finance, if desired by the Committee on Finance.

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

S. 3328. A bill to amend the Social Security Act to assure that whenever there is a general increase in social security benefits there will be a corresponding increase in the standard of need used to determine eligibility for aid or assistance under State plans approved under title I, X, XIV, or XVI of such act. Referred to the Committee on Finance.

By Mr. BEALL:

S. 3329. A bill to establish a National Institute of Health Care Delivery, and for other purposes. Referred to the Committee on Labor and Public Welfare.

By Mr. MANSFIELD (for Mr. JACKSON):

S. 3330. A bill to establish a national policy for the management, conservation, use, and development of the Nation's natural resources, to provide for the establishment of a Board on Natural Resources Planning and Policy, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

By Mr. ERVIN:

S. 3331. A bill relating to the constitutional rights of Indians; and

S. 3332. A bill to amend title 18 of the United States Code, section 702, relating to the unauthorized wearing of uniforms of the Armed Forces and the Public Health Service. Referred to the Committee on the Judiciary.

By Mr. MAGNUSON:

S. 3333. A bill to authorize a compact between the several States relating to taxation of multi-State taxpayers and to regulate and foster commerce among the States by providing a system for the taxation of interstate commerce. Referred to the Committee on Finance.

By Mr. MAGNUSON (by request):

S. 3334. A bill to authorize the Secretary of the Interior to assist the States in controlling damage caused by predatory animals; to establish a program of research concerning the control and conservation of predatory animals; to restrict the use of toxic chemicals as a method of predator control; and for other purposes; and

S. 3335. A bill to authorize appropriations for the fiscal year 1973 for certain maritime programs of the Department of Commerce. Referred to the Committee on Commerce.

By Mr. MANSFIELD (for himself and Mr. AIKEN):

S.J. Res. 215. A joint resolution proposing an amendment to the Constitution of the United States relating to the nomination of individuals for election to the offices of the President and Vice President of the United States.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. KENNEDY (for himself, Mr. JAVITS, Mr. MAGNUSON, Mr. CRANSTON, Mr. EAGLETON, Mr. HUGHES, Mr. MONDALE, and Mr. STEVENSON):

S. 3327. A bill to amend the Public Health Service Act to provide assistance and encouragement for the establishment and expansion of health maintenance organizations, health care resources, and the establishment of a quality Health Care Commission, and for other purposes. Referred to the Committee on Labor and Public Welfare, by unanimous consent, and, if and when reported, to the Committee on Finance, if desired by the Committee on Finance.

HEALTH MAINTENANCE ORGANIZATION AND RESOURCES DEVELOPMENT ACT OF 1972

Mr. KENNEDY. Mr. President, I send to the desk for appropriate reference a bill entitled the "Health Maintenance Organization and Resources Development Act of 1972."

Mr. President, I introduce the measure on behalf of myself, the Senator from New York (Mr. JAVITS), the Senator from Washington (Mr. MAGNUSON), the Senator from California (Mr. CRANSTON), the Senator from Missouri (Mr. EAGLETON), the Senator from Iowa (Mr. HUGHES), the Senator from Minnesota (Mr. MONDALE), and the Senator from Illinois (Mr. STEVENSON).

Mr. President, this bill is designed to provide support for health maintenance organizations, health service organizations and area health education, and service centers. In addition, it provides for the establishment of an independent Commission on Quality Health Care and extends the authority of several sections of the Public Health Service Act important to the development and support of our national health care resources.

During its activities throughout the past 13 months, the Health Subcommittee has seen striking evidence of the disorganization, waste, and inefficiency inherent in our fragmented system of health care. Almost every witness to testify before our hearings into the health care crisis, into health manpower and into health maintenance organizations has attested to the need for far better rationalization and organization of personal health services.

The degree of waste within the health system is illustrated by an interesting statistic. At the present time, we are spending almost enough money on personal health services to purchase two memberships in Kaiser or any other of the major prepaid group practices for every resident of the United States.

Yet, we are not receiving nearly as much for our investment as we could be, and many Americans are receiving virtually no services at all.

In his health message of February 17, 1971, President Nixon endorsed the concept of health maintenance organizations and stressed the important role the Federal Government would play in encouraging their development. In his state of the Union message to Congress on January 20, 1972, the President once again called for the passage of HMO legislation. He said:

> They ought to be everywhere available so that families will have a choice. . . .

That choice is not currently available to the American people. At the present time, 96 percent of all Americans receive their health care on a fee-for-service basis, largely from solo practitioners.

For the past 7 months, the Health Subcommittee of the Committee on Labor and Public Welfare has been conducting hearings concerning the subject of health maintenance organizations. We have heard from a great many very knowledgeable witnesses, who have almost unanimously endorsed the concept of HMO's. Substantial disagreement exists among the witnesses, however, as to the precise nature of an HMO.

The only areas upon which agreement exists are that an HMO should provide a wide range of services to a defined, enrolled population for a predetermined, prepaid, periodic premium. The premium is unrelated to the actual number of services utilized by a particular enrollee in a particular time period.

However, many areas of disagreement exist concerning the definition of a health maintenance organization and concerning the appropriate role of the Federal Government in encouraging the development of HMO's.

Many questions remain unanswered. For example, what is an appropriate range of services to be provided by an HMO? How large should an HMO be? What should the physician-enrollee ratio be? Will HMO's work in rural areas? What is the roll of profitmaking HMO's and what should the Government's role vis-a-vis profitmaking enterprises in the health field be? Given the fact that the financial incentives in an HMO are designed to reduce costly services, what mechanisms exist to assure the consumer of health services that necessary services will not be withheld or that the services they receive will be of uniformly high quality? How is it possible to assure that all Americans will be able to purchase services from a federally subsidized HMO if one is available in their community?

Mr. President, many of these questions cannot be fully answered at the present time. The bill I am introducing contains some suggested approaches which seem to be reasonable and seem likely to be most effective based upon testimony the subcommittee has heard to date.

Perhaps the most important single aspect of the HMO debate up to the present time is that it has forced us to focus on issues in the health care field which have, until the present time, been only abstract ideas.

Just as an HMO is intended to organize currently fragmented health services, so the HMO debate has forced us to organize our thinking about such issues as the cost of personal health services within a defined unit of time; the range of services necessary to maintain health and treat disease; the means to achieve equitable delivery of services; the efficient utilization of allied health professionals; and the quality of health care.

Mr. President, the bill I am introducing today contains five titles. Title I deals with health maintenance organizations, intended primarily for metropolitan areas. Title II is concerned with the support of health service organizations, intended primarily for nonmetropolitan and rural areas. Title III provides assistance for the establishment of area health education and service centers, intended to facilitate the rapid and widespread dissemination of new medical information into our currently medically underserved nonmetropolitan areas. Title IV provides for the establishment of a Commission on Quality Health Care in order to create and monitor standards relating to the quality of health services delivered in the United States. Title V contains other amendments to the Public Health Service Act which are designed to strengthen and improve the availability of health care resources.

Mr. President, I think it is important to describe the provisions contained in this bill in some detail, and to comment upon certain of those provisions.

TITLE I: HEALTH MAINTENANCE ORGANIZATIONS

Title I of this bill defines and authorizes support for health maintenance organizations.

DEFINITION

The title defines a health maintenance organization as an entity which provides comprehensive health services which are uniformly available to all its enrollees, directly through its own staff and its own supporting resources or through a medical group or groups. It stipulates that payment by the enrollee to the HMO is to be made on a periodic basis without regard to the frequency, extent, or type of health service actually furnished an enrollee; and that payment is uniform, except for adjustments for family rates, for all its enrollees. The title requires that the health maintenance organization assume responsibility for the provision of health services to its enrollees 24 hours a day, 7 days a week, and that it provide for out-of-area services when necessary.

Mr. President, it is my feeling that experience rating, the practice wherein low-risk persons are sold health insurance at preferential rates, has been extraordinarily damaging to the entire health industry and to the patterns of availability of services. This practice of "skimming the cream," of leaving those people most in need of health services to pay the highest bills—often without the assistance of adequate insurance, cannot and should not be encouraged by any program utilizing Federal funds.

The HMO must provide an opportunity for the ongoing education of its staff and of the physicians associated with it, as well as for the provision of enrollee health education. It must be organized in such a manner that its enrollees are assured a substantial role in the making of policy, and it must have meaningful procedures for hearing and resolving grievances.

The bill further requires that an HMO have quality control arrangements, satisfactory to the Quality of Health Care Commission, which will be established according to provisions contained further on in the bill. There is, in addition, a requirement that certain data, relating to the operation, cost, utilization rates, and effectiveness of the services rendered by the HMO, be reported periodically to the Secretary of Health, Education, and Welfare.

Another important requirement for an HMO under this section is that it assume financial responsibility for the cost of care delivered to its enrollees, without the benefits of reinsurance, up to the first $5,000 per enrollee per year. It is this provision which will be most effective in providing incentives for the HMO to reduce utilization of unnecessary services to the greatest extent possible.

It is further required that an HMO have an open enrollment period of at least 30 days per year, during which it accepts individuals in the order in which they apply. Once enrolled, an enrollee cannot be excluded for any reason related to his health status as long as he continues to pay his premiums. This provision is intended to prevent the type of "skimming" of low-risk cases which is so prevalent in the health insurance industry, and which makes it so difficult for people with a high requirement for health services to obtain adequate care.

An HMO, according to the definition contained in this bill, may enroll no more than 50 percent of its membership from medically underserved areas. This provision is intended to prevent the perpetuation of the dual-class system of medical care which exists at the present time in this country. It is only through the development of a single class, single standard of mainstream medical care that ghetto medicine can be eliminated.

The 50 percent maximum requirement is waived in the case of medically underserved rural areas, at the discretion of the Secretary.

The bill requires an HMO to deliver a comprehensive range of services. "Comprehensive health services" means a minimum range of services which must be offered by an HMO before it may qualify for assistance under this title. "Comprehensive health services" include health services provided without limitation as to time or cost as follows: "Physicians' services; inpatient and outpatient hospital services; extended care facilities services; home health services; diagnostic laboratory and diagnostic and therapeutic radiologic services; physical medicine and rehabilitative services—including physical therapy; preventive health and early disease detection services; emergency health services; reimbursement for expenses incurred for out-of-area health services when medically indicated; mental health services, with an emphasis on the utilization of existing community mental health centers; dental services, with an emphasis on preventive dental health services for children; prescription drugs; and such other additional personal health services as the Secretary may determine are necessary, including services dealing with alcoholism and drug abuse.

This rather broad range of services is thought by many experts to be a minimal goal for which an HMO should strive. The intent of the inclusion of these basic services among the range of services offered by a health maintenance organization is to encourage the movement of as many personal health services as possible into an organized, prepaid setting. The inclusion of many of these services will allow the health maintenance organization to achieve much greater flexibility in the allocation of services among health categories, and will enable them to create a maximum impact on the prevention and early detection of disease.

There appears to be a consensus among those providers who are currently actively engaged in the operation of a health maintenance organization and who have testified to date before the subcommittee that the most effective form of professional organizations within an HMO is a medical group. It is their opinion that a true medical group offers the greatest possible flexibility in delivering a wide range of health services to a defined population—flexibility in the ability of a medical group to modify its staffing patterns to suit the situation; its ability to foster continuing professional development among its members; and its ability to assure an informal, ongoing peer review which results in the practice of medicine of higher quality than may be the case in solo practice.

For these reasons, a health maintenance organization, according to the definitions contained in this bill, must utilize the services of a medical group, or directly employ the physicians rendering services. A medical group is defined as "a partnership or other association or group of not less than four persons who are licensed to practice medicine, osteopathy, or dentistry in a State and who, as their principal professional activity, engage in the coordinated practice of their profession as a group responsibility."

If not employees or retainees of a health maintenance organization, they must pool their income from practice as members of the group and distribute it among themselves according to a prearranged salary or drawing account plan. They must jointly use or share medical or other records, as well as substantial portions of major equipment and professional, technical, and administrative

staff. In addition, they must share or jointly utilize such additional health professionals and allied health professionals as are needed to provide comprehensive health services.

Continuing education is difficult to encourage among busy practitioners. Therefore, HMO's are required to encourage the continuing education of their medical group members in clinical medicine.

Another important characteristic of the health maintenance organization is its obligation to serve a defined, enrolled population of enrollees. The bill defines enrollee as an individual who has entered into contractual arrangement, or on whose behalf a contractual arrangement has been entered into, with a health maintenance organization or a health service organization, under which such organization assumes the responsibility for the provision of comprehensive health services and additional health services to such individual.

SUPPORT

Mr. President, the bill I am introducing today contains a number of different approaches supporting the planning and development of effective health maintenance organizations. Grants are authorized for the purposes of planning and feasibility studies for public or private nonprofit agencies, organizations, or institutions in order to assist them in projects for studying the feasibility of, or planning for, health maintenance organizations.

The bill also authorizes the Secretary to make grants in order to assist a health maintenance organization in meeting its costs prior to its first day of operation. Limits of a total of $1 million and a total availability of the grants for a period not to exceed 2 years are stipulated in this section. These grants are intended to enable the health maintenance organization to implement an enrollment campaign; design and make arrangements for the provisions of the required health services; develop administrative and internal organizational arrangements which will enable the health maintenance organization to operate, recruit, and train personnel; pay architects' and engineeers' fees; and for such other relevant purposes as the Secretary may deem appropriate. The Secretary is directed to give priority to those HMO's which give assurances that at least 30 percent of their enrollment shall be persons from medically underserved areas.

The bill authorizes the Secretary to make grants in order to assist any public or private nonprofit health maintenance organization in meeting the costs of construction of facilities or portions of facilities for ambulatory services, and capital investments for necessary transportation equipment to be used by it for the provision of health services to its members. The Secretary is directed to give special considerations to those applicants whose intention is to acquire or renovate existing facilities.

The Secretary is further directed to give special considerations to those applicants whose intention is to acquire or renovate existing facilities. The Secretary is directed to give priority to those applicants who provide assurances that at least 30 percent of their total enrollment shall be persons from medically underserved areas. Funds for the construction of inpatient services are not made available, since funds for those purposes are available through the Hill-Burton program.

Subsequent to its first day of operation, a health maintenance organization can be expected to experience a period of deficit operation, during which its premium income will be less than its costs of operation due to the time lag necessary for it to reach full enrollment. As the enrollment of an HMO increases toward its capacity, the operating deficit can be expected to diminish. For this reason, the bill authorizes the Secretary to make grants and loans for the purpose of assisting health maintenance organizations in meeting their costs of operation during their initial 3 years in operation.

The Secretary is authorized to make grants to public and nonprofit private health maintenance organizations, which may not exceed 100 percent of the first year's operating deficit during the HMO's first year of operation; 67 percent of its first year's operating deficit for the second year of operation; and 33 percent of the first year's operating deficit for the third year of operation. Similarly, loans may be made by the Secretary for any public or private nonprofit health maintenance organization which are not to exceed 60 percent of the first year's operating expenses during the HMO's first year of operation, 40 percent of the operating expenses for the second year of operation, and 20 percent of the operating expenses for the HMO's third year of operation.

TITLE II: HEALTH SERVICE ORGANIZATIONS

Mr. President, in testimony taken before the subcommittee during the past year, it has become apparent that the problems of the provision of health services to rural areas are far different from those which exist in urban areas. The problems most important in rural areas seem to be those of attracting adequate numbers of health practitioners and problems associated with transportation and communication once health professionals have located in the area. For that reason, title II of the bill I am introducing today is intended to encourage the improvement of the organization and distribution of health services to nonmetropolitan areas. The bill authorizes the support of health service organizations. A health service organization differs from a health maintenance organization in that the requirement for the provision of health services directly or by a medical group or groups may be waived by the Secretary where the existence of a medical group is not feasible due to low population density. The requirement for reimbursement of professionals by a salary or drawing account arrangement is waived in the case of the health service organization.

In addition, the Secretary of Health Education, and Welfare may waive the requirement for specific services within the range of "comprehensive health services" if adequate resources are not available which would enable the HSO to deliver such services. However, in such a case, the HSO must demonstrate its intention to make the full range of comprehensive health services available as soon as is feasible.

In addition, the health service organization is required to have a written agreement with an area health education and service center, as defined later in the bill, for the use of the educational and service facilities and programs of the center, if such a center is located in the geographic area served by the health service organization.

In making grants, loans, or loan guarantees under the authority provided by this legislation, the Secretary is directed to give priority to those health maintenance and health service organizations whose policymaking body is composed of a majority of consumers of its services.

In other respects, the definition of a health service organization is similar to that of a health maintenance organization. The types and amounts of support available to each are identical.

TITLE III: AREA HEALTH EDUCATION AND SERVICE CENTERS

The third title of this bill, Mr. President, deals with area health education and service centers. It authorizes grants to cover costs of development and construction of facilities in order to assist area health education and service centers.

One important reason for the maldistribution of health professionals resulting in the shortage existing in rural areas seems to be the sense of professional isolation felt by health professionals who choose to practice in relatively isolated areas. The Carnegic Commission, in their report entitled "Higher Education and the Nation's Health," issued in 1970, recognized this problem.

Among the recommendations contained in that report were those relating to the establishment of area health education centers in various locations throughout the United States. The Carnegie Commission recommended 126 locations. This title of the bill is patterned after the recommendations contained in the Carnegie report, with an emphasis on rural areas, since absolute shortages of medical care seem to be most severe in those areas.

An area health education and service center is defined as "A hospital, educational facility, or other public or private nonprofit entity affiliated with a university health center with the purpose of providing clinical training in a nonmetropolitan area."

It is required to have an agreement with a health service organization, if such an organization exists in the geographic area served by the center, and to provide educational services to and health services through such a center. In addition, the area health education and service center is required to make its facilities and programs available to all licensed health professionals in the geographic area which it serves. In this way, it is hoped that the area health education and service center will benefit, through the health care providers located

in a given geographic area, all of the people receiving health services within that area.

The purpose of an area health education and service center is to facilitate the rapid dissemination of current medical information to relatively remote, isolated and sparsely populated areas of the country, and to provide for and encourage clinical experience in a nonmetropolitan setting for students from university health centers, with the hope that such experience will encourage some of them to remain in rural areas to practice.

For that purpose, the Secretary is authorized to make grants to university health centers or to regional medical programs, where they exist, in order to assist in meeting the costs involved in the development of area health education and service centers. Such funds shall be available for expenditure for a maximum of 2 years, and are intended to be used to facilitate the design of education, health, and medical services and the integration of these services with the university health centers' research and educational programs. Grant funds are also authorized for university health centers to assist them in the construction and equipment of educational facilities in conjunction with the development of area health education and service centers.

Mr. President, the remainder of title III of this bill deals with general provisions which enable the Secretary to carry out the intent of the legislation.

Several of the provisions under general requirements deserve special mention. It has become clear throughout the course of the hearings into HMO's that the source of ongoing support for an HMO following its initial few years of operation are of great concern to many of the witnesses who testified before the subcommittee. If the Federal Government is to invest public funds in the creation of a new type of health delivery entity, I believe the Congress has the obligation to insure that all people who live in the area around such an organization are able to benefit from its services. Toward that end, the bill contains a provision authorizing the Secretary to make annual grants to HMO's and health service organizations for the purpose of enabling such organizations to provide services to all people desiring such services.

For that purpose, the Secretary is authorized to make grants to HMO's and HSO's equal in amount to the difference between the amount the member could reasonably be expected to pay for health services, as determined by the Secretary, and the cost of the premium in the HMO or HSO, multiplied by the number of persons enrolled in the HMO or HSO requiring such assistance.

In considering the amount a member should pay toward the premium, the Secretary is directed to consider all sources —including public sources—of income available to each member. In this way, as additional sources of support for personal health services become available in the future, this particular program can be phased out. Grants under this section of the bill may not exceed 25 percent of the total premium receipts for a health maintenance organization or health service organization.

Another provision under this title is the preemption of restrictice State legislation which would impair the formation or operation of HMO's and HSO's. Many States currently have laws in effect which restrict group practice, the corporate practice of medicine, advertising, and other practices. For that reason, the bill allows any organization or medical group qualifying for funds under this legislation to function regardless of restrictive State legislation.

TITLE IV: COMMISSION ON QUALITY HEALTH CARE

The preemption of State standards governing the delivery of health services makes it necessary to replace those standards with others. For that reason and others, title IV of the bill I am introducing today deals with the creation of an independent Federal agency, the Commission on Quality Health Care. Because of the incentives inherent in the financing mechanisms of health maintenance organizations and health service organizations, a danger exists that such organizations will provide health services in less than optimal amounts in order to reduce expenses.

In testimony before the Senate Health Subcommittee on October 6, 1971, Dr. Paul Ellwood, of the American Rehabilitation Foundation and the Institute for Interdisciplinary Studies in Minneapolis, testified concerning the need for additional, innovative quality controls in the health care field. Dr. Ellwood and many other experts in the field of health care. This work has resulted in the development of title IV of the bill before you.

It is extremely important that the Commission be independent of the Department of Health, Education, and Welfare. This is necessary in order to avoid the inevitable conflict of interest inherent in the situation where responsibility for administering a program and for regulating it are vested in the same hands.

The purposes of the Commission are threefold: First of all, it will have broad authority to certify providers of health care services according to a number of quality control parameters set forth in detail in the bill. No provider of health services will be eligible for support under this legislation without such certification by the Commission on Quality Health Care.

Second, the Commission will have a heavy responsibility for the conduct of research and developmental activities in the field of health care delivery, intended to develop standards of quality health care. Most standards in existence at the present time do not deal directly with the issue of quality. The state of the art concerning the measurement of the results of health care on the health of an individual or a group of individuals is poorly developed at the present time. The Commission would have a heavy responsibility for fostering the development of techniques to enable the quality of health care to be measured.

A third major area for which the Commission shall have responsibility is to assure the consumers of health services that adequate and accurate information is made available to them concerning those providers of health care who are certified by the Commission. To this end, the legislation requires that the description of any health care benefit plan covered by this legislation shall be published within 90 days after establishment of such plan or at the time the plan becomes subject to the legislation.

The information to be disclosed must include information concerning fees and prices; benefits and services of benefit packages; accessibility and availability of services, including the location of facilities, equipment available, hours of operation, practitioners by type and location, and amenities; the name and type of administration of the plan; and a statement of certification by the Commission.

One of the most serious problems currently existing in the health care system of this country is the difficulty consumers experience in trying to obtain accurate information concerning the quality of health services they receive. It is the intent of this title of the bill to make it possible for the consumer to accurately evaluate the costs, quality, and nature of health services he is purchasing, in order to enable him to make informed decisions regarding the services he receives.

In order to better enable the Commission to perform its functions, the National Center for Health Statistics is transferred to the Commission.

The supercession of State law provided for by this bill takes effect only if a provider is certified by the Commission on Quality Health Care. In addition, providers who elect to submit to the jurisdiction of the Commission on Quality Health Care receive a cash payment equal to 2 percent of their gross revenues in order to assist them in defraying expenses associated with quality assurance program implementation complying with the requirements of the Commission.

It is important to point out the fact that under the terms of the bill, any provider of health services, whether or not he is an applicant for grant or loan assistance under the provisions of this bill, may voluntarily submit to the Commission's jurisdiction. If that health care provider is certified by the Commission, he is eligible for the quality health care initiative awards; for exemption from restrictive State legislation, where this is applicable; and for the protection against malpractice litigation which is afforded in the legislation.

To meet the critical need for reform in medical malpractice litigation, this bill authorizes arbitration of medical malpractice disputes as an important alternative approach to meet the needs of both providers of care and patients. Provisions in this bill allow for health maintenance organizations and thier enrollees to agree to submit all medical malpractice claims to arbitration.

Litigation of medical malpractice claims has become a burdensome and unsatisfactory means of achieving a fair result for both the provider of medical care and the patient. Physicians have increasingly become apprehensive as the

insurance rates for malpractice alarmingly increase and the specter of protracted law suits arises ever more frequently.

A study showed that in New York, for example, the usual premium for malpractice insurance in 1950 was $75. In 1967, the premium was $324, or a 332-percent increase. Furthermore, in 1950 the policies generally were for $100,000.

In 1967, 75 percent of the physicians had policies for $200,000 and a sizable minority had $1 million. It is also significant that while the premiums had increased 332 percent, the insurance companies' losses increased by 375 percent. The result has been to have many physicians less willing to risk treatment approaches or procedures which involve any possibility of a malpractice suit.

The present system is also detrimental to the patient. Malpractice insurance is not compulsory, and the patient may not receive compensation for a bona fide claim if the defendant is insolvent and uninsured. The protracted process extending from the patient's first recognition of the possibility of malpractice to the ultimate trial or disposition involves an enormous amount of time and expense for preparation.

Both patient and doctor must await months or years before the case can be tried in court, a considerable burden for both to bear. When the trial begins, the physician must spend long hours in court away from the care and treatment of his own patients. Because of the lengthy delay, the patient may no longer have as great a degree of demonstrable injury from the alleged act of malpractice as originally documented.

In the process, needless ill will is created, and public confidence in obtaining a just resolution is undermined. Patients faced with rules of procedure and evidence in court to prove their claim have emphasized application of legal procedures which increase the likelihood of physician liability. In response to physicians' concerns, States have enacted legislation to limit the scope of malpractice litigation and to provide for physician immunity from liability in certain circumstances.

General frustration with the inherent inadequacies and inefficiencies in present malpractice litigation creating escalating costs and protracted delays has led to alternative approaches. In New Jersey and Pima County, Ariz., there are pretrial screening panels staffed by legal and medical personnel where medical malpractice claims may be voluntarily submitted by both parties for a determination.

The judgment of the panel may be binding if so agreed to by the interested parties. The advantages of this approach are to discourage groundless suits and to expedite the disposition of the claim by possibly avoiding involvement in lengthy legal procedures.

An improvement in the screening panel procedure, and as an alternative to medical malpractice litigation, is arbitration. Agreements between the providers of care and the patients for both to submit malpractice claims to arbitration have worked successfully for the past 20 years at the Ross-Loos Clinic in California. Physicians' insurance premiums in the clinic are 80 percent less than for comparable physicians in the area, and claims are handled expeditiously. A pilot program for arbitration involving nine California hospitals has been in operation 2 years. In that time, 65,000 patients have been admitted, only 41 of whom refused to agree to arbitration on admission. Of the 41, only three refused to sign an arbitration agreement after discharge.

Mr. President, recognizing the need for a major change in the current approach to medical malpractice litigation, I have proposed in this bill a basis for arbitration in lieu of court litigation. Arbitration is the most effective way we can reduce the inflating costs of protracted law suits. This bill provides a better means to settle medical malpractice claims which involve technical questions of fact requiring expert testimony.

In this bill the health maintenance or health service organization may elect to provide an arbitration plan which can equally meet its needs and that of its enrollees. Both may benefit from an expeditious hearing to settle disputes without prolonged controversy. The agreement will be in accordance with the laws of the local jurisdiction. A Federal medical malpractice insurance program is provided for through the Commission on Quality Health Care. The Commission will establish the premium rates and an insurance fund to meet the costs of the program.

I consider this program to be of critical importance not only to deal with the failures of the present malpractice approach, but to provide the Commission with a new and evolving criteria for standards of medical care in this country. The litigation in court of medical malpractice claims has been one method of determining what are relevant standards of medical care. However, the process has been cumbersome and often unproductive. The courts have had to rely on conflicting medical testimony as to what constitutes good medical care.

Standards have been difficult to articulate and have varied from one jurisdiction to another. The availability and credibility of medical expertise and testimony are factors creating variable standards for judgments of medical malpractice claims.

The present malpractice approach has not been able to effectively monitor present health care practice. The use of arbitration will have a greater impact on medical care standards as provided for in my bill. Arbitration will be closely related to the functions of the Commission on Quality Health Care. The Commission will carefully review arbitration proceedings as part of its mandate to develop criteria for health care standards.

Arbitration will provide a more effective and efficient means of settling malpractice claims as well as provide important data for the Commission in evaluating and developing standards for quality medical care.

TITLE V: OTHER LEGISLATIVE AUTHORITIES

Finally, Mr. President, I want to briefly described the last title of this comprehensive bill. Most all of the legislation the Congress has passed which has as its principal purpose reforming the health delivery system is contained within the Public Health Service Act.

Virtually all of those legislative authorities are time limited and expire at the end of every 3-year period; in fact, more than a dozen of those important legislative authorities expire either at the end of June 1972 or at the end of June 1973. Accordingly, the Congress will have to take action to extend and improve these crucial health delivery reform authorities within the very near future. I am convinced that several of these expiring legislative authorities can and should be extended in the context of the general debate on health maintenance organization legislation.

For that reason I have included in title V language which will extend these authorities in consonance with the HMO effort. Needless to say, the legislative authorities which have not been included in this bill are ones which will also be acted upon independently by my subcommittee.

Before I describe each of the individual expiring authorities in some detail, Mr. President, I do want to make some overall general comments. First of all, I want my colleagues to know that the language included in this title of the bill generally extends, without time limit and without specifying authorization levels, the legislative authority for each of these programs. For the most part, no substantive changes in the legislative authorities are included in this bill.

The reason for this is the simple fact that the subcommittee has as yet taken no testimony or developed no legislative record in respect to what the specific nature of improvements or modifications in these authorities should be. Therefore, the committee is open to all points of view regarding the nature of the modifications which need to be made in these important programs. Equally obvious is the committee's need to determine the specific dollar levels which should be included in the bill at the time that it is reported from the committee to the Senate.

Now, I would like to briefly describe each of the authorities which is extended by the bill. Title V of the bill extends section 314 of the Public Health Service Act which encompasses the authority for the comprehensive health planning services program. This important health planning effort is one which the committee will rely heavily upon in terms of bringing additional rationality to the health services delivery system in the country. And in that respect, the bill does make one important substantive change in the authority.

The bill requires that with respect to the approval of assistance under the Hill-Burton hospital construction program, the Secretary of the Department of Health, Education, and Welfare must receive recommendations from the State comprehensive health planning agency

and the area health planning agency recommending approval of such assistance. In addition, the bill requires that the Secretary also be so advised by the appropriate regional medical program authorized under title IX of the Public Health Service Act.

Title V of the bill extends the authority for the National Center for Health Services Research and Development administered by the Health Services and Mental Health Agency of Health, Education, and Welfare. The dozen or so centers around the country funded by the NCHSRD are important instruments in the rationalization of health services generally, and the extension of this authority is crucial in respect to HMO development.

The bill also extends the authority under title VI of the Public Health Service Act of the Hill-Burton hospital construction and modernization program. This effective program, which dates back to 1946, has been significant in making available additional health resources to the American people. The language of the bill in respect to this authority does make two important changes.

First of all, the formula under which the funds are allocated among the States has been altered in order to remove the disproportionate weighting in favor of the smaller, rural States. The provision contained in the bill is identical to the provision contained in the Hill-Burton extension of 1970 which passed the Senate.

In addition, the bill requires that the Secretary obligate grant funds in respect to hospital construction and modernization along with the making of loan guarantees and the granting of interest subsidies. This provision is identical to language which became law last year in the committee's extension of the Health Manpower and Nurse Training Acts.

The bill also extends the authority under title IX of the Public Health Service Act regarding the regional medical programs. The language in respect to RMP broadens the authority under title IX to permit the program to become involved in area health education and service centers as authorized under title III of the bill.

Title V also extends the authority in title VII of the Public Health Service Act with respect to training of allied health professionals. In addition, the bill creates new authority for grants for management training for HMO's, HO's, and the area health education and service centers. This authority enables the Secretary to make fellowships for traineeships in order to enhance the training of persons expert in this area.

Also, the bill includes new authority for the Secretary to support clinical training provided by health maintenance organizations, health service organizations, and area health education and service centers. These grants may be used to cover the cost of health professional schools or schools or nursing as well as HMO's, HSO's, or area health education and service centers for the provision of clinical training including administration and faculty salaries for health professionals practicing in HMO's.

Finally, the bill extends the authority under the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963 in respect to community mental health centers. Other provisions of the bill strive to integrate to the maximum possible HMO's with community mental health activties. In this respect, it is quite important to consider the extension of the community mental health centers legislation at the same time that the committee will be considering this bill.

Lastly, Mr. President, the bill includes a provision which is now contained in the Public Health Service Act but which will expire shortly which assures that funds appropriated by the Congress for the program of the Public Health Service Act and the Mental Retardation Facilities and Community Mental Health Centers Act of 1963 shall be made available for obligation and expenditure by the executive branch of the Government.

Mr. President, this bill is an extensive, complex piece of legislation. However, the activities of the Senate Health Subcommittee over the past year have convinced me that the problems of the delivery of health care to the American people are monumental and complex. They will require bold, imaginative, and innovative measures if they are ever to be solved.

It would be a major disservice to the American people to continue expending ever-increasing amounts of public and private funds for health services without taking the kind of steps which result in a true reform of the way they are delivered. Increasing the health insurance coverage for the people of this country is a futile exercise unless we simultaneously alter the manner in which health care services are delivered. I believe this legislation is a necessary first step in that direction.

I believe this legislation will form the basis for continued hearings into the problems associated with the delivery of personal health services in this country. In considering this bill together with the other HMO bills, the Health Subcommittee fully intends to report meaningful and effective legislation to the Committee on Labor and Public Welfare and, ultimately, to the full Senate.

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

PRIVILEGE OF THE FLOOR

Mr. CRANSTON. Mr. President, I ask unanimous consent that Louise Ringwalt of the staff of the Committee on Labor and Public Welfare be granted the privilege of the floor during this discussion.

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

Mr. CRANSTON. Mr. President, I am particularly pleased to join with the chairman of the Subcommitte on Health (Mr. KENNEDY) in cosponsoring this very important measure, the proposed Health Maintenance Organization and Resources Development Act of 1972.

The leadership the Senator from Massachusetts has shown on this important issue is of vast significance to countless people in our country. I am delighted to be joining him in this effort.

This bill offers a broadly-based approach to resolving the major issues involved in improving the Nation's health care system. Among these issues are:

The need to bring health care within the reach of everyone through a viable organizational structure.

The need to do so without imposing such an undue burden on the Nation's health facilities that they would be unable to withstand or meet the new demands;

The need to make the system more responsive to the patient's and community's needs and viewpoints.

ORGANIZATIONAL STRUCTURE

The bill will meet these challenges through providing the resources to develop three types of organizational entities: The Health Maintenance Organization, the Health Service Organization; and the Area Health Education and Service Center.

First. The Health Maintenance Organization is an entity which would provide comprehensive health care to its members through its own staff, utilizing, where necessary, other health professional organizations or groups for special services. Individuals would enroll in the Health Maintenance Organization by payment of a fixed amount. This amount would be uniform for all members regardless of age, physical condition or preexisting medical history and would provide the same benefits to all members. No differentiation would be permitted as to high option, or low option. The Health Maintenance Organization would operate predominantly in urban areas or suburban areas where there is not a shortage of health personnel, health facilities or other health resources.

Second. The Health Service Organization would be a similar entity operating in a rural or nonmetropolitan community offering comprehensive services similar to those offered by the HMO, with a fixed payment which would be uniform also for all members. However, it would be subject to two variations which would make it especially adaptable to the needs of the medically underserved community. These would be, first, the ability to contract with an individual provider on a fee for service basis as is now practiced by medical foundations; and, second, provision for the Secretary of HEW to permit some flexibility based on the availability of resources and personnel in the scope of services HSO's are required to provide.

There would also be a requirement for a written agreement with an Area Health Education and Service Center for the use of its educational and service facilities and programs.

Third. The Area Health Education and Service Center would generally be a clinical facility, in a rural—nonmetropolitan—area, affiliated with a university medical school or health center, which would also have an agreement with a Health Service Organization or other provider of health care to provide educational services and health care services through its facilities and staff. Its resources would not be limited to an organized HSO, but would be available to all health professionals licensed to practice in the surrounding community.

The definition of "area health education and service center" in the bill needs further study to ensure that, although priority should be given to areas with no such facilities at present, assistance to underserved or other geographical areas would be permitted. These three types of entities would form the nucleus of a system designed to provide services to all those not now covered by present systems or those who seek a more comprehensive coverage than is available to them now. In addition, they would provide the means for training the necessary manpower and demonstrating the new techniques which can expand the ability of our Nation's health resources to meet the steadily increasing demand for services.

One requirement in each of these entities which I feel is vital to the success of these new health care provider systems is the stipulation that every type of health professional be fully involved and actively participate in the organization and development of these organizations and be an integral part of the system when it is operational. I feel experience has demonstrated the value of the psychologist, the clinical pharmacist, the optometrist, and the podiatrist in providing specialized health services to the patient in addition to those provided by the physician, osteopath or dentist.

I also believe these new entities should look to developing a greater role for the nurse as an independent practitioner. As these organizations develop a greater reliance on continuing preventive health care and total care for the post-hospital patient, the nurse offers invaluable skills in bridging the transition between hospital and home and in providing total family care and counseling when one family member becomes ill.

Mr. President, I think it is important to emphasize that the proposal incorporated in S. 3327 is not offered as a substitute for the existing health care system. It is offered rather to complement already existing methods of providing health care and to build upon existing resources in an effort to extend the capacity to serve the public. The Health Maintenance Organizations and Health Service Organizations established under this bill would thus exist side-by-side with the more traditional forms of providing health care services. There would remain ample opportunity for those physicians and other health professionals and consumers who wished to, to continue in the fee-for-service system.

I believe the American health care consumer is searching for health care which will be comprehensive, accessible, and not prohibitively expensive. I believe the health professional is seeking a means of providing care which will insure that the critically sick receive priority consideration, while the rest of the population receives adequate preventive or maintenance care to help insure against the development of serious illnesses or chronic, debilitating conditions.

HEALTH CARE SERVICES UTILIZATION EXPERIENCE

Experience in the past 10 years has indicated wide variations in utilization rates in several forms of health insurance systems. The following tables were developed from experiences of the health plans offered Federal employees and represent utilization, except for maternity benefits, of all employees.

Health plan	All benefits (percent)		Inhospital (percent)		Hospital days per thousand	
	1961–62	1968	1961–62	1968	1961–62	1968
Average	21.5	32.9	9.2	8.9	762.6	835.1
Blue Cross/Blue Shield	16.8	31.8	9.9	9.5	826.2	878.6
Indemnity (Aetna)	16.9	24.1	7.8	8.4	707.9	884.5
Employee organization plans	22.5	29.2	9.8	8.6	729.0	775.1
Group practice	79.7	80.6	5.7	4.8	454.2	418.7
Foundation	79.6	76.0	9.8	6.4	538.0	472.3

These statistics indicate that the greatest utilization of the health system is encountered in both the group practice and the foundation systems of providing coverage. However, these statistics also indicate that this utilization is heaviest in the outpatient or continued care services and considerably less—and decreasing since 1961–62—in the utilization of hospital facilities.

While these figures may not represent any decrease in the overall demand for health manpower services, they do indicate a reduction in both the group practice and foundation plans of the utilization of the more costly care provided in an acute care facility. An accompanying saving is to the patient in days not lost on the job or with his family at home.

Thus, there is good indication that many of the goals of patient and provider can be achieved most effectively through group practice or foundation programs.

THE KAISER EXAMPLE

One of the outstanding examples of the success of prepaid group practice systems is that of Kaiser in California. I can no longer claim Kaiser as a unique California experience, since Kaiser has now successfully established new plans in Colorado and in Ohio. Figures on utilization for Kaiser are strikingly similar to those I indicated earlier for group practice plans. A study by the Health Manpower Commission in 1967 indicated that per capita medical care costs between the years 1960 and 1965, while increasing some 43.5 percent for private consumer expenditures throughout the United States, increased in Kaiser plans in California only 19.1 percent. And even this rise, according to the report, was caused mainly by rising wage rates. During the same period, Kaiser was able to reduce the personnel required per member.

The Health Manpower Commission report stated:

A reasonable conclusion to draw from these data and the evidence that the quality of care is good is that the Kaiser system has been relatively successful in restricting medical services in general, and hospital care in particular, to medically justified situations. It would appear that as medical technology and accepted practice has changed, Kaiser has been able to shift more care to an outpatient basis and reduce lengths of hospital stay for many types of illness. This has resulted in a significant savings in hospital expense per person. It also seems likely that the changes explain at least part of Kaiser's reduction in the number of medical personnel required per member.

In analyzing this conclusion, the report determined that much of the savings achieved were due to the ability of the individual physicians to control the costs of medical care while continuing to provide high quality care. The report concludes:

The Kaiser Foundation Medical Care Program has achieved real economies, while maintaining a high quality of care, through a delicate interplay of managerial and professional interests. This has resulted from structuring economic arrangements so that both professional and managerial partners have a direct economic stake in the successful and efficient operation of the overall program. As a result, there has been created a cost consciousness among the health professionals and a health care consciousness among the administrators which enables them to work toward a common goal without either sacrificing or overemphasizing their own points of view.

INITIAL FUNDING

There is no question, however, Mr. President, that efficiency of service and utilization cannot be provided without a major initial investment in funds and in manpower. Kaiser's experience again bears this out. Their success has been achieved only through substantial investments in money and personnel over a long period of time.

I am sure one of the first questions that will be raised is, "What will enable these new entities to be viable"? This is a question to which we have addressed ourselves and on which we have sought a great many views. The Health Subcommittee has already held over a dozen days of hearings on HMO legislation. Obviously, the investment necessary in HMO's and HSO's will be great both in terms of financing and in terms of health manpower, both very scarce resources.

This bill provides a means of meeting both these requirements. First, it would provide for substantial financial support under appropriate safeguards aimed at insuring the adequacy, continuity, and quality of the health services provided by the organization.

This support will be available through either grants or interest-subsidized loans for the first 3 years of operation to help the nonprofit organization plan, develop, and meet the initial operating expenses of providing comprehensive health services to its enrollees. Nonprofit HMO's accepting and meeting the quality of care standards would be eligible for guaranteed loans.

Provision is also made for annual grants to those organizations serving persons who cannot meet the expenses of the payments. Such grants would be made under regulations insuring that the organization is soundly organized and fairly representative of the population of the total community. There are to be no "ghetto" HMO's supported by the bill. Except in rural areas, no more than 50 percent of enrollees are to reside in medically underserved areas. The goal is one standard of care for high-, middle-, and low-income patients.

MEETING MANPOWER NEEDS

Another major purpose of the bill is to provide for meeting the manpower

shortage through the development of area health education and service centers. The health manpower shortage has several aspects: First, the basic shortage in numbers of trained manpower; second, the geographic maldistribution of trained manpower; and, third, the poor utilization of the skills of scarce health personnel.

Area health education and service centers will approach the manpower shortage with respect to each of these aspects. By providing thec linical facilities for community health manpower training institutions and through linkages with university medical centers, they can increase the capacities of those institutions to train—and to train more relevantly—greater numbers of students. Since it has been documented that health professionals tend to practice in the communities in which they served their residencies, the area health education and service centers, through their residency programs, hopefully, will attract young professionals to train in the rural or nonmetropolitan community and then to remain in the community upon completion of their residencies.

These centers can also provide a unique opportunity for innovations in the development of new types of professionals and for the team training of professionals. They will provide an incentive for the utilization of the more highly skilled paraprofessionals in taking on many of the duties of the professional, leaving the professional more time to concentrate on those aspects of medicine requiring highly trained special skills. The association of these centers with Health Service Organizations and Health Maintenance Organizations will provide a natural opportunity for employment of the more skilled paraprofessionals as well as for trainees entering at the lower levels of the health career ladder.

HEALTH MANPOWER TRAINING AT VA HOSPITALS

Establishment of these types of centers was one of the recommendations of the Carnegie Commission Report on Higher Education and the Nation's Health. That report recommended the affiliation of these centers with regional medical programs and with hospitals having underutilized health manpower training resources. I have incorporated these recommendations in S. 2219, a bill I introduced in the first session of this Congress and which is currently under consideration in the Veterans' Affairs Committee, having been reported from the Subcommittee on Health and Hospitals on February 16. S. 2219 would bring about greater utilization of Veterans' Administration hospitals in the training of health manpower both for the needs of the Veterans' Administration and for the needs of the Nation. S. 2219 provides for the establishment and strengthening of area health education centers—as well as health professions schools and allied health professions schools—utilizing the Veterans' Administration hospital as a clinical training center. Indeed, steps have already been taken by the Veterans' Administration to survey the potential for, and begin the development of a number of such centers in affiliation with VA hospitals, with very promising results.

I feel the bill and S. 2219 will be complementary to the mutual advantages of veteran patients and the community. I have long felt that this system of 166 hospitals, which for years has provided training for a large portion of our health professionals, and has provided outstanding leadership in both clinical basic research as well as providing hospital care to millions of veterans each year offers a tremendous potential to the Nation as a medical resource.

ROLE OF REGIONAL MEDICAL PROGRAMS

Another potential resource for the development of area health education and service centers is the regional medical programs. In my State of California we have one of the outstanding regional medical programs in the Nation. As I indicated earlier, this bill would seem to define such centers too narrowly and probably needs to be revised in order to utilize area health education and service capacities as effectively as possible. That program has surveyed the State and has concluded that within a half year of adoption of enacting legislation, between 12 and 16 sites for area health education and service centers could be designated. In some cases, the director of the program reports, enthusiasm has been so great that implementation could be undertaken immediately. This implementation could be accomplished immediately in the following areas: San Fernando Valley, Fresno, south central Los Angeles, San Diego, San Joaquin County, and Santa Rosa. Other sites which offer great potential are in Contra Costa County, Alameda County, northeastern California, southeastern and trans-Sierra California, and Orange, Santa Cruz, and Santa Clara Counties.

Mr. President, I ask unanimous consent to set forth at the end of my remarks, excerpts from a paper prepared by the California regional medical program listing these potential sites in more detail.

RESPONSIVENESS TO PATIENT AND COMMUNITY NEEDS

Each health maintenance organization and health service organization must be organized in a way to assure its members a substantial role in policymaking for the organization as well as meaningful procedures for presenting and resolving grievances. The bill provides for priority support to these organizations whose policymaking body has a majority representation of consumers. Each organization must also provide for health education services for its enrollees. With respect to assistance to HMO's priority would be given to those with 30 percent of their memberships from medically underserved populations in the community—no more than 50 percent of an HMO membership may be from that same population segment except in rural areas designated by the Health, Education, and Welfare Secretary. The bill also provides for periodic open enrollment periods where applicants must be accepted on a first-come-first-enrolled basis.

Mr. President, I believe the consumer role and consumer services provided for in HMD's and HSD's can and should be even greater than the excellent provisions presently in the bill, and I plan to work with Senator Kennedy to strengthen and expand this aspect.

QUALITY CONTROL

A vital component of S. 3327 to the consumer is the establishment of the Commission on Quality Health Care. The members of this Commission would be presidentally appointed with the advice and consent of the Senate, and would represent the providers of health care, private organizations involved in developing health care quality standards which may be applicable on a national basis, and consumers. More specificity needs to be written into the bill to insure that the Commission members will be truly representative. The Commission's task would be to develop health care standards and prescribe quality control systems for Health Maintenance Organizations and Health Service Organizations. An entity receiving grants, loans, or incentive awards under the provisions of the Public Health Service Act new title XI proposed by S. 3327 would be required to comply with the health care standards and quality control systems prescribed by the Commission.

Thus, the patient would be assured of receiving quality care in an HMO or HSO supported by the authorities of this bill. Other organizations could voluntarily submit themselves to the Commission's jurisdiction.

They would be provided an incentive to do so by provisions which offer coverage of liability for medical malpractice for any providers of health care complying with the quality standards promulgated by the Commission and having agreements with their patients to submit medical malpractice claims to binding arbitration.

CONCLUSION

The provisions I have cited form the nucleus of the bill. As this legislation proceeds through the legislative process, it will be improved as testimony is provided indicating how the purposes of the bill can be achieved more effectively.

Such major legislative proposals, as incorporated in this bill, will necessarily affect the other authorities of the Public Health Service Act, and we shall be considering means of integrating the programs established under those authorities more effectively into the system offered by this bill of providing quality consumer oriented health care. It is for this reason that the bill includes extensions to certain major provisions of the Public Health Service Act—such as regional medical programs, comprehensive health planning, allied health training, Hill Burton construction, National Center for Health Services Research and Development—as well as the mental retardation facilities and Community Mental Health Centers Construction Act.

I have been extremely gratified with the responsiveness of Senator KENNEDY to suggestions for modifications in S. 3327 and have worked with him closely in preparing this legislation. I am confident the bill will be further strengthened as hearings develop justification for additional changes.

There are three areas of the bill that

I plan to investigate very closely—in addition to expansion of the consumer role and redefinition of the "area health education and service center"—with a view toward offering amendments. These areas are as follows:

First. Providing that HMO's must make special efforts to enroll migrant workers and requiring that a nonresident HMO enrollee temporarily residing in another area must be provided treatment by a federally assisted HMO in that area and also that such HMO enrollees who change their residence must be given first priority for admission to a federally assisted HMO in the area to which they move, as soon as that HMO has a space available.

Second. Requiring that "preventive health services" in HMO's and HSO's, include provision of family planning inforing—where appropriate—and nutrition education services.

Third. Requiring that HMO's utilize clinical pharmacists to the greatest practicable extent, in drug abuse and alcoholism programs, general inpatient and outpatient care, and the dispensing, monitoring and evaluation of medication dosages.

S. 3327 offers a basic framework for modernizing and making more effective the Nation's health systems. Senator KENNEDY has provided outstanding leadership and courage in presenting this program to the Congress. It will generate a healthy discussion of health issues and philosophies of health care which I believe will enlist the energies of the best minds and talents in the Nation to seeking a better, more responsive and responsible system of health care for all.

I thank Senator KENNEDY and his staff for their cooperation and congratulate them for the highly innovative bill introduced today and which I am privileged to join in sponsoring.

I ask unanimous consent to have printed in the RECORD excerpts from a paper offered by California regional medical programs.

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

EXCERPTS FROM PAPER OFFERED BY CALIFORNIA REGIONAL MEDICAL PROGRAMS ON LOCATION OF AREA HEALTH EDUCATION CENTERS IN CALIFORNIA

Because of its inherent complexity and because it cannot depend on any single source for organizing strength, the AHEC concept lends itself particularly to the idea of a consortium, set up in the pattern already demonstrated repeatedly by the regional medical programs, which brings together groups of schools, or groups of hospitals and clinics, or groups of both, working out of a central office of their own.

POTENTIAL SITES

A preliminary survey and series of discussion in all parts of California conducted by RMP strongly suggests that within half a year from the passage of legislation on AHEC's, between 12 and 16 sites for local programs could be delineated. In fact, the speed with which the idea has been embraced in some places is startling. Much preliminary work was already done, under sponsorship by RMP and related agencies, so that in six instances in California, the AHEC could set out on its organizational course at once.

1. *San Fernando Valley.* A health consortium is already in existence under the leadership of Dr. Addie Klotz, director of student health services for the San Fernando Valley State College. The consortium relates to RMP projects directed by California RMP Area IV. Relationships have also been maintained with RMP Area V, and, through the two area offices and personnel, with UCLA and USC medical centers. The consortium has brought together a number of hospitals ready to assume teaching functions. With them are representatives of medicine and nursing and the other key health professions. Schools ready to participate in an AHEC are the San Fernando Valley State College itself, and several two-year community colleges. A number of hospitals which have increased in size and medical staff strength in recent years the work of the existing consortium is promising for an AHEC.

2. *Fresno.* The community, from private groups to the Mayor's Office, has long been eager to increase the health training capacity of the central San Joaquin Valley around Fresno. A strong teaching base is provided by Fresno State College and related institutions. Several hospitals, including the VA facility, can provide the needed clinical base. The medical community of Fresno, in spite of considerable distances, has maintained links with several university medical centers. These have been systematically developed through the district organization and a number of operational programs of the California RMP through its Area IV and UCLA.

3. *South Central Los Angeles.* The health needs of the inner city, with its concentration of minority groups, have been documented. A development of national importance has been the establishment of the Drew School for medical training in South Central Los Angeles. The Drew School is already a training base for allied health professions. The King Hospital offers an admirable clinical center. Also of great importance is the neighborhood health center established earlier a few blocks away from the Drew School and the King Hospital. South Central Los Angeles could be an immediate organizing site for an AHEC.

4. *San Diego.* Somewhat resembling the San Fernando Valley health consortium is a coordinating council for health education set up in San Diego county under the leadership of the medical school of the University of California at San Diego and California RMP's Area VII. This council, too, already exists and can be turned to account with minimum delay in the creation of an AHEC. A number of hospitals in San Diego are candidates for inclusion in the AHEC and clinical teaching sites. The community mix in San Diego also promises cooperative action reaching all ethnic groups. Favorable, too, is a geographic cohesiveness which has promoted joint activity between RMP and the local office for Comprehensive Health Planning.

5. *San Joaquin County.* Further to the north, around Stockton, is another immediately favorable situation for the launching of an AHEC. Here a private instiution of higher education, the University of the Pacific, has long been ready to increase its reach into health professional training. The local medical community has sponsored a number of forward looking programs. Not only hopsitals, but a significant new ambulatory care center, which will provide service for, among others, migrant farm workers, can provide a clinical base. First discussions of an AHEC have already been carried out between local health leaders and the California RMP (Area III—Stanford).

6. *Santa Rosa.* Santa Rosa has long been a center for residency training for physicians with a strong push toward family practice of medicine. In the last five years, support for this concept has come from Area I of the California RMP. This preliminary work, again in the presence of a cluster of schools including the 4-year Sonoma State College, promises a base for quick and vigorous development of an AHEC.

A number of other possible sites for AHEC's could be listed. The ones named above are simply those in which substantial preliminary work has already been done, promising speedy establishment of functioning AHEC's. Other possible sites, where, for example, other California RMP area offices have been at work, include:

At least two other sites in the San Francisco Bay Area are being examined by Area I at Richmond, perhaps, and in Oakland or Berkeley;

Matching the dispersed features of population and health installations, RMP Area II visualizes a large scale consortium for northeastern California organized from an office at Davis, with the cooperation of the University of California campus there.

A similar consortium, based on Loma Linda University, is seen developing out of California Area VI, for the benefit of southeastern and trans-Sierra California.

In Orange County, with cooperative links reaching into the Long Beach Area, California RMP Area VIII is also assembling the key units for an AHEC, with the help of the medical campus of the University of California at Irvine.

Within Los Angeles, work done by California RMP Areas IV and V indicates another three or four AHEC sites can be established.

In Santa Cruz and Santa Clara Counties, AHEC's may also be established through existing institutions and health professional groups in conjunction with California Area III.

Mr. KENNEDY. First, I wish to thank the Senator from California for his contribution to the development of health legislation. He has been one of the most active and interested members of the committee. California, of course, has so many areas of excellence in the health community and has been the site of many imaginative approaches in a wide variety of different areas of health. I am sure this legislation will benefit from Senator CRANSTON'S deep personal interest and dedication. I want to thank him and also the Senator from Minnesota, who has been very interested in all health matters and has contributed greatly to an understanding of the health crisis.

Mr. CRANSTON. I thank the Senator very much. I wanted to express my great thanks to him for his cooperation and that of his staff in this effort, for providing leadership, and for the introduction of this very innovative bill.

Mr. MONDALE. Mr. President, I thank the Senator from Massachusetts.

PRIVILEGE OF THE FLOOR

Mr. MONDALE. Mr. President, I ask unanimous consent that Mr. Herbert Jasper may be permitted to remain on the floor during this discussion.

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

Mr. MONDALE. Mr. President, I understand our time is very short, but I wanted to express my appreciation and admiration to the Senator from Massachusetts for the development of this excellent proposal, known as the Health Maintenance Organization and Resources Development Act of 1972. I think it reflects the high degree of sophistica-

tion which has been developed by the Senator, and by the committee, as the result of some of the most sweeping and intensive hearings ever held in the history of this body.

I think it may well be one of the most significant pieces of health legislation considered by the Congress in this decade. Proposed national health insurance legislation addresses itself, primarily, to the financing of health care. This legislation is addressed to the equally important problem of delivering that care to the people.

The bill should make it possible to achieve the objective noted by the President of making health maintenance organizations available throughout the United States. Unfortunately, the legislation proposed by the administration to support that objective has been found, through extensive hearings, to fall short of the mark. This bill should give us the mechanisms to make the growth and development of health maintenance organizations a reality.

I am especially pleased to be a cosponsor of this bill for two reasons. First, the Institute of Interdisciplinary Studies, in my own State of Minnesota, has been a leading force, if not the leading force, in the development for the health maintenance organization "strategy." This organization, headed by my good friend, Dr. Paul Ellwood, was instrumental in persuading the administration to adopt the health maintenance strategy. Since then, through testimony before the Health Subcommittee, and in consultation with members and staff of the subcommittee, Dr. Ellwood and his excellent interdisciplinary team have provided an invaluable resource in developing the approach which is reflected in this legislation.

I am also pleased that the bill reflects the substance of my proposed Community Medicine Act of 1971, S. 1301. My bill seeks to engage medical schools and teaching hospitals in the delivery of health services to under-served populations through health maintenance organizations. Thus, it has two objectives: To improve the quality and relevance of medical education, and to improve the level of services to those whom the present delivery system has left behind. The provisions for area health education and service centers in the new bill should achieve the same objectives. Perhaps most significantly, this new bill will make it possible for high quality, comprehensive, medical services to be brought to citizens in our rural areas who have increasingly been denied such care.

I am greatly encouraged by the possibility that enactment of this legislation will contribute to the control of health care costs. As we all know, these have been skyrocketing. Experts agree that group practice, emphasizing preventive care and early detection of disease, can help to cut the costs of medical care, while not sacrificing quality.

The bill also provides for a significant innovation in the form of a quality health care commission. This commission should be able to lead the way in the development of new measures and standards to monitor and improve the quality of care. The Institute for Interdisciplinary Studies in Minneapolis contributed significantly to the development of these features in the bill.

There is a rapidly growing consensus on the advantages of using health maintenance organizations as a means for delivering health care. A brief survey of the experience under one such plan, in Columbia, Md., and of the legislative situation was printed in the Minneapolis Tribune a few months ago. I ask unanimous consent that the article be printed in the RECORD.

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

[From the Minneapolis Tribune, Aug. 8, 1971]

"NEW MEDICINE" TESTING HEALTH CARE ALTERNATIVE

(By Richard P. Kleeman)

COLUMBIA, MD.—"They're good doctors," the young mother said, wrapping up her view of the "new medicine" practiced in this growing "new town" under a prepaid family health care plan.

A psychologist and early member of the two-year-old Columbia Medical Plan, she chatted with a reporter while supervising her three youngsters at play in a village-square sandbox:

"They discovered a condition in one of my kids that put him on constant medication. We travel a lot and he gets strange injections—but all our bills are covered."

From her librarian's desk, a mother of four also talked about the medical plan: "I had major surgery last fall and got excellent care, but I also feel it's preventive medicine, and I've always believed in that. You can have a physical without being afraid of a cost that floors you."

Her child's hay fever medicine and her own contraceptive supplies, bought through the clinic, cost less than half of drugstore prices, she said.

And a young recreation worker—calling the plan "a Godsend to new parents"—said major surgery on varicose veins in both legs, cost him all of $4 at the Baltimore, Md., hospital of Johns Hopkins University, which sponsors the Columbia plan.

But at Columbia's subsidized housing project there was another kind of reaction: The mother of two youngsters, separated from her husband, said, "I'm all for the plan, but it's too expensive right now."

The monthly charges found excessive by these hard-pressed families were recently raised to $15 for individuals and $51 for a family of more than two members. The monthly premium for two-member families has just been cut from $43.60 to $30.

"Sure, some people in the low- and mid-income scale would find those premiums high," admits William P. Towle, 39, a St. Paul native who trained in hospital administration at the University of Minnesota and now administers the Columbia plan.

"But if you compare the costs of medical care, you find annual per capita costs relatively the same in or outside the plan—roughly $600 per family—so it becomes a matter of how the dollar is used."

At Columbia, the medical plan dollar buys doctor care—general and specialized, except for dentistry and prolonged psychiatry—on a round-the-clock basis. It also buys coverage while away from home and, pending completion of the first section of a planned 180-bed hospital in Columbia, hospitalization plus additional specialist care at Hopkins' hospital in Baltimore.

Depending on which version of the plan they use, subscribers pay $2 per clinic visit—or nothing. Drugs generally runs $2 per prescription.

The plan is offered only to groups through their employer's health insurer, but the 14,000-plus residents of Columbia, located between Baltimore and Washington, D.C., constitute a "group." About half have chosen to join the medical plan, along with another 75,500 nonresidents.

Towle expects membership to hit 15,000 next June and the plan to start breaking even not long afterwards.

The Columbia plan, with which Towle has been associated since its planning stages in 1966 and which he has run since 1969, is testing many things for many interested onlookers.

The Nixon administration, as well as every member of Congress concerned about the national health care crisis—i.e., most of them—are watching plans like Columbia's.

For virtually every broad-gauge national health proposal—including those of Minnesota Senators Walter Mondale and Hubert Humphrey—provides for some form of government support for prepaid group health plans, which the administration calls HMOs (health maintenance organizations).

"The way health care is financed today works against the consumer's interest," declared a 1970 study made for the administration by the Health Services Research Center of the American Rehabilitation Foundation in Minneapolis.

Since payment traditionally has been based on the number of doctor-visits and hospital days used, the greater the number of such visits and days, the greater the reward to the provider, the study pointed out, adding:

"The consumer, unable to judge his own treatment needs, pays for whatever he is told he needs."

In contrast, the Minneapolis study suggested a "health maintenance strategy" aimed at a "highly diversified, pluralistic and competitive health industry."

Under such an approach, HMOs of various types would be paid annual fees to keep people healthy—as well as to care for them when sick.

Mr. Nixon clearly accepted these arguments. In his "national health strategy" message last February, he restated points from the Minneapolis report and emphasized that for the seven million Americans enrolled in HMOs, "studies show they are receiving high quality care at a significantly lower cost—as much as one-fourth to one-third lower than traditional care in some areas.

"They go to hospital less often and they spend less time there when they go," the President added.

"Patients and practitioners alike are enthusiastic about this organizational concept. So is this administration."

He proposed—and Congress is still debating—making HMO membership available, where possible to every health plan subscriber; providing up to $23 million initially to aid in planning some 163 new HMOs—118 of them in areas now unserved medically—and allocating $300 million in federal loan guarantees for building HMO clinics and meeting start-up deficits.

The President also proposed a model law for adoption in the 21 states where—under past pressure from the organized medical profession—laws restrict group medical practice.

(The University of Minnesota has been mentioned among many organizations contemplating establisment of an HMO, and the Nicollet Clinic and Eitel Hospital announced plans to cooperate on such a plan.)

Towle admits to some uncertainties about the best financing mix for HMOs, but is convinced, for both personal and professional reasons, of their underlying soundness.

With his employer paying half the monthly premiums for his family—a wife and four daughters—Towle said he had less than $50 out-of-pocket expense for routine medical

care last year, on top of his $300 half-share in the premium. His wife's major surgery cost him nothing. He recognizes that—despite an 87 percent favorable reaction to Columbia's plan from its members in a recent survey—some subscribers feel smaller families should not subsidize larger ones. A three-rate structure is under review, he noted.

But the prepaid plan basically aims at taking care of what Towle calls "gray-zone people": Those of middle-income, neither old enough to be eligible for Medicare nor poor enough to qualify for Medicaid.

Some such people, he said, buy no medical insurance, taking a chance their families won't get sick.

"But if they lose, those who gamble that way can lose awfully hard," Towle observed.

The administration's "national health insurance partnership"—which supporters of full-scale national health insurance call inadequate—proposes that all employers must provide their employees with basic health insurance coverage. An employee could have the option of using his employer's contribution toward membership in an HMO.

Some such plan, Towle said, would begin to take care of working "gray-zone people"—but there still would need to be government subsidy, as the administration has proposed, for the low-income self-employed and for the unemployed.

Of Columbia's fast-growing plan, which looks toward an eventual enrollment of 100,000, Towle says, "It may seem like socialism to some—but what we're doing is simply pooling our resources."

Mr. MONDALE. Mr. President, we have a similar plan operating very successfully in St. Paul, Minn., and another excellent plan serving the northern Minnesota communities of Hibbing and Virginia. The experience in our State amply justifies the reliance that this bill places on health maintenance organizations as an important contribution to improved health delivery.

Mr. President, I believe this is an outstanding bill. I am proud of my contribution and that of a number of outstanding Minnesotans to it. I hope and trust the bill will be acted on promptly. Once again, I wish to express my admiration and respect for the very significant work in the field of health represented by this measure offered by the Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I want to comment upon the legislation the Senator mentioned, S. 1301. It would provide assistance to medical schools that relates in a substantial way to the delivery of health care. That feature of his bill has been incorporated into the HMO legislation.

There is no reason in the world not to encourage medical schools to move into this area and to provide the kind of expertise, research, and training that only they can. We have included this feature of S. 1301 in the bill, and I think as a result it will provide the kind of additional assistance to medical schools which will bring new energy into HMO's and into the delivery of health care.

I wanted to acknowledge the very substantial contribution of the Senator from Minnesota in this area and thank him for his comments.

Mr. President, I ask unanimous consent that the bill be referred to the Committee on Labor and Public Welfare, and that if and when the bill should be reported, that it be referred to the Committee on Finance for that committee's consideration of any provisions relating to trust funds, and so forth, which might fall within the jurisdiction of the Finance Committee if the Finance Committee so desires.

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

Mr. KENNEDY. Mr. President, I ask unanimous consent that a very splendid statement by the distinguished Senator from Washington (Mr. MAGNUSON) be printed in the RECORD as a comment on the legislation.

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

STATEMENT BY SENATOR MAGNUSON

Mr. President, I am pleased to add my support to the Health Maintenance Organization and Resources Development Act of 1972 which the distinguished Chairman of the Senate Health Subcommittee (Mr. KENNEDY) is introducing today. Senator Kennedy once more deserves commendation for his continuing efforts to focus national attention upon the health care crisis in America.

I view this bill not as a finished legislative product but rather as an extremely valuable working paper, a springboard for serious Congressional consideration of the complex issues involved in the delivery of health care. Hopefully, out of this deliberation will come answers to some of the problems that now hinder the delivery of health care.

How can we re-orient health care so that more emphasis will be placed on preventing illness as opposed to just treating its ravages? How can we overcome the maldistribution of health care resources which now denies care to millions of Americans living in rural areas and in inner-city neighborhoods? How can we maximize the use of every health care dollar so that all Americans can receive maximum-quantity health care at minimum cost? These are just some of the questions which must be answered if the dream of quality health care for all is ever to become a reality.

As Chairman of the Health Appropriations Subcommittee, I am committed to translating that dream into reality. That is why I have consistently urged the Congress and the Administration to increase federal expenditures on health research, health manpower training, health facilities construction and the direct delivery of health care to those who would otherwise go unattended. That is why I introduced the National Health Service Corps Act in the 91st Congress and why I have introduced both the Children's Dental Health Act and the Children's Catastrophic Health Care Act in the 92nd Congress.

For the same reason, Mr. President, I joined as one of the original co-sponsors in supporting the National Health Security Act when Sen. Kennedy first introduced it in 1970. That bill has spurred a wide-ranging debate in Congress and throughout the nation about the best methods for financing health care. Hopefully, the Health Maintenance Organization and Resources Development Act of 1972 will spur a similar national debate over the delivery of health care. Out of that debate, hopefully, will come answers to some of our health care delivery problems. And out of all our efforts will come, hopefully, the day when quality health care for all will be a reality rather than just a dream.

Mr. KENNEDY. Mr. President, I ask unanimous consent to have printed in the RECORD a section-by-section analysis, together with the text of the bill.

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

S. 3327

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 "Health Maintenance Organization and Resources Development Act of 1972".

SEC. 2. (a) The Congress finds that—

(1) there is a shortage and maldistribution of quality health care resources which has resulted in limited access to quality health care in the United States;

(2) the present health care system is not organized in a manner which encourages the efficient and economical provision of quality health care;

(3) the present health care system is oriented toward providing care to those manifesting disease, rather than toward providing health maintenance services and maintaining good health;

(4) the establishment of health maintenance organizations, health service organizations, and area health education and service centers will aid in alleviating the maldistribution of health care resources, in providing health care in a more efficient and economical manner, and in reorienting the health care system toward the maintenance of health;

(5) there is a need to provide technical assistance and resources to individuals and groups, undertaking the planning, development, and initial operation of health maintenance organizations, health service organizations, and area health education and service centers;

(6) there is a shortage of educational facilities in health sciences, unbalanced emphasis on hospital practice and on rare and exotic diseases in medical education; and

(7) there exists an excessive variance in the quality of health care and health services.

(b) The purpose of this Act is to assist in improving the system for the delivery of health care through encouragement of and support for the planning, development, and initial operation of health maintenance organizations, health service organizations, and area health education and service centers, particularly with the intent of improving the health of populations in medically underserved areas.

TITLE I—HEALTH MAINTENANCE ORGANIZATIONS

SEC. 101. The Public Health Service Act is amended by inserting after title X the following new title:

"TITLE XI—HEALTH MAINTENANCE ORGANIZATIONS AND HEALTH SERVICE ORGANIZATIONS

"PART A—SUPPORT OF HEALTH MAINTENANCE ORGANIZATIONS

"DEFINITIONS

"SEC. 1101. For purposes of this title:

"(1) The term 'health maintenance organization' means an entity which—

"(A) provides as a minimum for all its enrollees (or subscribers) comprehensive health services (as defined in this section) which are uniformly available to all its enrollees (or subscribers) directly through its own staff and supporting resources or through a medical group or groups and such other additional services as may be required through other health delivery entities, for a fixed payment which (i) is to be paid on a periodic basis without regard to the frequency, extent, or kind of health service actually furnished to any particular enrollee; and (ii) is uniform for all its enrollees;

"(B) demonstrates to the satisfaction of the Secretary ability to assure that appropriate comprehensive health services are

available and accessible to all its enrollees promptly and in a manner which assures continuity;

"(C) demonstrates to the satisfaction of the Secretary financial responsibility through proof of adequate provision against the risk of insolvency;

"(D) is organized in such a manner (as prescribed by regulations of the Secretary) that assures its members a substantial role in the making of policy for the health maintenance organization, with equitable representation of members from medically underserved areas, and provides meaningful procedures for hearing and resolving grievances (i) between its enrollees and the health maintenance organization (including the medical group or groups and other health delivery entities providing health services) and (ii) between the medical group or groups providing health services and other employees and the health maintenance organization;

"(E) encourages and actively provides for its enrollees (i) health education services, and (ii) education in the appropriate use of health services provided;

"(F) has organizational arrangements, established in accordance with regulations of the Commission on Quality Health Care (established under title IV of this Act) for an ongoing quality assurance program which stresses health outcomes and assures that health services provided meet the quality standards established in accordance with regulations of the Commission on Quality Health Care;

"(G) provides, in accordance with regulations of the Secretary (including safeguards concerning the confidentiality of the doctor-patient relationship), an effective procedure for developing, compiling, evaluating, and reporting to the Secretary, data (which the Secretary shall publish and disseminate on an annual basis) relating to (i) the cost of its operations, (ii) the patterns of utilization of its services, (iii) the availability, accessibility, and acceptability of its services, and (iv) such other matters as the Secretary may require and disclose at least annually and in a manner acceptable to the Secretary, such data to its enrollees and to the general public;

"(H) except for (i) out of area emergency care, and (ii) care reasonably valued in excess of the first $5,000 per member per year, assumes full financial responsibility, without benefit of insurance, on a prospective basis for the provision of the comprehensive health services defined in this section;

"(I) subject to the requirements of paragraph (K), has an open enrollment period (of not less than thirty days) at least once during each consecutive twelve-month period during which it accepts individuals in the order in which they apply for enrollment up to its capacity as determined by the Secretary;

"(J) assumes responsibility for the provision of health care services to its enrollees twenty-four hours a day, seven days a week, as may be appropriate and for the prompt availability of such services in emergencies;

"(K) shall enroll no more than 50 per centum of its members from medically underserved areas, except in rural areas as designated by the Secretary;

"(L) provides, or makes arrangements for continuing education for its staff;

"(M) emphasizes the use of physician's assistants, dental therapists, nurse practitioners, and other allied health personnel;

"(N) meets such other criteria for its organization and operations as the Secretary may by regulation prescribe, consistent with the provisions of this title; and

"(O) does not refuse enrollment to or expel an enrollee for any reason concerning his health status or requirements for the provision of health services.

"(2) The term 'comprehensive health services' means health services, provided without limitation as to time or cost, as follows: (A) physician services (including consultant and referral services); (B) inpatient and outpatient hospital services; (C) extended care facility services; (D) home health services; (E) diagnostic laboratory, and diagnostic and therapeutic radiologic services; (F) physical medicine and rehabilitative services (including physical therapy); (G) preventive health and early disease detection services; (II) vision care and podiatric services; (I) reimbursement for expenses incurred for necessary out-of- area emergency health services; (J) mental health services (including drug abuse and alcoholism), utilizing existing community mental health centers on a priority basis; (K) dental services (including preventive dental health services to children); (L) provision of, or payment for, prescription drugs; and (M) such other additional personal health services as the Secretary may determine are necessary to insure the protection, maintenance, and support of human health.

"(3) The term 'medical group' means a partnership or other association or group of not less than four persons who are licensed to practice medicine, osteopathy, or dentistry in a State and who (A) as their principal professional activity engage in the coordinated practice of their profession as a group responsibility; (B) if not employees or retainees of a health maintenance organization, or health service organization, pool their income from practice as members of the group and distribute it among themselves according to a prearranged salary or drawing account; (C) jointly use or share medical and other records, and substantial portions of major equipment and professional, technical, and administrative staff (D) share or jointly utilize such additional health professionals and allied health professionals which may include but are not limited to psychologists and other mental health workers, optometrists, podiatrists, dental therapists, physicians' assistants, nurse practitioners, and nurse midwives, as are needed to provide comprehensive health services; and (E) arrange for and encourage the continuing education of their members in the field of clinical medicine and related areas.

"(4) The term 'enrollee' when used in connection with a health maintenance organization or health service organization (as defined in part B) means an individual who has entered into a contractual arrangement, or on whose behalf a contractual arrangement has been entered into, with a health maintenance organization or a health service organization under which such organization assumes the responsibility for the provision of health services to such individual.

"(5) The term 'medically underserved area' means an urban or rural area or population group designated by the Secretary as an area or population group with a shortage of personal health services. Such a designation may be made by the Secretary only after consideration of the comments, if any, of (A) each State comprehensive health plannnig agency designated pursuant to section 314(a) of this Act, covering, in whole or in part, such area, (B) each areawide comprehensive health planning agency designated pursuant to section 314(b) of this Act, covering, in whole or in part, such area, and (C) regional medical programs established pursuant to title IX of this Act.

"(6) The terms 'construction' and 'cost of construction' include (A) the construction of new buildings, and the acquisition, expansion remodeling, replacement, and alteration of existing buildings, including architects' fees, and acquisition of land, and (B) equipping new buildings and existing buildings, whether or not acquired, expanded, remodeled, or altered with assistance under this title.

"(7) The term 'university health center' means those health care institutions which are owned and operated by a university or college of medicine or which have a written affiliation arrangement with a university or college of medicine for the purpose of educating undergraduate medical students.

"(8) The term 'area health education and service center means a hospital, educational facility, or other public or private nonprofit entity affiliated with a university health center for the purpose of providing clinical training in a nonmetropolitan area (other than an area presently served by a university health center) which—

"(A) has an agreement with a health maintenance organization or health service organization (if such an organization exists within the geographical area served by such center) to provide education services to, and health care services through such organization;

"(B) has an agreement with other providers of health care to provide education services to, and health care services through such center; and

"(C) provides, to all licensed health professionals in the geographic area which it serves, equal opportunity to use its facilities and programs.

"(9) The term 'non-metropolitan area' means an area no part of which is within an area designated as a standard metropolitan statistical area by the Office of Management and Budget, and does not contain a city whose population exceeds fifty thousand persons.

"GRANTS FOR PLANNING AND FEASIBILITY STUDIES

"SEC. 1102. (a) The Secretary may make grants, subject to the general provisions of this title, to public or private nonprofit agencies, organizations, or institutions to assist in projects for planning or studying the feasibility of developing or expanding health maintenance organizations. No project may receive more than $250,000 in grants under this section. Funds awarded under such grants shall be available for expenditure by the grantee for such period (not to exceed two years from the date of award) designated by the Secretary.

"(b) In making grants under this section the Secretary shall give priority to those applicants who give assurances that at least 30 per centum of their total enrollment shall be persons from medically underserved areas.

"(c) There are authorized to be appropriated to carry out the provisions of this section; $15,000,000 for the fiscal year ending June 30, 1973; $21,000,000 for the fiscal year ending June 30, 1974; $40,000,000 for the fiscal year ending June 30, 1975; $62,000,000 for the fiscal year ending June 30, 1976; and $85,000,000 for the fiscal year ending June 30, 1977.

"GRANTS FOR INITIAL DEVELOPMENT COSTS

"SEC. 1103. (a) The Secretary may make grants, subject to the general provisions of this title, to any public or private nonprofit agencies, organizations, or institutions, to assist it in meeting the costs involved in a project for the initial development of a health maintenance organization prior to its first day of operation. No project may receive more than $1,000,000 in grants under this section.

"(b) Sums awarded under such grant shall be available for expenditure by the grantee for not more than two years, and shall be utilized for such purposes as may be prescribed in regulations of the Secretary, including but not limited to (1) implementation of an enrollment campaign; (2) detailed design of and arrangements for the health services to be provided; (3) development of administrative and internal organizational arrangements, including fiscal control and fund accounting procedures and the develop-

ment of a capital financing program; (4) recruitment of personnel and the conduct of personnel training activities; and (5) payment of architects' and engineers' fees.

"(c) In making grants under this section the Secretary shall give priority to those applicants who give assurances that at least 30 per centum of their total enrollment shall be persons from medically underserved areas.

"(d) There are authorized to be appropriated to carry out the provisions of this section; $42,565,000 for the fiscal year ending June 30, 1973; $68,720,000 for the fiscal year ending June 30, 1974; $74,700,000 for the fiscal year ending June 30, 1975; $141,940,000 for the fiscal year ending June 30, 1976; and $241,690,000 for the fiscal year ending June 30, 1977.

"CONSTRUCTION GRANTS

"SEC. 1104. (a) The Secretary may make grants, subject to the general provisions of this title, to assist any public or private nonprofit health maintenance organization or any public or private nonprofit agency, organization, or institution intending to become a health maintenance organization in meeting the cost of construction of facilities or portions of facilities for ambulatory care and capital investment for necessary transportation equipment, to be used by it for the provision of health services to its enrollees. The Secretary shall give special consideration to applications for grants for the acquisition or renovation of existing facilities, except for exceptional circumstances, in which case up to 90 per centum of the cost of construction (as determined by the Secretary) may be authorized by the Secretary, no grant under this section for any project may exceed 75 per centum of the cost of construction of such project. No project may receive more than $2,500,000 in grants under this section.

"(b) In making grants under this section the Secretary shall give priority to those applicants who give assurances that at least 30 per centum of their total enrollment shall be persons from medically underserved areas.

"(c) There are authorized to be appropriated to carry out the provisions of this section such sums as may be necessary.

"GRANTS FOR INITIAL COSTS OF OPERATION

"SEC. 1105. (a) Where the Secretary determines that the applicant has made all reasonable attempts to meet his operating expenses (including loans and loan guarantees), he may make grants to public and private nonprofit health maintenance organizations to assist them in meeting operating deficits during the initial three-year period of their operation.

"(b) Grants under this section shall be made only for the period beginning with the first day of the first month for which such grant is made and ending with the close of three years after such first day; and such grant with respect to any such organization may not exceed 100 per centum of such operating deficit for the first year after such first day; 67 per centum of such first year operating deficit for the second year after such first day; and 33 per centum of such first year operating deficit for the third year after such first day.

"(c) There are authorized to be appropriated to carry out the provisions of this section such sums as may be necessary.

"CONSTRUCTION LOANS

"SEC. 1106. (a) The Secretary may make loans, subject to the general provisions of this title, to any public or private nonprofit health maintenance organization, or any public or private nonprofit agency, organization, or institution intending to become a health maintenance organization, to assist it in meeting the cost of construction of facilities for ambulatory care and transportation services for the provision of health services to its enrollees. The Secretary shall give special consideration to applications for loans for the acquisition or renovation of existing facilities. No loan under this section for any project may exceed 90 per centum of the cost of construction (as determined by the Secretary) of such project.

"(b) There are authorized to be appropriated to carry out the provisions of this section such sums as may be necessary. Sums so appropriated, regular with repayments of loans made under this section and any other receipts in connection with the program under this section, shall be placed in and constitute a revolving fund which shall be available to the Secretary without fiscal year limitation for use in making loans and other expenditures in the exercise of his functions under this section.

"LOANS FOR INITIAL COSTS OF OPERATION

"SEC. 1107. (a) The Secretary may make loans, subject to the general provisions of this title, to any public or private nonprofit health maintenance organization to assist it in meeting, for the period prescribed in subsection (b), a portion of its initial operating costs in excess of gross revenues determined under regulations of the Secretary.

(b) Loans under this section for initial costs of operation may be made only for the period beginning with the first day of the first month for which such a loan is made and ending with the close of three years after such first day; and such loans with respect to any project may not exceed 60 per centum of such costs of operation, for the first year after such first day; 40 per centum, of such costs for the second year after such first day; and 20 per centum, of such costs for the third year after such first day.

"(c) There are authorized to be appropriated to carry out the provisions of this section such sums as may be necessary. Sums so appropriated, together with repayments of loans made under this section and any other receipts in connection with the program under this section, shall be placed in and constitute a revolving fund which shall be available to the Secretary without fiscal year limitation for use in making loans and other expenditures in the exercise of his functions under this section."

TITLE II—SUPPORT OF HEALTH SERVICE ORGANIZATIONS

STATEMENT OF PURPOSE

SEC. 201. It is the purpose of this title to assist in the establishment of health service organizations and area health education centers primarily directed at defined rural population groups which are characterized by a lack of medical care services.

AMENDMENT TO PUBLIC HEALTH SERVICE ACT

SEC. 202. The Public Health Service Act, as amended by this Act, is further amended by inserting after part A of title XI the following new part:

"PART B—HEALTH SERVICE ORGANIZATIONS

"DEFINITIONS

"SEC. 1120. For the purpose of this part the term—

"(1) 'health service organization' means an entity operating in a rural or non-metropolitan area which—

"(A) provides as a minimum for all its enrollees indirectly or directly through its own staff, and supporting resources or through a medical group or groups, comprehensive health services, to the extent the Secretary determines such organization is able, which are uniformly available to all its enrollees and such additional services as may be required through other health delivery entities, for a fixed payment which—

"(i) is to be paid on a periodic basis without regard to the frequency, extent, or kind of health service actually furnished to any particular enrollee; and

"(ii) is uniform for all its members, subject to rules and regulations regarding family rates;

"(B) demonstrates to the satisfaction of the Secretary ability to assure that appropriate health services are available and accessible to all its members promptly in a manner which assures continuity;

"(C) has a written agreement with an area health education and service center for the use of the educational and service facilities and programs of such center, if such a center is located in the geographic area served by such health service organization;

"(D) provides, to the extent the Secretary determines such health service organization is able, ongoing education for its staff;

"(E) demonstrates to the satisfaction of the Secretary financial responsibility through proof of adequate provision against the risk of insolvency;

"(F) is organized in such a manner (as prescribed by regulations of the Secretary) that assures its enrollees a substantial role in the making of policy for the health service organization and provides meaningful procedures for hearing and resolving grievances (i) between its enrollees and the health service organization (including the medical group or groups and other health delivery entities providing health services) and (ii) between the medical group or groups providing health services and other employees of the health service organization;

"(G) encourages and actively provides for its enrollees (i) health education services and (ii) education in the appropriate use of the health services provided;

"(H) has organizational arrangements established in accordance with regulations of the Commission on Quality Health Care for an ongoing quality assurance program which stresses health outcomes, and assures that health services provided meet quality standards established in accordance with regulations of the Commission on Quality Health Care;

"(I) provides in accordance with regulations of the Secretary an effective procedure for developing, compiling, evaluating, and reporting to the Secretary, data (which the Secretary shall publish and disseminate on an annual basis) relating to (i) the cost of its operation, (ii) the patterns of utilization of its services, (iii) the availability, accessibility, and acceptability of its services, (iv) such other matters as the Secretary may require and discloses at least annually in a manner acceptable to the Secretary such data to its members and to the general public;

"(J) except for (i) out-of-area emergency services; and (ii) care reasonably valued in excess of the first $5,000 per enrolleee, per year assumes full financial responsibility without benefit of insurance, on a prospective basis for the provision of health services as defined in this section;

"(K) has an open enrollment period of not less than thirty days at least once during each consecutive twelve-month period, during which it accepts individuals in the order in which they apply for enrollment;

"(L) assumes responsibility for health care services to its enrollees twenty-four hours a day, seven days a week as may be appropriate and for the prompt availability of such services in emergencies;

"(M) does not refuse enrollment to or expel an enrollee for any reason concerning his health stuatus or requirements for the provisions of health services;

"(N) emphasizes the use of physician's assistants, dental therapists, nurse practitioners, and other allied health personnel; and

"(O) meets such other criteria including plans for providing full comprehensive health care at a future date where the Secretary has determined such an organization was not able to provide such health services under paragraph (A), for its organization and operations as the Secretary may by regulation prescribe, consistent with the provisions of this title.

"GRANTS FOR PLANNING AND FEASIBILITY STUDIES

"SEC. 1121. (a) The Secretary may make grants subject to the general provisions of this title to public or private nonprofit agencies, organizations, or institutions, to assist in meeting the costs of projects for planning or studying the feasibility of developing or expanding a health service organization. No project may receive more than $250,000 in grants under this section. Funds awarded under such grants shall be available for expenditure by the grantee for such period, not to exceed two years from the date of the award, designated by the Secretary.

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

"GRANTS FOR INITIAL DEVELOPMENT COSTS

"SEC. 1122. (a) The Secretary may make grants, subject to the general provisions of this title, to any public or private nonprofit entity to assist in it meeting the costs involved in a project for the initial development of a health service organization prior to its first day of operation. No project may receive more than $1,000,000 in grants under this section.

"(b) Sums awarded under such grant shall be available for expenditure by the grantee for not more than two years and shall be utilized for such purposes as may be prescribed in regulations of the Secretary including but not restricted to, (1) implementation of an enrollment campaign, (2) detailed design of an arrangement for the health services to be provided, (3) development of administrative and internal organizational arrangements including fiscal control and fund accounting procedures and the development of a capital financing program, (4) recruitment of personnel and the conduct of personnel training activities, and (5) payment of architects' and engineering fees.

"(c) There are authorized to be appropriated to carry out the provisions of this section such sums as may be necessary.

"CONSTRUCTION GRANTS

"SEC. 1123. (a)(1) The Secretary may make grants subject to the general provisions of this title to assist any public or private nonprofit health service organization in meeting the cost of construction of facilities or portions thereof for ambulatory care and capital investment for necessary transportation equipment to be used by it for the provision of health services to its enrollees. The Secretary shall give special consideration to applications for grants for the acquisition or renovation of existing facilities.

"(2) Except for exceptional circumstances in which costs up to 90 per centum of the cost of construction may be authorized by the Secretary, no grant under this section for any project may exceed 75 per centum of the cost of construction on such project.

"(3) No project may receive more than $2,500,000 in grants under this section.

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

"GRANTS FOR INITIAL COST OF OPERATION

"SEC. 1124. (a) Where the Secretary determines that the applicant has made all reasonable attempts to meet his operating expenses (including loans and loan guarantees), he may make grants to public or private nonprofit health service organizations to assist them in meeting operating deficits during the initial three-year period of their operation.

"(b) Grants under this section shall be made only for the period beginning with the first day of the first month for which such grant is made and ending with the close of three years after such first day and such grant with respect to any such organization may not exceed 100 per centum of such operating deficit for the first year after such first day; 67 per centum of such first year operating deficit for the second year after such first day; and 33 per centum of such first year operating deficit for the third year after such day.

"(c) There are authorized to be appropriated to carry out the provisions of this section such sums as may be necessary.

"CONSTRUCTION LOANS

"SEC. 1125. (a) The Secretary may make loans subject to the general provisions of this title to any public or private nonprofit health service organization or any public or private nonprofit agency, organization, or institution intending to become a health service organization to assist it in meeting the cost of construction and facilities for ambulatory care and transportation services for the provision of health services to its enrollees. The Secretary shall give special consideration to applications for loans for the acquisition or renovation of existing facilities. No loan under this section for any project may exceed 90 per centum of the cost of construction of such project.

"(b) There are authorized to be appropriated to carry out the provisions of this section $37,500,000 for the fiscal year ending June 30, 1973; $50,000,000 for the fiscal year ending June 30, 1974; $62,500,000 for the fiscal year ending June 30, 1975; $112,500,000 for the fiscal year ending June 30, 1976; and $187,500,000 for the fiscal year ending June 30, 1977. Sums so appropriated together with repayments of loans made under this section and any other receipts in connection with the program under this section shall be placed in and constitute a revolving fund which shall be available to the Secretary for use in making loans and other expenditures in the exercise of his functions under this section.

"LOANS FOR INITIAL COST OF OPERATION

"SEC. 1126. (a) The Secretary may make loans subject to the general provisions of this title to any public or private nonprofit health service organization to assist it in meeting, for the period prescribed in subsection (b), a portion of its initial operating costs in excess of gross revenues determined under regulations of the Secretary.

"(b) Loans under this section may be made only for the period beginning with the first day of the first month for which such a loan is made and ending with the close of three years after such first day and such loans with respect to any project may not exceed 60 per centum of such initial operating costs for the first year after such first day; 40 per centum of such initial operating costs for the second year after such first day and 20 per centum of such initial operating costs for the third year after such first day.

"(c) There are authorized to be appropriated to carry out the provisions of this section $2,250,000 for the fiscal year ending June 30, 1973; $15,500,000 for the fiscal year ending June 30, 1974; $41,000,000 for the fiscal year ending June 30, 1975; $62,500,000 for the fiscal year ending June 30, 1976; and $84,500,000 for the fiscal year ending June 30, 1977. Sums so appropriated together with repayments of loans made under this section and any other receipts in connection with the program under this section shall be placed in and constitute a revolving fund which shall be available to the Secretary for use in making loans and other expenditures in the exercise of his functions under this section."

TITLE III—AREA HEALTH EDUCATION AND SERVICE CENTERS AND GENERAL REQUIREMENTS

SEC. 301. The Public Health Service Act, as amended by this Act, is further amended by inserting after part B of title XI the following new parts:

"PART C—GRANTS TO ASSIST AREA HEALTH EDUCATION AND SERVICE CENTERS

"STATEMENT OF PURPOSE

"SEC. 1130. It is the purpose of this part to—

"(1) promote communication between area health education and service centers and health service organizations;

"(2) provide for and encourage, the ongoing education of providers of health care services in a designated area;

"(3) provide for and encourage clinical experience in a nonmetropolitan setting for students from university health centers; and

"(4) encourage the utilization of regional medical programs where such programs exist.

"GRANTS FOR COSTS OF DEVELOPMENT

"SEC. 1131. (a) The Secretary is authorized to make grants to university health centers (or to regional medical programs where they exist) to assist in meeting the costs involved in the development of area health education and service centers.

"(b) Funds awarded under such grants shall be available for expenditure by the grantee for a maximum of two years and shall be utilized for such purposes as may be prescribed in regulation by the Secretary, including but not limited to: (1) detailed design of and arrangements for education, health and medical services, and integration with the institution's research and educational programs; (2) development of administrative and internal and organizational arrangements, including fiscal control and fund accounting procedures and the development of a capital financing program; and (3) recruitment of personnel and conduct of personnel training activity.

"(c) For the purpose of carrying out the provisions of this section, there are hereby authorized to be appropriated $10,000,000 for the fiscal year ending June 30, 1973; $20,000,000 for the fiscal year ending June 30, 1974; $25,000,000 for the fiscal year ending June 30, 1975; $25,000,000 for the fiscal year ending June 30, 1976; and $25,000,000 for the fiscal year ending June 30, 1977.

"CONSTRUCTION OF FACILITIES

"SEC. 1132. (a) The Secretary is authorized to make grants to university health centers (or to regional medical programs where they exist) to assist them in the construction and equipment of educational facilities in conjunction with the development of area health education and service centers. An award under this authority shall be made only after the Secretary has determined that assistance for the construction proposed has been sought and is not available under titles I and II of the Medical Facilities Construction and Modernization Amendments of 1970 and title IX of the National Housing Act.

"(b) for the purpose of carrying out the provisions of this section, there are authorized to be appropriated $25,000,000 for the fiscal year ending June 30, 1973; $50,000,000 for the fiscal year ending June 30, 1974; $75,000,000 for the fiscal year ending June 30, 1975; $75,000,000 for the fiscal year ending June 30, 1976; and $75,000,000 for the fiscal year ending June 30, 1977.

"PART D—GENERAL PROVISIONS

"GRANTS AND LOANS

"SEC. 1140. (a) Any loan by the Secretary shall bear interest at a rate comparable to the current legal rate of interest prevailing with respect to loans which are guaranteed under section 1141. No payment of principal on a loan shall be required for the first five years after such loan is made.

"(b) No such loan shall be made unless—

"(1) the Secretary is reasonably satisfied that the applicant therefor will be able to make payments of principal and interest thereon when due, and

"(2) the applicant provides the Secretary

with reasonable assurances that there will be available to it such additional funds as may be necessary to complete the project with respect to which such loan is requested.

"(c) Any such loan shall have such security, have such maturity date, be repayable in such installments, and be subject to such other terms and conditions (including provisions for recovery in case of default) as the Secretary determines to be necessary to carry out the purposes of this title while adequately protecting the financial interests of the United States.

"(d) No such loan shall have a term in excess of fifteen years.

"(e) The Secretary may, for good cause, waive any right of recovery which he has by reason of the failure of a public organization to make payment and interest on a loan under this section.

"(f) Applicants for grants and loans under this title shall submit a plan for approval to the Secretary for the inclusion of dental and mental health services as they become available.

"LOAN GUARANTEES AND INTEREST SUBSIDIES

"SEC. 1141. (a) In order to assist (1) private health maintenance orgainizations, health service organizations (or entities intending to become either), to carry out construction projects for ambulatory care facilities and transportation services to be used by it for the provision of health services to its members or to meet their initial development costs (for not more than three years) or to meet their costs of operation (for not more than five years), (2) assist university health centers in the development of area health education, and service centers, and to provide working capital for the operation of such area health education and service centers as well as to subsidize the difference between income and operating expenditures, the Secretary, during the period beginning January 1, 1973, and ending with the close of June 30, 1977, may, in accordance with the provisions of this section, and subject to the general provisions of this Act (A) guarantee to non-Federal lenders making loans to such organizations for such purposes, payment of principal of and interest on such loans which are approved under this section, and (B) in the case of nonprofit health maintenance or health service organizations, pay to the holder of such loans (and for and on behalf of the organization which received such loan) amounts sufficient (not to exceed 3 per centum per annum) to reduce the net effective interest rate otherwise payable on such loan. No loan guarantee or interest subsidy under this section may, except under such special circumstances and under such conditions as are prescribed by regulations, apply to or be made for an amount which, when added to any grant or other loan under this or any other law of the United States, is—

"(i) with respect to any construction, in excess of 90 per centum of the cost of such construction,

"(ii) with respect to initial development costs, in excess of 90 per centum of such costs, or

"(iii) with respect to initial operating costs, in excess of 90 per centum of such costs.

No such loan guarantee may apply to more than 90 per centum of the loss of principal and interest on the loan.

"(b) The Secretary may not approve the application of a health maintenance organization, health service organization, or university health center, unless—

"(1) he determines, in the case of a loan for which a guarantee or an interest subsidy payment is sought, that the terms, conditions, maturity, security (if any), and schedule and amounts of repayments with respect to the loan are sufficient to protect the financial interests of the United States and are otherwise reasonable and in accord with regulations, including a determination that the rate of interest does not exceed such per centum per annum on the principal obligation outstanding as the Secretary determines to be reasonable, taking into account the range of interest rates prevailing in the private market for similar loans and the risks assumed by the United States;

"(2) the term of a loan for which a guarantee and interest subsidy is sought does not exceed twenty-five years if for construction, or fifteen years if for operating costs, or such shorter period as the Secretary prescribes; and

"(3) he obtains assurances that the applicant will keep such records, and afford such access thereto, and make such reports, in such form and containing such information, as the Secretary may reasonably require.

"(c) Guarantees of loans and interest subsidy payments under this section shall be subject to such further terms and conditions as the Secretary determines to be necessary to assure that the purposes of this section will be achieved, and, to the extent permitted by subsection (e), any of such terms and conditions may be modified by the Secretary to the extent he determines it to be consistent with the financial interests of the United States.

"(d) In the case of any loan guaranteed under this section, the United States shall be entitled to recover from the applicant the amount of any payments made pursuant to such guarantee unless the Secretary, for good cause, waives his right of recovery, and, upon making any such payment, the United States shall be subrogated to all of the rights of the recipient of the payments with respect to which the guarantee was made.

"(e) Any guarantee of a loan under this section shall be incontestable in the hands of an applicant on whose behalf such guarantee is made, and as to any person who makes or contracts to make a loan to such applicant in reliance thereon, except for fraud or misrepresentation on the part of such applicant or such other person.

"(f)(1) There is established in the Treasury a Health Maintenance Organization and Health Service Organization and Area Health Education and Service Center Loan Guarantee and Interest Subsidy Fund (hereafter in this section referred to as the 'fund') which shall be available to the Secretary without fiscal year limitation, in such amounts as may be specified from time to time in appropriation Acts (A) to enable him to discharge his responsibilities under guarantees issued by him under this title, and (B) for interest subsidy payments authorized by this title. There are authorized to be appropriated from time to time such amounts as may be necessary to provide the sums required by the fund. To the extent authorized from time to time in appropriation Acts there shall be deposited in the fund amounts received by the Secretary as interest payments or repayments of principal on loans and any other moneys, property, or assets derived by him from his operations under this title, including any moneys derived from the sale of assets.

"(2) If at any time the moneys in the fund are insufficient to enable the Secretary to discharge his responsibilities under this title to meet the obligations under guarantees of loans under subsection (a) or to make interest subsidy payments on such loans, he is authorized to issue to the Secretary of the Treasury notes or other obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions, as may be prescribed by the Secretary with the approval of the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the notes or other obligations. The Secretary of the Treasury is authorized and directed to purchase any notes and other obligations issued hereunder and for that purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act and the purposes for which securities may be issued under that Act are extended to include any purchase of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States. Sums borrowed under this subsection shall be deposited in the fund and redemption of such notes and obligations shall be made by the Secretary from such fund.

"(g) (1) The cumulative total of the principal of the loans outstanding at any time with respect to which guarantees have been issued under this section may not exceed such limitations as may be specified in appropriation Acts.

"(2) In any fiscal year no loan guarantee or agreements to make loan subsidy payments may be entered into under this title of the making of such guarantee or the entering into of such agreement would cause the cumulative total of—

"(A) the principal of the loans guaranteed under this title in such fiscal year, and

"(B) the principal of the loans for which no guarantee has been made under this title and with respect to which an agreement to make interest subsidy payments is entered into under this title in such fiscal year, to exceed the amount of grant funds obligated under this Act in such fiscal year; except that this paragraph shall not apply if the amount of grant funds obligated under this title in such fiscal year equals the sums appropriated for such fiscal year under this title.

"APPLICATION REQUIREMENTS

"SEC. 1142. (a) No grant, contract, loan, loan guarantee, or interest subsidy may be made under this title unless an application therefor has been submitted to and approved by the Secretary. Such application shall be in such form, submitted in such manner, and contain such information, consistent with subsection (b)(1), as the Secretary shall by regulation prescribe.

"(b) (1) An application for a grant, loan, loan guarantee, or interest subsidy under this title shall include to such extent, in such manner and among such other matters as the Secretary may by regulation prescribe, satisfactory specification of the existing or anticipated (A) population group or groups to be served by the existing or proposed health maintenance organization or health service organization described in the application, (B) enrollment for such organization, (C) methods, terms, and periods for the enrollment of enrollees, (D) nature and estimated costs per enrollee of the health care and educational services to be provided, (E) sources of professional services, and organizational arrangements for providing health care and educational services, (F) organizational arrangements for an ongoing quality assurance program in conformance with standards of the Commission on Quality Health Care, (G) sources of prepayment and other forms of payment for the services to be provided, (H) facilities available for and additional capital investments and sources of financing therefor, required to provide the level and scope of services proposed, (I) administrative, managerial, and financial arrangements and capabilities of such organi-

zation, (J) role for enrollees in the planning and policymaking for such organization, (K) grievance procedures for enrollees, staff, and employees, and (L) evaluation or evaluations of the support for and acceptance of such organization by the population to be served, the sources of operating support, and the professional groups to be involved or who would be affected thereby. An organization making multiple applications for assistance under this title simultaneously or over the course of time shall not be required to submit duplicate or redundant information but shall be required to update the description of the existing or proposed organization in such manner and with such frequency as the Secretary may by regulation prescribe.

"(2) Upon completion of assistance under this title, the recipient of assistance shall make a full and complete report to the Secretary, in such manner as he may by regulation prescribe. Each such report shall include, among such other matters as the Secretary may by regulation prescribe, descriptions of plans, developments, and operations in those areas enumerated in paragraph (1) for specification in applications for assistance.

"(c) A health maintenance organization, health service organization, or university health center receiving assistance under this title shall submit to the Secretary as a condition of its continued assistance, satisfactory assurances, in accordance with such regulations as the Secretary shall prescribe, including but not limited to the following: (1) financial responsibility, and (2) development and operation consistent with the terms of this title and the plans contained in such organization's application or applications for assistance.

"(d)(1) An application for a grant or for a loan, loan guarantee, or interest subsidy under this title shall contain assurances satisfactory to the Secretary that the applicant will, in accordance with such criteria as the Secretary shall by regulation prescribe, enroll the maximum number of persons that its available and potential resources (as determined under regulations of the Secretary) will enable it to effectively serve; except that the applicant shall enroll no more than 50 per centum of its enrollee from medically underserved areas except in rural areas as designated by the Secretary.

"(2) No grant may be made and no loan, loan guarantee, or interest subsidy payment may be made under this title unless the applicant demonstrates to the satisfaction of the Secretary that the applicant will or has enrolled, and will maintain an enrollment of, the maximum number of persons that is available and potential resources (as determined under regulations of the Secretary) will enable it to effectively serve, except that the applicant shall enroll no more than 50 per centum of its enrollees from medically underserved areas except in rural areas as designated by the Secretary.

"(e) The Secretary shall have the authority after a hearing on the record to terminate or cancel any grant, loan, loan guarantee, or interest subsidy to any health maintenance organization, university health center, or health service organization which it determines is in substantial noncompliance with any material provision of this title or after notice from the Commission on Quality Health Care that such organization has had its certificate of approval suspended or revoked.

"(f) Except for assistance under sections 1102, 1103, 1121, and 1122, no assistance shall be available to any entity which would otherwise qualify for assistance, unless such entity submits with its application for assistance proof of compliance with the standards of the Commission on Quality of Health Care, except that during the first two years after the enactment of this Act, or until such time as the standards of the Commission on Quality Health Care are effective, which ever is sooner, the Secretary may give assistance under this title to an entity which would otherwise qualify for assistance, where the application for assistance for such entity is accompanied by reasonable assurances that such entity will comply with such standards when they become effective.

"ESTABLISHMENT OF HEALTH MAINTENANCE TRUST FUND

"SEC. 1143. (a) There is established in the Treasury a Health Maintenance Fund (hereinafter referred to as the 'fund') which shall be available without fiscal year limitations for the purpose of section 1148 of this title.

"(b) The fund shall be credited with—

"(1) (A) 5 per centum of the taxes received in the Treasury under chapter 51 of the Internal Revenue Code of 1954 (relating to taxes on distilled spirits, wines, and beer); and

"(B) 5 per centum of the taxes received in the Treasury under chapter 52 of the Internal Revenue Code of 1954 (relating to taxes on tobacco, cigars, cigarettes, and cigarette papers and tubes);

"(2) interest or other receipts on investments of the fund;

"(3) such amounts as may be appropriated for the fund;

"(4) such amounts as may be advanced to the fund out of appropriations; and

"(5) receipts from any other source.

"(b) In the case of the taxes described in paragraph (1) of subsection (a), amounts received during the calendar year during which this Act is enacted shall be taken into account only to the extent attributable to liability for tax incurred after the date of enactment of this Act.

"TREASURY BORROWING

"SEC. 1144. To carry out the purposes of the Health Maintenance Fund (established under section 1143), the Secretary of Health, Education, and Welfare is authorized to issue to the Secretary of the Treasury notes or other obligations in an annual amount of not to exceed $500,000,000, in such forms and denomination, bearing such maturities, and subject to such terms and conditions, as may be prescribed by the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the notes or other obligations. The Secretary of the Treasury is authorized and directed to purchase any notes and other obligations issued hereunder and for that purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act and the purpose for which securities may be issued are extended to include any purchase of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States.

"EFFECT ON STATE LAW

"SEC. 1145. (a) Notwithstanding any provisions of State law which—

"(1) require approval of a health maintenance organization or health service organization by a medical society;

"(2) require that physicians constitute all or a majority of the governing body of a health maintenance organization or health service organization;

"(3) require that all physicians or a percentage of physicians in the local medical society be permitted to participate in rendering the services of the organization;

"(4) require that such organization submit to regulations as an insurer of health care services;

"(5) require that only unincorporated individuals or associations or partnerships may provide health care services;

"(6) prohibit advertising by a professional group for recruitment of enrollees; or

"(7) impose requirements or restrictions on a health maintenance organization or health service organization in a manner, determined by the Secretary, to be incompatible with this title,

a health maintenance organization, a health service organization (as defined in this title), or other providers of health care receiving Quality Health Care Initiative Awards under this title, which otherwise conforms with the laws for incorporation and laws for licensing of physicians, osteopaths, and dentists in such State shall be allowed to provide health care services in such State in accordance with the provisions of this title.

"QUALITY HEALTH CARE INITIATIVE AWARDS

"SEC. 1146. (a) Every provider of health care which is certified by the Commission on Quality Health Care as maintaining quality control standards in compliance with the standards set by the Commission on Quality Health Care shall be entitled to an annual payment in an amount equal to 2 per centum of the gross revenues of such provider attributable to the delivery of health care services in order to defray expenses associated with such compliance. Any provider of health care, whether or not subject to the provisions of this Act, may apply to the Commission for certification of compliance under section 1202(a)(4).

"(b) There are authorized to be appropriated for the purposes of this section $1,000,000 for the fiscal year ending June 30, 1973; $10,000,000 for the fiscal year ending June 30, 1974; $50,000,000 for the fiscal year ending June 30, 1975; $100,000,000 for the fiscal year ending June 30, 1976; and $200,000,000 for the fiscal year ending June 30, 1977.

"CONSUMER PRIORITY

"SEC. 1147. In making grants, loans, and loan guarantees under this title the Secretary shall give priority to those applicants whose policymaking body is composed of a majority of persons who are consumers of its services.

"CAPITATION GRANTS TO ENABLE HEALTH MAINTENANCE ORGANIZATIONS AND HEALTH SERVICE ORGANIZATIONS TO SERVE ALL PERSONS

"SEC. 1148. (a) The Secretary shall make annual grants to health maintenance organizations or health service organizations serving persons who cannot meet the expenses of such organizations' premiums. The amount of such annual grants shall be equal to the difference between the maximum amount (as determined by the Secretary) an enrollee could reasonably be expected to pay toward the health maintenance or health service organization premium and the premium for membership enrollment in such health maintenance or health service organization for each such person enrolled.

"(b) In determining the amount an enrollee should pay toward the premium, the Secretary shall consider all sources (including public sources) of income available to each such enrollee.

"(c) Grants under this section shall not exceed 25 per centum of the total premium receipts for such health maintenance or health service organization for the next preceding year.

"(d) Grants under this section shall be made in accordance with rules and regulations promulgated by the Secretary from the Health Maintenance Trust Fund established under this title.

"SERVICES FOR INDIANS

"SEC. 1149. (a) The Secretary is authorized (with the consent of the Indian people served) to contract with health maintenance organizations or health service organizations or other non-Federal health agencies or organizations for the provision of health services to such people on a prepaid basis.

"(b) There are authorized to be appropriated for the purposes of this section $10,000,000 for the fiscal year ending June 30, 1973; $15,000,000 for the fiscal year ending June 30, 1974; $20,000,000 for the fiscal year ending June 30, 1975; $25,000,000 for the fiscal year ending June 30, 1976; and $30,000,000 for the fiscal year ending June 30, 1977.

"PAYMENT OF GRANTS

"SEC. 1150. The amount of any grant under this title shall be determined by the Secretary. Payments under such grants may be made in advance or by way of reimbursement and at such intervals and on such conditions as the Secretary finds necessary.

"PROHIBITION ON TRANSFER OF FUNDS

"SEC. 1151. (a) No funds appropriated pursuant to any of the preceding sections of this title shall be available for any purposes other than the purposes of the program authorized by the particular section pursuant to which such funds are appropriated.

"(b) No funds, except those appropriated under this title, shall be used for the purposes of carrying out the provisions of this title.

"(c) Only funds appropriated under titles IX and XI of the Public Health Service Act shall be used to initially develop, construct, and initially operate a health maintenance organization, health service organization, and any other entity that provides, either directly or indirectly through arrangements with others, health care to a defined population on a prepaid basis.".

TITLE IV—COMMISSION ON QUALITY HEALTH CARE

SHORT TITLE

SEC. 401. This title shall be known as the "Commission on Quality Health Care Act of 1972".

STATEMENT OF PURPOSE

SEC. 402. It is the purpose of this title to promote the quality of health care in the United States by establishing a Commission on Quality Health Care to develop, establish, and encourage parameters and standards for quality health care.

SEC. 403. The Public Health Service Act, as amended by this Act, is further amended by inserting after title XI the following new title:

"TITLE XII—COMMISSION ON QUALITY HEALTH CARE

"PART A—COMMISSION ON QUALITY HEALTH CARE

"ESTABLISHMENT OF COMMISSION

"SEC. 1202. (a) There is hereby established (as an independent agency in the executive branch) a Commission on Quality Health Care.

"(b) The Commission shall be composed of five members to be appointed by the President by and with the advice and consent of the Senate from among individuals who by virtue of their service, experience, or education are especially qualified to serve on the Commission. In making such appointments the President shall appoint individuals who are representative of the health care delivery industry, private organizations engaged in developing health care quality standards which may be applicable on a national basis, and consumers not related to the delivery of health care. The terms of office of each member of the Commission shall be five years except that—

"(1) the members first appointed shall serve, as designated by the President, one for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years, and one for a term of five years;

"(2) any member appointed to fill a vacancy shall serve for the remainder of the term for which his predecessor was appointed; and

"(3) a member shall be eligible for reappointment for one additional term.

"(c) The President shall designate one of the members to serve as Chairman and one to serve as Vice Chairman of the Commission.

"(d) Any vacancy in the Commission shall not effect its powers and three members of the Commission shall constitute a quorum.

"(e) At any one time there shall be no less than two members of the Commission who are consumers not related to the delivery of health care.

"DUTIES OF THE COMMISSION

"SEC. 1202. (a) The Commission shall—

"(1) conduct necessary investigations and studies intended to develop appropriate quality health care standards;

"(2) establish not later than two years after the enactment of this Act appropriate quality health care standards which shall include but not be restricted to inputs, processes, and outcomes;

"(3) prescribe quality control systems for health maintenance organizations, health service organizations, and other providers of health care subject to the provisions of this Act which shall be designed to—

"(A) improve as well as assess the quality of medical care;

"(B) evaluate the inputs, processes, utilization characteristics, and outcomes of health care as related to individuals and population groups, and establish relationships between inputs, processes, and outcomes;

"(C) concentrate on those illnesses which have relatively high incidence in the population and which are particularly influenced by medical treatment, rather than on unusual illnesses or conditions whose course is little influenced by therapy;

"(4) issue certificates of compliance to providers of health care certifying that such provider is in compliance with the standards promulgated under paragraph (2) of this section;

"(5) after a hearing on the record, revoke or suspend such certificate, where it determines that a provider of health care is not in compliance with such standards;

"(6) monitor biannual reports by health care providers covered by this Act for the purpose of assuring that the performance of such health care providers is in conformance with promulgated standards;

"(7) conduct a program of research and development which shall have the objectives of—

"(A) improvement of the technology of assessing the quality of health care with emphasis on the outcomes of health care;

"(B) assessing and comparing the quality of medical care provided under different delivery system arrangements;

"(C) analyzing the effects of providing information to consumers and improvement in the methods of information dissemination; and

"(D) analyzing the impact of the quality assurance program upon the quality of health care for the American people;

"(8) collect, summarize, and distribute information regarding the impact of medical services and the health status of the population of the United States;

"(9) provide technical assistance to providers of health care in the development of quality control programs; and

"(10) study the levels, costs, and quality of health care under health care programs of the Federal Government;

"(11) administer the insurance program established under part B of this title; and

"(12) annually report to the Congress on the conduct of activities under this Act (including results of studies conducted under paragraph (9)) together with such recommendations for additional legislation as the Commission may determine appropriate.

"(b) In developing quality health care standards, the Commission shall consider existing State regulations, such standards as are in effect for Federal health agencies, and analyze the results of the insurance programs under part B of this title.

"ADMINISTRATIVE POWERS

"SEC. 1203. (a) In order to carry out the provisions of this Act the Commission is authorized to—

"(1) appoint and fix the compensation of personnel of the Commission in accordance with the provisions of title 5, United States Code;

"(2) make, promulgate, issue, rescind, and amend rules and regulations as may be necessary to carry out the functions vested in the Commission and delegate authority to any officer or employee;

"(3) acquire (by purchase, lease, condemnation, or otherwise), construct, improve, repair, operate, and maintain, research and other necessary facilities and equipment, and related accommodations as may be necessary, and such other real or personal property including patents) as the Commission deems necessary; to acquire by lease or otherwise through the Administrator of General Services, buildings or parts of buildings in the District of Columbia or communities located adjacent to the District of Columbia for the use of the Commission for a period not to exceed ten years without regard to the Act of March 3, 1877 (40 U.S.C. 34);

"(4) employ experts and consultants in accordance with section 3109 of title 5, United States Code;

"(5) appoint one or more advisory committees composed of such private citizens and officials of Federal, State, and local governments as it deems desirable, to advise it with respect to his functions under this Act;

"(6) utilize, with their consent, the services, equipment, personnel, information, and facilities of other Federal, State, and local public agencies with or without reimbursement therefor;

(7) accept voluntary and uncompensated services, notwithstanding the provisions of section 665(b) of title 31, United States Code;

"(8) accept unconditional gifts or donations of services, money or property, real, personal, or mixed, tangible or intangible; and

"(9) take such actions as may be required for the accomplishment of the objectives of the Commission.

"(b) Upon request made by the Commission each Federal agency is authorized and directed to make its services, equipment, personnel, facilities, and information (including suggestions, estimates, and statistics) available to the greatest practicable extent consistent with other laws to the Commission in the performance of its functions with or without reimbursement.

"(c) Each member of a committee appointed pursuant to paragraph (5) of subsection (a) of this section who is not an officer or employee of the Federal Government shall receive an amount equal to the maximum daily rate prescribed for GS–18 under section 5332 of title 5, United States Code, for each day he is engaged in the actual performance of his duties (including traveltime) as a member of a committee. All members shall be reimbursed for travel, subsistence, and necessary expenses incurred in the performance of their duties.

"(d) The Chairman shall be the Chief Executive and the Administrative Officer of the Commission and shall exercise the re-

sponsibility of the Commission with respect to—

"(1) the appointment and supervision of personnel employed by the Commission;

"(2) the distribution of jobs among the personnel of the Commission; and

"(3) the use and expenditure of funds.

"COMPENSATION

"SEC. 1204. (a) Section 5314 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"'(58) Chairman, Quality Health Care Commission'.

"(b) Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"'(95) Members, Quality Health Care Commission (4)'.

"APPLICABILITY OF STANDARDS

"SEC. 1205. (a) Except as provided in subsection (d), this Act applies to any provider receiving any assistance under title XI of the Public Health Service Act or insurance coverage under part B of this title.

"(b) Any provider covered under this Act may apply to the Commission for a temporary order granting a variance from a standard or any provision thereof promulgated under section 1202 of this Act. Such temporary order shall be granted only if the provider files an application which establishes that—

"(1) the provider is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come to compliance with the standard or because necessary construction, alteration or modernization of facilities cannot be completed by its effective date; and

"2) the provider has an effective program for coming into compliance with the standards as quickly as possible with adequate interim safeguards for the protection of consumers of health care.

"(c) The Commission is authorized to grant a variance from any standard or portion thereof whenever it determines or the Secretary of Health, Education, and Welfare certifies that such a variance is necessary to permit a provider to participate in a project approved by him designed to validate new and improved techniques of health care delivery systems.

"REPORTS AND MAINTENANCE OF RECORDS

"SEC. 1206. (a) Each provider, covered under this Act, shall make, keep, and preserve, and make available to the Commission and the Secretary of Health, Education, and Welfare, such records regarding activities governed by this Act as the Commission, in cooperation with the Secretary of Health, Education, and Welfare, shall prescribe.

"(b) Each provider shall report to the Commission on a monthly basis its activities including but limited to—

"(1) gross utilization aggregates;

"(2) disenrollment rates; and

"(3) overall monthly rates.

"(c) The Commission shall prescribe rules and regulations as may be necessary with regard to inspection of the records and facilities of a provider.

"DISCLOSURE TO CONSUMERS OF HEALTH CARE SERVICES

"SEC. 1207. (a) A description of any health care benefit plan covered by this Act shall be published as required herein within ninety days after the establishment of such plan or when such plan becomes subjected to this Act.

"(b) A description of the plan shall be comprehensive and shall include, in a manner calculated to be understood by the average enrollee, the following:

"(1) fees and prices;

"(2) benefits and services of benefit packages;

"(3) accessibility and availability of services including the location of the facilities, equipment available, hours of operation, practitioners by type and location, and amenities;

"(4) the name and type of administration of the plan; and

"(5) a statement of certification by the Commission.

"(d) The Commission shall monitor the provision of information by providers of care as required by this section. In any case in which information is disclosed or disseminated under this Act and is subsequently found to be insufficient, inaccurate, or inaccurately disseminated the Director shall take such action as is necessary to assure a full retraction of the inaccurate information together with a statement of new data in a manner similar to the initial disclosure or dissemination of such information.

"(e) The disclosure must also include 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.

"(f) Every provider shall furnish a copy of the plan description (including amendments or modifications thereto) described in subsection (b), to every enrollee upon his enrollment in the plan, and cause the same to be published, in a manner prescribed by the Commission, to the general public.

"TRANSFER OF FUNCTIONS

"SEC. 1208. (a) There are hereby transferred to the Quality Health Care Commission from the Department of Health, Education, and Welfare the function, records, property, personnel, and funds of the National Center for Health Statistics.

"(b) Within one hundred and eighty days of the effective date of this Act the President may transfer to the Commission any functions not transferred to the Commission by this Act, if he determines that such functions relate primarily to functions of the Commission under this Act.

"PENALTIES

"SEC. 1209. (a) (1) Whenever the Commission after reasonable notice and opportunity for hearing to the provider finds that the provider is no longer complying with the standards promulgated under section 1202, the Commission shall notify the provider, and the Secretary of Health, Education, and Welfare that such provider shall be ineligible to participate in grants, loans, loan guarantees, or interest subsidies under title XI of the Public Health Service Act and that the certificate of approval has been suspended until such time as the provider is found to be in compliance with the standards promulgated under section 1202.

"(2) Providers of health care, who have had their certificate suspended for a period, which the Commission determines to be unreasonable, without complying with standards promulgated under section 1202, shall have their certificate revoked and shall be liable for the repayment of part or all amounts received under title XI of the Public Health Service Act.

"(3) The Commission is authorized to make arrangements with providers of health care who have had their certificates revoked, for reimbursement of amounts received under title XI of the Public Health Service Act, including deferred payments on such terms and for such periods as are deemed equitable and appropriate.

"(b) Any provider who willfully or repeatedly violates the requirements of section 1207 (concerning disclosure) may be assessed a civil penalty of not more than $10,000 for each such violation.

"(c) Any person who knowingly makes any false statement, representation, or certification on any application, record, report, plan or other document filed or required to be maintained pursuant to this Act shall upon conviction be punished by a fine of not more than $10,000 or by imprisonment of not more than six months or by both.

"(d) Civil penalties owed under this Act shall be paid to the Secretary for a deposit into the Treasury of the United States and shall accrue to the United States and may be recovered in a civil action in the name of the United States or in the United States District Court for the district where the violation is alleged to have occurred or where the provider has its principal office.

"ARBITRATION

"SEC. 1210. (a) A provider of health care that possesses a valid certificate of compliance issued under section 1202(a)(4) may enter into a program for the equitable and expeditious handling of malpractice claims which may arise out of care and treatment of patients. Such programs shall be based upon the agreements of the patients of such provider to submit all such claims to binding arbitration in order to gain the benefits of such program for patients and providers.

"(b) An agreement to submit to binding arbitration under subsection (a) must be valid in the jurisdiction in which such agreement is made and shall provide for the selection of arbitrators in accordance with rules and regulations promulgated by the Commission.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 1211. There are authorized to be appropriated to carry out the purposes of this part, such sums as may be necessary.

"DEFINITIONS

"SEC. 1212. For the purposes of this Act, the term—

"(1) 'input measure' means assessment based on the qualifications of personnel, facilities, and equipment permitted to provide medical care;

"(2) 'process measure' measure assessment based upon the conformance of medical decisions and actions taken in actual episodes of care to some defined standards of medical practice;

"(3) 'utilization characteristics' means those characteristics giving information concerning the rates of usage of components of the health care system such as the length of hospital stays, the number of doctor-patient contacts, the number of hospital admissions in a year;

"(4) 'outcome measure' means assessment of care based upon health of patients during and particularly at the conclusion of episodes of care. Standards for clinical outcome should be based solely on the results of health care;

"(5) 'population outcome measure' means assessment based on (but not limited to) morbidity, disability, and mortality rates in a defined population;

"(6) 'Commission means the Commission on Quality Health Care; and

"(7) 'insurance program' means the Federal Medical Malpractice Insurance Program established under part B of this title.

"PART B—FEDERAL MEDICAL MALPRACTICE INSURANCE

"PROGRAM ESTABLISHED

"SEC. 1220. There is hereby established an insurance program to be known as the Federal Medical Malpractice Insurance Program which shall be administered by the Commission.

"SCOPE OF PROGRAM

"SEC. 1221. In carrying out the insurance program, the Commission shall make insurance available to providers of health care to cover liability for medical malpractice arbitration awards.

"CONDITIONS OF INSURANCE

"SEC. 1222. The insurance program shall insure only those providers of health care who—

"(I) possess a valid certificate of compliance under section 1202(a)(4); and

"(2) have valid agreements with their patients to submit all medical malpractice claims to binding arbitration in accordance with section 1210.

"ESTIMATES OF PREMIUM RATES

"SEC. 1223. (a) The Commission is authorized to undertake and carry out such studies and investigations and receive or exchange such information as may be necessary to estimate on an area, subdivision, or other appropriate basis—

"(1) the risk premium rates for medical malpractice insurance—

"(A) based on consideration of the risk involved and accepted actuarial principles, and

"(B) including—

"(i) applicable operating costs and allowances which, in its discretion, should properly be reflected in those rates, and

"(ii) any administrative expenses (or portion of such expenses) of carrying out the medical malpractice insurance program which should properly be reflected in such rates, that would be required in order to make such insurance available on an actuarial basis for which insurance coverage shall be available, and

"(2) the rates, if less than the rates estimated under paragraph (1) which would encourage prospective purchasers of such insurance to purchase medical malpractice insurance, and would be consistent with the purposes of this title.

"(b) In carrying out subsection (a), the Commission shall, to the maximum extent feasible and on a reimbursement basis, utilize the services of other Federal departments or agencies, and for such purposes, may enter into contracts or other appropriate arrangements with any person.

"ESTABLISHMENT OF CHARGEABLE PREMIUM RATES

"SEC. 1224. (a) On the basis of estimates made under section 1223 and such other information as may be necessary, the Commission from time to time shall, by order prescribe—

"(1) chargeable premium rates for any provider of health care for which insurance coverage shall be available under this title, and

"(2) the terms and conditions under which and areas (including subdivisions thereof) within which such rates shall apply.

"(b) Such rates shall, insofar as practicable, be—

"(1) based on a consideration of the respective risks involved,

"(2) adequate, on the basis of accepted actuarial principles, to provide reserves for anticipated losses, or, if less than such amount, consistent with the objective of making medical malpractice insurance available, at reasonable rates so as to encourage prospective insureds to purchase such insurance, and

"(3) stated so as to reflect the basis for such rates, including the differences (if any) between the estimated risk premium rates under paragraph (1) of section 1223(a), and the estimated rates under paragraph (2) of such section.

"(c) If any chargeable premium rate prescribed under this section—

"(1) is at a rate which is not less than the estimated risk premium rate under section 1223(a)(1), and

"(2) includes any amount for administrative expenses of carrying out the earthquake insurance programs which have been estimated under clause (ii) of section 1223(a)(1)(B),

a sum equal to such amount shall be paid to the Secretary, and he shall deposit such sum in the fund authorized under section 1226.

"TREASURY BORROWING AUTHORITY

"SEC. 1225. (a) The Commission is authorized to issue to the Secretary of the Treasury from time to time and have outstanding at ony one time, in an amount not exceeding $500,000,000 (or such greater amount as may be approved by the President), notes or other obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be prescribed by the Commission, with the approval of the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on the outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of such notes or other obligations. The Secretary of the Treasury is authorized and directed to purchase any notes and other obligations to be issued under this subsection, and for such purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under such Act, as amended, are extended to include any purchases of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this section. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States.

"(b) Any funds borrowed by the Commission under this authority shall, from time to time, be deposited in the Medical Malpractice Insurance Fund established under section 1226.

"MEDICAL MALPRACTICE INSURANCE FUND

"SEC. 1226. (a) To carry out the medical malpractice insurance program authorized by this Act, the Commission is authorized to establish in the Treasury of the United States a Medical Malpractice Insurance Fund which shall be available, without fiscal year limitation—

"(1) to repay to the Secretary of the Treasury such sums as may be borrowed from him (together with interest) in accordance with the authority provided in section 1225 of this title; and

"(2) to pay such administrative expenses (or portion of such expenses) of carrying out the insurance program as he may deem necessary; and

"(3) to pay claims and other expenses and costs of the insurance program (including any premium equalization payments and reinsurance claims), as the Commission deems necessary.

"(b) The fund shall be credited with—

"(1) such funds borrowed in accordance with the authority provided in section 1225 of this Act as may from time to time be deposited in the fund;

"(2) such amounts as may be advanced to the fund from appropriations in order to maintain the fund in an operative condition adequate to meet its liabilities;

"(3) interest which may be earned on investments of the fund pursuant to subsection (c);

"(4) such sums as are required to be paid to the Commission under section 1224(c); and

"(5) receipts from any other operations under this Act which may be credited to the fund.

"(c) If, after all outstanding obligations have been liquidated, the Commission determines that the moneys of the fund are in excess of current needs, he may request the investment of such amounts as he deems advisable by the Secretary of the Treasury in obligations issued or guaranteed by the Treasury in obligations issued or guaranteed by the United States.

"PAYMENT OF CLAIMS

"SEC. 1227. The Commission is authorized to issue orders establishing the general method or methods by which proved and approved claims for losses may be adjusted and paid for any damage to or loss of property which is covered by medical malpractice insurance made available under the provisions of this Act.

"PARTIES

"SEC. 1228. (a) Where the provider of health care is insured under the insurance program, it shall be the responsibility of the Commission to represent the insured in an arbitration proceeding to determine liability and damages for medical malpractice.

"(b) The Commission shall not have the right of subrogation against any provider of health care for which it has paid an arbitration award."

TECHNICAL AMENDMENTS

SEC. 404. (a) Section 1 of the Public Health Service Act is amended by striking out "titles I to X" and inserting in lieu thereof "titles I, II, and XIII".

(b) The Act of July 1, 1944 (58 Stat. 682) is further amended by renumbering title XI (as in effect prior to the date of enactment of this Act) as title XIII and by renumbering sections 1101 through 1114 (as in effect prior to such date) and references thereto sections 1301 through 1314 respectively.

TITLE V—AMENDMENTS TO THE PUBLIC HEALTH SERVICE ACT AND THE MENTAL RETARDATION FACILITIES AND COMMUNITY MENTAL HEALTH CENTERS CONSTRUCTION ACT TO IMPROVE AVAILABILITY AND DISTRIBUTION OF HEALTH SERVICES

PART A—AMENDMENTS TO THE PUBLIC HEALTH SERVICE ACT

STATEMENT OF PURPOSE

SEC. 501. Purpose of this title—

(1) to strengthen the Nation's resources of health personnel and facilities and its system of delivery of health services in order to enable the providers of health services to meet the demands on them and to that end to—

(A) expand and intensify the health planning processes throughout the United States with primary emphasis on preparation of the health delivery system to meet increased demands, and

(B) provide financial and other assistance in (i) alleviating shortages and maldistribution of health personnel and facilities in order to increase the supply of services, and (ii) improving the organization of health services in order to increase their accessibility and effective delivery; and

(2) to reenforce the operation of the health programs under the Public Health Service Act and the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963, as amended (77 Stat. 282) as a mechanism for the continuing distribution of health personnel and facilities and the organization of health services to that end to—

(A) coordinate the health planning processes throughout the United States with a view to the continuing development of plans for maximizing the capabilities for the effective delivery of health services, and

(B) assist in meeting those costs of improvement of health personnel, facilities, and organization that are not met from other sources of public or private assistance.

PLANNING

SEC. 502. (a) Section 314 of the Public Health Service Act is amended by adding at the end thereof the following new subsection:

"PLANNING

"(h) In consultation with comprehensive health planning agencies approved under subsections (a) and (b), and with Regional Medical Programs and other health planning agencies, the Secretary shall promote and support, and as necessary shall conduct within the Department of Health, Education, and Welfare, a continuous process of health service planning for the purpose of improving the supply and distribution of health personnel and facilities and the organization of health services. Except for planning with respect to the national supply of professional health personnel, the planning shall proceed primarily on a State-by-State basis but without excluding more particularized planning for portions of States, for metropolitan or interstate areas, or with respect to health facilities, health manpower development, or other particular aspects of health care. If a State comprehensive health planning agency does not undertake and carry out the responsibility for utilizing and coordinating all health planning activities within the State (including coordination with planning for interstate areas), and for coordinating health planning in related fields, the Secretary shall assume the responsibility for coordinating such planning activities within the State. Planning pursuant to this subsection shall give first consideration to identification of the most acute shortages and maldistributions of health personnel and facilities and the most serious deficiencies in the organization for delivery of health services, and to developing means for the speedy alleviation of these shortcomings. Thereafter, it shall be directed to the continuing development of plans for maximizing capabilities for the effective delivery of health services."

(b) Section 314(a)(1) of such Act is amended by striking out the second sentence and inserting in lieu thereof the following: "There are authorized to be appropriated such sums as are necessary to carry out the provisions of this section."

(c) Paragraph (1)(A) of section 314(b) of such Act is amended by striking out the last sentence and inserting in lieu thereof the following: "There are authorized to be appropriated such sums as are necessary to carry out the provisions of this section."

(d) Section 314(c) of such Act is amended by striking the second sentence and inserting in lieu thereof: "There are authorized to be appropriated for this section such sums as may be necessary."

(e) Section 314(d)(1) of such Act is amended by striking out the first sentence and inserting in lieu thereof the following: "There are authorized to be appropriated such sums as are necessary to carry out the provisions of this section to enable the Secretary to make grants to State health or mental health authorities and to assist the States in establishing and maintaining adequate public health services including training of personnel for State and local health work."

(f) Section 314(e) of such Act is amended by striking out the first sentence and inserting in lieu thereof the following: "There are authorized to be appropriated such sums as are necessary to carry out the provisions of this section for grants to any public or nonprofit agency, institution, or organization to cover part of the cost (including equity requirements and amortizations of loans on facilities acquired from the Office of Economic Opportunity or construction in connection with any program or project transferred from the Office of Economic Opportunity) of—

"(1) providing services (including related training) to meet health needs of geographic scope or of specialized regional or national significance; or

"(2) developing and supporting for an initial period new programs of health service (including related training)."

(g) Section 314 of such Act, as amended by this Act, is further amended by redesignating subsection (g) as subsection (i) and inserting in lieu thereof the following:

"APPROVAL OF NEW CONSTRUCTION

"(g) Assistance under parts A, B, and C of title VI of this Act shall be made only after the Secretary receives comments from (A) each appropriate State comprehensive health planning agency (designated under subsection (a) of this section), (B) each appropriate areawide comprehensive health planning agency (designated under subsection (b) of this section), and (C) each appropriate regional medical program (under title IX of this Act), approving such projects.".

EXTENSION OF AUTHORITY RELATING TO HEALTH FACILITIES AND SERVICES

SEC. 503. Section 304(c)(1) of the Public Health Service Act is amended to read as follows: "There are authorized to be appropriated such sums as are necessary to carry out the provisions of this section.".

EXTENSION OF ASSISTANCE UNDER TITLE VI OF THE PUBLIC HEALTH SERVICE ACT

SEC. 504. Section 601 of such Act is amended to read as follows:

"SEC. 601. (a)(1) There are authorized to be appropriated such sums as are necessary for grants for the construction of public or other nonprofit facilities for long-term care.

"(2) There are authorized to be appropriated such sums as are necessary for grants for the construction of public or other nonprofit outpatient facilities.

"(3) There are authorized to be appropriated such sums as are necessary for grants for the construction of public or other nonprofit rehabilitation facilities.

"(b) For grants for the construction of public or other nonprofit hospitals and public health centers there are authorized to be appropriated such sums as are necessary.

"(c) For grants for modernization of facilities referred to in paragraphs (a) and (b) there are authorized to be appropriated such sums as are necessary to carry out the provisions of this section."

EXTENSION OF LOAN GUARANTEES AND LOANS FOR MODERNIZATION AND CONSTRUCTION OF HOSPITAL AND OTHER MEDICAL FACILITITES

SEC. 505. (a)(1) Section 621(a)(1) of the Public Health Service Act is amended by striking out the phrase "during the period July 1, 1970, through June 30, 1973,".

(2) Paragraph (2) of such section is amended by striking out the phrase "during the period July 1, 1970, through June 30, 1973,".

(b) Section 622(b) of the Public Health Service Act is amended by striking out the phrase "ending before July 1, 1973".

(c) Section 631 of the Public Health Service Act is amended by striking out "$20,000,000 each for the fiscal year ending June 30, 1971, and the next two fiscal years." and inserting in lieu thereof "such sums as may be necessary.",

STATE ALLOTMENTS

SEC. 506. Section 602(a) of the Public Health Service Act is amended to read as follows:

"SEC. 602. (a)(1) For each fiscal year beginning after June 30, 1973, the Secretary shall make allotments to each State from the sums appropriated under subparagraph (1), (2), or (3) of paragraph (a) or under subsection (b) of section 601 for grants for construction of respectively—

"(A) public or other nonprofit facilities for long-term care,

"(B) public or other nonprofit outpatient facilities,

"(C) public or other nonprofit rehabilitation facilities, and

"(D) public or other nonprofit hospitals and public health centers. Each allotment shall be made on the basis of the population, the financial need, and the extent of the need for construction of facilities for which grants from the allotment are to be made of the respective States.

"(2) For each fiscal year beginning after June 30, 1973, the Secretary shall, in accordance with regulations, make allotments among the States for grants for modernization of the facilities referred to in section 601. Such allotments shall be made from the sums appropriated under paragraph (c) of section 601 and shall be made among the States on the basis of the population, the financial need, and the extent of the need for modernization of such facilities of the respective States.

"(3) If—

"(A) the allotment for any State under paragraphs (1) and (2) for any fiscal year for grants for construction or modernization of facilities described in any one of the clauses (A), (B), (C), and (D) of such paragraph is less than,

"(B) the amount of the allotment for grants for construction of facilities described in such clause for the fiscal year ending June 30, 1973, as computed under this subsection (as in effect prior to the date of the enactment of this paragraph) and subsection (b) (as in effect on and after such enactment) then such allotment shall be increased to that amount the total of the increase thereby required being derived by proportionately reducing the allotment to each of the remaining States under subsection (a) and the preceding paragraphs of this subsection for grants for construction of facilities described in such clause but with such adjustments as may be necessary to prevent any such allotment of any such remaining States from being thereby reduced to less than that amount.".

LOAN LIMITATIONS

SEC. 507. Part A of title VI of the Public Health Service Act is amended by adding at the end thereof the following new section:

SEC. 611. In any fiscal year no loan guarantee may be made under this part and no agreement to make interest subsidy payments may be entered into under this title if the making of such guarantee or the entering into of such agreement which would cause the cumulative total of—

"(1) the principal of the loans guaranteed under this title in such fiscal year, and

"(2) the principal of the loans for which no guarantee has been made under this title and with respect to which an agreement to make interest subsidy payments is entered into under this title in such fiscal year, to exceed the amount of grant funds obligated under this title in such fiscal year; except that this paragraph shall not apply if the amount of grant funds obligated under this title in such fiscal year equals the sums appropriated for such fiscal year."

REGIONAL MEDICAL PROGRAM

SEC. 508. (a) Section 900(d) of the Public Health Service Act is amended to read as follows: "by these means to improve generally the quality and enhance the capacity of the health manpower and facilities available to the Nation and to improve health services in cooperation with practicing physicians, medical center officials, hospital administrators, and representatives from appropriate voluntary health agencies."

(b) Section 901(a) of such Act is amended to read as follows: "There are authorized to be appropriated such sums as are necessary to carry out the provisions of this section."

(c) Section 900(a) of such Act is amended by inserting the words "(including area health education and service centers)" immediately after "arrangements".

(d) Section 910 of such title is amended to read as follows:

"MULTIPROGRAM SERVICES.—To facilitate interregional cooperation and develop improved national capability for delivery of health services, the Secretary is authorized to utilize funds appropriated under this title to make grants to public or nonprofit private agencies or institutions, or combinations thereof, to contract for and otherwise participate in the cost of those activities which, upon advice of the National Advisory Council on Regional Medical Programs, he deems to be necessary or appropriate for the accomplishment of the purposes of this title.".

(e) Section 902 of such title is amended by inserting "(including area health education and service centers)" immediately after "regional medical program" in subsection (a).

(f) Title IX of such Act is further amended by adding at the end thereof the following new section:

"AREA HEALTH EDUCATION AND SERVICE CENTERS

"SEC. 911. (a) Notwithstanding limitations with regard to the diseases with which this title is concerned, the Secretary is authorized to make grants to and enter into contracts with regional medical programs for the purpose of developing area health education and service centers.".

(g) The title of title IX of the Public Health Service Act is amended to read as follows:

"TITLE IX—REGIONAL COOPERATIVE ARRANGEMENTS FOR EDUCATION, RESEARCH, TRAINING, AND DEMONSTRATION TO IMPROVE HEALTH SERVICES AND MEDICAL CARE"

ASSISTANCE FOR CLINICAL AND MANAGEMENT TRAINING IN COMPREHENSIVE HEALTH SERVICE ORGANIZATIONS

SEC. 509. Title VII of the Public Health Service Act is amended by inserting immediately after section 794D the following:

"GRANTS FOR MANAGEMENT TRAINING FOR HEALTH MAINTENANCE ORGANIZATIONS, COMPREHENSIVE HEALTH ORGANIZATIONS, AND AREA HEALTH EDUCATION CENTERS

"SEC. 794E. (a) The Secretary may make grants to public and nonprofit private educational entities with professional training programs in the management and administration of health maintenance organizations, comprehensive health service organizations, and area health education and service centers, to assist them in meeting the costs of providing such training and of fellowships and traineeships. No such programs of an educational entity may be approved unless the educational entity has a contractual arrangement with an operational health maintenance organization, a comprehensive health service organization, or an area health education and service center, under which the organization will provide practical training to the fellows and trainees enrolled in such program. Not less than 75 per centum of any grant under this section to any entity shall be used by it for traineeships and fellowships.

"(b) Payments by recipients of grants under this section for (1) traineeships shall be limited to such amounts as the Secretary finds necessary to cover the cost of tuition and fees of, and stipends and allowances (including travel and subsistence expenses and dependency allowances) for, the trainees; and (2) fellowships shall be limited to such amounts as the Secretary finds necessary to cover the cost of advanced study by, and stipends and allowances (including travel and subsistence expenses and dependency allowances) for, the fellows.

"(c) There are authorized to be appropriated such sums as are necessary to carry out the provisions of this section.

"GRANTS FOR CLINICAL TRAINING PROVIDED BY HEALTH MAINTENANCE ORGANIZATIONS, COMPREHENSIVE HEALTH SERVICE ORGANIZATIONS, AND AREA HEALTH EDUCATION AND SERVICE CENTERS

"SEC. 794F. (a) The Secretary for the purpose of covering expenses associated with education, may make grants to health professions schools or schools of nursing which provide clinical training in health maintenance organizations, comprehensive health service organizations, and area health education and service centers, to students, and postgraduate trainees and fellows in schools of medicine, osteopathy, nursing, and other health professions. Health professions schools receiving such grants must either (i) operate their own health maintenance organizations, health service organization, or area health education and service center; or (ii) have contractual arrangements with operational health maintenance organizations, health service organization, or area health educational and service center for such clinical training.

"(b) Such grants may be used to cover the costs to the health professions schools or schools of nursing and the health maintenance organizations, health service organization, or area health education and service center; of providing such clinical training, including (but not limited to) the reasonable costs of program administration, and faculty salaries for health professionals practicing in the health maintenance organizations, health service organization, or area health education and service center.

"(c) There are authorized to be appropriated such sums as are necessary to carry out the provisions of this section."

CONTINUATION OF ASSISTANCE FOR ALLIED HEALTH PROFESSIONS

SEC. 510. (a) Section 791(a)(1) of the Public Health Service Act is amended to read as follows:

"SEC. 791. (a)(1) There are authorized to be appropriated such sums as are necessary to carry out the provisions of this section."

(b)(1) Subsection (a)(1) of section 792 of such Act is amended to read as follows:

"SEC. 792. (a)(1) There are authorized to be appropriated such sums as are necessary to carry out the provisions of this section."

(2) Subsection (b) of such section is amended to read as follows:

"(b) There are authorized to be appropriated such sums as are necessary to carry out the provisions of this section for special improvement grants to assist training centers for allied health professions in projects for the provision, maintenance, or improvement of the specialized functions which the center serves."

(3) Subsection (c)(1) of such section is amended to read as follows:

"(c)(1) There are authorized to be appropriated such sums as are necessary to carry out the provisions of this section;".

(c) Section 793(a) of such Act is amended by striking out all of the first sentence through "1973" and inserting in lieu thereof the following:

"There are authorized to be appropriated such sums as are necessary to carry out the provisions of this section."

(d) Subsection (b) of section 794A of such Act is amended to read as follows:

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

(e) Subsection (f) of section 794B of such Act is amended to read as follows:

"(f) There are authorized to be appropriated such sums as are necessary to carry out the provisions of this section."

(f) Subsection (e) of section 794C of such Act is amended to read as follows:

"(e) There are authorized to be appropriated such sums as are necessary to carry out the provisions of this section."

(g) Subsection (c) of section 794D of such Act is amended to read as follows:

"(c) There are authorized to be appropriated to the Secretary for Federal capital contributions to student loan funds pursuant to subsection (a)(2)(B)(i) such sums as are necessary, and there are also authorized to be appropriated such sums as may be necessary to enable students who have received a loan from any academic year to continue or complete their education. Sums appropriated pursuant to this subsection for any fiscal year shall be available to the Secretary (1) for payments into the funds established by subsection (f)(4), and (2) in accordance with agreements under this section, for Federal capital contributions to schools with which such agreements have been made, to be used together with deposits in such funds pursuant to subsection (a)(2)(B)(ii), for establishment and maintenance of student loans funds."

PART B—AMENDMENT TO THE MENTAL RETARDATION FACILITIES AND COMMUNITY MENTAL HEALTH CENTERS CONSTRUCTION ACT OF 1963

COMMUNITY MENTAL HEALTH CENTERS

SEC. 520. (a) Section 201 of the Community Mental Health Centers Act is amended to read as follows:

"SEC. 201. There are authorized to be appropriated for grants for construction of public and other nonprofit community mental health centers such sums as may be necessary."

(b) Section 207 of such Act is amended to read as follows:

"SEC. 207. No grant may be made under any provision of the Public Health Service Act for any fiscal year, for construction of any facility described in this title, unless the Secretary determines that funds are not available, under this title to make a grant for the construction of such facility.".

(c) Section 224 of such Act is amended to read as follows: "There are hereby authorized to be appropriated to enable the Secretary to make initial grants to community mental health centers, under the provisions of this part, such sums as may be necessary. For the fiscal year ending June 30, 1973, and each succeeding fiscal year there are hereby authorized to be appropriated such sums as may be necessary to make grants to such centers which have previously received a grant under this part and are eligible for such a grant by the year for which sums are being appropriated under this sentence.".

PART C—AVAILIBILITY OF APPROPRIATIONS

SEC. 530. Notwithstanding any other provision of law, unless enacted after the enactment of this Act expressly in limitation of the provisions of this section, funds appropriated for any fiscal year, to carry out any program for which appropriations are authorized by the Public Health Service Act or the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963 shall remain available for obligation and expenditure until tne end of such fiscal year.

SECTION-BY-SECTION ANALYSIS OF THE HEALTH MAINTENANCE ORGANIZATION AND RESOURCES DEVELOPMENT ACT OF 1972

(Section 2) States the findings of Congress that:

a. A shortage and maldistribution of health care resources in the United States has limited access to medical care;

b. the present health care system is not organized to promote efficient and economical health care;

c. the health care system is oriented toward the provision of acute health care rather than preventive health care;

d. health maintenance organizations, health service organizations, and area health education and service centers will help to alleviate such circumstances by providing efficient and economical health care, oriented toward the provision of preventive health services;

e. technical and resource assistance is needed for those planning to establish health maintenance organizations, health service organizations, and area health education and service centers;

f. the system of medical education in the United States has a shortage of health science educational facilities, and presently over emphasizes the practice of medicine within a hospital setting and the treatment of rare and exotic diseases;

g. the quality of health care and that of the health service provided varies excessively throughout the United States.

The section also indicates that the purpose of this Act is to improve the health care delivery system by supporting the creation of health maintenance organizations, health service organizations, and area health education and service centers, particularly in medically underserved areas.

TITLE I—HEALTH MAINTENANCE ORGANIZATIONS

(Section 101) Amends the Public Health Service Act by adding new title XI entitled, "Health Maintenance Organizations and Health Service Organizations," and part A of new title XI entitled, "Support for Health Maintenance Organizations."

(Section 101—new section 1101) Defines the terms "health maintenance organization;" "comprehensive health services;" "medical group;" "enrolled;" "medically underserved area;" "construction" and "costs of construction;" "university health center;" "area health education and service center;" and "non-metropolitan area."

(New section 1101(1)) "Health maintenance organization" means an entity which:

a. Provides uniform comprehensive health services for all its enrollees (or subscribers), in return for fixed and uniform payments which are made on a periodic basis (without service actually furnished). A basic range of regard to the frequency, extent, or kind of services is to be delivered directly through the staff and supporting resources of the health maintenance organization or through a medical group (or groups). Additional services, if required, may be delivered by other health delivery entities;

b. satisfactorily demonstrates its ability to provide prompt and appropriate health services that are accessible and available to all enrollees and that assure continuity of care;

c. satisfactorily demonstrates its financial responsibility by adequately providing against the risk of insolvency;

d. is organized to assure enrollees including representation of persons from medically underserved areas a substantial policymaking role in the health maintenance organization; and provides for meaningful hearing and grievance procedures between enrollees and the health maintenance organization, and between individuals providing services and the health maintenance organization;

e. encourages and actively provides for its enrollees health education services and education in the appropriate use of health services;

f. has organizational arrangements for an ongoing quality assurance program that stresses the outcomes of health services provided and assures that quality standards are met which are in compliance with the standards established by the Commissioner on Quality Health Care (created under new title XII of the Public Health Service Act);

g. provides effective procedures for developing, compiling, evaluating and reporting to the Secretary (without jeopardizing physician-patient confidentiality) information on the costs, utilization, availability, accessibility, and acceptance of its health services, and on other matters as may be required. Discloses such information (at least annually) to health maintenance organization enrollees and to the general public;

h. assumes fully (without the benefit of insurance) financial responsibility for comprehensive health services provided. Is not expected to assume direct liability for expenses incurred in association with out-of-area emergency health care, or health care that can be reasonably valued in excess of $5,000 per enrollee per year;

i. has an unrestricted open enrollment period (of not less than 30 days) at least once during a 12-month period.

j. assumes responsibility for the health care of enrollees twenty-four hours a day, seven days a week, and for the prompt availability of such care in emergency situations.

k. may not enroll more than 50 percent of its enrollees from medically underserved areas, except in rural areas and designated by the Secretary;

l. provides ongoing education for its staff;

m. emphasizes the use of physicians' assistants, nurse practitioners, and other allied health personnel.

n. meets other criteria as prescribed by regulation which are consistent with the provisions of this title;

o. does not expell (or refuse to enroll) any enrollee from reasons of medical condition or adverse utilization experience.

(New section 1101(2)) "Comprehensive health services" mean: a minimum range of health services that are provided by the health maintenance organization or health service organization (as defined under new section 1120) to its enrollees without limits as to time or cost. Specifically "comprehensive health services" mean:

a. Physician services (including consultant and referral services);

b. inpatient and outpatient hospital services;

c. extended care facility services;

d. home health services;

e. diagnostic laboratory and diagnostic and therapeutic radiologic services;

f. physical medicine and rehabilitative services (including physical therapy);

g. preventive health and early disease detection services;

h. vision care and podiatric services;

i. reimbursement for necessary out-of-area emergency health services;

j. mental health services, including the prevention and treatment of alcoholism and drug abuse, and emphasizing the use of community mental health centers;

k. dental services, including preventive dental health services for children;

l. provision of or payment for prescription drugs;

m. other personal health services that are necessary to maintain and insure health.

(New section 1101(3)) "Medical group" means: a partnership or other association or group of not less than four persons licensed to practice medicine, osteopathy, or dentistry in a State. Such groups must:

a. As their principal professional activity and as a group responsibility engage in the coordinated practice of their profession;

b. if not employees or retainees of a health maintenance or health service organization, pool their income from their practice and distribute it among themselves according to a prearranged salary plan or drawing account;

c. jointly share their records, substantial portions of major equipment, and staff;

d. utilize additional health professionals and allied health professionals as needed to provide comprehensive health services;

e. provide their members with opportunities for continuing education in clinical medicine and related areas.

(New section 1101(4)) "Enrollee" means: an individual who has entered into a contract with a health maintenance organization or health service organization (or on whose behalf a contract has been arranged) for the provision of health services.

(New section 1101(5)) "Medically underserved area" means: an urban or rural area or population growth that has a shortage of personal health services. Medically underserved areas are to be designated by the Secretary after considering comments of appropirate State and areawide comprehensive health planning agencies (designated under section 314(a) and (b) of the Public Health Service Act) and the regional medical programs.

(New section 1101(6)) "Construction" and "costs of construction" include: the construction of new buildings; the acquisition, expansion, remodeling, replacement, and alteration of existing buildings; architects' fees; the acquisition of land; and the acquisition of equipment (whether or not associated with construction assistance under title XI).

(New section 1101(7)) "University health center" means: those health care institutions which are affiliated with or owned and operated by an accredited university or school of medicine. University health centers must educate undergraduate medical students.

(New section 1101(8)) "Area public health education and service center" means: a hospital, educational facility, or other public or nonprofit private entity that is affiliated with a university health center and which provides clinical training to health personnel in nonmetropolitan areas not presently served by a university health center. Such centers have agreements to:

a. Provide health and educational services for health service organizations and other health care providers in the same geographic area; and

b. Provide licensed health professionals (located in the same geographic area) with opportunities to use its facilities and programs.

(New section 1101(9)) "Nonmetropolitan area" means: an area which is not part of a standard metropolitan statistical area (as designated by the Office of Management and Budget). Such areas cannot contain a city with a population greater than 50,000 persons.

GRANTS FOR PLANNING AND FEASIBILITY STUDIES

(New section 1102) Authorizes the Secretary (fiscal year 1973 through fiscal year 1977) to make grants to public or private nonprofit agencies, organizations, or institutions to assist them in meeting the costs of projects to plan or study the feasibility of developing or expanding health maintenance organizations.

No project may receive more than $250,000 in such grants. Grant funds awarded shall be available for expenditure by the grantee for no more than two years. Priority will be given to those applicants who assure the Secretary that at least 30 percent of their total enrollment will be from medically underserved areas.

There are authorized to be appropriated for such grants:

$15 million for fiscal year 1973;
$21 million for fiscal year 1974;
$40 million for fiscal year 1975;
$62 million for fiscal year 1976; and
$85 million for fiscal year 1977.

GRANTS FOR INITIAL DEVELOPMENT

(New section 1103) Authorizes the Secretary (fiscal year 1973 through fiscal year

1977) to make grants to any public or private nonprofit agency, organization, or institution to assist it in meeting the costs of projects to initially develop a health maintenance organization before it begins actual operation.

No project may receive more than $1 million in such grants. Grant funds awarded shall be available to expenditure by the grantee for no more than two years. Priority will be given to those applicants who assure the Secretary that at least 30 percent of their total enrollment will come from medically underserved areas.

Grant funds shall be used to:

a. Implement an enrollment campaign;

b. design and arrange for the provision of health services;

c. develop administrative and internal organizational arrangements, including arrangements for fiscal control, accounting procedures, and capital financing programs;

d. recruit personnel and conduct training activities; and

e. pay architects' and engineers' fees.

Other uses may be prescribed by regulation.

There are authorized to be appropriated for such grants:

$42.565 million for fiscal year 1973;
$68.720 million for fiscal year 1974;
$74.100 million for fiscal year 1975;
$141.940 million for fiscal year 1976; and
$241.690 million for fiscal year 1977.

CONSTRUCTION GRANTS

(Now section 1104) Authorizes the Secretary (fiscal year 1973 through fiscal year 1977) to make grants to any public or private nonprofit health maintenance organization or any public or private nonprofit agency, organization, or institution intending to become a health maintenance organization to:

a. Assist in meeting construction costs for ambulatory care facilities (or portions of such facilities) that will be used to provide health services to its enrollees; and

b. assist in meeting capital investment costs for necessary tr..nsportation equipment that will be used to improve access to health services for its enrollees.

Special consideration will be given to those applicants for grants to acquire or renovate existing facilities. A grant for any project under this section may not exceed 75 percent of the costs of construction. However, in exceptional circumstances the Secretary is authorized to grant up to 90 percent of such costs. No project may receive more than $2.5 million in construction grants. Priority will be given to those applicants who assure the Secretary that at least 30 percent of their total enrollment will come from medically underserved areas.

There are authorized to be appropriated for such grants such sums as may be necessary.

GRANTS FOR INITIAL OPERATING COSTS

(New section 1105) Authorizes the Secretary (fiscal year 1973 through fiscal year 1977) to make grants to public and private nonprofit health maintenance organizations to assist them in meeting operating deficits incurred during their first three years of operation. Such grants may be made only after the Secretary has determined that the applicant has made reasonable attempts to obtain funds for such purposes from other sources (including loan and loan guarantees).

Grants for initial operating deficits may be made only for the first three years of a health maintenance organization's operation as follows:

For the first year of operation, a grant may not exceed 100 percent of the first year's operating deficit;

For the second year of operation, a grant may not exceed 67 percent of the first year's operating deficit;

For the third year of operation, a grant may not exceed 33 percent of the first year's operating deficit.

There are authorized to be appropriated for such grants such sums as may be necessary.

CONSTRUCTION LOANS

(New section 1106) Authorizes the Secretary (fiscal year 1973 through fiscal year 1977) to make loans to assist any public or private nonprofit health maintenance organization or any public or private nonprofit agency, organization, or institution intending to become a health maintenance organization to assist it in meeting the cost of constructing facilities for ambulatory care and transportation services. Such facilities must be used by the health maintenance organization to provide health services to its enrollees.

Applications for loans to acquire or renovate existing facilities will be given special consideration. A loan for any project under this section may not exceed 90 percent of the costs.

There are authorized to be appropriated for such loans such sums as may be necessary.

Appropriations for such loans, loan repayments, and other receipts in connection with this section shall be placed in a revolving fund to be used by the Secretary for loans and other expenditures under this section.

INITIAL OPERATING LOANS

(New section 1107) Authorizes the Secretary (fiscal year 1973 through fiscal year 1977) to make loans to any public or private nonprofit health maintenance organization to assist it in meeting a portion of its initial operating costs in excess of its gross revenues (as determined by regulation).

Initial operating loans may only be made for the first three years of a health maintenance organization's operation. Such loans (with respect to any project) may not exceed:

60 percent of such excess operating costs for the first year;

40 percent of such excess operating costs for the second year; and

20 percent of such excess operating costs for the third year.

There are authorized to be appropriated for such loans such sums as may be necessary.

Appropriations for loans, loan repayments, and other receipts in connection with this section shall be placed in a revolving fund to be used by the Secretary for loans and other expenditures under this section.

TITLE II—SUPPORT FOR HEALTH SERVICE ORGANIZATIONS

(Section 201) States the purpose of title II. This title authorizes programs to assist in the establishment of health service organizations and area health education and service centers, primarily in rural areas. The services provided by such organizations and centers will be directed toward defined rural population groups that are characterized by a lack of medical care services.

(Section 202) Adds part B entitled, "Health Service Organizations," to new title XI of the Public Health Service Act.

PART B—HEALTH SERVICE ORGANIZATIONS

(Section 202—new section 1120) Defines the term "health service organization." "Health service organization" means an entity operating in a rural or nonmetropolitan area which:

a. Provides, directly or indirectly through arrangements with others, uniform comprehensive health services (as defined in section 1101) for all its enrollees, in return for fixed and uniform payments made on a periodic basis (without regard to the frequency, extent, or kind of service actually furnished). A basic range of services is to be delivered directly through its own staff and supporting resources or through a medical group (or groups), or indirectly, through contractual arrangements with other providers. Additional services, if required, may be delivered through other health delivery entities.

b. satisfactorily demonstrates its ability to provide prompt and appropriate health services that are accessible and available to all members and that assure continuity of care;

c. contracts with an area health education and service center to use the center's facilities and programs if one is located in the same geographic area;

d. provides ongoing education for its staff;

e. satisfactorily demonstrates its financial responsibility by adequately providing against the risk of insolvency;

f. is organized to assure its enrollees a substantial policymaking role in the health service organization; and provides for meaningful grievance procedures between enrollees and the health service organization and between individuals providing services and the health service organization;

g. encourages and actively provides for its enrollees health education services and education in the appropriate use of health services;

h. has organizational arrangements for an ongoing quality assurance program that stresses the outcomes of the health services provided by the organization and assures that quality standards are met in accordance with standards established by the Commission on Quality Health Care (created under new title XII);

i. provides effective procedures for developing, compiling, evaluating and reporting to the Secretary (without jeopardizing physician-patient confidentiality) information on the costs, utilization, availability, accessibility, and acceptance of its health services, and on other matters as may be required. Discloses such information (at least annually) to health service organization enrollees and to the general public.

j. fully assumes (without the benefit of insurance) financial responsibility for comprehensive health services provided. Is not expected to assume direct liability for expenses incurred in association with out-of-area emergency health care, or health care that can be reasonably valued in excess of $5,000 per enrollee per year;

k. has an unrestricted open enrollment period (of not less than thirty days) at least once during a 12-month period;

l. assumes responsibility for the health care of enrollees twenty-four hours a day, seven days a week, and for the prompt availability of such care in emergency situations;

m. provides that individuals, [during enrollment or] once enrolled, may not be excluded by the health service organization for reasons of medical condition or adverse utilization experience.

n. emphasizes the use of physician's assistants, nurse practitioners, and other allied health personnel.

o. meets other criteria as prescribed by regulation which are consistent with the provisions of title XI, including plans to provide a full range of comprehensive health services (as defined in section 1101), if the Secretary determines such organization was not able to provide such services under paragraph (A) of this section.

GRANTS FOR PLANNING AND FEASIBILITY STUDIES

(New section 1121) Authorizes the Secretary (fiscal year 1973 through fiscal year 1977) to make grants to public or private nonprofit agencies, organizations, or institutions to assist them in meeting the costs of projects to plan or study the feasibility of developing or expanding a health service organization. No project may receive more than $250,000 in such grants. Grant funds awarded shall be available for expenditure by the grantee for no more than two years.

There are authorized to be appropriated for such grants:
$15 million for fiscal year 1973;
$21 million for fiscal year 1974;
$40 million for fiscal year 1975;
$62 million for fiscal year 1976; and
$85 million for fiscal year 1977.

GRANTS FOR INITIAL DEVELOPMENT COSTS

(New section 1122) Authorizes the Secretary (fiscal year 1973 through fiscal year 1977) to make grants to any public or private nonprofit entity to assist it in meeting the cost of a project to initially develop a health service organization before it begins actual operation. No project may receive more than $1 million in such grants. Grant funds awarded shall be available for expenditure by the grantee for no more than two years.

Grant funds shall be used to:

a. implement an enrollment campaign;

b. design and arrange for the provision of health services;

c. develop administrative and internal organizational arrangements, including arrangements for fiscal control, accounting procedures, and capital financing programs;

d. recruit personnel and conduct training activities; and

e. pay architects' and engineers' fees.

Other uses may be prescribed by regulation.

There are authorized to be appropriated for such grants:
$42.565 million for fiscal year 1973;
$68.720 million for fiscal year 1974;
$74.700 million for fiscal year 1975;
$141.940 million for fiscal year 1976; and
$241.690 million for fiscal year 1977.

CONSTRUCTION GRANTS

(New section 1123) Authorizes the Secretary (fiscal year 1973 through fiscal year 1977) to make grants to any public or private nonprofit health service organization to:

a. Assist in meeting construction costs for those ambulatory care facilities (or portions of such facilities) that will be used to provide health services to its enrollees; and

b. assist in meeting capital investment costs for necessary transportation equipment that will be used to improve access to health services for its enrollees.

Special consideration will be given to those applicants for grants who acquire or renovate existing facilities. A grant for any project under this section may not exceed 75 percent of the costs of construction. However, in exceptional circumstances the Secretary is authorized to grant up to 90 percent of such costs. No project may receive more than $2.5 million in construction grants under this section.

There are authorized to be appropriated for such grants such sums as may be necessary.

GRANTS FOR INITIAL OPERATING COSTS

(New section 1124) Authorizes the Secretary (fiscal year 1973 through fiscal year 1977) to make grants to public or private nonprofit health service organizations to assist them in meeting operating deficits incurred during their first three years of operation. Such grants may be made only after the Secretary has determined that the applicant has made reasonable attempts to obtain funds from other sources (including loans and loan guarantees).

Grants for initial operating deficits may only be made for the first three years of a health service organization's operation as follows:

For the first year of operation, a grant may not exceed 100 percent of the first year's operating deficit;

For the second year of operation, a grant may not exceed 67 percent of the first year's operating deficit;

For the third year of operation, a grant may not exceed 33 percent of the first year's operating deficit.

There are authorized to be appropriated for such grants such sums as may be necessary.

CONSTRUCTION LOANS

(New section 1125) Authorizes the Secretary (fiscal year 1973 through fiscal year 1977) to make loans to assist any public or private nonprofit health service organization or any public or private nonprofit agency, organization, or institution intending to become a health service organization to meet the costs of constructing facilities for ambulatory care and transportation services. Such facilities must be used by the health service organization to provide health services to its enrollees.

Applications for loans to acquire or renovate existing facilities will be given special consideration. A loan for any project under this section may not exceed 90 percent of the costs.

There are authorized to be appropriated for such loans such sums as may be necessary.

Appropriations for loans, loan repayments, and other receipts in connection with this section shall be placed in a revolving fund to be used by the Secretary for loans and other expenditures under this section.

INITIAL OPERATING LOANS

(New section 1126) Authorizes the Secretary (fiscal year 1973 through fiscal year 1977) to make loans to any public or private nonprofit health service organization to assist it in meeting a portion of its initial operating costs in excess of its gross revenues (as determined by regulation).

Initial operating loans may only be made for the first three years of a health service organization's operation. Such loans (with respect to any project) may not exceed:

60 percent of such excess operating costs for the first year;

40 percent of such excess operating costs for the second year; and

Twenty per centum of such excess operating costs for the third year.

There are authorized to be appropriated for such loans such sums as may be necessary.

Appropriations for loans, loan repayments, and other receipts in connection with this section shall be placed in a revolving fund to be used by the Secretary for loans and other expenditures under this section.

TITLE III—AREA HEALTH EDUCATION AND SERVICE CENTERS

(Section 301) Adds part C entitled, "Grants to Assist Area Health Education and Service Centers" and part D entitled, "General Provisions" to new title XI of the Public Health Service Act.

PART C—GRANTS TO ASSIST AREA HEALTH EDUCATION AND SERVICE CENTERS

(Section 301—new section 1130) States the purpose of part C. The programs authorized under part C are intended to:

a. promote communication between area health education and service centers and health service organizations;

b. provide ongoing education for health care providers;

c. provide clinical experience in nonmetropolitan settings for students from university health centers; and

d. encourage the use of regional medical programs.

GRANTS FOR DEVELOPMENT COSTS

(New section 1131) Authorizes the Secretary (fiscal year 1973 through fiscal year 1977) to make grants to university health centers or to regional medical programs to assist them in meeting the costs of developing area health education and service centers. Grant funds awarded shall be available for expenditure by the grantee for no more than two years.

Grant funds shall be used to:

a. Design and arrange for the provision of services by the center and for the integration of such services with the programs of the parent institution;

b. develop administrative and internal organizational arrangements, including arrangements for fiscal control, accounting procedures, and capital financing programs; and

c. recruit personnel and conduct training activities.

Other uses may be prescribed by regulation.

There are authorized to be appropriated for such grants:
$10 million for fiscal year 1973;
$20 million for fiscal year 1974;
$25 million for fiscal year 1975;
$25 million for fiscal year 1976; and
$25 million for fiscal year 1977.

CONSTRUCTION OF FACILITIES

(New section 1132) Authorizes the Secretary (fiscal year 1973 through fiscal year 1977) to make grants to university health centers or regional medical programs to assist them in constructing and equipping educational facilities to be used by area health education and service centers. The Secretary may award such grants only after determining that applicants are unable to receive assistance for such purposes under titles I and II of the Medical Facilities Construction and Modernization Amendments of 1970 (Hill-Burton) and title IX of the National Housing Act.

There are authorized to be appropriated for such grants:
$25 million for fiscal year 1973;
$50 million for fiscal year 1974;
$75 million for fiscal year 1975;
$75 million for fiscal year 1976; and
$75 million for fiscal year 1977.

PART D—GENERAL PROVISIONS

LOANS

(New section 1140(a)) Any loan made by the Secretary is required to bear interest at rates comparable to prevailing current interest rates for loans guaranteed under new section 1141. No payment of principal on a loan is required until five years after the loan is made.

(New section 1140(b)) Loans may not be made unless the applicant gives the Secretary reasonable satisfaction of its ability to make payments of principal and interest when due and gives reasonable assurances that it will have such additional funds as are necessary to complete the project for which the loan is requested.

(New section 1140(c)) Loans must have such security, such maturity date, be repayable in such installments, and be subject to such other terms and conditions that the Secretary determines are necessary to carry out the purposes of title XI and to protect the financial interests of the United States.

(New section 1140(d)) Loans cannot have a term longer than 15 years.

(New section 1140(e)) Authorizes the Secretary to waive, for good cause, his right to recover loans made to public organizations who fail to make payment and interest on loans under this section.

(New section 1140(f)) Requires applicants for grants and loans under new title XI to submit, for the Secretary's approval, a plan to include dental and mental health services as such services become available.

LOAN GUARANTEES AND INTEREST SUBSIDIES

(New section 1141(a)) Authorizes the Secretary, between January 1, 1973, and June 30, 1977, to:

a. Guarantee loans made by non-Federal lenders to health maintenance organizations, health service organizations (or entities intending to become either), and university health centers; and

b. pay interest subsidies on loans made by non-Federal lenders to private nonprofit health maintenance organizations, health service organizations (or entities intending to become either), university health centers, and regional medical centers.

Loan guarantees and interest subsidies may be made to assist health maintenance orga-

nizations and health service organizations to carry out construction projects for ambulatory care facilities and necessary transportation equipment; to meet their initial development costs for three years; or to meet their operating costs for five years. Loan guarantees and interest subsidies may be made to assist university health centers to develop area health education and service centers; to provide working capital to operate such centers; and to subsidize any differences between a center's income and its operating expenses.

Interest subsidies would be paid to non-Federal lenders on behalf of a health maintenance organization, health service organization, or university health center, in amounts sufficient to reduce by not more than 3 percent per year the net effective interest rate otherwise payable on such loans.

A loan guarantee or interest subsidy could not apply to any amount which when added to any other Federal grant or loan, would exceed more than 90 percent of the costs of construction, initial development, or initial operation (except as prescribed by regulation); nor could loan guarantee apply to more than 90 percent of the loss of principal and interest.

(New section 1141(b)(1)) Requires the Secretary's determination in the case of an application for a loan guarantee or interest subsidy that the terms, conditions, maturity, security (if any), and schedule and amount of repayments of the loan are sufficient to protect the financial interests of the United States, and the rate of interest does not exceed a rate of interest determined by the Secretary to be reasonable, taking into account the range of interest rates prevailing in the private money market for similar loans and the risks assumed by the United States.

(New section 1141(b)(2)) Requires that the term of a loan for which a loan guarantee and interest subsidy is sought does not exceed 25 years (if for construction) or 15 years (if for operating costs), or such shorter period as the Secretary may prescribe.

(New section 1141(b)(3)) Requires an applicant to give assurances that it will keep and afford access to such records as the Secretary may require and make such reports containing such information and in such form as the Secretary may require.

(New section 1141(c)) Requires that loan guarantees and interest subsidies be subject to such further terms and conditions that the Secretary determines are necessary. To the extent permitted by section 1141(e), any terms and conditions may be modified by the Secretary if he determines that such modifications are consistent with the financial interests of the United States.

(New section 1141(d)) Authorizes the United States to recover amounts of its payments under a loan guarantee from the applicant unless the Secretary, for good cause, waives such right and upon making any payment the United States shall be subrogated to all the rights of recipient of payments with respect to which the guarantee was made.

(New section 1141(e)) A loan guarantee made by the Secretary is incontestible in the hands of an applicant and to any person who makes or contracts to make a loan to such applicant in reliance thereon, except in the case of fraud or misrepresentation on the part of the applicant or such other person.

(New section 1141(f)) Establishes in the Treasury a Health Maintenance Organization, Health Service Organization and Area Health Education and Service Center Loan Guarantee and Interest Subsidy Fund to enable the Secretary to discharge his responsibilities under loan guarantees and to make payments of interest subsidies.

There is authorized to be appropriated from time to time such sums as may be necessary to provide amounts required by the Fund. To the extent authorized from time to time in appropriation Acts, amounts received by the Secretary as interest payments, repayments of principal on loans and other moneys, property, or assets received by the Secretary under operations of this section shall be deposited in the Fund.

If at any time sums in the Fund are insufficient, the Secretary of HEW is authorized to issue to the Secretary of the Treasury notes or other obligations in such forms and under such terms as the Secretary may prescribe with the approval of the Secretary of the Treasury.

The Secretary of the Treasury shall determine the rate of interest for such notes or obligations and may use proceeds of sales of any securities issued under the Second Liberty Bond Act, and the purpose for which securities may be issued under the Act are extended to include purchases of such notes and obligations.

The Secretary of the Treasury may at any time sell such notes or obligations. Purchases, sales, or redemptions by the Secretary of the Treasury of such notes or obligations shall be treated as public debt transactions.

Sums borrowed shall be deposited in the fund and redemption of such notes and obligations shall be made by the Secretary from the Fund.

(New section 1141(g)) The cumulative total of the principal of the loans outstanding at any time with respect to which guarantees have been issued may not exceed limitations specified in appropriations Acts. In any fiscal year, the cumulative total of:

a. The principal of loans guaranteed under title XI in that fiscal year, plus

b. the principal of loans not guaranteed under title XI but on which interest subsidy agreements have been made in that fiscal year may not exceed the amount of grant funds obligated under this Act for that fiscal year, unless funds appropriated for such grants for that fiscal year are fully obligated.

APPLICATION REQUIREMENTS

(New section 1142(a)) Requires applications for assistance under this title to be submitted to and approved by the Secretary. Applications must be submitted in such form and manner, and contain such information as the Secretary may prescribe. Applications must also be consistent with the provisions of section 1142(b)(1).

(New section 1142(b)(1)) Applications for assistance under this title must include, to such extent and among other matters as may be prescribed, satisfactory specifications of the existing or anticipated:

a. Population groups to be served by the existing or proposed health maintenance or health service organization;

b. enrollment of the organization;

c. methods, terms, and periods for enrollment;

d. nature and estimated costs per enrollee of health and educational services to be provided;

e. sources of professional services and organizational arrangements for providing health and educational services;

f. organizational arrangements for ongoing quality assurance programs;

g. sources of prepayment and other forms of payment for services provided;

h. facilities available, additional capital investments, and sources of financing required to provide level and scope of services proposed;

i. administrative, managerial, and financial arrangements and capabilities;

j. planning and policymaking roles for enrollees;

k. grievance procedures for enrollees, staff, and employees;

l. evaluations of the support for and acceptance of the organization by the populations served, the sources of operating support, and the professional groups involved.

Organizations applying for multiple assistance under this title (either simultaneously or over a period of time) will not be required to submit duplicate information. However, such organizations will be required to update the information required under this section according to prescribed regulations.

(New section 1142(b)(2)) Requires recipients, upon completion of assistance under this title, to make a full and complete report to the Secretary describing the plans, developments, and operations in the areas enumerated in section 1141(b)(1).

(New section 1142(c)) Requires health maintenance organizations, health service organizations, or university health centers receiving assistance under this title to submit to the Secretary continuing assurances of:

a. Financial responsibility;

b. development and operation consistent with terms of title XI and plans contained in application; and

c. other matters as prescribed by regulation.

(New section 1142(d)) Requires an application for grants, loans, loan guarantees or interest subsidies under title XI to contain assurances that the applicant will enroll the maximum number of persons it will be able to serve effectively. However, it cannot enroll more than 50 percent of its enrollees from medically underserved areas (except in rural areas) as designated by the Secretary. Such assistance under title XI may not be made unless the applicant demonstrates that it will or has met such conditions and that these conditions will be maintained.

(New section 1142(e)) Authorizes the Secretary to terminate or cancel (after a hearing) any grant, loan, loan guarantee, or interest subsidy made to a health maintenance organization, health service organization, or university health center that is in substantial non-compliance with the material provisions of title XI. He may also terminate or cancel such assistance after he has received notice from the Commission on Quality Health Care that such organization or center has had its certificate of approval suspended or revoked.

(New section 1142(f)) Requires applications for any assistance under title XI (with the exception of planning and feasibility grants) to contain proof of compliance with Quality Health Care Standards) except during the first two years after the enactment of this Act or until such standards are effective (whichever is sooner). During such periods, applications for assistance must contain reasonable assurances that the applicant will comply with such standards when they become effective.

HEALTH MAINTENANCE TRUST FUND

(New section 1143) Establishes in the Treasury a Health Maintenance Trust Fund to enable the Secretary to make grants or enter into contracts with health maintenance and health service organizations for annual capitation payments authorized under section 1148.

The Health Maintenance Trust Fund shall be credited with:

a. 5 percent of those taxes received in the Treasury relating to distilled spirits, wines, and beers, and 5 percent of those taxes received in the Treasury relating to tobacco, cigars, cigarettes, and cigarette papers and tubes;

b. interest or other receipts on Fund investments;

c. amounts appropriated;

d. amounts advanced out of appropriations; and

e. receipts from any other source.

For the year of enactment, tax amounts paid into the fund will be based on tax liabilities accrued after the date of enactment of this Act.

TREASURY BORROWING

(New section 1144) Authorizes the Secretary of HEW to issue to the Secretary of the Treasury notes or other obligations in an an-

nual amount not to exceed $500 million, and in such forms and under such terms as the Secretary may prescribe with the approval of the Secretary of the Treasury.

The Secretary of the Treasury shall determine the rate of interest for such notes or obligations. The Secretary of the Treasury shall purchase such notes or obligations and may use proceeds of sales of any securities issued under the Second Liberty Bond Act, and the purposes for which securities may be issued under that Act are extended to include purchase of such notes and obligations.

The Secretary of the Treasury may at any time sell such notes or obligations. Purchases, sales, or redemptions by the Secretary of the Treasury of such notes or obligations shall be treated as public debt transactions.

EFFECT ON STATE LAW

(New section 1145) Allows health maintenance organizations and health service organization (as defined in this title), as well as organizations and providers that receive Quality Health Care Initiative Awards to provide health care services in States, regardless of any restrictive provisions in State laws that:

a. require such organizations to receive approval of a medical society;

b. require physicians to constitute most or all of the organization's governing body;

c. require a certain percentage of the physicians in the local medical society to participate in the organization;

d. require the organization to submit to regulations as an insurer of health care services;

e. bars incorporated individuals or associations from providing health care services;

f. prohibits advertising by a professional group in order to recruit enrollees;

g. imposes restrictions on such organizations in a manner that conflicts with title XI.

Health maintenance organizations and health service organizations must otherwise conform with State laws for incorporation.

QUALITY HEALTH CARE INITIATIVE AWARDS

(New section 1146) Entitles each provider of health care to receive an annual payment to defray administrative costs associated with maintaining internal quality control standards certified by the Commission on Quality Health Care. Such payments shall be equal to 2 percent of that part of the health care provider's gross revenues which can be attributed to the delivery of health services.

There are authorized to be appropriated for such payments:

$1 million for fiscal year 1973;
$10 million for fiscal year 1974;
$50 million for fiscal year 1975;
$100 million for fiscal year 1976; and
$200 million for fiscal year 1977.

Any health care provider, whether or not subject to the provisions of this Act, is eligible to apply for a Quality Health Care Initiative Award.

CONSUMER PRIORITY

(New section 1147) Authorizes the Secretary to give priority to those applicants, for assistance under this title, whose policymaking bodies consist mostly of individuals who use their services.

CAPITATION GRANTS

(New section 1148) Authorizes the Secretary to make annual grants to health maintenance or health service organizations that provide health services to those individuals who cannot afford to pay the entire amount of a health maintenance or health service premium. Individuals who cannot meet the entire expense of a health maintenance or health service premium will be expected to contribute a reasonable portion (as determined by the Secretary). The annual amount of a grant shall be equal to the organization's per capita premium times the number of such individuals enrolled, less the amount of actual premium collected for such individuals.

In determining the amount an individual could be expected to contribute toward a premium, the Secretary is required to consider all sources of income available to the individual (including public sources).

The amount of the annual capitation grant shall not exceed 25 percent of the organization's total premium receipts in the year prior to the year for which the grant is made. Capitation grants are authorized to be made from the Health Maintenance Trust Fund.

SERVICES FOR INDIANS

(New section 1149) Authorizes the Secretary (fiscal year 1973 through fiscal year 1977) to make contracts with health maintenance or health service organizations or other non-Federal agenceis or organizations to provide prepaid health services to Indians. The Secretary must have the consent of the Indian people to be served when making such contracts.

There are authorized to be appropriated for such contracts:

$10 million for fiscal year 1973;
$15 million for fiscal year 1974;
$20 million for fiscal year 1975;
$25 million for fiscal year 1976; and
$30 million for fiscal year 1977.

PAYMENT OF GRANTS

(New section 1150) Provides that the Secretary shall determine the amount of any grant under title XI. Payments under such grants may be made in advance or by reimbursement, and at such intervals and on such conditions as the Secretary finds necessary.

PROHIBITION ON TRANSFER OF FUNDS

(New section 1151) Prohibits the transferring of funds appropriated for any program authorized under title XI to any other program. Requires that only funds appropriated under title XI are to be used to carry out the provisions of title XI. Requires that only funds appropriated under titles IX and XI of the Public Health Service Act are to be used to initially develop, construct, and initially operate health maintenance organizations, health service organizations, and any other entities that provide (either directly or indirectly through arrangements with others) prepaid health care to defined populations.

TITLE IV—COMMISSION ON QUALITY HEALTH CARE

(Section 401) This title is entitled, "The Commission on Quality Health Care Act of 1972."

(Section 402) Title IV creates a Commission on Quality Health Care to establish parameters and standards to promote quality health care in the United States.

(Section 403) Adds new title XII to the Public Health Service Act entitled, "Commission on Quality Health Care," and parts A and B of new title XII.

PART A—COMMISSION ON QUALITY HEALTH CARE

ESTABLISHMENT OF THE COMMISSION

(Section 403—new section 1201) Establishes a Commission on Quality Health Care as an independent agency in the Executive Branch. The Commission shall consist of five members who because of their experience or education are particularly qualified to serve. Membership shall include representatives of the health care delivery industry, private organizations developing quality health care standards, and consumers who are not related to the delivery of health care. Of the five, at least two shall be consumers not related to the delivery of health care. Commission members shall serve a five-year term, except for the first five members appointed. Members cannot serve more than two terms.

DUTIES AND POWERS OF THE COMMISSION

(New section 1202.) Sets forth the functions of the Commission. The Commission shall:

a. Investigate and conduct studies to develop quality health care standards;

b. establish (not later than two years after this Act is enacted) quality health care standards, including standards that relate to the inputs, processes, and outcome of health care delivery;

c. prescribe quality control systems for health maintenance organizations, health service organizations, and other providers of health care affected by this Act. Such systems shall be intended to:

(1) improve and assess medical care quality;

(2) evaluate the inputs, processes, utilization characteristics, and outcomes of health care in relation to those groups receiving such care; and establish relationships between such inputs, processes, and outcomes;

(3) concentrate on those categories of disease which occur most commonly and on which the impact of medical treatment can be most effective;

d. issue certificates of compliance to health care providers which certify that such providers meet quality health care standards established by the Commission;

e. revoke or suspend certificates of compliance.

f. monitor health care provider bi-annual reports to assure that quality standards are maintained;

g. conduct a research and development program to:

(1) improve the technology for assessing medical care quality;

(2) assess and compare medical care quality provided under alternative health care delivery systems;

(3) analyze the effects of providing information to consumers and improve methods for disseminating information; and

(4) analyze the impact of the quality assurance program on the level of health care.

h. collect, summarize, and distribute information on the impact of medical services and the health status of the population of the United States;

i. provide technical assistance to health care providers who are developing quality control programs;

j. study the levels, costs, and quality of health care provided under Federal health care programs;

k. administer the insurance program established under part B of title XII; and

l. report annually to the Congress on the activities conducted under this Act and make recommendations for additional necessary legislation.

Requires the Commission to consider the following when developing Quality Health Care Standards:

a. existing State regulations;

b. existing quality standards for Federal health agencies; and

c. results of the Federal Medical Malpractice Insurance Program (established under Part B).

(New section 1203) Authorizes administrative powers that enable the Commission to carry out the provisions of this Act. Such powers include: appointing and compensating personnel; promulgating regulations; acquiring or constructing equipment and facilities; employing experts; appointing advisory committees; utilizing other public agencies; accepting voluntary assistance; accepting unconditional gifts; and taking those actions necessary to accomplish the objectives of the Commission.

(New section 1204) Provides for the compensation of the chairman and members of the Commission.

APPLICABILITY OF STANDARDS

(New section 1205) Allows a health care provider (receiving assistance under title XI) to apply for an order to permit it to be temporarily out-of-compliance with a quality health care standard (or portions of a standard). The Commission is authorized to grant the order if the applicant:

a. Is unable to comply with the standard because personnel or equipment are unavailable, or necessary construction cannot be completed by the standard's effective date; and

b. has an effective program for coming into compliance with the standard as soon as possible.

The Commission is authorized to grant variances for standards (or portions of standards) if it determines or if the Secretary certifies that the variance is necessary to permit a provider to participate in an approved project, designed to validate new and improved health care delivery techniques.

REPORTS AND MAINTENANCE OF RECORDS

(New section 1206) Requires providers to keep records of their activities which are governed by this Act. Such records must be made available to the Commission and to the Secretary.

Providers are required to make monthly reports to the Commission on activities concerning gross utilization aggregates; disenrollment rates; and overall mortality rates. Reports on other activities may also be required.

The Commission is authorized to prescribe rules and regulations for inspecting a provider's records and facilities.

DISCLOSURE TO CONSUMERS

(New section 1207) Requires providers to publish descriptions of any health care benefit plan covered under this Act. Plan descriptions must be published within 90 days after the plan is established or when the plan becomes subject to the provisions of this Act.

Plan descriptions are required to be comprehensive and written in a manner easily understood by the average enrollee. Descriptions must include the following information:

a. Fees and prices;

b. benefits and services of benefit packages;

c. accessibility and availability of services;

d. name and type of plan administration; and

e. statement of certification by the Commission.

The Commission is required to monitor the published plan descriptions and take action on any insufficient, inaccurate, or inadequate information disclosed. Plan descriptions must also include procedures for presenting benefit claims and remedies available for redress of denied claims. Providers are to distribute copies of plan descriptions to every enrollee upon his enrollment and make such descriptions available to the general public.

TRANSFER OF FUNCTIONS

(New section 1208) The functions, records, property, personnel, and funds of the National Center for Health Statistics are transferred to the Commission on Quality Health Care.

The President is authorized to transfer to the Commission those additional functions (not otherwise transferred under this Act) that relate to the Commission's presently authorized functions. Such transfers must be made within six months of the effective date of this Act.

PENALTIES

(New section 1209) Authorizes the Commission to suspend the certificate of approval of any provider that is found, after a hearing, to be out-of-compliance with quality health care standards and suspend a provider's eligibility for grants loans, loan guarantees, and interest subsides under title XI. Notice of such suspension shall be sent to the provider and to the Secretary.

Providers who have had certificates suspended for an unreasonable period of time (as determined by the Commission) shall have their certificates revoked and shall be responsible for repaying part or all of amounts received under title XI. The Commission is authorized to arrange with such providers for reimbursement of such amounts.

Providers who repeatedly violate the requirements of section 1207 (concerning disclosure of benefit plans) may be assessed a civil penalty of not more than $10,000 per violation. Persons who make false statements on any document required under this Act, upon conviction, will be punished by a fine of not more than $10,000 or by imprisonment of not more than six months, or both. Civil penalties owed under this Act shall be deposited into the Treasury of the United States.

ARBITRATION

(New section 1210) Permits health care providers (with valid certificates of compliance) to require their patients with malpractice claims to agree to submit to binding arbitration. Such agreements must be valid in the jurisdiction in which they are made and must provide for the selection of arbitrators.

AUTHORIZATION

(New section 1211) Such sums as may be necessary are authorized to be appropriated for the Commission on Quality Health Care.

DEFINITIONS

(New section 1212) Defines the terms "input measure," "process measure," "utilization characteristics," "outcome measure," "population outcome measure," "Commission," and "Insurance Program."

PART B—FEDERAL MEDICAL MALPRACTICE INSURANCE PROGRAM

(New section 1220) Establishes a Federal Medical Malpractice Insurance Program, to be administered by the Commission on Quality Health Care.

(New section 1221) Requires the Commission to make the Federal Medical Malpractice Insurance Program available to health care providers.

(New section 1222) Directs the Commission to insure only those health care providers that have valid certificates of compliance and agreements with patients to submit malpractice claims to binding arbitration.

(New section 1223) Authorizes the Commission to obtain information, as necessary, to estimate on an areawide or other appropriate basis:

a. premium rates currently being charged for medical malpractice insurance; and

b. such other rates, if any, that would, in the judgment of the Commission, encourage the purchase of medical malpractice insurance.

Directs the Commission (when making such estimates) to use the services of other Federal agencies (on a reimbursable basis) or enter into contracts with others for such purposes.

(New section 1224) Requires the Commission (from time to time) to prescribe:

a. premium rates for the Federal Medical Malpractice Insurance Program; and

b. terms and conditions for such rates.

Such prescribed rates are to be based on estimates arrived at under section 1223 and other necessary information. Such rates (if feasible) are also to:

a. take into consideration the risks involved in offering such insurance;

b. be adequate to provide reserves for anticipated losses, or be reasonable so as to encourage the purchase of such insurance; and

c. be stated so as to reflect the basis for such rates.

TREASURY BORROWING

(New section 1225) Authorizes the Commission to issue to the Secretary of the Treasury, and have outstanding $500 million (or greater amounts if approved by the President), notes or other obligations in such forms, and under such terms as the Commission may prescribe with the approval of the Secretary of the Treasury.

The Secretary of the Treasury shall determine the rate of interest for such notes or obligations and may use proceeds of sales of any securities issued under the Second Liberty Bond Act, and the purpose for which securities may be issued under the Act are extended to include purchases of such notes and obligations.

The Secretary of the Treasury may at any time sell such notes or obligations. Purchases, sales, or redemptions by the Secretary of the Treasury of such notes or obligations shall be treated as public debt transactions.

Funds borrowed by the Commission (under this authority) shall be deposited in the Medical Malpractice Insurance Fund (established under section 1226).

INSURANCE FUND

(New section 1226) Establishes in the Treasury, a Medical Malpractice Insurance Fund to enable the Commission to carry out the Federal Medical Malpractice Insurance Program. The Fund shall be available to:

a. repay amounts borrowed from the Secretary of the Treasury;

b. pay necessary administrative expenses for the Federal Medical Malpractice Insurance Program; and

c. pay claims and other necessary expenses for the Federal Medical Malpractice Insurance Program.

The Fund shall be credited with:

a. funds borrowed under the authority of section 1225;

b. amounts advanced out of appropriations;

c. interest earned on investments;

d. premiums collected for the Federal Medical Malpractice Program; and

e. other receipts.

PAYMENT OF CLAIMS

(New section 1227) Authorizes the Commission to issue orders establishing methods for paying claims which are covered under the Federal Medical Malpractice Insurance Program.

PARTIES

(New section 1228) Provides that the Commission is to represent providers of health care in arbitration proceedings for malpractice claims. Prohibits the Commission from having the right of subrogation against those health care providers which have received arbitration awards.

TECHNICAL AMENDMENTS

(Section 404) Renumbers certain titles and sections in the Public Health Service Act.

TITLE V—AMENDMENTS TO THE PUBLIC HEALTH SERVICE ACT AND THE MENTAL RETARDATION FACILITIES AND COMMUNITY MENTAL HEALTH CENTERS CONSTRUCTION ACT

PART A—AMENDMENTS TO THE PUBLIC HEALTH SERVICE ACT

(Section 501) states the purpose of title VI:

a. To strengthen the supply of health personnel, facilities, and the health care system by:

(1) expanding health planning processes; and

(2) providing assistance to alleviate the

shortages and maldistributions of health personnel, and to improve the organization of health services.

b. To reinforce the operation of health programs authorized under the Public Health Service Act and the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963, as amended, by:

(1) coordinating health planning processes throughout the United States; and

(2) providing assistance (not otherwise provided) to improve health personnel, facilities, and organization.

PLANNING

(Section 502) subsection (a) adds new section 314(h) to the Public Health Service Act. Authorizes the Secretary (in consultation with State comprehensive health planning agencies designated under sections 314 (a) and (b), regional medical programs, and other health planning agencies) to support continuing health planning processes to improve the supply and distribution of health personnel, facilities, and the organization of health services. Such planning is to proceed on a State and local basis.

When developing such planning processes, planners are directed to:

a. Identify first those local areas which have the most acute shortages and maldistributions of health personnel and facilities, and the most serious health service organizational deficiencies; and

b. develop means to alleviate such shortcomings and deficiencies as soon as possible.

Subsection (b) amends section 314(a)(1) of the Public Health Service Act to reauthorize and extend indefinitely the program of grants to states for comprehensive health planning. Such sums as may be necessary are authorized to be appropriated for such grants.

Subsection (c) amends section 314(b)(1)(A) of the Public Health Service Act to reauthorize and extend indefinitely the program of project grants for areawide health planning. Such sums as may be necessary are authorized to be appropriated for such grants.

Subsection (d) amends section 314(c) of the Public Health Service Act to reauthorize and extend indefinitely the program of project grants for training, studies, and demonstrations to develop improved comprehensive health planning. Such sums as may be necessary are authorized to be appropriated for such grants.

Subsection (e) amends section 314(d)(1) of the Public Health Service Act to reauthorize and extend indefinitely the program of formula grants for comprehensive public health services. Such sums as may be necessary are authorized to be appropriated for such grants.

Subsection (f) amends section 314(e) of the Public Health Service Act to reauthorize and extend indefinitely the program of project grants for health service development. Such sums as may be necessary are authorized to be appropriated for such grants.

Subsection (g) redesignates section 314(g) of the Public Health Service Act as subsection (i) and inserts in lieu a new subsection (g). The new subsection requires the appropriate State and area wide comprehensive health planning agencies (designated under sections 314 (a) and (b)), and the appropriate regional medical programs to approve projects to construct and modernize hospitals and other medical facilities before the Secretary can award assistance for such projects under parts A, B, and C of title VI of the Public Health Service Act (Hill-Burton).

HEALTH FACILITIES AND SERVICES

(Section 503) Amends section 304(c)(1) of the Public Health Service Act to reauthorize and extend indefinitely the program of grants and contracts for research and demonstrations relating to health facilities and services. Such sums as may be necessary are authorized to be appropriated for such grants.

EXTENSION OF TITLE VI OF THE PUBLIC HEALTH SERVICE ACT

(Section 504) Amends section 601 of the Public Health Service Act to reauthorize and extend indefinitely the following grant programs:

a. Grants to construct public or other nonprofit long term care facilities;

b. grants to construct public or other nonprofit out-patient facilities;

c. grants to construct public or other nonprofit rehabilitation facilities;

d. grants to construct public or other nonprofit hospitals and public health centers; and

e. grants to modernize the above-mentioned facilities.

Such sums as may be necessary are authorizes to be appropriated for each grant program.

(Section 505) Subsection (a) amends section 621(a) of the Public Health Service Act to reauthorize and extend indefinitely the program of loan guarantees and loans for modernization and construction of hospitals and other medical facilities.

Subsection (b) amending section 622(b) of the Public Health Service Act, is a technical conforming amendment.

Subsection (c) amends section 631 of the Public Health Service Act to reauthorize and extend indefinitely the program of special project grants to construct or modernize emergency rooms. Such sums as may be necessary are authorized to be appropriated for such grants.

(Section 560) Amends section 602(a) of the Public Health Service Act. Changes the formula for allotting grant funds to States to construct hospitals and other medical facilities. Beginning in fiscal year 1974 and thereafter, the Secretary is to determine the amount of each State's allotment for such purposes on the basis of the State's:

a. Population;

b. financial need; and

c. need for the facility to be constructed.

If, in fiscal year 1974 thereafter, the amount of a State's allotment for grants to construct or modernize hospitals and other medical facilities is less than its fiscal year 1973 allotment, then such allotment shall be increased to the fiscal year 1973 level.

(Section 507) Adds new section 611 to part A, title VI of the Public Health Service Act. Provides that in any fiscal year, the cumulative total of:

a. The principal of loans guaranteed under part A in that fiscal year, plus

b. the principal of loans not guaranteed under part A but on which interest subsidy agreements have been made in that fiscal year may not exceed the amount of title VI grant funds obligated in that fiscal year, unless funds appropriated for such grants for that fiscal year are fully obligated.

EXTENSION OF TITLE IX OF THE PUBLIC HEALTH SERVICE ACT

(Section 508) Subsection (a) amends section 900(d) of the Public Health Service Act to remove the restriction that requires regional medical programs to accomplish their objectives without interfering with the patterns, or the methods of financing, of patient care or professional practice, or with the administration of hospitals.

Subsection (b) amends section 901(a) of the Public Health Sevice Act to extend and reauthorize indefinitely the programs of grants and contracts to plan, establish, and operate regional medical programs. Such sums as may be necessary are authorized to be appropriated for such grants.

Subsection (c) amends the title of title IX of the Public Health Service Act to read, "Title IX—Regional Cooperative Arrangements for Education, Research, Training, and Demonstration to Improve Health Services and Medical Care."

Subsection (d) amends section 900(a) of the Public Health Service Act to expand its meaning. Section 900(a) states one purpose of title IX, which is to encourage the establishment of regional cooperative arrangements between medical schools, research institutions, and hospitals for medical date exchanges and for patient care demonstrations. Under the terms of this amendment, an area health education and service center could be operated or administered through regional cooperative arrangements between such institutions and therefore be eligible to receive assistance in accordance with the provisions of title IX.

Subsection (e) replaces section 910 of the Public Health Service Act (concerning multiprogram services) with a new section 910, permitting the Secretary to use title IX funds to make grants to public or private nonprofit agencies or institutions (or combinations of both) to contract for or otherwise participate in the costs of those activities that would further the purposes of title IX.

Subsection (f) amends section 902(a) of the Public Health Service Act to expand the definition of the term "regional medical program" to include area health education and service centers.

Subsection (g) adds new section 911 to the Public Health Service Act to authorize the Secretary to make grants and enter into contracts with regional medical programs to develop area health education and service centers.

MANAGEMENT TRAINING GRANTS

(Section 509) Amends section 794 of the Public Health Service Act to add new sections 794E and 794F.

New section 794E authorizes the Secretary (without fiscal year limitation) to make grants to public and nonprofit private educational entities with approved professional training programs in the management and administration of health maintenance organizations, health service organizations, and area health education and service centers. Such grants may be made to assist educational entities in meeting the costs of providing such training, and for traineeships and fellowships.

No program may be approved, unless the educational entity has a contract with an operational health maintenance organization, health service organization, or area health education and service center for the purpose of providing practical training to fellows and trainees. At least 75 percent of any such grant to any educational entity shall be used for traineeships and fellowships.

Payments for traineeships are limited to amounts necessary (as determined by the Secretary) to cover the costs of tuitions, fees, stipends, and allowances for the trainees. Payments for fellowships are limited to amounts necessary (as determined by the Secretary) to cover the costs of advanced study, stipends, and allowances for the fellows.

Such sums as may be necessary are authorized to be appropriated for such grants.

CLINICAL TRAINING GRANTS

New section 794F authorizes the Secretary (without fiscal year limitation) to make grants to health professions or nursing schools that provide clinical training in health maintenance organizations, health service organizations, and area health education and service centers for students, postgraduate trainees, and fellows enrolled in such schools. Such grants are to be used to defray those costs that can be attributed to educational activities so that costs for such purposes will not be reflected in the premiums of the health maintenance or health service organization.

Schools receiving such grants must either operate their own health maintenance organization, health service organization, or area health education and service center or contract with an operational health maintenance organization, health service center, or area health education and service center for such training. Grants may be used to cover the costs of clinical training, including reasonable costs for program administration and faculty salaries.

Such sums as may be necessary are authorized to be appropriated for such grants.

CONTINUATION OF ASSISTANCE FOR ALLIED HEALTH PROFESSIONS

(Section 510) Subsection (a) amends section 791(a)(1) of the Public Health Service Act to reauthorize and extend indefinitely the program of grants to construct teaching facilities for the allied health professions. Such sums as may be necessary are authorized to be appropriated for such grants.

Subsection (b)(1) amends section 792(a)(1) of the Public Health Service Act to reauthorize and extend indefinitely the program of basic (formula) improvement grants for allied health training centers. Such sums as may be necessary are authorized to be appropriated for such grants.

Subsection (b)(2) amends section 792(b) of the Public Health Service Act to reauthorize and extend indefinitely the program of special improvement grants for allied health training centers. Such sums as may be necessary are authorized to be appropriated for such grants.

Subsection (b)(3) amends section 792(c)(1) of the Public Health Service Act to reauthorize and extend indefinitely the program of grants and contracts for special projects for experimentation, demonstration, and institutional improvement. Such sums as may be necessary are authorized to be appropriated for such grants.

Subsection (c) amends section 793(a) of the Public Health Service Act to reauthorize and extend indefinitely the program of grants for traineeships for the advanced training of allied health personnel. Such sums as may be necessary are authorized to be appropriated for such grants.

Subsection (d) amends section 794A(b) of the Public Health Service Act to reauthorize and extend indefinitely the program of grants and contracts to encourage the full utilization of educational talent for the allied health professions. Such sums as may be necessary are authorized to be appropriated for such grants.

Subsection (e) amends section 794B(f) of the Public Health Service Act to reauthorize and extend indefinitely grants for allied health student scholarships. Such sums as may be necessary are authorized to be appropriated for such grants.

Subsection (f) amends section 794C(e) of the Public Health Service Act to reauthorize and extend indefinitely grants for allied health work-study programs. Such sums as may be necessary are authorized to be appropriated for such grants.

Subsection (g) amends section 794D(c) of the Public Health Service Act to reauthorize and extend indefinitely the program of loans for students of the allied health professions. Such sums as may be necessary are authorized to be appropriated for such purposes.

PART B—AMENDMENTS TO THE MENTAL RETARDATION FACILITIES AND COMMUNITY MENTAL HEALTH CENTERS CONSTRUCTION ACT OF 1963

COMMUNITY MENTAL HEALTH CENTERS

(Section 520) Subsection (a) amends section 201 of the Community Mental Health Centers Act to reauthorize and extend indefinitely the program of grants for construction of public and other nonprofit community mental health centers. Such sums as may be necessary are authorized to be appropriated for such grants.

Subsection (b), amending section 207 of the Community Mental Health Centers Act, is a technical amendment that extends indefinitely the provision concerning non-duplication of grants.

Subsection (c) amends section 224 of the Community Mental Health Centers Act to reauthorize and extend indefinitely grants for costs of professional and technical personnel of community mental health centers.

(Section 521) Provides that funds appropriated, in any fiscal year, to carry out programs under the Public Health Service Act or the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963, as amended, will remain available for obligation and expenditure until the end of the fiscal year for which appropriated.

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

S. 3328. A bill to amend the Social Security Act to assure that whenever there is a general increase in social security benefits there will be a corresponding increase in the standard of need used to determine eligibility for aid or assistance under State plans approved under title I, X, XIV, or XVI of such Act. Referred to the Committee on Finance.

AUTOMATIC INCREASE IN STANDARDS OF NEED UNDER PUBLIC ASSISTANCE PROGRAMS

Mr. CRANSTON. Mr. President, I introduce today, along with my colleague (Senator TUNNEY), legislation to enable those needy individuals who are recipients of grants for the aged, blind, and disabled to receive automatic increases in this assistance commensurate with increases in social security benefits. This would be achieved by requiring States to increase, by a rate corresponding to the rate of any further social security increase, the standard of need used to determine eligibility for assistance under these programs.

This concept, in a somewhat different form, was recommended in 1970 by the Senate Finance Committee in its consideration of H.R. 17550, the proposed Social Security Amendments of 1970. The committee report (No. 91-1431, page 43) said:

PASS-ALONG OF SOCIAL SECURITY INCREASES TO WELFARE RECIPIENTS

Under other provisions of the bill, social security benefits would be increased by 10 percent, with the minimum basic social security benefit increased to $100 from its present $64 level. If no modification were made in present welfare law, however, many needy aged, blind, and disabled persons would get no benefit from these substantial increases in social security since offsetting reductions would be made in their welfare grants. To assure that such individuals would enjoy at least some benefit from the social security increases, the committee bill requires States to raise their standards of need for those in the aged, blind, and disabled categories by $10 per month for a single individual and $15 per month for a couple. As a result of this provision, recipients of aid to the aged, blind, or disabled, who are also social security beneficiaries, would enjoy an increase in total monthly income of at least $10 ($15 in the case of a couple).

The method I am proposing to assure that the aged, blind, or disabled enjoy benefits from social security increases eliminates the discriminatory effect of the so-called pass-along provision, which results in the granting of cost-of-living increases only to those public assistance recipients who are also beneficiaries of social security or railroad retirement benefits.

The original pass-along provisions, included in the 1965 and 1967 social security amendments, permitted States, in determining an individual's need for public assistance payments, to exclude $5 and $7.50 per month, respectively, from any source although these provisions were designed with the 1965 and 1967 social security increases in mind. Later pass-along provisions, however, have applied exclusively to the income received from social security and railroad retirement benefits, and thereby have not helped those public assistance recipients who receive no additional income or who receive income other than that afforded by social security or railroad retirement benefits. My bill would rectify this situation by substituting the "increase in standard-of-need" concept for the "pass-along" concept.

In addition, my bill would eliminate the necessity of repeatedly legislating to afford public assistance recipients the benefits of social security cost-of-living increases by providing for automatic increases in the standard of need. To illustrate the need for such a permanent, automatic mechanism, let me trace briefly the history of the pass-along provisions since their inception 6 years ago:

The Social Security Amendments of 1965 (Public Law 89-97) included a provision that permitted States, in determining an individual's need for public assistance payments, to exclude up to $5 of income per month from any source.

The Social Security Amendments of 1967 (Public Law 90-248) amended the pass-along provision enacted in 1965 to increase the income exclusion from $5 to $7.50 per month.

The Tax Reform Act of 1969 (Public Law 91-172) included in section 1006 a requirement that, in determining the need of its public assistance recipients, States must disregard the retroactive payment of the social security increase received April 1970. Section 1007 of the Tax Reform Act required States to exclude up to $4 per month of social security benefits in determining the amount of public assistance payments. This provision was applicable through July 1970.

The 1970 social security amendments to the act to continue the suspension of duties on manganese ore (Public Law 91-306) extended the pass-along provided in section 1007 of the Tax Reform Act of 1969 through October 1970.

The January 1971 amendments to the Social Security Act (Public Law 91-669) extended the pass-along provided in section 1007 of the Tax Reform Act of 1969 through December 1971.

The March 1971 social security amendments to the act to increase the public debt (Public Law 92-5) made it optional for States to disregard retroactive social security benefits in determining public assistance payments from January through April 1971.

The December 1971 amendments to the Social Security Act—Public Law 92-223—extended the passalong provided

in section 1007 of the Tax Reform Act of 1969 through December 1972. My colleague and principal consponsor of this legislation (Mr. TUNNEY) was responsible for the enactment of this, the most recent temporary passalong provision, which affects the benefits provided by the April 1970 cost-of-living increases.

However, Mr. President, at no time has there been a passalong of any portion of the social security benefit increase enacted in March and effective January 1, 1971. Thus, recipients of aid to the aged, blind, or disabled who are also social security or railroad retirement beneficiaries have not yet realized the benefits Congress intended for them by this legislation. Only they can tell of the hardships they have suffered from this situation.

Passalong provisions, then, have, at times, been enacted to correct the situation whereby individuals receiving both social security and/or railroad retirement benefits as well as public assistance also receive a corresponding reduction in their public assistance grant whenever social security cost-of-living increase are enacted. In general, however, the passalong allowed has been less than the full social security increase, so recipients in this category have not enjoyed the full cost-of-living increase intended for them. Further, when the passalong legislation is not included in the legislation to increase benefits, as was the case in the most recent social security increase enacted last March 1971 recipients in this category receive none of the cost-of-living increase provided other social security beneficiaries.

A permanent, automatic mechanism to increase the standard of need, Mr. President, would eliminate not only the necessity of repeatedly legislating this kind of provision, but also, the bill I am introducing today would have the following benefits as well:

First, it would require that all States conform to the mechanism, rather than making it optional for States to pass on benefits, as most pass-along provisions have to date; and

Second, it would provide every aged, blind, and disabled public assistance recipient with the guarantee that he will receive grant increases whenever there is a corresponding social security increase, and thus provide a systematic way of improving assistance benefits under those programs in equal proportion to improvements Congress makes in social security benefits. For example, in addition to those in my State who receive social security as well as old age assistance, this legislation would benefit the 159,000 Californians on old-age assistance who receive no other source of income. This legislation would benefit a total of 521,000 older persons in California. Enactment of such a mandatory provision would seem particularly appropriate if the Senate accepts the automatic social security increase provision in H.R. 1.

Throughout last spring and summer, Mr. President, I received countless letters from elderly persons—persons who rely on old age assistance grants and social security for their very existence—relating their despair upon receiving from the California State Department of Public Social Services the notice that their public assistance check would be reduced by the amount of the social security cost-of-living increase enacted in March. This was a cruel blow to deal to so many of the more than 2 million recipients of old age assistance in the United States, 60 percent of whom are also recipients of social security benefits. Approximately 362,000 of California's aid to the aged, blind, and disabled recipients also receive social security benefits and thus were not benefited at all by the 1971 social security increase. I believe it is past time to insure that this unfortunate stiuation is not continued in the future.

I am today writing to Chairman LONG of the Senate Finance Committee, urging that he consider the concept embodied in this legislation in conjunction with his committee's consideration of H.R. 1, the Social Security Amendments of 1971. To facilitate his work, I am redrafting my bill to propose it as well as an amendment to that omnibus social security measure.

As I related to Chairman LONG, last week, on the 3d and 4th of March, as ranking majority member of Senator TOM EAGLETON'S Subcommittee on Aging of the Labor and Public Welfare Committee, I was privileged to chair hearings on legislation affecting our Nation's more than 20 million older Americans. I discussed the legislation I am introducing today with many of the witnesses present, and without a dissent, each testified to the vital need for such a measure.

Mr. President, I ask unanimous consent that the text of my 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. 3328

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title XI of the Social Security Act is amended by adding at the end thereof the following new section:

"AUTOMATIC INCREASE IN STANDARDS OF NEED UNDER PUBLIC ASSISTANCE PROGRAMS

"SEC. 1122. (a)(1) In addition to the requirements imposed by other provisions of law as a condition of approval of a State plan of any State (other than the Commonwealth of Puerto Rico, Guam, or the Virgin Islands) to provide aid or assistance to individuals under title I, X, XIV, or XVI, there is hereby imposed the requirement (and the plan shall be deemed to require) that the standard of need (as defined in paragraph (2)) applicable under any such plan shall be increased by the amounts certified in the certifications of the Secretary made pursuant to subsection (b).

"(2) For purposes of this section, the term 'standard of need', when used in connection with any approved plan referred to in paragraph (1), means the income amount (not otherwise disregarded under the plan) used to determine (in the case of each category of applicants for and recipients of aid or assistance under the plan) eligibility of such applicants and recipients for aid or assistance under such plan.

"(b)(1) Whenever there is enacted any provision of law providing a general increase in monthly benefits payable to individuals under title II, the Secretary shall (at the earliest practicable date after the enactment of such provision) determine the average rate of such increase and shall certify to each State agency administering or supervising the administration of any State plan approved under title I, X, XIV, or XVI, the average so determined.

"(2) Any such certification shall be effective, in the case of the standard of need applicable under any approved State plan referred to in subsection (a), for months beginning more than 30 days after such certification is made to the State agency administering or supervising the administration of such State plan, or, if the general increase (referred to in paragraph (1)), on the basis of which such certification is made, will not be effective by such date, then it shall be effective on the first month for which such general increase will be effective."

SEC. 2. (a) Subject to subsection (b), the amendment made by the first section of this Act shall be effective in the case of general increases in monthly benefits payable to individuals under title II of the Social Security Act resulting from the enactment of provisions of law enacted after January 1971.

(b) For purposes of section 1122 of the Social Security Act (as added by the first section of this Act), any certification under subsection (b) of such section on account of any general increase in monthly benefits payable to individuals under title II of the Social Security Act resulting from the enactment, prior to the enactment of this Act but after January 1971, shall be made at the earliest practicable date after the enactment of this Act and shall be effective with respect to months beginning 2 months after the month of enactment of this Act.

By Mr. BEALL:

S. 3329. A bill to establish a National Institute of Health Care Delivery, and for other purposes. Referred to the Committee on Labor and Public Welfare.

NATIONAL INSTITUTE OF HEALTH CARE DELIVERY ACT OF 1972

Mr. BEALL. Mr. President, I introduce today a bill to establish a new National Institute of Health Care Delivery. The bill also authorizes up to eight regional health care delivery centers and two special Emphasis Centers, the Health Care Technology Center and the Health Care Management Center. Under my proposal the National Institute of Health Care Delivery would be funded at $155 million level for the first year. This figure represents more than a doubling of the present effort. A total of $580 million will be authorized over a 3-year period.

This legislation implements a proposal I made last June. Since then, I have solicited the views of many experts and interested citizens in the health field. I am deeply gratified over the favorable reaction and interest the proposal has generated. This reaction included a favorable editorial comment from the highly respected science magazine. I ask unanimous consent that this editorial be printed following my remarks.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. (See exhibit A.)

Mr. BEALL. Since World War II, this Nation has invested approximately $20 billion in biomedical research. This investment has made biomedical research in the United States preeminent in the world and has produced many medical breakthroughs. Our citizens are aware of the miracles of medical science. The people of America generally believe that

the state of the art in medical science in this Nation is higher than anywhere else in the world. It is not the achievements of medical science that are under attack. What is under attack and what greatly disturbs and distresses the American people is the gap between the present promises and capabilities of medical science and what is delivered to the patient.

I have talked to and heard from many citizens in my State and across the country. Their first plea is not for more dramatic breakthroughs, although they support continued research efforts in this regard. They simply want access to the methods and procedures developed by medical science over the last quarter to one-half century. To develop the means and methods to deliver the results of medical research to the American citizens wherever they are located and at a price they can afford, is the tough test facing our Nation and our health community. This is the challenge that would be the work of the new National Institute of Health Care Delivery.

LOCATION AND APPROACH

The new National Institute of Health Care Delivery will be a separate agency within the Department of Health, Education, and Welfare. Its organizational position within the Department will be comparable to the National Institutes of Health. This position is needed because of the importance and urgency of health care delivery problems and it is necessary if the Institute is going to attract top management and the talented men and women required for this undertaking. This elevated structure will give health care delivery research and development the necessary visibility and raise its stature among the public, the health community and within the Government. The Institute's new structure will enable it to have a strong voice for a needed increased investment and interest in research and development in health care delivery.

The Institute will provide a creative environment wherein multidisciplinary teams from such academic disciplines as health, medicine, engineering, science, accounting, statistics, social sciences, architecture, law, education, and the management sciences can interact and focus their attention and generate action oriented research on the critical and complex problems of health care delivery.

The Institute will be headed by a Director, appointed by the President, with the advice and consent of the Senate. The salary of the Director will be at executive level 4, which is similar to and competitive with other Federal research and development agencies. The Institute will have a Deputy Director, also appointed by the President, and not to exceed four Assistant Directors who will be selected by the Director. The objectives and mandate of the Institute will be broad. It will be encouraged to pursue all promising opportunities for improving the quality of health care and for increasing the effectiveness and efficiencies of our health care system and improving the quality of health care.

It will carry out its functions through an in-house capability and through an extramural effort at the Regional Health Care Centers and its two National Emphasis Centers, the Health Care Technology Center and the Health Care Management Center, and through its broad authority to make grants, and contracts with universities, research institutions, industry, other public and private agencies, and individuals.

Let us examine some of the areas that the National Institute of Health Care Delivery will explore.

INSTITUTE'S MANDATE

The legislative mandate of the National Institute of Health Care Delivery will be broad. It will be authorized to examine all aspects of the existing health care system and the means to improve that system, as well as to devise and test alternative systems.

The Institute of Health Care Delivery must be able to examine the ways physicians and other health professionals are organized and utilized and the extent to which tasks performed by such professionals may be delegated to other appropriately trained individuals. With respect to any illness, we can combine the talents of medical personnel in various ways. Take a routine physical examination. It may be performed entirely by a doctor, by a doctor-nurse combination, with the nurse taking the medical history and patient's temperature, or by a doctor-nurse-technician team where the technician performs many of the tests and the doctor's role is limited to the interpretation of the results such as in multiphasic screening. These different approaches to the routine physical examination may produce medical care of the same quality.

They, however, carry vastly different implications, both in terms of cost and the utilization of the physician's scarce time. Similarly, experts tell us that from 70 to 80 percent of the pediatricians medical task could be performed by a trained physician-assistant, such as nurses. Furthermore, it is generally felt that doctors spend too much time on routine tasks, including 25 percent of their time on business, such as bookkeeping, billing, ordering supplies, et cetera. Also, it has been estimated that nurses spend up to 25 percent of their time on paperwork. We need to explore all of these areas and to improve our utilization of scarce medical personnel.

The National Institute of Health Care Delivery will also study the manpower credentialing and malpractice problem. Both of these issues have been examined recently, but it is important that an examination and followup on these reports be made. Indicatons are that malpractice insurance may cost some hospitals as much as $2 a day per patient. The malpractice problem has also resulted in what some refer to as "defensive medicine" under which certain tests or procedures are ordered which may not be really necessary in order to protect a physician from a possible charge of negligence. The National Institute of Health Care Delivery could use the Federal Government's Public Health Service hospitals and outpatient clinics if license laws prove to be an obstacle to experimentation on the use of new categories of health manpower. Successful experimentation in these Federal facilities should encourage their use elsewhere.

The new Institute also will have the responsibility of examining the efficiency, management, and utilization of new and existing health care facilities including studies of admission practice and examination of cost-finding techniques. An effort will be made to develop uniform accounting practices, financial reporting, and uniform health records.

Some medical experts estimate that as many as 30 percent of hospital admissions are unnecessary. With the average cost of a single day's stay in any hospital being $100 in many urban areas, it becomes important to avoid unnecessary hospitalization. The U.S. Chamber of Comerce in their excellent study, "Improving Our Nation's Health Care System: Proposals for the Seventies," pointed out the need and potential for operational analysis to control cost saying:

> Operational analysis by hospitals should quickly become widespread. One hospital director has in effect a "predicted length of stay profile" for each diagnosis, to use in measuring a doctor's performance. He requires a prospective rather than a retrospective hospital utilizaton review to be carried out, so that each discharge can be measured against the predicted length of stay for that diagnosis. He suggests greater reward for doctors whose performance results in lowering community costs.
>
> The average length of stay in his hospital is much lower than surrounding institutions. These illustrations suggest the scope for applying to the hospital cost-saving operational analysis familiar to industrial engineers for a generation or more.

An article in Medical Economics of December 1971 features Parkview Hospital in Indiana which "operates with one-fourth fewer employees per patient than comparable hospitals nationally, and at no apparent sacrifice in the general level of care." The cost per patient at this hospital was $58.09 compared with an average of $83.11 for other Indiana hospitals with 250 beds or more.

While I have not evaluated these particular situations personally, I believe they illustrate the potential for operational analysis and the desirability of uniform accounting rules and reporting so that administrators at least will be able to compare the cost and quality of their facility with comparable facilities elsewhere. This should be a useful tool in moderating health costs.

Part of the problem has been that insurance policies often pay only if the treatment takes place in hospitals. This is changing and all insurance companies should take steps to insure that they do not encourage needless hospitalization.

There is also the serious problem of communities and professionals competing for the most advanced and expensive equipment. This often results in unnecessary duplication. Open-heart surgery is a good example. One hospital director has said that open heart surgery requires a team of 12 doctors, nurses, and technicians on constant standby and

that 50 operations are needed a year in order to keep the team at its maximum effectiveness and efficiency.

Yet, of the 800 hospitals equipped to do this surgery, one-third do not have a single operation in a year, let alone 50. The Institute would have a mandate to develop and test incentive payment mechanisms that reward efficiency in health care delivery without, of course, compromising the quality of health care.

The Institute would also examine the applications of all forms of technology including computers and other electronic devices in health care delivery. In this connection, the Institute along with the Health Care Technology Center, will examine data processing, which has become standard in other segments of our society. One of the Nation's aerospace corporations did a study of the famed Mayo Clinic and they found that in a $1,000 hospital bill, $300 went to unproductive information handling and filing. Alarmingly, they also found that with all of the redtape required, 12 individual steps were needed merely for an X-ray picture—there was one chance in six that the hospital test had some error in it.

The potential of data processing has been illustrated in my State by the Maryland Blue Cross—computer link arrangements with 30 Maryland hospitals. This has enabled Blue Cross to cut its costs of processing patients' admissions and claims by 30 percent from $3.60 per claim to $2.52 per claim.

The National Institute of Health Care Delivery should encourage development of preventive medicine and the techniques and technology, including multiphasic screening and testing, to improve the early diagnosis and treatment of diseases, particularly for preschool children. One issue that needs to be answered here is the cost and benefits associated with annual physical examinations or periodic physical examinations at critical ages. With the growing evidence regarding the importance of the early learning years and the growing interest in early childhood programs, I believe it is important that we develop techniques for early detection of physical or mental difficulties that children may have. That is why I have particularly emphasized the early diagnosis for preschool children.

The National Institute of Health Care Delivery will also give special emphasis to the development of systems and components of rural health services. Certainly, there is little disagreement with respect to the need to upgrade health care in many rural areas.

The National Institute of Health Care Delivery will also be assigned the mandate to develop a policy with respect to long term care, particularly for mentally and physically handicapped individuals and senior citizens, with special emphasis on alternatives to institutionalization, including the use of home health aids.

Long term care was one of the areas of concern at the recent White House Conference on Aging. I believe that society's experience in other areas such as mental retardation demonstrates that alternatives to institutionalization are possible.

The National Institute of Health Care Delivery would also be given the important assignment of developing and testing systems and technical components of emergency health care and services—including at least one experimental statewide helicopter transportation emergency care system—which utilize, where possible, the skills of returning military corpsmen. This is a neglected area and has been called the "hidden crisis in health care" by Secretary Du Val. Injuries are the chief killer of Americans aged 1 through 38. All of us are potential victims. Yet, the fact is that a trauma victim in Vietnam probably has a better chance of survival than an accident victim in the United States. This is because the military, during the Second and Korean wars developed a highly organized system for transporting and caring for the emergency victim. This procedure has been perfected in Vietnam to such an extent that Secretary of Defense Laird recently was able to declare that the death rate of such victims in Vietnam was near zero.

The technology and know-how is there; all we have to do is organize on a rational basis and apply these lifesaving methods. Heart attack victims could also benefit from improved emergency care arrangements. Some experts have estimated that prompt and early care might potentially save 150,000 heart attack victims annually. My own State of Maryland, for example, is pointing the way in this area with its Trauma Center at the University of Maryland and its three helicopters now in operation. With four or five more helicopters, this system could be statewide and the director of the center, Dr. R. A. Cowley, predicts that accident deaths in Maryland could be cut by one-half in 2 years.

The Institute would also examine the various life styles, including the environmental, recreational, and nutritional factors that bear on an individual's health and the development of methods and materials to convey the significance of personal decisions on individual health. Health problems cannot be viewed in the context of medical care alone. For the disadvantaged, it is well to note that the steps taken to assure proper nutrition, safe and sanitary housing, and clean environment may have an equal, if not greater, impact than improving medical health.

Similarly, for all Americans such indulgences as smoking, drinking, excessive eating, and inadequate exercise contribute to the enormous toll in heart disease, cancer, and so forth. Education of and will power by our citizens are needed in this fight for better health, for the price of such pleasures is high, indeed. Disturbingly, the February 17 Time magazine medicine section carried a story not only indicating considerable public ignorance in health care, but also that the public knows much less about health than they think they do. Furthermore, even when they know the benefits of good health practice such as regular exercise, less than one-half of those knowing about the benefits were doing anything about it.

As Prof. Anne R. Somers, of the Rutgers Medical School, said:

> What is desperately needed—along with reforms in the delivery and financing systems—is a massive program of consumer health education.

This is certainly one of the keys to a more healthy America and the Institute would develop educational materials and methods to alert the public to the importance of personal decisions and actions on health.

TRAINING AND TECHNICAL ASSISTANCE

The Institute would also develop methods and support for training of individuals to plan and conduct research, development, demonstration, and evaluation of health care delivery and provide technical assistance and develop methods for the transfer of new knowledge, components, and systems to the health community. The Institute will be authorized to exchange information and to collaborate with other countries for the advancement of health care delivery in the United States. The Institute and its affiliated centers will also provide an opportunity for individuals from industry, local and State government and Federal agencies to receive training.

In addition, "alumni" of the Institute and centers will be available for administrative and policy making positions in the health community.

MAJOR EVALUATION ROLE

The new Institute will also have a major evaluation role. The Institute will evaluate the quality, effectiveness and efficiency of Federal health programs, including medicare, medicaid, and the maternal and child health programs of the Social Security Act. For such evaluation, the Secretary of Health, Education, and Welfare is authorized to transfer the evaluation funds appropriated pursuant to section 513 of the Public Health Service Act as he deems necessary.

The Institute will have more expertise, talent, and objectivity for evaluation of programs than probably any other Federal agency, and I believe that utilization for this purpose will be exceedingly desirable. There is general agreement that more and improved evaluation efforts are needed.

EXPERIMENT INCENTIVES

The legislation also provides for supplemental incentive grants to encourage experimentation. The basic thrust of this section is that when the National Advisory Council designates a project or a health facility as essential to the research and development efforts of the Institute or centers and where it was determined that such experimental efforts would not be undertaken without this incentive, the Director could increase or supplement the regular Federal grant-in-aid health programs up to 80 percent.

For example, under Hill-Burton, the Federal program for health facility construction and modernization, the Federal matching in general cannot exceed two-thirds. Assuming that a particular facility was designated as essential, this section would enable the facility to receive 80 percent Federal matching. Not more than 10 percent of the funds authorized by this legislation could be used

for these incentive grants to encourage experimentation.

REPORTS

The Director of the institute, within 1 year after his appointment and prior to February 1 of each year thereafter, is required to prepare and submit to the Secretary of Health, Education, and Welfare for transmittal shortly thereafter to the President and the Congress a written report including: First, an appraisal of the institute's activities, and accomplishments; second, a summary of its significant research and development findings; third, an identification and recommendation concerning those factors or barriers which inhibit implementation of the institute's significant findings or prevent innovation in health care.

ACTIVE ADVISORY COUNCIL

The institute will have a prestigious National Advisory Council on Health Care Delivery. This council will have 21 members, including the Secretary of Health, Education, and Welfare, the chief medical officer of the Veterans' Administration, a medical officer designated by the Secretary of Defense, the Director of the National Institutes of Health, the Administrator of the Health Services and Mental Health Administration, and the Director of the National Institute of Health Care Delivery as ex officio members. The other 15 members will be selected by the President from persons who are leaders in the field of medical science, or the organization, delivery or financing of health care; leaders in the management sciences; or representatives of consumers of health care. In selecting the membership of this council, it is my intention that the President search for the most distinguished and talented individuals available. While legislation does not spell it out, it is my intention that at least one of the council members be a practicing physician. At least seven of the council members must be representatives of consumers. The President will designate the chairman of the council and they will meet at the call of the chairman, but not less than four times a year.

The bill contemplates an active council and specific responsibilities are delineated in the legislation. The council will be responsible for reviewing the programs, policies, and priorities of the institute; examining and coordinating health care delivery efforts within the Department of Health, Education, and Welfare and other Federal agencies so as to avoid duplication; accuring that significant research and development findings are communicated throughout the health system and to the public; and evaluating the impact that the institute's research and development efforts are having on the health care system.

The council will be independent and will have its own executive director. If the council is to enjoy the independence that the legislation envisions, it is important that it have a top staff person accountable only to the council.

The council under the measure would also be required to submit as an appendix to the director's report, which I previously discussed, a summary of the progress of the institute in achieving the bill's objecitves and the council's evaluation of the status of health care delivery research and development in the Nation. Any minority views of council members will also be included in this report.

DISSEMINATING RESULTS

It is not enough merely to produce significant results in research and development. These findings must be disseminated to the health system and to the public. To help assure that this is done, the legislation establishes within the institute a Health Care Information Service. This service would provide, or arrange for, the provision of indexing, abstracting, translating or other services leading to a more effective dissemination of health care delivery information as well as undertaking programs to develop new or improved methods for making such information available.

In drafting this legislation, I have studied the various Federal research and development agencies such as the National Institutes of Health, NASA, the National Science Foundation, and the National Foundation for Postsecondary Education and the National Institute of Education which were included in S. 659 recently passed by the Senate. I have incorporated in my bill many of those administrative provisions which seem to be essential to a successful research and development effort.

NEEDED ADMINISTRATIVE PROVISIONS

Thus, the new institute and centers will have a flexible personnel system to enable the attraction of the most qualified and talented individuals. This will include the authority, when the director deems it necessary, to establish the entrance pay level up to two grades higher than it otherwise would be and the authority to appoint a percentage of the employees without regard to civil service Laws.

The new institute will be granted the authority to carry over unexpended funds from 1 year to the next. This is vital and will permit the institute to provide stable funding for multiyear projects which are important in research and development.

The new institute would be given joint funding authority which will enable the waiver of certain requirements for undertakings where funds are advanced to a single project by more than one Federal agency. The frustrating experience that Johns Hopkins University had in my State when they were moving to establish a prepaid practice program in Baltimore City, illustrates the need for this kind of authority. To put their program together, Johns Hopkins had to deal with 13 different agencies, each with different standards and requirements. Program fragmentation and different and inconsistent rules and regulations almost made the program come apart before it was implemented.

The health programs of the Federal Government are divided in nine departments and at least 1 dozen agencies. There are a number of provisions in my bill aimed at this problem. First, there is a specific provision directing the establishment within the institute of offices and procedures necessary to provide for the greatest possible coordination of research and development under the act with activities conducted by other Federal agencies and public and private agencies.

Second, the National Advisory Council has a specific assignment to examine and coordinate health care delivery efforts of the Department of Health, Education, and Welfare and other Federal agencies so as to avoid duplication.

Third, the President is granted, for a 2-year period, the authority to transfer to the Institute any program or personnel within the Department of Health, Education, and Welfare when he feels such action is desirable.

REGIONAL CENTERS

The legislation also authorizes up to eight regional centers and two special emphasis centers, the Health Care Technology Center and the Health Care Management Center. These centers will serve to broaden and strengthen the Nation's research and development base in health care delivery, enable the study of the different health care delivery problems peculiar to the various regions of the country and most importantly, provide a better link between the research and development activities and actual practice. The location of the regional centers will be determined by the National Advisory Council with the view to the broadest possible geographical distribution of such centers. It is my intention that the centers will be funded by the Federal Government for an initial period of 3 years. Then, following a review of each center's operations, by the Director and upon the recommendation of the National Advisory Council, the Director may extend the centers for additional periods of not more than 3 years. After this period it is my intent that a majority of the center's support will be program support in competition with other institutions. It is expected that the region in which the centers are located will utilize the centers for research, development, and evaluation. Actually, at the end of this initial period the success of the centers will in part be determined by the degree of interest shown in its work by the State and local governments and the health community in the area in which they are located.

HEALTH CARE TECHNOLOGY CENTER

In addition, two special emphasis centers, a Health Care Technology Center and a Health Care Management Center are authorized.

The Health Care Technology Center will focus on all forms of technology, including computers and electronic devices and its application in health care delivery. Our achievements in technology, such as of space, transportation, communication, and data processing have been amazing. Yet, much of the health care system continues to employ outdated manual procedures.

We must wed 20th century technology with 20th century research and this will be the focus of the Health Care Technology Center.

The Senate Labor and Public Welfare Committee, on which I serve, last year

heard testimony regarding the potential of the computer. Coupled with new "health care specialists" the committee saw demonstrated a potential way of extending the doctor to remote rural areas which have been unable to attract a physician.

The computer is already being employed in such areas as the interpretation of the electrocardiogram and the automation of history taking. Recently, I visited the University of Maryland Trauma Center and I watched the computer perform a variety of tasks, including the constant monitoring of even the chemical content of the air that the center's severe trauma victims were breathing. I have previously referred to the computer's potential and use with respect to medical records and hospital admissions. The computer, with its unbelievable ability to store large amounts of information, may someday be used by the physician as an aid in diagnosis and decisionmaking.

Mr. President, President Nixon in both his state of the Union and his recent health message emphasized the need to stimulate and apply science and technology to the solution of domestic problems.

In his March 2, 1972, health message, the President properly identified health as a "vital area" for exploiting technology. I believe there is enormous potential for the use of technology that might bring enormous benefits to the public and the patient. Yet, at the present there are only a handful of individuals actively concerned with such problems. The Health Care Technology Center is designed to remedy this situation and serve as the focal point for an accelerated research effort on both program and hardware development. The Technology Center, as well as the institute and the other centers, will provide us with an opportunity to utilize the talents of some of the 100,000 engineers and scientists who are unemployed. Mr. J. H. Holloman, consultant to the president of MIT, and his administrative assistant, Mr. Harger, writing in the January issue of the Professional Engineer on the need for greater Government research and development for civilian purposes, said:

> Addressing, the social tasks directly, perhaps the most important single action that is required is a substantial increase in support for the improvement, both in quality and efficiency, of those public services in which private industry plays only a small role, such as education, and the delivery of health care.

The other special emphasis center, the Health Care Management Center, is most important. This center will focus on the improvement of management and organization in the health field, the training and retraining of health administrators, and the development of leaders, planners and policy analysis in the health field. The job of the managers in the health field is most complex. The modern manager of a health enterprise, if he is to carry out his responsibilities with maximum effectiveness, must have a basic understanding of a wide variety of management skills and some background in such areas as health economics, computer technology, and statistics, to mention a few.

Quite often medical administrators are elevated to these positions without adequate preparation for their new responsibilities. Certainly American industry would make certain that its top executives are adequately trained and the health system must do no less. There is also often the need to provide retraining, as is evidenced by the letter I received from a Boston administrator. He said:

> Practitioners of health care administration, among whom I am one, have been flying by the seat of their pants for too long. The nation deserves better. There is currently no systematic effort I know of to reach decision makers in the health care field with the results of innovative research and to stimulate a research orientation to many of the problems we all face in the financing, organization, and delivery of services. There is moreover, an almost total neglect of more formal continuing education opportunities for health care administrators . . . After ten years or more in the field, many of us are in positions of responsibility and strong in experience but weak in understanding of fundamental advances in health care systems, e.g. the problem-oriented medical record, how to organize a prepaid group practice, the use of television in medical diagnosis and treatment, computer applications to health systems problems, etc.

The administrative officer of each regional center and each special emphasis center will be required to submit annually to the director a report which shall include an audit of expenditures; bibliographies, with annotations, of research performed; and a description of on-going research programs including a summary of significant research and development findings.

The regional and special emphasis centers have a separate authorization of $30 million for the initial fiscal year and a total of $105 million over a 3-year period. Support for a center, other than support for construction, shall not exceed $2 million per year per center except for the Health Care Technology Center, Federal assistance under this section of the bill may be used for research and development, staffing, and other basic operating costs, training, demonstration purposes, and construction where the National Advisory Council deems such is necessary.

PRESENT EFFORT INADEQUATE

It is true that efforts have been under way at the National Center for Health Services, Research, and Development and elsewhere. For the most part, however, the efforts to date have contributed disappointingly little either to solving the problems of the present delivery system or to producing alternative systems. We have inadequate knowledge about the efficiencies and effectiveness of existing experimental efforts. It has been difficult, if not impossible, to compare the experiences under one experimental system directly with another. We do not know what the costs and benefits would be to expand experimental systems. So, where are we today? We know more about the delivery system; but not much more. As a matter of fact, important questions about health care delivery that were raised 10 years ago are being asked today.

The National Center for Health Services, Research, and Development would be transferred to the new institute. This center is presently buried in the Department of Health, Education, and Welfare, being one of the many units of the health services and Mental Health Administration, one of the major health structures of the Department.

At this layer in the Department it lacks visibility and its clout is small. Its organizational structure is weak. It does not have the needed flexibility that other research and development organizations have. It does not have joint funding authority. It does not have the authority to carry over funds from one year to the next. In fact, it does not even have a legislative mandate. I doubt whether many in Congress, other than those with a special interest in health or serving on the Appropriations and Health Subcommittees, know the Center exists. For example, the Center is doing research on manpower problems, but during hearings held last year by the Health Subcommittee, on which I serve, the Center's experts were not called in to testify on the manpower problem.

Most important, it lacks the resources. As I previously noted, since World War II the Nation has invested approximately $20 billion in biomedical research. On the other hand, comparatively small sums have been spent on health care delivery. In fiscal 1972, the National Institutes of Health's, the Federal Government's chief biomedical organization, budget was $2.2 billion, while the National Center for Health Services, Research, and Development was only $62 million.

This was less than the $115 million spent on health by the National Aeronautics and Space Administration in 1970. My proposal would more than double the present effort, authorizing $155 million the first year, $185 million the second year, and $240 million the third year, for a 3-year total of $580 million.

In research and development we frequently hear the words "critical mass." This is an important concept. This term originated in nuclear physics where "critical mass" is defined as the amount of radioactive material needed to produce a self-sustaining nuclear reaction. In research and development, "critical mass" refers to the minimum size and composition needed to achieve the important self-sustaining creative atmosphere for the undertaking. In theoretical basic research, one or two researchers may be the "critical mass." On the other hand, in complex and larger research efforts, the "critical mass" may be hundreds of individuals from many disciplines. In complex and large undertakings where the "critical mass" is not achieved, researchers tend to pursue smaller tasks individually. The smaller efforts of individuals doing their own thing do not often cumulate to produce major efforts. Today we have inadequate numbers of people trained and experienced in this area, and those with this experience are dispersed throughout the Government, universities, and research institutions. As a result, the synergism that can occur when a "critical mass" of people who are

problem solvers from many academic disciplines interact has not yet been adequately developed.

There is a general recognition that a health care crisis exists in this Nation. The crisis can be seen in the spiraling medical costs, in the shortage and maldistribution of physicians and other health personnel, and in the inadequate medical care received by too many of our citizens. Even for middle-income Americans, a prolonged illness may spell financial disaster. The fact that emerges from an examination of health care in the United States is that for millions of Americans quality health care is not accessible, available, or affordable.

Congress and the administration have taken steps in response to this crisis. Last year, we enacted the Comprehensive Health Manpower Training Act and the parallel Nurses Training Act. These landmark measures were designed to provide the Nation with the necessary manpower, a key element, if we are to overcome deficiencies in health care. Health maintenance organization legislation will soon be the subject of committee hearings.

Second, both Houses of Congress are examining the financing issue. I am convinced that a consensus will be reached on this issue, at least by the end of the next Congress. The medicare program has demonstrated that the resolution of the financing issue alone will not result in an end to our health care problems. Medicare has been a blessing to senior Americans and they are clearly benefiting from the program. Medicare has not been a panacea for health problems. For example, medicare has not solved the problems of those living in ghettos or in rural areas where medical services are hard to come by. Indeed, the evidence suggests that medicare, by increasing the demand for health services, without preparing the health system to meet the increased demand, likely contributed to the dramatic health care cost increases. Experience thus tells us that the settlement of the financing issue alone will not assure the delivery of health care to our citizens.

As the Federal Reserve Bank of Philadelphia noted in its September 1971 Business Review:

> Government programs that attempt to achieve this goal by simply injecting massive doses of dollars into the veins of the existing medical care systems may be at best, inefficient, and at worst, self-defeating. The underlying issue at stake is the ability of the medical care industry as it currently operates to deliver the increased level of services that may be demanded under Government financed programs or insurance.

CONCLUSION

The proposal I advance today is aimed at improving health care delivery. This proposal will make health care delivery a field of research in its own right. I believe that health care delivery must be made as important as medical research. It is my position that, to deliver the benefits of medical research and the scientific discoveries system to the American people, we need an organization of equal status and visibility as the National Institutes of Health and that we must invest the resources necessary to do the job.

The Science editorial to which I referred earlier in my speech said in support of my proposal.

> A major tour de force is needed now—an administrative mandate backed by appropriate funding—to dramatize the importance of rational organization and planning services . . . if the magnificent benefits of American medical research are meant for all of our people then an effective science of health care delivery is as important as the medical research itself.

I believe that my proposal to establish a new National Institute of Health Care Delivery will provide the legislative mandate, the necessary research and development structure, the wise management, and the required resources to make it so. I urge early and favorable consideration of this bill.

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

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

S. 3329

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

SHORT TITLE

SECTION 1. This Act shall be known as the National Institute of Health Care Delivery Act of 1972.

FINDINGS AND DECLARATION OF POLICY

SEC. 2. (a) The Congress of the United States finds—

(1) that the United States faces a crisis in health care;

(2) that health care costs have increased in the last five years twice as fast as the general cost of living;

(3) that there exists an acute shortage and maldistribution of physician and other medical manpower in inner city and rural areas;

(4) that millions of Americans do not have access to quality health care;

(5) that since World War II the United States has invested approximately $20,000,000,000 in biomedical research, and that this investment has resulted not only in wide recognition of the preeminence of biomedical research in the United States, but also produced many, often spectacular, advances in medical science;

(6) that during the same period comparatively few resources were invested to deliver the discoveries of medical research and technology to our citizens;

(7) that the American public is concerned with the gap between the knowledge and capabilities of medical science and what is delivered to the patient, and that this is a source of public discontentment and dissatisfaction;

(8) that significant changes regarding the health care system have been proposed and may be implemented in the near future;

(9) that the potential costs and benefits associated with the various proposals are largely unknown; and

(10) that, inadequate attention, emphasis, and resources have been devoted to health policy analysis and health care delivery.

(b) It is the purpose of this Act to establish a National Institute of Health Care Delivery and regional and special emphasis centers to improve health care delivery and to help speed the delivery of the benefits of medical science and the scientific discovery system to the people of the United States.

SEC. 3. The Public Health Service Act is amended by inserting after title X the following new title:

"TITLE XI—NATIONAL INSTITUTE OF HEALTH CARE DELIVERY

"DEFINITIONS

"SEC. 1101. For the purposes of this title—

"(1) the term 'health care delivery' includes all aspects and interrelationships of the organization, financing, and provisions of direct health services to individuals, families, and groups for the purposes of prevention, care, rehabilitation, restoration, and maintenance of function, and related health services essential to good health.

"ESTABLISHMENT OF INSTITUTE

"SEC. 1102. (a) There is hereby established in the Department of Health, Education, and Welfare a National Institute of Health Care Delivery. The Institute shall carry out a multidisciplinary research and development program to improve delivery of health care services and shall be the principal Government agency for improvement of health care in the United States.

"(b) The Institute shall be headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate, for a term of four years. There shall be in the Institute a Deputy Director, who shall be appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The Deputy Director shall perform such functions as the Director may prescribe and shall be the Acting Director during the absence or disability of the Director or in the event of a vacancy in the position of Director. Upon the expiration of his term, the Director and Deputy Director shall continue to serve until his successor has been appointed and has qualified.

"(c) The Director is authorized to appoint within the Institute not to exceed four Assistant Directors.

"FUNCTIONS OF THE INSTITUTE

"SEC. 1103. (a) It shall be the function of the Institute to pursue methods and opportunities to improve and advance the effectiveness, efficiency, and quality of health care delivery in the States, regions, and communities of the United States, through initiation support of studies, research, experimentation, development, demonstration, and de-evaluation of, but not limited to, the following areas and subjects—

"(1) the existing health care system, emphasizing means and methods to improve such system and the devising and testing of alternative delivery systems;

"(2) health care systems and subsystems in States, regions, and communities which give special attention to the effective combination and coordination of public and private methods or systems for health care delivery;

"(3) preventive medicine and the techniques and technology, including multiphasic screening and testing, to improve the early diagnosis and treatment of diseases, particularly for preschool children.

"(4) systems and technical components of emergency health care and services (including at least one experimental statewide helicopter transportation emergency care system), which utilize, where possible, the skills of returning military corpsmen;

"(5) systems and components of rural health services;

"(6) the development of policy with respect to long-term care, particularly for mentally and physically handicapped individuals and senior citizens, with special emphasis on alternatives to institutionalization, including the use of home health aides;

"(7) methods to meet the Nation's medical manpower requirements, including new types of manpower and their utilization and the

extent to which tasks performed by physicians and other health professionals may be safely delegated to other appropriately trained individuals in both new and existent health occupations;

"(8) continuing education and the exploration of programs and methods to help health professionals to stay abreast of current developments and to maintain professional excellence;

"(9) health manpower credentialing, licensing, and certification;

"(10) the medical malpractice program, particularly as it relates to quality care, the practice of 'defensive medicine' and added costs to the public;

"(11) programs for educating health manpower and the accreditation of such education programs;

"(12) application of all forms of technology, including computers and other electronic devices, in health care delivery;

"(13) the efficiency, management, and utilization of new and existing health care facilities including studies of admission practices and examination of cost-finding techniques;

"(14) the development of tools and methods to improve planning, management, and decisionmaking in the health care system;

"(15) the development of information by which quality, efficiency, and cost of health care may be measured;

"(16) the development of uniform accounting practices, financial reporting, and uniform health records;

"(17) the development and testing of incentive payment mechanisms that reward efficiency in health care delivery without compromising the quality of care;

"(18) the needs of individuals, families, and groups for health care and related services, emphasizing the various life styles, including environmental, recreational, and nutritional factors that bear on an individual's health; identification of those factors affecting acceptance and utilization of health care and related services; and the development of educational materials and methods communicating to the public the importance of personal decisions and actions on health;

"(19) the economics of health care and related services, and the impact of the total system of health care delivery and related services upon the standards of living and the general stability of the national economy;

"(20) proposals for the financing of health care, including the potential cost and benefits, and their impact on the health care system;

"(21) concepts and data essential to formation of a factual basis for national health policies; and

"(22) the effects on health care delivery of the organization, functions, and interrelationships of Federal, State, and local governmental agencies and programs concerned with planning, organization, and financing of health care delivery.

"(b) The Institute shall (1) develop methods for, and support of, training of individuals to plan and conduct research, development, demonstrations, and evaluation of health care delivery and related services; (2) provide technical assistance and development of methods for the transfer of new knowledge, components, and systems to public and private agencies, programs, institutions, and individuals engaged in the improvement of health care delivery; (3) collaborate with governments and private care institutions and programs in foreign countries for the exchange of information and support of research, experiments, demonstrations, and training in order to advance health care delivery in the United States and cooperating nations.

"(c) The Institute shall evaluate the quality, effectiveness, and efficiency of Federal health programs, including titles V, XVIII, and XIX of the Social Security Act, in improving the delivery of health care to the Nation's citizens. For the purposes of this subsection the Secretary is authorized to transfer to the Institute such funds as may be necessary pursuant to section 513 of this Act.

"ADMINISTRATIVE PROVISIONS

"SEC. 1104. (a) In order to carry out the provisions of this Act the Director is authorized to—

"(1) make grants to States, political subdivisions, universities, hospitals, and other public or nonprofit private agencies, institutions, or organizations for projects for the conduct of research and development, experiments, studies, demonstrations, and training of individuals to plan and conduct such projects;

"(2) make contracts with public or private agencies, institutions, or organizations for the conduct of research and development, experiments, studies, demonstrations, and the training of individuals to plan and execute such contracts;

"(3) appoint and fix the compensation of the personnel of the Institute in accordance with chapter 51 of title 5, United States Code, except that (A) to the extent that the Director deems such action necessary to recruit men and women of exceptional talent, he may establish the entrance grades for personnel at a level of two grades higher than the grade level provided for such personnel under the General Schedule established by such title and fix their compensation accordingly, and (B) to the extent that the Director deems such action necessary to the discharge of his responsibilities, he may appoint personnel of the Institute without regard to civil service or classification laws, except that personnel appointed under such laws do not exceed at any one time one-third of the number of full-time regular technical or professional employees of the Institute;

"(4) make, promulgate, issue, rescind, and amend rules and regulations as may be necessary to carry out the functions vested in him or in the Institute and delegate authority to any officer or employee under his direction or his supervision;

"(5) acquire (by purchase, lease, condemnation, or otherwise) construct, improve, repair, operate, and maintain research and other necessary facilities and equipment and related accommodations as may be necessary, and such other real or personal property (including patents) as the Director deems necessary;

"(6) to acquire by lease or otherwise from the Administrator of General Services, buildings or parts of buildings in the District of Columbia or communities located adjacent to the District of Columbia for the use of the Institute for a period not to exceed ten years without regard to the Act of March 3, 1877;

"(7) employ experts and consultants in accordance with section 3109 of title 5, United States Code;

"(8) appoint one or more advisory committees composed of such private citizens and officials of Federal, State, and local governments as he deems desirable to advise him with respect to his functions under this Act;

"(9) utilize with their consent the services, equipment, personnel, information, and facilities of other Federal, State, and local public agencies with or without reimbursement therefor;

"(10) accept voluntary and uncompensated services notwithstanding the provisions of section 665(b) of title 31, United States Code;

"(11) accept unconditional gifts or donations of services, money, or property, real or personal, mixed, tangible or intangible;

"(12) allocate and expend or transfer to other Federal agencies for expenditure funds made available under this title as he deems necessary;

"(13) establish within the Institute such offices and procedures as may be appropriate to provide for the greatest possible coordination of activities under this title with related research and development activities being carried on by other public and private agencies and organizations; and

"(14) take such other actions as may be required for the accomplishment of the objectives of this title.

"(b) Upon requests made by the Director, each Federal agency is authorized and directed to make its services, equipment, personnel, facilities, information, and statistics available, to the greatest practicable extent, consistent with other laws, to the Institute in the performance of its functions with or without reimbursement.

"(c) Each member of a committee appointed pursuant to paragraph (8) of subsection (a) of this section who is not an officer or employee of the Federal Government shall receive an amount equal to the maximum daily rate prescribed for GS–18 under section 5332 of title 5, United States Code, for each day he is engaged in the actual performance of his duties including traveltime. All members shall be reimbursed for travel, subsistence, and necessary expenses incurred in the performance of their duties.

"COMPENSATION

"SEC. 1105. (a) Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"'(95) Director, National Institute of Health Care Delivery.'

"(b) Section 5316 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"'(131) Deputy Director, National Institute of Health Care Delivery.'

"JOINT WAIVER FUNDING AUTHORITY

"SEC. 1106. Where funds are advanced for a single project by more than one Federal agency for the purposes of this title, the Director of the Institute may act for all in administering the funds advanced and a single non-Federal share requirement may be established according to the proportion of the funds advanced by each Federal agency. The Director may order any such agency to waive any technical grant or contract requirement which is inconsistent with the similar requirements of the Institute or which the Institute does not impose.

"TRANSFER OF RESEARCH FUNDS OF OTHER GOVERNMENT DEPARTMENTS AND AGENCIES

"SEC. 1107. Funds available to any department or agency of the Government for health care delivery research and development, or for the provision of facilities therefor shall be available for transfer with the approval of the head of the department or agency involved, in whole or in part, to the Institute for such use as is consistent for the purposes for which such funds were provided, and funds so transferred shall be expendable by the Institute for the purposes for which the transfer was made.

"TRANSFER OF NATIONAL CENTER FOR HEALTH RESEARCH AND DEVELOPMENT

"SEC. 1108. (a) The National Center for Health Services Research and Development is hereby transferred from the Health Services and Mental Health Administration to the Institute.

"(b) Subject to the provisions of this section, the President, for a period of two years after the date of enactment of this title, may transfer to the Institute any functions (including powers, duties, activities, facilities, and parts of functions) of the Department of Health, Education, and Welfare or of any officer or organizational entity thereof which relate primarily to the functions, powers, and duties of the Director as described by this title. In connection with any such transfer the President may, under this section or other applicable authority,

provide for appropriate transfers of records, property, personnel, and funds.

"NATIONAL ADVISORY COUNCIL ON HEALTH CARE DELIVERY

"SEC. 1109. (a) There is hereby established a National Advisory Council on Health Care Delivery (hereafter referred to as the Council) to be composed of twenty-one members. The Council shall consist of the Secretary of Health, Education, and Welfare, the Chief Medical Officer of the Veterans' Administration, a medical officer designated by the Secretary of Defense, the Administrator of the Health Services and Mental Health Administration, the Director of the National Institutes of Health, and the Director of the National Institute of Health Care Delivery who shall be ex officio members and an additional fifteen members not otherwise of the regular full-time employee of the United States to be appointed by the President without regard to civil service laws. The appointed members shall be persons who are leaders in the field of medical sciences or in the organization, delivery, or financing of health care, (2) leaders in the management sciences, or (3) representatives of the consumers of health care. At least seven of the appointed members shall be representatives of the consumers of health care.

"(b) The President shall designate a Chairman of the Council. The Council shall meet at the call of the Chairman but not less than four times a year.

"(c) Each appointed member of the Council shall hold a term of four years except that any member appointed to fill a vacancy prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, except that the terms of the office of the members first taking office shall expire as designated by the President at the time of appointment, three at the end of the first year, four at the end of the second year, four at the end of the third year, and four at the end of the fourth year after the date of appointment. An appointed member shall not be eligible to serve continuously for more than two terms.

"(d) Appointed members of the Council shall receive compensation at rates not to exceed the daily rate prescribed for GS–18 actual performance of their duties, including under section 5332, title 5, United States Code, for each day they are engaged in the traveltime, and while so serving away from their homes or regular place of business, they may be allowed travel expenses, including per diem in lieu of subsistance, in the same manner as the expense authorized by section 503, title 5, United States Code, for persons in the Government service employed intermittently.

"(e) The Chairman of the Council, with the concurrence of a majority of the Council members, shall appoint an Executive Secretary of the Council. The Executive Secretary may be appointed without regard to civil service laws and may be compensated at a rate not exceeding the appropriate rate provided for individuals in grade GS–18 under section 5332, title 5, United States Code, as may be necessary to provide for the performance of duties as may be prescribed by the Council in connection with his duties under this Act. The Director of the Institute shall make available to the Council such additional staff, information, and other persons as it may require to carry out its activities.

"(f) The Council shall—

"(1) review programs, policies, and priorities of the Institute, and centers established under section 1113, and advise the Director on the development and conduct of the programs of the Institute and centers;

"(2) examine and coordinate health care delivery efforts within the Department of Health, Education, and Welfare and other Federal departments and agencies so as to avoid duplication; and

"(3) assure that significant research and development findings of the Institute and centers are being disseminated to the health care system, and evaluate the extent such findings are making an impact on the health care delivery system.

"(g) The Council shall submit as an appendix to the report required by section 1110 of this Act, its report on the progress of the Institute and centers toward the accomplishment of the objectives of this title, and the status of health delivery research development in the United States including any minority views of the Council members.

"REPORTS

"SEC. 1110. The Director shall, within one year after the date of his appointment and prior to February 1 of each year thereafter, prepare and submit to the Secretary for his transmittal to the President and the Congress a written report that shall include:

"(1) an appraisal of the activities and accomplishments of the Institute and the centers;

"(2) bibliographies with annotations of research performed or supported and a summary of the significant research and development findings which show promise (given due consideration to the cost, benefits, and the quality of health care program) of improving health care delivery or increasing the productivity of health care systems; and

"(3) identification and recommendations concerning those factors or barriers which inhibit implementation of the significant research and development findings of the Institute and centers or that prevent innovation in health care.

"HEALTH CARE DELIVERY INFORMATION SERVICES

"SEC. 1111. There is created within the National Institute of Health Care Delivery an Office of Health Care Delivery Information Services. Such Office shall provide—

"(1) for the provision of indexing, abstracting, translating, and other services leading to a more effective dissemination of information on research and development in health care delivery, to public and private agencies, institutions, and individuals engaged in the improvement of health care delivery and the general public; and

"(2) undertake programs to develop new or improved methods for making such information available.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 1112. For the purposes of carrying out the provisions of this Act (except for the provisions of section 1113) there are authorized to be appropriated $125,000,000 for the fiscal year ending June 30, 1973; $150,000,000 for the fiscal year ending June 30, 1974; and $200,000,000 for the fiscal year ending June 30, 1975. Any unexpected sums appropriated pursuant to this section may be carried over without fiscal year limitations.

"REGIONAL AND SPECIAL EMPHASIS CENTERS

"SEC. 1113. (a) In order to strengthen the Nation's research and development base in health care delivery, to enable the examination and study of health care delivery problems of the various regions of the United States, and to link better research and development findings with actual practice, the Director is authorized to enter into cooperative arrangements with public or private nonprofit agencies or institutions to pay all or part of the cost of planning, establishing, and providing basic operating support for (1) not to exceed eight regional centers to carry out multidisciplinary research and development in health care delivery, and (2) two national special emphasis centers, one of which shall be designated as the Health Care Technology Center, to focus on all forms of technology, including computers and electronic devices, and its application in health care delivery; and one which shall be designated as the Health Care Management Center, to focus on the improvement of management and organization in the health field, the training and retraining administrators of health care enterprises, and the development of leaders, planners, and policy analysts in the health field.

"(b) Federal payments under this subsection in support of such cooperative agreements may be used for—

"(1) construction to the extent that the National Advisory Council determines such construction is necessary;

"(2) staffing and other basic operating costs;

"(3) research and development;

"(4) training; and

"(5) demonstration purposes.

Support under this subsection other than support for construction shall not exceed $2,000,000 per year per center, except for the Health Care Technology Center, and may be funded for an initial period of not to exceed three years. The Director, following a review of each center's operation and upon the recommendation of the National Advisory Council, may extend the centers for an additional period of not more than three years each.

"(c) The location of the regional centers authorized by subsection (a) shall be determined by the National Advisory Council with a view, to the extent possible, of broad geographical distribution of such centers.

"(d) The administrative officer of each regional and national special emphasis center shall transmit annually to the Director a report which shall set forth (1) an audit of expenditures in accordance with generally accepted accounting procedures, (2) bibliographies, with annotations, of research performed, and (3) a description of ongoing research programs including a summary of significant research and development findings.

"(e) For the purpose of carrying out the provisions of this section, there are authorized to be appropriated $30,000,000 for the fiscal year ending June 30, 1973; $35,000,000 for the fiscal year ending June 30, 1974; and $40,000,000 for the fiscal year ending June 30, 1975. Any unexpended sums appropriated pursuant to this subsection may be carried over without fiscal year limitations.

"SUPPLEMENTAL INCENTIVE GRANTS TO ENCOURAGE EXPERIMENTATION

"SEC. 1114. (a) In order to encourage individuals, institutions, and health facilities to participate in research and demonstration projects, which without the incentive assistance provided under this section would not otherwise be carried out, and which have been designated by the National Advisory Council as essential, the Director is authorized to provide funds to be used to increase the Federal contribution to such projects under Federal grant-in-aid programs above the fixed maximum portion of the cost of such projects otherwise authorized by an applicable law. Funds shall be so provided for Federal grant-in-aid programs for which funds are available under the Acts authorizing such programs and shall be available without regard to any appropriation authorization ceiling in such Acts.

"(b) The Federal portion of such cost shall not be increased in excess of the percentage established by the Director, and shall in no event exceed 80 per centum thereof.

"(c) The term 'Federal grant-in-aid program' as used in this section means those Federal grant-in-aid programs in the health area authorized on or before December 31, 1971.

"(d) Not to exceed 10 per centum of the funds authorized by this title shall be available to carry out this section."

EXHIBIT A

THE TOPSY-TURVY WORLD OF HEALTH-CARE DELIVERY

In a recent speech Senator J. Glenn Beall, Jr. (R-Md.), called for the establishment of

a National Institute of Health-Care Delivery.[1] In so doing, he has focused attention on a national problem of broad scale and transcendent urgency.

Over the years the American people have prided themselves on being the best clothed, best fed, best housed, best educated, and healthiest people in the world. But recent health statistics give cause for concern. Across the board, we are not the healthiest people in the world, in spite of a number of impressive facts. The nation has spent some $20 billion on biomedical research since the late 1940's. We now have more physicians and hospitals than ever before. And currently we spend for health services more—and the rate of expenditure is escalating more rapidly—than we have ever done before. In the last decade alone, physicians' fees have risen twice as rapidly and hospital charges four times as fast as other items in the Consumer Price Index.

The situation is a complex one. Certainly, the balance among the diseases has shifted toward the degenerative disorders. But, in addition, there are striking geographic variations in the availability of health resources. There are marked differences in availability for urban and rural populations and for the poor and the more affluent. Most insurance coverage is inadequate in that it excludes outpatient and preventive services and only partially accommodates catastrophic incidents. And, generally, resources, particularly those for unusual treatment, are poorly utilized everywhere. (If, for example, the utilization of health-care resources were improved by only 10 percent, the saving would be $5 billion. But, with a high proportion of third-party payments, there is little incentive for efficiency. Instead, the trend is to use the higher-cost facilities and services and to make as many of these available as possible.)

The essential ingredients of the Beall proposal merit serious examination. By 1970, health-care delivery had become the nation's second largest industry. But last year only $18 million was spent on research in this area. No other industry can make such a claim. The National Institutes of Health are charged with the technical aspects of prevention and treatment. The Health Services and Mental Health Administration is concerned with health-care delivery, but it has other responsibilities as well. A major tour de force is needed now—an administrative mandate backed by appropriate funding—to dramatize the importance of rational organization and planning of services, even though such action would add yet another agency to the welter already existing in the health field. Future legislation would do well to direct its sole attention to the social sciences, both basic and applied, which underlie effective organization and management. Furthermore, the importance of testing and evaluation should receive significant consideration. Already, a number of alternative systems—for instance, group practice, private prepaid care, a variety of community health-care schemes, and health maintenance organizations—are in various stages of design and development, and a nation with an established scientific tradition must certainly recognize the importance of pilot projects.

If the magnificent benefits of American medical research are meant for all of our people, then an effective science of health-care delivery is as important as the medical research itself.—William Bevan.

By Mr. MANSFIELD for Mr. JACKSON:

S. 3330. A bill to establish a national policy for the management, conservation, use, and development of the Nation's natural resources, to provide for the establishment of a Board on Natural Resources Planning and Policy, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

Mr. MANSFIELD. Mr. President, on behalf of the distinguished Senator from Washington (Mr. JACKSON), I submit a statement prepared by him and introduce a bill, and I ask that they be printed in the RECORD and that the bill be appropriately referred.

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

THE NATIONAL RESOURCE PLANNING AND POLICY ACT

(Statement by Senator JACKSON)

Mr. President, I introduce for appropriate reference the "National Resources Planning and Policy Act".

This measure would provide for the establishment of a coherent long-range policymaking capacity for the management of the Nation's natural resources. The purpose of the bill is to declare a national policy concerning the management, conservation, use and development of minerals, fuels, and other natural resources. In addition, it would establish a three member Board on Natural Resources Planning and Policy in the Executive Office of the President. The Board would insure that Federal policy is continuously reviewed and implemented.

Mr. President, our increasing demands upon the Nation's limited natural resource base and our growing energy requirements can no longer be met with the *ad hoc*, "crisis" oriented management philosophy of the past. The Federal government, in my view, is neither properly organized nor sufficiently informed to manage our increasingly scarce natural resource base in a manner which will insure that our social, economic, and environmental requirements are adequately fulfilled and that national goals are met.

The legislation I introduce today would go far toward the development of centralized, coherent and consistent Federal natural resources policymaking. It would draw upon the experience of the National Resources Planning Board in the early 1940's and upon a number of the concepts embodied in my earlier legislation, the National Environmental Policy Act.

The National Resources Planning and Policy Act would declare improved organization, policymaking, planning and management of our natural resources to meet national, economic, social and environmental requirements to be a new national goal. The Act would state new national policies for the management, conservation, use, and development of natural resources. Among others, these policies would be concerned with the development of new technologies; better monitoring and data collection; research on new methods to produce more efficient and cleaner energy sources; and better decisionmaking and coordination of activities within the Federal government.

The Board on Natural Resources Planning and Policy would have three members. Their duties would include: the coordination and improvement of all Federal programs and activities in the natural resources and energy fields; the conduct of studies and research; the responsibility, where appropriate, to insure that technical and economic information accompanies environmental impact statements; the recommendation of policy changes and new programs or actions; and the recommendation, jointly with the Council on Environmental Quality, of alternatives to Federal actions enjoined by the courts.

One of the most important assignments of the Board would be the preparation and transmittal to Congress of an annual Natural Resources Report. This Report would meet the need for a continuing assessment of present and projected natural resources requirements; research and development efforts concerning natural resources; data collection and monitoring activites; and efforts to develop applied technology. With this informational base and annual assessment of problems and opportunities, Congress and the Executive Branch would, I believe, be greatly assisted in the preparation and implementation of needed policies for the management, conservation, use, and development of our natural resources.

With the phenomenal growth of government over the past two decades and the assumption of important, new governmental mandates in many fields, it has become painfully evident that institutions must be established which can provide consistent and full-time policy review of the activities and the direction of the many resources management agencies of government. The National Environmental Policy Act (NEPA) provided a procedural means in the requirement for an environmental impact statement and an institution in the Council on Environmental Quality (CEQ) which have greatly diminished Federal activities which have unwarranted adverse impacts upon environmental values. The CEQ and the Environmental Protection Agency have, indeed, been truly effective in internalizing environmental values in Federal agency decisionmaking and establishing a healthy and quality environment as a new national goal.

It is my view that an institution similar to the CEQ is needed to improve the management of public resources.

The National Resources Planning and Policy Act like NEPA, is specifically designed to give the President the institutional and policy tools necessary to improve governmental planning and natural resources management. The Office of the Presidency historically has great difficulty in introducing new value perceptions and new national goals into the on-going processes of old line Federal agencies. This is because with age these agencies tend to become moribund; their world view shortens; their primary thrust becomes defensive and protective of practices, policies and goals announced or applied in earlier times and for different problems.

An institution, equipped with a fresh and less restricted mandate, staffed by competent personnel, and unencumbered with specific programs can provide the President with an objective viewpoint to balance against the institutional view old line agencies come to share with their respective constituencies in the Congress, in industry, and among the public. Even though personnel of the Executive Offices of the Presidency may be aware of agency policy and institutional inadequacies, they often lack the time and the expertise to sort out the problems and inefficiencies.

At present, the responsibility for the planning and management of our minerals, fuels and other natural resources is hopelessly balkanized among a multitude of Federal departments, independent agencies, and offices. More important, there is no central place in the Federal government which provides continuing oversight and overall policy review outside of the Office of Management and Budget (OMB). And on those occasions when OMB does attempt to fulfill a central decisionmaking role in resources planning, the decisions are usually based on short-term fiscal considerations. Fiscal specialists, in my view, should not be called upon to evaluate goals and to set policies to meet national goals. The history of the Santa Barbara oil spill demonstrates what happens when resource management decisions—in this case the leasing of public lands—are made on the basis of budgetary factors.

Furthermore, it is not realistic to expect that the Council on Environmental Quality (CEQ) can fulfill the proper policy role in both the environmental and the natural resources fields. CEQ already has its hands full

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[1] J. Glenn Beall, Jr., "A proposed institute of health-care delivery," *Congr. Rec.*, vol. 117, pt. 25, p. 19852.

attempting to recommend to the President both immediate responses to present environmental problems and long-term policies and programs to insure permanent protection and enhancement of the environment. In fact, the President has recommended a national environmental policy institute to relieve CEQ of a portion of its present burden. Thus, the Council has not fulfilled, and cannot be expected to fulfill simultaneously many of these same duties of policy review and coordination for natural resources development programs. The Council should, however, be fully responsible for insuring that environmental values are properly considered in the natural resources field as well as the full range of other Federal policy areas.

In natural resources management, unlike environmental management, the Nation has previously attempted to develop and implement national policies. Despite its limitations, the National Resources Planning Board created in 1939, and its predecessors, did provide the country with valuable practical experience in resources planning and policymaking.

In his reorganization plan, the President has recognized the inadequacy of existing arrangements and has proposed a partial answer in the establishment of a Department of Natural Resources. However, even if the Department, as now proposed, were to be established, it would lack jurisdiction over or ability to coordinate the programs of many significant Federal departments and agencies which have a tremendous influence on resource policy and adequacy. Those include the Tennessee Valley Authority, the developmental activities of the Atomic Energy Commission, the Rural Electrification Administration, the Federal Highway Program, the resources requirements engendered by the Federal housing programs, and the vast water resource management responsibilities of EPA, DOT, HUD, PFC and other agencies.

The DNR proposal should receive objective consideration for its potential impact upon the few programs actually involved. It must not, however, be regarded as a panacea for all of our organizational ills in the resource field. Careful examination of the proposal regarding energy, water, or any major resource area will show clearly that a large part of the Federal management responsibility would remain outside of DNR. This is not surprising nor is it necessarily a fault. There is no ideal way to aggregate the Federal establishment into 4, 8, 16, or even 100 parts; each of which could then operate in a well defined, autonomous subject area. Whenever one function is consolidated, other important functions are dissected.

From time to time it is appropriate to regroup the existing programs and agencies to more nearly reflect current priorities and needs of society. But it is no longer sufficient to settle for the functional approach to organization of the Brownlow and Hoover Commissions or the Ash Council. The great objectives of government—such as economic welfare, environmental management, national security, and resource development are too broad and too pervasive to be managed simply by accumulating some of the functional agencies under one operating department.

These major concerns represent viewpoints from which the entire system of government must be observed and guided. We have developed this "system approach" to management, above the Departmental level, in a number of areas. The most recent application is that of environmental management. We drew upon experience with the Council of Economic Advisors in establishing CEQ. In this proposal, I am again drawing upon proven management mechanisms to deal with another great "system" of governmental responsibility—the management of natural resources.

S. 3330

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Resources Planning and Policy Act of 1972".

PURPOSES

SEC. 2. The purposes of this Act are to declare a national policy for the management, conservation, use, and development of natural resources; to promote efforts which will insure the early anticipation of problems concerning, and the timely planning and wise management of, the Nation's natural resources; to insure the availability of natural resources necessary for the health, welfare, environmental, and economic requirements of man; to improve understanding and knowledge of the Nation's natural resources base; to improve the quality of the human environment; and to establish a Board on Natural Resources Planning and Policy.

TITLE I

DECLARATION OF A NATIONAL POLICY ON NATURAL RESOURCES

SEC. 101. (a) The Congress, recognizing the profound importance of the Nation's finite natural resources base to the quality of human life, to beneficial economic growth, to man's health and social welfare, to a livable physical environment, and to cultural and recreational opportunities, and recognizing further that the Nation is entering a critical period of increasing demand upon its limited natural resources, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, to foster and promote better natural resources planning and management to the end that conditions will be maintained under which the social, economic, environmental, and cultural needs and aspirations of present and future generations of Americans may be fulfilled.

(b) To carry out the policy set forth in this Act, it is the continuing responsibility of all agencies of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal policies, plans, functions, programs, and activities—

(1) assure that the responsibilities of each generation to provide for the social, economic, and material needs of succeeding generations; are fulfilled;

(2) assure for all Americans safe, healthful, clean, and productive sources of minerals, fuels, and other natural resources necessary to their well-being;

(3) provide a just and equitable sharing of the material benefits derived from the exploitation and use of commonly owned natural resources;

(4) conserve essential natural resources which are in short supply for their highest and best social uses, both current and future;

(5) promote planning and management policies and practices which will insure the conservation and continuing availability of renewable resources;

(6) initiate and support the discovery and development of new and alternative supplies of minerals, fuels, nonfuel sources of energy, and other natural resources;

(7) foster technological advances which will reduce waste, promote recycling, and increase the efficiency of man's use of minerals, fuels, and other natural resources;

(8) sponsor research to develop environmentally sound resource conversion, consumption, and recycling processes;

(9) undertake and evaluate innovative methods to reduce resource demands;

(10) develop effective plans to deal with resource scarcity contingencies, including but not limited to end use controls and appropriate pricing policies;

(11) assure that the Nation's people who are economically disadvantaged do not bear a disproportionate share of the economic and social costs which may be associated with natural resource policies; and

(12) implement needed resources policies confident in the knowledge that all legitimate values have been considered, that all realistic alternatives have been evaluated, and that a balanced decision has been made which recognizes the full range of national requirements.

SEC. 102. The Congress authorizes and directs that, to the fullest extent possible—

(a) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act; and,

(b) all agencies of the Federal Government shall—

(1) utilize a systematic, interdisciplinary approach which will insure the integrated use of the physical and social sciences and engineering in planning for and managing the Nation's energy and natural resources;

(2) identify and develop methods and procedures, in consultation with the Board on Natural Resources Planning and Policy established by title II of this Act, which will insure that man's economic, social, and environmental needs are fulfilled in a balanced, equitable, and coherent manner and that the occurrences of unanticipated shortages and misallocations of natural resources and energy are minimized;

(3) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in making decisions on natural resources management conservation, use, and development.

(4) gather data and information and develop analytical techniques for use in the management, conservation, use, and development of natural resources and make such data available to the Board on Natural Resources Planning and Policy for inclusion in the Natural Resources Report required by title II of this Act;

(5) recognize the worldwide and long-range character of energy and natural resources and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to foster international cooperation in anticipating and solving such problems; and

(6) assist the Board on Natural Resources Planning and Policy established by Title II of this Act.

SEC. 103 (a) At the direction and in the discretion of the Board on Natural Resources Planning and Policy, agencies of the Federal Government shall include in any environmental impact statement prepared pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (83 Stat. 852, 853) on any proposed action which raises a significant question concerning Federal energy or natural resources policy, a statement by the responsible official, as well as any other Federal agency designated by the Board, on—

(1) the relationship of the proposed action to the national policies declared by this Act;

(2) the relationship of the proposed action to other essential national policies which are not directly related to the policies declared by this Act;

(3) short- and long-term economic and technological benefits to the Nation which it is anticipated will accrue from such action; and,

(4) the economic and technological impacts as well as the benefits and costs related to the alternative actions discussed in the impact statement.

(b) The Board on Natural Resources Planning and Policy and the Council on Environmental Quality may review any proposed Federal action of importance to energy or enjoined by court action and shall make recommendations to the President and the

responsible agency or agencies with respect to—

(1) modification of the proposed action to minimize adverse environmental impacts; and

(2) alternative measures to attain the stated objectives of the proposed action.

SEC. 104. The policies and goals set forth in this Act are supplementary to those set forth in existing authorizations of Federal agencies.

TITLE II

SEC. 201. The President shall transmit to the Congress annually beginning January 1, 1974, a Natural Resources Report which shall set forth:

(a) the present supply of and requirements for energy and natural resources, together with a review of the physical and policy constraints to meeting such requirements;

(b) projected and foreseeable trends in supply of and requirements for energy and natural resources together with a review of the physical and policy constraints to meeting such requirements;

(c) anticipated problems in meeting projected requirements for minerals, fuels, and other natural resources;

(d) research and development efforts funded by the Federal Government to develop new technologies to forestall resource shortages, to reduce waste, to foster recycling, and to encourage conservation practices;

(e) recommendations for improving the natural resources and energy data and information available to the Federal agencies by improving monitoring systems; by standardizing data; by placing a condition on use of natural resources which would require sale, lease, licensing, or permission by the Federal Government that information about the location, extent, and nature of these resources be made available to the Federal Government;

(f) recommendations to improve the Nation's national security posture by developing more efficient and economical means of providing strategic reserves of essential materials; by expanding domestic policy options concerning minerals, fuels, and energy; and by insuring necessary protection for critical domestic industries;

(g) recommendations for developing technology capable of improving the quality of the environment, increasing efficiency, and fully protecting worker health and safety in the commercial exploration, production, conversion, and transport of natural resources;

(h) a review of the policies, programs, and activities of the Federal Gvernment, State, and local governments, and nongovernmental entities, which directly or indirectly affect the management, conservation, use, or development of energy and natural resources; and

(i) a program to remedy deficiencies in and improve upon existing policies, programs, and activities, together with recommendations for legislation.

SEC. 202. There is created in the Executive Office of the President a Board on Natural Resources Planning and Policy (hereinafter referred to as the "Board"). The Board shall be composed of three members who shall be appointed by the President to serve at his pleasure, by and with the advice and consent of the Senate. The President shall designate one of the members of the Board to serve as Chairman. Each member shall be a person who, as a result of his or her training, experience, and attainments, is exceptionally well qualified to analyze and interpret trends and information of all kinds concerning natural resources and energy; to appraise programs and activities of the Federal Government in the light of the policies set forth in this Act; to be conscious of and responsive to the scientific, economic, social, esthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the wise management, conservation, use, and development of natural resources and energy.

SEC. 203. The Board may employ such officers and employees as may be necessary to carry out its functions under this Act. In addition, the Board may employ and fix the compensation of such experts and consultants as may be necessary for the carrying out of its functions under this Act, in accordance with section 3109 of title 5, United States Code (but without regard to the last sentence thereof).

SEC. 204. It shall be the duty and function of the Board—

(a) to provide continuity to and continuing oversight of national policies concerning the management, conservation, use, and development of natural resources and energy;

(b) to assist and advise the President in the preparation of the Natural Resources Report required by section 201;

(c) to gather timely and authoritative information concerning the conditions and trends in the management, conservation, use, and development of natural resources and energy, both current and prospective; to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policies set forth in this Act; and to compile and submit to the President studies relating to such conditions and trends;

(d) to review and appraise the various programs and activities of the Federal Government in the light of the policies set forth in this Act for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policies, and to make recommendations to the President with respect thereto;

(e) to develop and recommend to the President national policies to foster and promote the wise management, conservation, use, and development of natural resources and energy to meet the economic, social, environmental, and other requirements and goals of the Nation.

(f) to conduct investigations, studies, surveys, research, and analyses relating to natural resources and energy;

(g) to accumulate necessary data and other information for a continuing analysis of the Nation's natural resources and energy and the management, conservation, use, and development thereof;

(h) to report at least once a year to the President on the Nation's natural resources and energy;

(i) to make and furnish such studies, reports, thereon, and recommendations with respect to matters of policy and legislation as the President may request; and

(j) to periodically review agency contingency plans for assuring adequate and reliable supplies of energy and essential natural resources.

SEC. 205. In exercising its powers, functions, and duties under this Act, the Board shall, to the fullest extent possible, make use of the services, facilities, and information (including statistical information) of public and private agencies and organizations and individuals, thus avoiding duplication of effort and expense and assuring that the Board's activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

SEC. 206. Members of the Board shall serve full time. The Chairman of the Board shall be compensated at the rate provided for level II of the Executive Schedule Pay Rates (5 U.S.C. 5313). The other members of the Board shall be compensated at the rate provided for level IV of the Executive Schedule Pay Rates (5 U.S.C. 5315).

SEC. 207. The Council on Environmental Quality, pursuant to its authority set out in subsections (3) and (4) of section 201 of the National Environmental Policy Act of 1969 (83 Stat. 852, 854), and all other Federal agencies shall consult with and assist the Board in the gathering of data and information on natural resources and energy and in the preparation of the annual Natural Resources Report required by section 201.

SEC. 208. There are authorized to be appropriated to carry out the provisions of this Act—

(a) not to exceed $300,000 for fiscal year 1973, $700,000 for fiscal year 1974, and $1,000,000 for each fiscal year thereafter.

(b) $10,000,000 each fiscal year for use by both the Board and the Council on Environmental Quality to contract for studies and research on environmental quality, minerals, fuels, and natural resources, which is designed to reduce conflicts concerning, promote balance among, and enable the Nation to attain, the goals declared in the Full Employment Act of 1946, in the National Environmental Policy Act of 1969, and in this, the National Resources Planning and Policy Act of 1972.

By Mr. ERVIN:

S. 3331. A bill relating to the constitutional rights of Indians. Referred to the Committee on the Judiciary.

AMENDMENT TO 1968 CIVIL RIGHTS ACT, RESPECTING THE PUBLICATION OF CERTAIN MATERIALS RELATING TO THE CONSTITUTIONAL RIGHTS OF INDIANS

Mr. ERVIN. Mr. President, I introduce for appropriate reference a bill in the nature of a technical amendment to title VII of the 1968 Civil Rights Act, which pertains to the constitutional rights of Indians.

As the Members of this body know, included in the 1968 Civil Rights Act were six provisions drafted by the Constitutional Rights Subcommittee which have become known as the "Indian Bill of Rights." This legislation was the culmination of a 7-year study conducted by the subcommittee into the legal status of the Indian and the problems he encounters when asserting constitutional rights in his relations with State, Federal, and tribal governments. The subcommittee discovered that one of the most significant hinderances to any effort on behalf of our Indian citizens was the lack of up-to-date information in the area of Indian law. In order to insure full and easy access to relevant documentary sources, Congress passed title VII which authorized and directed the Secretary of the Interior to:

First, have the document entitled "Indian Affairs, Laws and Treaties" revised and extended to include all treaties, laws, executive orders, and regulations relating to Indian affairs, and have the document printed;

Second, have revised and republished the treaties entitled "Federal Indian Laws"; and

Third, have prepared an accurate compilation of the official opinions of the Solicitor of the Department of the Interior relating to Indian affairs, and have such compilation printed as a Government publication.

In addition, the document entitled "Indian Affairs, Laws and Treaties," and

the Solicitor's opinions were to be kept current on an annual basis.

Mr. President, I am pleased to announce that now, almost 4 years later, I have been informed that the document "Indian Affairs, Laws and Treaties" is now at a stage to be sent to the GPO for printing. In addition, the compilation of the Solicitor's opinions is substantially completed and will be ready for printing during the coming fiscal year—1973—and it is projected that the treatise "Federal Indian Laws" will be printed during the next fiscal year—1974.

When the 1968 act was approved, section 701(c) authorized the appropriation for carrying out the provisions of title VII with respect to the preparation but not including the printing. The printing costs were to be covered by funds normally appropriated to the Department of the Interior in its annual printing budget. However, the Department interpreted the language in the 1968 act to be a prohibition against printing—something which was never intended.

The amendment I offer today simply strikes the restrictive language in section 701(c). By so doing, the intent of Congress in passing title VII will be perfectly clear, and there should be no further delays in complying with the congressional mandate of the 1968 law.

By Mr. MAGNUSON:

S. 3333. A bill to authorize a compact between the several States relating to taxation of multistate taxpayers and to regulate and foster commerce among the States by providing a system for the taxation of interstate commerce. Referred to the Committee on Finance.

Mr. MAGNUSON. Mr. President, in February of 1969 I joined with other Senators in introducing a bill which would have granted congressional consent for an interstate compact designed to achieve certain enumerated purposes in the field of State taxation of interstate businesses. In particular, the compact was designed to facilitate proper determination of State and local tax liability, to promote uniformity or compatibility of tax systems, to facilitate the multistate taxpayers' convenience and compliance regarding taxing procedures, and to avoid duplication of taxation. In this present session, I have again joined with other Senators to sponsor S. 1883 which is drafted to achieve the same purposes.

I will not, at this time, restate all the reason—which I believe to be very sound reasons—for seeking congressional approval of this legislation but will only add certain comments relating to the proposal which I am presently asking the Senate to consider.

The compact with which the original bill and this bill are concerned, the multistate tax compact, has been enacted by 22 States—one of which, Alabama, has conditioned its approval upon the enactment of consent legislation by Congress. In addition, 14 other States have become associate members of the Commission and still other States are seriously considering participating in this new governmental agency.

The Multistate Tax Compact has for its basic objectives the provision of solutions and additional facilities for dealing with tax problems of multistate businesses. More important, in the long run, the compact would establish mechanisms for meeting multistate tax problems on a continuing basis. In addition to granting consent to the compact, this bill contains other features on which some background should be given.

Nearly 3 years ago a small group of State and business representatives, under the joint chairmanship of George Kinnear, director of the Department of Revenue of the State of Washington and then chairman of the Multistate Tax Commission, and Leonard E. Kust, partner in the New York law firm of Cadwalader, Wickersham & Taft and then vice president and general counsel of Westinghouse Electric Corp., began a study directed toward developing a program whereby the problems of state taxation of interstate business could be more comprehensively considered and solved, hopefully to the satisfaction of both the States and business.

The committee was organized with the understanding that the members were not representing the organization by which they were employed or any other organization with which they were associated. Members represented only their own views based upon their concern with the problems involved, their experience and knowledge with respect to such problems and their good will in committing themselves to seeking a reconciliation of views.

The original group who served throughout included, in addition to Mssrs. Kinnear and Kust, the following individuals:

Eugene F. Corrigan, executive director, Multistate Tax Commission.

Theodore W. de Looze, chief tax counsel, State of Oregon.

William Dexter, assistant attorney general, State of Washington.

Timothy R. Malone, assistant attorney general, State of Washington.

James T. McDonald, director, department of revenue, State of Kansas.

James Sabine, assistant attorney general, State of California.

James F. Devitt, manager, State income tax, Montgomery Ward & Co.

John Hollis, tax attorney, Humble Oil Corp.

Thomas S. Miller, manager, State, local and miscellaneous taxes, Gulf Oil Corp.

Stephen C. Nemeth, Jr., assistant secretary, Republic Steel Corp.

Paul E. O'Brien, assistant treasurer, the Coca-Cola Co.

Raymond L. Slater, tax administrator, United States Steel Corp.

These gentlemen worked together for a year and a half, eventually presenting their views to the Multistate Tax Comsion and to certain business groups after reconsideration with a larger number of persons from both business and State government, in an expanded committee. The final draft of legislation now being introduced was developed after full and unlimited consideration by all members of an expanded committee. No individual member was asked to be bound by the entire draft as presented.

The general conception of the proposals to which the committee was committed from its beginning in 1969, is that the solutions to the problems of multistate taxation of interstate business should be implemented through a merger of the Multistate Tax Compact approach and the Federal legislation approach. The objective of such a merger of approaches is to preserve as far as possible administrative authority in the States by requiring the States to act, in certain areas, through the machinery of an interstate tax compact consented to by the Congress and serving as the agency to implement uniform standards established under Federal legislation.

The bill which I am presenting to the Senate at this time embodies this approach. It represents the advanced and sophisticated thinking of men with outstanding qualifications in the field of taxation and should be given careful consideration when the Senate takes up any legislation on the subject of State taxation of multistate business.

As in 1969, so too now I believe that the Multistate Tax Compact is a responsible answer of the States to the shortcomings of State tax laws as they affect multistate businesses. I also believe that the present proposal, with its merger of the compact approach and the Federal legislation approach, represents a true step forward in solving this problem, and can most effectively advance the economic interests of the multistate business while protecting the essential revenue stability of the States.

Mr. President, I ask unanimous consent that an analysis of this legislation prepared by Mr. George Kinnear, director of the Washington State Department of Revenue and Mr. Leonard E. Kust, cochairman of the Revised Ad Hoc Committee on Taxation of Interstate Commerce, be printed in the CONGRESSIONAL RECORD immediately following my remarks; and Mr. President, I ask further unanimous consent that the full text of the legislation I am introducing today be printed in the CONGRESSIONAL RECORD immediately following that analysis.

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

ANALYSIS

(Prepared by the cochairman of the Revised Ad Hoc Committee on Taxation of Interstate Commerce)

The general conception of the proposals to which the Committee was committed from its beginning in 1969, is that the solutions to the problems of multistate taxation of interstate business should be implemented through a merger of the Multistate Tax Compact approach and the Federal legislation approach. The objective of such a merger of approaches is to preserve as far as possible administrative authority in the States by requiring the States to act, in certain areas, through the machinery of an interstate tax compact consented to by the Congress and serving as the agency to implement uniform standards established under Federal legislation.

Under this conception, it was agreed that Public Law 86-272 was adequate as a jurisdictional standard for income taxes, and that Federal legislation should codify the existing judicially prescribed jurisdictional stand-

ard for sales and use taxes, should provide an optional uniform apportionment formula for income taxes, standards for consolidation or combination of affiliated corporations and tax status of dividends for income tax purposes, standards for sales and use taxes, and authority to the Multistate Tax Commission to promulgate advisory rules and regulations implementing the Federal legislation.

Such a structure would provide flexibility for adjustment and evolution to improve the system for taxation of interstate business. With the Multistate Tax Commission under the Compact acting as the administrative agency it could implement and modify, within the limits of permissible administrative interpretation, the legislative standards under Federal law, and when the need for changes exceeded the bounds of permissible administrative interpretation the Commission could seek amendments to the Federal legislation. Moreover, under the Committee structure of the Multistate Tax Compact any proposal for amendment of the Federal legislation will have been preceded by extensive discussions between state administrators and business representatives and will presumably, therefore, be presented to the Congress with a substantial consensus of support.

In the belief that the merger of the Multistate Tax Compact approach and the Federal legislation approach would provide flexibility for evolution of a system for taxation of multistate business, the Committee also agreed at the outset that the initial legislation should limit itself to the most pressing problems, that is, the problems in those areas indicated earlier. These areas are freighted with enough controversy to suggest that an attempt should not be made now to cover additional areas. Thus, the Committee's proposals do not deal with the question of a uniform income tax base, capital stock and gross receipts taxes, and the Committee did not deal with all the problems that might arise in the areas which it has included in its proposals. The Committee deemed it more important to take an initial step, but a sound one, which would lay the ground work for perfecting amendments as experience pointed the way.

The proposals contemplate that the Congress will direct the House Judiciary Committee and the Senate Finance Committee to continue to evaluate the progress being made and, if at the end of five years the progress is not satisfactory, it is assumed that legislation implementing an alternative approach to reliance on the Multistate Tax Compact will be developed.

The Committee was keenly conscious of the problem presented by H.R. 1538 (the Rodino Bill) containing provisions which apply only to "small business", thus drawing a distinction between small and large business. The Committee concluded that such a distinction was not valid and in all of its deliberations strove to frame proposals which would meet the needs of both large and small business without providing different solutions for what it believed to be artificially drawn categories.

COMMENTS ON SPECIFIC PROVISIONS

Title I—Consent to enter into compact and conferral of powers upon compact commission

Title I is structured on the Magnuson Bill (S. 1883) and is designed to provide for the consent of Congress to the existing Multistate Tax Compact.

Sections 101 and 102 provide for Congressional consent to and identification of the Multistate Compact.

The purpose of Section 103 is to prevent a corporation from electing to have its income tax liability determined by reference to the allocation and apportionment provisions of the existing Compact. Alternately, Title III provides a maximum for income attributable to taxing jurisdiction computed under the provisions of this Act. Thus, for taxable years ending after the effective date of the Act the allocation and apportionment rules of the proposed Act rather than those set forth in the existing Compact would be applicable.

Thus, Section 103 prevents a corporation from having, in effect, a three-way choice in compact states, *i.e.*, state laws apart from the Compact, Article IV of the Compact, and Title III of the proposed federal act. Accordingly, Section 103 restricts a corporation to the choice of either state law apart from the Compact, or Title III of the federal act.

Section 104 confers on the Commission the power to adopt rules and regulations for the administration of the federal standards set forth in the Act. The question of whether Congress may delegate this power to the Commission was considered by the original ad hoc committee. The ad hoc committee satisfied itself with the advice of eminent counsel that this delegation is constitutional. See *Parden* v. *Terminal R. of Alabama Docks Dept.*, 377 U.S. 184, 12 L. Ed.2d 233, 84 S Ct. 1207 (1964).

Section 104 provides, however, that no rule or regulation adopted by the Multistate Tax Commission (hereinafter referred to as the Commission) will be in effect in any state if that state rejects the rule or regulation in accordance with the procedures it would use in the adoption of any rule or regulation in its administration of the tax law which constitutes the subject matter of the Commission rule or regulation. Also, section 104 provides for the participation of all the states whether or not regular members of the Commission in those deliberations and procedures to be followed by the Commission in the adoption of any rule or regulation. State sovereignty is thus preserved by affording each state the opportunity (1) of participating in the rule or regulation making function, (2) to administratively reject any rule or regulation adopted by the Commission, and (3) to use its own procedures in any proceedings pertaining to the rejection of any proposed rule or regulation. This approach, embodied in section 104, represents the rejection of the original ad hoc proposal, which would have made the Commission's regulations automatically binding on all states, and acceptance of the position that the Commission's rules and regulations should be essentially advisory. However, nonuniformity resulting from state administrative inaction, if any, is prevented.

Title II—Jurisdiction to tax

Under the Rodino Bill (H.R. 1538) the jurisdictional standard for net income taxes would be applicable only to "small" corporations but the jurisdictional standard with respect to collection of sales or use taxes would be generally applicable. As with respect to all provisions of the Act, the jurisdictional standard proposed by the Committee are, as in the Ribicoff Bill (S. 317), applicable without distinction between large and small corporations.

In the case of net income taxes, this gave rise to little difference of view among members of the Committee. In order, however, to minimize changes in existing law, it was agreed the jurisdictional limitations of Public Law 86–272 which have been the subject of judicial interpretation are adequate for purposes of the net income tax and are preferable to the "business location" tests of the Rodino and Ribicoff Bills.

The major controversy as to jurisdiction arose with respect to the imposition of the obligation to collect a sales or use tax on interstate sales of tangible personal property. The Rodino and Ribicoff Bills would not permit States or political subdivisions to impose on a seller such an obligation unless the seller has a business location in the State or regularly makes household deliveries in the State. The Talcott Bill (H.R. 4267), on the other hand, would enlarge regular deliveries to cover all deliveries in the State other than by common carrier or United States mail, and in addition would extend jurisdiction to regular solicitation by means of salesmen, solicitors or representatives in the State, except where the solicitation is solely by direct mail or advertising by means of newspapers, radio, or television. Thus, the Talcott Bill in effect codifies the decisions of the Supreme Court in *Scripto, Inc. v. Carson and National Bellas Hess, Inc. v. Illinois Department of Revenue.*

The merits of the differing standards were debated at length. It was recognized that the conflict was between the interests of business, mainly of small business, opposing undue burdens of collection of tax on interstate sales and the interests of the States in assuring reasonably effective enforcement of their tax with respect to interstate sales. In analyzing the problems it became clear, however, that neither the Rodino nor the Ribicoff Bills dealt effectively with the far more important problem of the power of political subdivisions to impose the obligation to collect sales and use tax on the interstate seller.

It is one thing for the small interstate seller to contend with the collection requirements of 50 states and quite another, and more serious matter, for both small and large business to deal with the varying collection requirements of thousands of political subdivisions. The trend among States toward allowing political subdivisions to impose sales and use taxes and to require collection of such taxes by the seller is accelerating. The Committee felt that this problem was a more serious problem than the question of whether the jurisdictional standard with respect to State power should be that in the Rodino and Ribicoff Bills or that in the Talcott Bill.

Consequently, it was agreed that the jurisdictional standards of the Talcott Bill, codifying existing law, should be adopted but that the power of a State or a political subdivision with respect to an interstate sale should be made clearly subject to the limitations of Section 405 of the Act, similar to Section 205 of the Talcott Bill. That Section provides, as does Section 305 of the Rodino and Ribicoff Bills, that a seller need not classify interstate sales according to geographic areas of a State, except those sales with destinations in political subdivisions in which the seller has a business location or regularly makes deliveries.

By cross-referencing the jurisdictional provisions of Section 201 to the classification provisions of Section 405, the Committee believes that political subdivisions will be effectively prohibited from imposing the obligation on a seller to collect tax on an interstate sale unless that seller has a business location or makes regular deliveries in the political subdivision. However, where the local tax is imposed in all geographic areas of the State on like transactions at the same combined State and local rate, administered by the State, and uniformly applied so that a seller would not be required to classify interstate sales according to geographic areas of the State, the jurisdictional standard in Section 201 would apply.

Under the jurisdictional standards of Section 101 of the Rodino and Ribicoff Bills, a political subdivision has power to impose the obligation to collect tax on an interstate sale if the seller is subject to the jurisdiction of the State, regardless of whether or not the jurisdictional standard is satisfied in the political subdivision. The effect of the classification provisions of those Bills is obscure, particularly since they refer to classification for "tax accounting" rather than for "tax collection" purposes. The latter term is used in Section 405 of the Act.

The Committee believes that both small and large business are more interested in limiting the power of political subdivisions to require collection of tax on interstate

sales where there is not a clear jurisdictional presence in the political subdivision than they are in "rolling-back" the present judicially prescribed jurisdictional standard with respect to State-level taxes.

In order to permit States and political subdivisions to adjust to the limitations on the power to require collection of sales or use taxes on interstate sales imposed by political subdivisions, Section 405 of the Act is not effective until July 1, 1976.

While Sections 101 of the Rodino and Ribicoff Bills, as well as comparable provisions of the original Ad Hoc Bill, prescribed jurisdictional standards for both capital stock and gross receipt taxes, the committee deleted all references to capital stock and gross receipts taxes as it was deemed more prudent to lay the proper foundation in dealing with the substantive provisions relating to the more pressing problems of income and sales and use taxes, perhaps as a future guide for resolutions of the many other interstate business tax problems.

Title III—Maximum Income Attributable to Taxing Jurisdiction

The first problem with which the Committee was confronted regarding a uniform apportionment formula for income tax purposes was the question of whether the formula should include only two factors, property and payroll, or should include a third factor, sales. The 2-factor formula which was included for general application in the original Willis Bill (H.R. 11798) encountered the determined opposition of the states and much of the business community. The opposition of the states has remained adamant but the application of the 2-factor formula to "small" corporations under the Rodino and Ribicoff Bills has had continuing support from some sectors of the business community.

The Committee agreed from the outset that there should be no distinction between large and small business and that the 3-factor formula, since it represented the practice of most of the states having corporate net income taxes, was to be preferred to the 2-factor formula. Not only was it believed to be less disruptive of the revenues of the states but it was believed to approximate more nearly the results of separate accounting for which an apportionment formula is a practical substitute. Moreover, given an appropriate jurisdictional limitation, it was believed that the 2-factor formula did not serve the interests of "small" business in a significantly better way than a 3-factor formula.

The Uniform Division of Income for Tax Purposes Act (UDITPA) was taken as a guide. UDITPA has been adopted by a number of states, although with variations, and is incorporated in the existing Multistate Tax Compact. The Committee felt, however, that as part of Federal legislation which will be applicable in all states, UDITPA should not be incorporated without change but that the occasion should be taken for correcting some of the deficiencies in UDITPA, correction of which has been difficult to achieve through the Multistate Tax Compact or Separate action by the states.

One of the least satisfactory aspects of UDITPA has been its attempted distinction between "business" and "non-business" income, the latter the subject of specific allocation rather than apportionment under the formula. The Committee decided that with the exception of dividends from 80% owned subsidiaries and foreign source income all of the income of corporations subject to the Act should be apportioned among the several states in accordance with the apportionment formula.

Title III sets forth the ceiling beyond which a state or a political subdivision cannot go in imposing its income tax for any taxable year on a corporation taxable in more than one state. References in the original ad hoc bill to capital stock and gross receipts taxes have been deleted for the reasons previously stated. As in the original proposal, the Title is not applicable to "excluded corporations" which are defined in section 504. No state or political subdivision is required to incorporate into their income tax law any of the provsions of this Title. The limitations imposed on a state's political subdivisions are identical with those limitations imposed on a state (Section 305). This Title (1) sets forth an optional three factor apportionment formula; (2) exempts from state and local taxation income described in section 951(a)(1) of the Internal Revenue Code (section 306(a)); (3) exempts dividends paid by a corporation in which taxpayer owns 80% of the voting stock relating thereto and prohibits any offsetting adjustments related to such dividends; and (4) assigns all other dividend income, otherwise taxable, to the commercial domicile. In the original ad hoc proposal all dividends were subject to tax at the commercial domicile of the corporation.

The committee deemed it advisable to adopt provisions similar to the "taxable in more than one state" concept embodied in UDITPA, so as to describe the circumstances under which the apportionment formula would apply, and for purposes of determining whether interstate sales were assignable to destination or subject to the "throwback" provision. Such concept is incorporated in Section 301(d). Provision is also made for tolling the statute of limitation where the taxpayer's liability changes due to the reassignment of sales.

The most controversial problem considered by the Committee was the question of the consolidation or combination of income of related corporations, where one corporation is subject to the jurisdiction of the State but the other corporation is not. Conflicting and apparently irreconcilable views are held with respect to the solution of the problems involved. It does not seem possible even to define with agreement what the central problem is. On the one hand, the problem is conceived to be one of "nonarm's-length dealing" between related corporations, resulting in improper shifting of income between related corporations, so that a State having jurisdiction over only one of the related companies may be unable to apply the apportionment formula to the "true" income of the taxpayer over which it has jurisdiction. On the other hand, the so called "unitary business" doctrine, evolved primarily under the law of California, apparently rejects as its foundation "non-arm's-length dealing" between related corporations and relies on a "single economic unit" test applicable in both the intro-corporate and inter-corporate context.

Consolidation or combination of related corporation is practiced by only a few states. Yet a theoretical commitment to such consolidation or combination appears to be growing in appeal to State tax administrators. Some solution of the problem is necessary.

It is obvious that if one or more States consolidate related companies and other States do not the application of even a uniform apportionment formula will result in taxation of either more or less than 100% of the consolidated income. On the other hand, nationwide uniformity will eliminate the problem. Whatever the standards for consolidation may be, they must be uniformly applied among the States. Related corporations should either be consolidated in all of the States or in none of the States, unless a particular State and the taxpayers agree otherwise.

There was agreement within the Committee that potential "whip-sawing" of a taxpayer should be eliminated. The intransient controversy centered on whether consolidation should be permitted and if it was on what should be the standards applicable to determination of whether consolidation was appropriate.

Adherents of the view that the problem was one of "nonarm's-length dealing" insisted that consolidation was not the necessary solution. For Federal income tax purposes the granting of power to the Commissioner of Internal Revenue under Section 482 of the Internal Revenue Code to allocate income and deductions among related taxpayers in order clearly to reflect income was cited as an inadequate solution of the problem. The Ribicoff bill prohibits a State from combining or consolidating the income of a corporation over which it has jurisdiction with income of a corporation over which it does not have jurisdiction and confines the power of the State to adjustments with respect to transactions so as to clearly reflect the income of such corporations in the case of any non-arm's-length transactions between them.

According to the logic of the adherents to the "unitary business" doctrine, such a solution is irrelevant because "nonarm's-length dealing" is not the crux of the problem.

Even among those who agreed that "nonarm's-length dealing" was the central problem it was recognized that the administrative problem presented by reallocation of income and deductions among related taxpayers, while it might work under the sophisticated and elaborate auditing procedures of the Federal Government, might well be unworkable for the States and that consolidation under proper circumstances might be a reasonable alternative. With considerable reluctance on the part of some of the business representatives on the Committee it was agreed that an effort should be made to reconcile the conflicting views through the establishment of appropriate standards for consolidation, rather than to insist upon a solution such as that under Section 482 of the Internal Revenue Code. Controversy continued, however, throughout the deliberations of the Committee over the standards under which consolidation should be required or permitted.

The initial Ad Hoc Bill sought to bridge the differences in view by permitting consolidation subject to rebuttable presumptions based upon quantitative tests of intragroup flow of goods and services. These standards, however, continued to be controversial and have been abandoned in the revised Ad Hoc Bill.

Section 301(d) permits apportionable income, at the option of either the state or the taxpayer, to be determined by reference to the combined apportionable income and apportionment factors of all corporations of an affiliated group of which the taxpayer is a member. Affiliated group as used in section 301(d) is defined in section 505 to include corporations meeting the 80% of the voting stock ownership test (corporate or noncorporate) exclusive of the affiliated corporations deriving income from sources outside the United States. This is a substantial change from the original Ad Hoc proposal which had contained the quantitative flow of goods and services test to determine when a corporation's income tax liability should be determined on a combined basis. In order to assure uniform application of combined reporting requirements under the quantitative flow of goods and services rebuttable presumption tests, the original Ad Hoc Bill would have created a Multistate Tax Appeal Board as an independent agency of the Commission to adjudicate disputes arising under such proposal. Since Section 301(d) has been redrafted to permit any corporation of an affiliated group to elect or be required by a state to file a combined report, the need for the appeal board has been eliminated and the title providing for such agency has been

deleted. It was agreed that in a consolidation dividends from affiliates should be excluded from consolidated income.

It was also agreed that foreign source income should be excluded, since consolidation should legitimately seek only to bring income earned within the United States into the consolidated income to be apportioned among the 50 States. There was strong disagreement, however, as to whether foreign source income should be defined according to Federal source rules or whether sole reliance should be placed upon the apportionment formula to determine foreign source income of affiliated corporations included in the consolidation.

The disagreement with respect to foreign source income was finally resolved by the proposal that in the case of affiliated corporations, such as Western Hemisphere Trade Corporations, possessions companies and China Trade Act Corporations under the Internal Revenue Code, where the Internal Revenue Service would of necessity in each year determine the amount of foreign source income of such companies and under Section 482 would determine that such income was clearly reflected in such companies, the Federal rules would be accepted and such companies would be excluded from a consolidation. On the other hand, any other foreign or domestic company would be excluded from a consolidation only if at least 90% of its income was from foreign sources, determined by separate application to it of the apportionment formula under Title III of the Act. For this purpose the "throw-back" rule, with respect to the location of sales for purposes of the numerator of the sales fraction, would be inapplicable, since this rule is not pertinent to the determination of where income is earned by application of the apportionment formula.

These provisions designed to eliminate foreign source income are incorporated in the definition of an affiliated corporation in Section 505 of the Act.

The optional three factor apportionment formula consists of the factors or property, payroll, and sales. The property factor is based upon the valuation of property at its original cost and leased property at eight times the gross rental. The payroll factor includes the total amount paid as compensation. Full accountability of the property and compensation factors is required since the sum of the numerators for the states in which the corporation is taxable must be the same as the denominator used in those factors. This was not expressly provided for in the original ad hoc proposal.

Section 304, the sales factor, achieves full accountability through the "throw-back rule" which assigns sales to the origin state if the destination state lacks jurisdiction to impose tax. Export sales, however, other than export sales to the U.S. Government, are assigned to the foreign destination. The committee agreed that export sales, except for export sales to the U.S. Government, should not be subject to the "throw-back" provisions. The "throw-back" provisions properly apply where the nationally imposed jurisdictional standards prevent the destination state from imposing tax, but such justification is lacking where sales have a destination in foreign countries, since such countries are subject neither to the jurisdictional standards nor the uniform apportionment formula imposed on the states.

The sales factor is generally defined as the fraction the numerator of which is the sales of the corporation which are located in the state during the tax year and the denominator of which is the total sales by the corporation everywhere during the tax year. The original ad hoc proposal did not contain any special provision for either sales to the United States Government or to foreign countries.

Sales of services are assigned to the state where services are performed based on direct costs of performance and receipts from rentals of tangible personal property are assigned to location of the property. Sales of real estate, if the corporation is engaged primarily in the sale of real estate, are assigned to location of the real estate. Sales of other tangible personal property are assigned on a destination basis. All other receipts are eliminated from both the denominator and numerator of the sales factor.

Section 305 of the Act is based upon Section 206 of the Rodino Bill.

As discussed earlier, Section 306, dealing with exclusions from apportionable income, exempts foreign source income and assigns dividends received from subsidiaries meeting the 80% ownership test to the taxpayer's commercial domicile. Offsetting adjustments for interest and other expenses are prohibited.

Title IV—Sales and use taxes

Uniform standards with respect to sales and use taxes were perhaps less controversial than any of the areas to which the Committee addressed itself. The Committee was largely able to agree on the standards contained in the Rodino, Ribicoff and Talcott Bills, with some modifications deemed to be an improvement.

The provisions of this title in the draft are comparable to the provisions in the original ad hoc bill, and the Talcott Bill. Section 401(a) defines a location of a sale to be in the destination state and permits a contiguous state or political subdivision thereof to enter into reciprocal collection agreements as provided for in Section 406. Section 406 in turn, when authorized by state law and reciprocal agreement, requires a seller with a business location to collect use tax on sales he makes into a state which does not have jurisdiction to require collection under Section 201. Section 401(b) provides a use tax credit for prior sales taxes to another state. Section 401(c) provides for a refund for the overpayment of a use tax. Section 401(d) places a limitation on credit for prior taxes for the respective taxes which are measured by periodic payments made under a lease. Section 401(e) exempts vehicles and motor fuels from the provisions of Title IV.

Section 402 is the same as Section 202 of the Talcott Bill. It exempts household goods and motor vehicles from use tax if acquired and used by the person for a period of 90 days or more before he brings the property into the state for use there as a resident.

Section 403 deals with the treatment of transportation charges with respect to interstate sales. This section conforms to Section 203 of the Talcott Bill without precluding a state from requiring an instate purchaser to pay tax on freight charges.

Section 404 concerns the use tax collection liability of sellers on sales claimed to be exempt by the purchaser. It relieves the seller from any liability if the purchaser of the property furnishes to the seller a certificate or other written form of evidence indicating that the property is acquired for an exempt purpose.

Section 405 has been commented on in reference to jurisdictional limitations provided in Section 201. It should be noted that while Section 405 by its language only precludes classification of interstate sales for use tax collection purposes by a seller, the purpose of Section 405 is to require uniform state collection and administration of local sales or use taxes imposed on interstate sales. Because the provisions of Section 405 may have some significant effect on local revenues, Section 523 postpones its effective date to on or after July 1, 1976.

Title V—Definitions and miscellaneous provisions

The definitions contained in part A of this Title generally are those set forth in the original ad hoc proposal which were based upon the definitions contained in Part A, Title V of the Rodino and Ribicoff Bills, with minor changes except any references to gross receipts or capital stock taxes are deleted from the definitions. Section 501 defines a net income tax, Section 502, a sales tax, and Section 503, a use tax. Section 504 defines an excluded corporation which term is used in Section 301(a) to delineate the scope of Title III. Thus, the income tax provisions of the proposed bill do not pertain to an excluded corporation. An excluded corporation generally includes various financial organizations and public utilities.

Section 505 defines an affiliated corporation and is based upon Section 1504 of the Internal Revenue Code with changes in structure and modifications to take into account companies controlled by a noncorporate common owner. The term "affiliated corporation" defines corporations which can be required or permitted to file a combined report, as provided in Section 301(d). There is excepted from an affiliated corporation (1) excluded corporations defined in Section 504. (2) Western Hemisphere Trade Corporation as defined in Section 921 of the Internal Revenue Code, (3) possession companies as defined in Section 931 of the Internal Revenue Code, (4) corporations entitled to the special deduction for China Trade Act corporations under Section 941 of the Internal Revenue Code, and (5) corporations substantially all of the income of which is derived from sources without the United States.

Section 506 defines sale to include leases and rental payments under leases for the purposes of Title IV. Section 507 defines an interstate sale and Section 508 defines destination. Section 509 defines business location. This term is used in the Act only in regard to sales and use tax jurisdiction. Section 510 defines the location of property and Section 511 defines the location of an employee for Title III income apportionment purposes. Section 512 defines state and Section 513, state law, Section 514, taxable year, Section 515, compensation, Section 516, commercial domicile and Section 517 defines dividends.

Part (b) of Title V contains the miscellaneous provisions. Section 518 permits the imposition of franchise tax as a revenue measure even though technically imposed on the privilege of engaging exclusively in interstate commerce. Section 519 prohibits geographical discrimination. Section 520 indicates that the proposed act does not repeal Public Law 86–272 with respect to any person or to increase or otherwise effect the power of any state or political subdivision to impose or assess a net income tax with respect to an excluded corporation. Section 521 prohibits out of state audit charges. Section 522 limits the liability with respect to unassessed taxes which a state or political subdivision would have no power to impose after the date of the enactment of the proposed Act. Section 523 pertains to effective dates. The provisions of the Act will take effect on the date of its enactment unless otherwise provided. Section 405 (pertaining to local sales and use taxes) is to be effective on or after July 1, 1976, and the Act is effective for unassessed taxes as provided in Section 522.

S. 3333

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

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TITLE I—CONSENT TO ENTER INTO COMPACT AND CONFERRAL OF POWERS UPON COMPACT COMMISSION

CONSENT TO COMPACT

SEC. 101. Congress consents to any two or more states of the United States to enter into the Multistate Tax Compact described in section 102 of this Act. The consent granted herein shall be retroactive to the date of entry into such Compact by any State if such date of entry is prior to the effective date of this section.

IDENTIFICATION OF COMPACT

SEC. 102. The Compact referred to in section 101 is the Multistate Tax Compact which has been entered into by two or more states prior to January 1, 1971, and which contains the following in Article I thereof—

"The purposes of this Compact are to:

"1. Facilitate proper determination of state and local tax liability of multistate taxpayers, including the equitable apportionment of tax bases and settlement of apportionment disputes.

"2. Promote uniformity or compatibility in significant components of tax systems.

"3. Facilitate taxpayer convenience and compliance in the filing of tax returns and in other phases of tax administration.

"4. Avoid duplicative taxation."

LIMITATION ON CERTAIN COMPACT PROVISIONS

SEC. 103. No corporation may make, with respect to any taxable year in which it is taxable in more than one State for income tax purposes within the meaning of section 301(c) of this Act, the election provided for in Article III(1) to apportion and allocate income in accordance with Article IV of the Compact.

ADDITIONAL POWERS

SEC. 104. In addition to the powers conferred upon the Multistate Tax Commission by the Compact consented to in section 101, the Commission shall have the power to adopt such rules and regulations as it deems appropriate for the administration of Titles III through V of this Act. The exercise of the powers granted by this section shall be subject to the following conditions—

(a) Any rule or regulation shall be adopted in accordance with the procedures established in section 2 of Article VII of the Compact: *Provided, however,* That the notice required therein shall be given to each State.

(b) Any rule or regulation shall have the same force and effect in a State as it would have if it were adopted by a Federal administrative agency empowered to adopt a similar rule or regulation, unless within 180 days after the adoption thereof by the Multistate Tax Commission it has been rejected by the State in a rule or regulation adopted in accordance with the State's procedure for the adoption of a rule or regulation pertaining to the same subject matter.

(c) No rule or regulation adopted pursuant to this section shall be effective prior to 180 days after adoption of this Act.

(d) The bylaws of the Multistate Tax Commission, established by Article VI of the Compact shall contain—

(1) Procedures for States which have not adopted the Compact to become associate members of the Commission, said procedures to be substantially the same as those provided for in the bylaws in effect on January 1, 1971.

(2) Procedures for designation, by the Governor of each associate member State, of the tax administrator empowered to exercise voting rights on behalf of such State.

(3) A provision granting to each associate member, with respect to any Commission action taken pursuant to this section, the same voting rights as are enjoyed by regular members of the Commission.

(4) A provision that any action taken hereunder must be approved both by a majority of the total number of members and by those members representing a majority of the total population of the member State as allowed by the latest Federal census: *Provided, however,* That "member" shall include both an associate member and a regular member.

(5) A provision that the voting rights of associate member States shall be subject to the associate members having contributed to the Commission an amount to be established by the Commission, such amount to be no greater than the amount which would have been apportioned to such State if all associate members were regular members.

TITLE II—JURISDICTION TO TAX

JURISDICTIONAL STANDARDS

SEC. 201. No State or political subdivision thereof shall have power to require a person to collect and remit a sales or use tax with respect to an interstate sale of tangible personal property unless the person: (1) has a business location in the State; or (2) regularly makes deliveries in the State other than by common carrier or United States mail; or (3) regularly engages in the State in solicitation of orders for the sale of tangible personal property by means of salesmen, solicitors, or representatives (unless such solicitation of orders is carried on solely by direct mail or advertising by means of newspapers, radio, or television).

A State or political subdivision shall have power, subject to the limitations of Section 405 of this Act, to require seller collection of a sales or use tax with respect to an interstate sale of tangible personal property, if it is not denied the power to do so under the preceding sentence.

TITLE III—MAXIMUM INCOME ATTRIBUTABLE TO TAXING JURISDICTION

APPORTIONMENT; TAXABLE IN A STATE; COMBINED REPORTING

SEC. 301. (a) OPTIONAL THREE FACTOR FORMULA.—A State or a political subdivision thereof may not impose for any taxable year on a corporation taxable in more than one State, other than an excluded corporation, a net income tax measured by an amount of net income in excess of the amount determined by (1) multiplying the corporation's apportionable income by an apportionment fraction, the numerator of which is the sum of the property factor, the payroll factor, and the sales factor, excluding those factors which have negligible denominators and the denominator of which is three reduced by the number of factors which are excluded, and (2) in the State of taxpayer's commercial domicile only, such dividends as are assignable thereto under section 306(b).

A negligible denominator is one which is less than 10% of one-third of the corporation's net income,.

(b) APPORTIONABLE INCOME.—For this purpose the apportionable income to which the apportionment fraction is applied shall be such corporation's net income for that taxable year as determined under State law, with the exceptions provided for in section 306.

(c) TAXABLE IN MORE THAN ONE STATE; TAXABLE IN A STATE.—For purposes of this Title, a corporation is taxable in more than one State if (1) in more than one State it is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a capital stock tax, or (2) more than one State has jurisdiction to subject the corporation to a net income tax regardless of whether, in fact, that State does or does not.

For purposes of this Title, a corporation is taxable in a State if (1) in that State it is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a capital stock tax, or (2) that State has jurisdiction to subject the corporation to a net income tax regardless of whether, in fact, that State does or does not.

Notwithstanding the statute of limitations in a State for the filing of amended returns and claims for refunds, if it is subsequently determined that a corporation is taxable in a State for which a return was not originally filed, such corporation may file amended returns and claims for refunds in any State to which sales have been assigned under the provisions of Section 304(b)(2) of this Act, but only for the purpose of revising the sales factor by reassigning such sales.

(d) COMBINED REPORTING.—Any state may require the apportioned income of a corporation to be determined by reference to the combined income and apportionment factors of all corporations of the affiliated group of which the corporation is a member. Any member of an affiliated group may elect to determine its apportioned income for any state by reference to the combined income and apportionment factors of all corporations of the affiliated group.

PROPERTY FACTOR

SEC. 302. (a) IN GENERAL.—The property factor is a fraction, the numerator of which is the average value of the real and tangible personal property which is located in a State and, whether owned or rented, is used in that State by the corporation and the denominator of which is the sum of the corporation's property factor numerators as determined under this section for such year for all states in which the corporation is taxable. The denominator of the property factor shall not include the value of any property located in a state in which the corporation is not taxable.

(b) VALUATION.—Property owned by the corporation shall be valued at its original cost. Property leased to the corporation shall be valued at eight times the gross rents payable by the corporation during the taxable year without any deduction for amounts received by the corporation from subrentals.

The average value of property shall be determined by averaging the values at the beginning and ending of the taxable year but the State tax administrator may require or permit the averaging of monthly values during the taxable period if reasonably required to reflect properly the average value of the corporation's property.

PAYROLL FACTOR

SEC. 303. (a) IN GENERAL.—The payroll factor is a fraction, the numerator of which is the total amount paid in the State during the taxable year by the corporation as compensation and the denominator of which is the sum of the corporation's payroll factor numerators as determined under this section for all states in which the corporation is taxable.

If an employee is located in any state in which the corporation is not taxable, the compensation paid to that employee shall not be included in either the numerator or the denominator of the corporation's payroll factor for any state or political subdivision.

(b) LOCATION OF COMPENSATION.—Compensation is paid in the State if:

(1) the employee's service is performed entirely within the State;

(2) the employee's service is performed both within and without the State, but the service performed without the State is incidental to the employee's service within the State; or

(3) some of the employee's service is performed in the State and (a) the base of operations or, if there is no base of operations, the place from which the employee's service is directed or controlled is in the State, or (b) the base of operations or the place from which the service is directed or controlled is not in any State in which some part of the service is performed, but the employee's residence is in the State.

SALES FACTOR

SEC. 304. (a) GENERAL.—The sales factor is a fraction, the numerator of which is the sales of the corporation which are located in the State during the tax year, and the denominator of which is the total sales by the corporation everywhere during the tax year.

(b) LOCATION OF SALES OF TANGIBLE PERSONAL PROPERTY.—Sales of tangible personal property are included in the numerator of a State if:

(1) the property is delivered or shipped to a purchaser within the State, and the corporation is taxable in the State, regardless of the f.o.b. point or other conditions of the sale; or

(2) the property is shipped from an office, store, warehouse, factory, or other place of storage in the State and the property is delivered or shipped to a purchaser within a state in which the corporation is not taxable, or the purchaser is the United States Government and the property is delivered or shipped to a place outside the United States, including the District of Columbia. Other than such sales to the United States Government, sales of tangible personal property which are delivered or shipped to a place outside the United States, including the District of Columbia, are not included in the numerator of a State.

(c) LOCATION OF CERTAIN OTHER SALES.—

(1) Sales of services shall be included in the numerator of the State in which the service is performed. Sales of services rendered in two or more States shall, for the purpose of the numerator of the sales factor, be divided between those States in proportion to the direct costs of performance incurred in each such State by the taxpayer in rendering the services.

(2) Sales of real property, if the corporation is engaged primarily in the business of selling real property, are included in the numerator of the State in which the property is located.

(3) Sales which consist of receipts from the rental of tangible personal property shall be considered to be located in the State in which the property is located.

(d) ALL OTHER SALES.—All gross receipts, other than those described in subsections (b) and (c) of this section shall be excluded from both the numerator and the denominator of the sales factor.

LOCAL TAXES

SEC. 305. The maximum income of a corporation attributable to a political subdivision for tax purposes shall be determined under this Title in the same manner as though the political subdivision were a State; except that the denominators of the corporation's property factor, payroll factor, and sales factor shall be the denominators applicable to all States and political subdivisions. For this purpose the numerators of the corporation's property factor, payroll factor, and sales factor shall be determined by treating every reference to a State as a reference to the political subdivision.

EXCLUSIONS FROM APPORTIONABLE INCOME

SEC. 306. (a) EXCLUSION OF INCOME CONSIDERED TO BE FOREIGN SOURCE INCOME.—The apportionable income of a taxpayer shall not include income described in Section 951(a)(1) of the Internal Revenue Code.

(b) CORPORATE DIVIDENDS.—The apportionable income of a taxpayer shall not include income derived from dividends paid by a corporation in which taxpayer owns at least 80% of the voting stock; dividends otherwise taxable shall be assigned to the State of taxpayer's commercial domicile and may be subjected to a net income tax only in such State; no State shall, by reason of not including such dividends in apportionable income, make any offsetting adjustment of an otherwise allowable deduction.

TITLE IV—SALES AND USE TAXES

REDUCTION OF MULTIPLE TAXATION

SEC. 401. (a) LOCATION OF SALES.—A State or political subdivision thereof may impose a sales tax or require a seller to collect a sales or use tax with respect to an interstate sale of tangible personal property only if the destination of the sale is—

(1) in that State, or

(2) in a contiguous State or political subdivision of a contiguous State for which the tax is required to be collected under reciprocal collection agreements as authorized under Section 406.

(b) CREDIT FOR PRIOR TAXES.—The amount of any use tax imposed with respect to tangible personal property shall be reduced by the amount of any sales or use tax previously incurred and paid by a person with respect to the property on account of liability to another State or political subdivision thereof.

(c) REFUND.—A person who pays a use tax imposed with respect to tangible personal property shall be entitled to a refund from the State or political subdivision thereof imposing the tax, up to the amount of the tax so paid, for any sales or use tax subsequently paid with respect to the same property on account of prior liability to another State or political subdivision thereof.

For purposes of this subsection, the person seeking the refund from a State or political subdivision imposing the tax shall apply for the refund within one year from the date of payment of the sales or use tax to such other State or political subdivision.

(d) LIMITATION OF CREDIT FOR PRIOR TAXES.—A credit or refund otherwise permitted under subsections (b) and (c) shall not be allowed with respect to taxes which are measured by periodic payments made under a lease to the extent that the taxes imposed by the other State or political subdivision thereof were also measured by periodic payments made under a lease for a period prior to the possession, storage, use, or other consumption of the property in the State or political subdivision thereof imposing the tax.

(e) VEHICLES AND MOTOR FUELS.—

(1) VEHICLES.—Nothing in subsection (a) shall affect the power of a State or political subdivision thereof to impose or require the collection of a sales or use tax with respect to vehicles that are registered in the State.

(2) FUELS.—Nothing in this section shall affect the power of a State or political subdivision thereof to impose or require the collection of a sales or use tax with respect to motor fuels consumed in the State.

EXEMPTIONS FOR HOUSEHOLD GOODS, INCLUDING MOTOR VEHICLES, IN THE CASE OF PERSONS WHO ESTABLISH RESIDENCE

SEC. 402. No State or political subdivision thereof may impose a sales tax, use tax, or other nonrecurring tax measured by cost or value with respect to household goods, including motor vehicles, brought into the State by a person who establishes residence in that State if the goods were acquired and used by that person ninety days or more before use of the property in the State in which he establishes such residence.

TREATMENT OF TRANSPORTATION CHARGES WITH RESPECT TO INTERSTATE SALES

SEC. 403. Where the freight charges or other charges for transporting tangible personal property from the seller or supplier directly to the purchaser incidental to an interstate sale are separately stated in writing by the seller to the purchaser, to the extent that such charges do not exceed a reasonable charge for transportation by facilities of the seller or the charge for the transportation by the carrier when the transportation is by other than the seller's facilities, no State or political subdivision may require the seller to include such charges in the measure of a sales or use tax imposed and collected by the seller with respect to the sale or use of the property.

LIABILITY OF SELLERS ON EXEMPT SALES

SEC. 404. No seller shall be liable for the collection or payment of a sales or use tax with respect to an interstate sale of tangible personal property if the purchaser of such property furnishes or has furnished to the seller a certificate or other written form of evidence indicating the basis for exemption, or the reason the seller is not required to pay or collect the tax. Any such certificate or writing shall give the name and address of the purchaser, his registration number, if any, and shall be signed by the purchaser or his representative.

LOCAL SALES AND USE TAXES

SEC. 405. No seller shall be required by a State or political subdivision thereof to classify interstate sales for use tax collection purposes according to geographic areas of the State in any manner other than to account for interstate sales with destinations in political subdivisions in which the seller: (1) has a business location; or (2) regularly makes deliveries other than by common carrier or United States mail.

Where in all geographic areas of a State sales and use taxes are imposed on like transactions at the same combined State and local rate, are administered by the State, and are otherwise applied uniformly so that a seller is not required to classify interstate sales according to geographic areas of the State in any manner whatsoever, such sales or use taxes, whether imposed by the State or by political subdivisions, shall be subject to the jurisdictional rule of Section 201 of this Act.

RECIPROCAL COLLECTION AGREEMENTS

SEC. 406. When authorized by State law, reciprocal agreements may be made between two contiguous States for the purpose of re-

quiring a seller with a business location in one of the States to collect applicable State use tax for, and to remit that tax to, the other State into which the seller makes sales of tangible personal property, even though he is otherwise not subject to the jurisdiction of such other State under Section 201 of this Act.

TITLE V—DEFINITIONS AND MISCELLANEOUS PROVISIONS

PART A—DEFINITIONS

NET INCOME TAX

SEC. 501. A "net income tax" is a tax which is imposed on or measured by net income, including any tax which is imposed on or measured by an amount arrived at by deducting from gross income expenses one or more forms of which are not specifically and directly related to particular transactions.

SALES TAX

SEC. 502. A "sales tax" is any tax imposed with respect to sales, and measured by the sales price of tangible personal property or services with respect thereto, which is required by State law to be stated separately from the sales price by the seller, or which is customarily stated separately from the sales price.

USE TAX

SEC. 503. A "use tax" is any nonrecurring tax, other than a sales tax, which is imposed on or with respect to the exercise or enjoyment of any right or power over tangible personal property incident to the ownership of that property or the leasing of that property from another, including any consumption, keeping, retention, or other use of tangible personal property.

EXCLUDED CORPORATION

SEC. 504. A financial organization or a public utility is an excluded corporation. "Financial organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, cooperative bank, small loan company, sales finance company, investment company, or any type of insurance company. "Public utility" means any business entity (1) which owns or operates any plant, equipment, property, franchise, or license for the transmission of communications, transportation of goods or persons, except by pipe line, or the production, transmission, sale, delivery, or furnishing of electricity, water or steam; and (2) whose rates of charges for goods or services have been established or approved by a Federal, State or local government or governmental agency.

AFFILIATED CORPORATION

SEC. 505. (a) Two or more corporations are "affiliated" if they are included corporations as defined herein and if they are members of the same group comprised of one or more corporate members connected through stock ownership with a common owner, which may be either corporate or noncorporate, in the following manner—

(1) At least 80% of the voting stock of each member other than the common owner is owned directly by one or more of the other members; and

(2) At least 80% of the voting stock of at least one of the members other than the common owner is owned directly by the common owner.

The fact that a corporation is an "excluded corporation" as defined in section 504 shall not be taken into account in determining whether two or more other corporations are "affiliated".

(b) The term "included corporation" means any corporation except—

(1) Excluded corporations as defined in Section 504.

(2) Western Hemisphere Trade Corporations as defined in Section 921 of the Internal Revenue Code.

(3) Possessions companies as defined in Section 931 of the Internal Revenue Code.

(4) Corporations entitled to the special deduction for China Trade Act Corporations under Section 941 of the Internal Revenue Code.

(5) Corporations, substantially all of the income of which is derived from sources without the United States. For this purpose substantially all of the income of a corporation shall be deemed to be derived from sources without the United States if the sum of the apportionment fractions of such corporation for all States under Title III of this Act, without the application of Section 304(b)(2) thereof, averages less than one-tenth (10%) per year for the current year and the two preceding years, or such lesser number of years as the corporation was in existence. The United States, as used in this paragraph, means the 50 States and the District of Columbia.

SALE

SEC. 506. For the purpose of Title IV only, the term "sale" shall be deemed to include leases and rental payments under leases.

INTERSTATE SALE

SEC. 507. An "Interstate sale" is a sale in which the tangible personal property sold is shipped or delivered to the purchaser in the State from a point outside that State.

DESTINATION

SEC. 508. The destination of a sale is in the State or political subdivision in which possession of the property is physically transferred to the purchaser, or to which the property is shipped to the purchaser, regardless of the f.o.b. point or other conditions of the sale.

BUSINESS LOCATION

SEC. 509. (a) GENERAL RULE.—A person shall be considered to have a business location within a State only if that person—

(1) owns or leases real property within the State, or

(2) has one or more employees located in the State, or

(3) regularly maintains a stock of tangible personal property in the State for sale in the ordinary course of his business, or

(4) regularly leases to others tangible personal property for use in the State.

For the purpose of paragraph (3), property which is on consignment in the hands of a consignee, and which is offered for sale by the consignee on his own account, shall not be considered as stock maintained by the consignor.

If a person has a business location in a State solely by reason of paragraph (4), he shall be considered to have a business location in the State only with respect to such leased property.

LOCATION OF PROPERTY

SEC. 510. (a) GENERAL RULE.—Except as otherwise provided in this section property shall be considered to be located in a State if it is physically present in that State.

(b) MOVING PROPERTY.—Personal property which is characteristically moving property, such as motor vehicles, rolling stock, aircraft, vessels, mobile equipment, and the like, shall be considered to be located in a State if—

(1) the operation of the property is localized in that State, or

(2) the operation of the property is not localized in any State but the principal base of operations from which the property is regularly sent out is in that State.

If the operation of the property is not localized in any State and there is no principal base of operations in any State from which the property is regularly sent out, the property shall not be considered to be located in any State for purposes of inclusion in either the numerator or the denominator of the property factor.

(c) MEANING OF TERMS.—

(1) Localization of Operation—The operation of property shall be considered to be localized in a State if during the taxable year it is operated entirely within that State, or it is operated both within and without that State but the operation without the State is—

(A) occasional, or

(B) incidental to its use in the transportation of property or passengers from points within the State to other points within the State, or

(C) incidental to its use in the production, construction, or maintenance of other property located within the State.

(2) Base of Operations—The term "base of operations," with respect to a corporation's moving property means the premises at which any such property is regularly maintained regardless of whether such premises are maintained by the corporation or by some other person; except that if the premises are maintained by an employee of the corporation primarily as a dwelling place they shall not be considered to constitute a base of operations.

LOCATION OF EMPLOYEE

SEC. 511. An employee shall be considered to be located in a State if—

(a) the employee's service is performed entirely within the State;

(b) the employee's service is performed both within and without the State, but the service performed without the State is incidental to the employee's service within the State; or

(c) some of the service is performed in the State and (1) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the State, or (2) the base of operations or the place from which the service is directed or controlled is not in any State in which some part of the service is performed, but the employee's residence is in the State.

The term "employee" has the same meaning as it has for purposes of Federal income tax withholding under chapter 24 of the Internal Revenue Code of 1954.

STATE

SEC. 512. The term "State" means the several States of the United States and the District of Columbia: *Provided, however,* That the term shall also include, for purposes of sections 302 through 304, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

STATE LAW

SEC. 513. References in this Act to "State Law," "the laws of the State," and the like shall be deemed to include a State constitution, and to include the statutes and other legislative acts, judicial decisions, and administrative regulations and rulings of a State and of any political subdivision.

TAXABLE YEAR

SEC. 514. A corporation's "taxable year" is the calendar year, fiscal year, or other period upon the basis of which its taxable income is computed for purposes of the Federal income tax.

COMPENSATION

SEC. 515. "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services.

COMMERCIAL DOMICILE

SEC. 516. "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

DIVIDENDS

SEC. 517. "Dividends" means distributions made in cash or property from the earnings and profits of a corporation as earnings and profits are defined for Federal tax purposes, but net of any "deemed foreign tax paid" which may be required to be added for Fed-

eral income tax purposes under Section 902 of the Internal Revenue Code.

PART B—MISCELLANEOUS PROVISIONS

PERMISSIBLE FRANCHISE TAXES

SEC. 518. The fact that a tax to which this Act applies is imposed by a State or political subdivision thereof in the form of a franchise, privilege, or license tax shall not prevent the imposition of the tax on a person engaged exclusively in interstate commerce within the State; but such a tax may be enforced against a person engaged exclusively in interstate commerce within the State solely as a revenue measure and not by ouster from the State or by criminal or other penalty for engaging in commerce within the State without permission from the State.

PROHIBITION AGAINST GEOGRAPHICAL DISCRIMINATION

SEC. 519. (a) IN GENERAL.—No provision of State law shall make any person liable for a greater amount of sales or use tax with respect to tangible personal property, by virtue of the location of any occurrence in a State outside the taxing State, than the amount of the tax for which such person would otherwise be liable if such occurrence were within the State (subject to section 520). For purposes of this subsection, the term "occurrence" includes incorporation, qualification to do business, and the making of a tax payment, and includes an activity of the taxpayer or of a person (including an agency of a State or local government) receiving payments from or making payments to the taxpayer.

(b) COMPUTATION OF TAX LIABILITY UNDER DISCRIMINATORY LAWS.—When any State law is in conflict with subsection (a), tax liability may be discharged in the manner which would be provided under State law if the occurrence in question were within the taxing State.

APPLICABILITY OF ACT

SEC. 520. Nothing in this Act shall be considered—

(a) to repeal Public Law 86–272 with respect to any person; or

(b) to increase, decrease, or otherwise affect the power of any State or political subdivision to impose or assess a net income tax with respect to an excluded corporation.

PROHIBITION AGAINST OUT-OF-STATE AUDIT CHARGES

SEC. 521. No charge may be imposed by a State or political subdivision thereof to cover any part of the cost of conducting outside that State an audit for a tax to which this Act applies, including a net income tax imposed on an excluded corporation.

LIABILITY WITH RESPECT TO UNASSESSED TAXES

SEC. 522. (a) Periods Ending Prior to Enactment Date.—No State or political subdivision thereof shall have the power, after the date of the enactment of this Act, to assess against any person any tax for any period ending on or before such date in or for which that person became liable for such tax if during such period the State or political subdivision would not have had the power to assess such tax had the provisions of Title II of this Act been in effect during such period.

(b) Certain Prior Assessments and Collections.—The provisions of subsection (a) shall not be construed—

(1) to invalidate the collection of a tax prior to the time assessment became barred under subsection (a), or

(2) to prohibit the collection of a tax at or after the time assessment became barred under subsection (a), if the tax was assessed prior to such time.

EFFECTIVE DATES

SEC. 523. (a) Except as provided in section 522, titles II and III of this Act shall apply only with respect to taxable years ending after the date of the enactment of this Act.

(b) Section 405 of this Act shall be effective wtih respect to taxable periods beginning on or after July 1, 1976.

(c) The remaining provisions of this Act shall take effect on the date of the enactment of this Act, unless a specific date is provided for in any such provision.

EVALUATION OF STATE PROGRESS

SEC. 524. The Committee on the Judiciary of the House of Representatives and the Committee on Finance of the United States Senate, acting separately or jointly, or both, or any duly authorized subcommittees thereof, shall for five years following the enactment of this Act evaluate the progress which the several States and their political subdivisions are making in resolving the problems arising from State taxation of interstate commerce and if, after five years from the enactment of this Act, the States and their political subdivisions have not made substantial progress in resolving any such problem, shall propose such measures as are determined to be in the national interest.

By Mr. MAGNUSON (by request):

S. 3334. A bill to authorize the Secretary of the Interior to assist the States in controlling damage caused by predatory animals; to establish a program of research concerning the control and conservation of predatory animals; to restrict the use of toxic chemicals as a method of predator control; and for other purposes. Referred to the Committee on Commerce.

Mr. MAGNUSON. Mr. President, by request, I introduce for appropriate reference a bill concerning the control of predatory animals. This is a subject which has generated much controversy recently and which, I think, deserves the attention of the Congress.

I ask unanimous consent that the bill be printed in the RECORD at this point, together with the letter from Secretary Morton to the Vice President.

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

S. 3334

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 "Federal Animal Damage Control Act of 1972".

SEC. 2. For the purpose of this Act—

(a) the term "person" means any individual, organization or association, including any department, agency or instrumentality of the Federal government, a State government or a political subdivision thereof;

(b) the term "State" means the several States of the Union, Puerto Rico, Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and the District of Columbia, but shall not include any political subdivision of the foregoing entities;

(c) the term "chemical toxicant" means any chemical substance which, when ingested, inhaled, or absorbed, or when applied to, or injected into the body, in relatively small amounts, by its chemical action may cause signicant bodily malfunction, injury, illness or death to animals or man;

(d) the term "predatory animal" means any mammal, bird or reptile which habitually preys upon other animals; and

(e) the term "secondary poisoning effect" means the result attributable to a chemical toxicant which, after being ingested, inhaled, or absorbed by or into, or when applied to or injected into a mammal, bird, or reptile, is retained in its tissue, or otherwise retained in such a manner and quantity that the tissue itself or retaining part if thereafter ingested by man or another mammal, bird or reptile, produces the effects set forth in subsection (c) hereof.

(f) the term "field use" means any use on lands not in or immediately adjacent to occupied buildings.

SEC. 3. (a) In order to assist the States in controlling damage caused by predatory animals, birds and field rodents, and in order to encourage the use by States of predator control methods which are consistent with accepted principles of wildlife management and the maintenance of environmental quality, the Secretary of the Interior (hereinafter referred to as the "Secretary") is authorized to conduct directly or by agreement with qualified agencies or institutions, public and private, a program of research which shall concern the control and conservation of predatory and depredating animals and the abatement of damage caused by such animals.

(b) The program of research authorized by subsection (a) hereof shall include, but need not be limited to (1) the testing of methods used for the control of predator and depredating animals and the abatement of damage caused by such animals; (2) the development of effective methods for predator control and the abatement of damage caused by predatory animals which contribute to the maintenance of environmental quality and which conserve, to the greatest degree possible, the Nation's wildlife resources, including predatory animals; (3) a continuing inventory of the Nation's predatory animals, and the identification of those species which are or may become threatened with extinction; and (4) the development of means by which to disseminate to States the finding of studies conducted pursuant to this section.

(c) The Secretary is authorized to conduct such demonstrations of methods developed pursuant to subsection (b) and to provide such other extension services as may be reasonably requested by the duly authorized wildlife agency of any State.

SEC. 4. (a) In furtherance of the purposes of this Act, the Secretary is authorized to provide in the three fiscal years following enactment financial assistance to any State which may annually propose to administer a program for the control of predatory animals. To qualify for assistance under this section, any such State program must be found by the Secretary to meet such standards as he may, by regulation, establish: *Provided, however,* That the Secretary shall not approve any such State program which entails the field use of chemical toxicants for the purpose of killing predatory animals or the field use of any chemical toxicant which causes any secondary poisoning effect for the purposes of killing other mammals, birds, or reptiles: *Provided, further, however,* That he may approve a State program which entails such emergency use of chemical toxicants as he may authorize, in each specific case, for the protection of human health or safety; the preservation of one or more wildlife species threatened with extinction or likely within the foreseeable future to become so threatened, or for the prevention of substantial irretrievable damage to nationally significant natural resources.

(b) An annual payment under subsection (a) hereof may be made to any State in such amount as the Secretary may determine; *Provided, however,* That no such annual payment shall exceed an amount equal to 75 percent in the first year, 50 percent in the second year, or 25 percent in the third year, of the cost of the program approved under subsection (a) hereof; and *Provided, further,*

That no such annual payment to any State shall exceed $300,000 in the first fiscal year following enactment, $200,000 in the second fiscal year following enactment, or $100,000 in the third fiscal year following enactment. No payment otherwise authorized by this section shall be made to a State whose share, in whole or part, of the cost of the program approved under subsection (a) hereof is to be paid from funds not appropriated by its legislature.

(c) There is hereby authorized to be appropriated for the purposes of this section $3,000,000 in fiscal year 1973, $2,000,000 in fiscal year 1974, and $1,000,000 in fiscal year 1975.

SEC. 5. (a) No person shall (1) make field use of any chemical toxicant on any Federal lands for the purpose of killing predatory animals; or (2) make field use on such lands of any chemical toxicant which causes any secondary poisoning effect for the purpose of killing other mammals, birds, or reptiles; *Provided, however,* That nothing in this section shall be deemed to affect the administration of lands held in trust for Indians

(b) Notwithstanding subsection (a) hereof, the head of a Federal department, agency, or establishment may authorize on lands subject to his administrative jurisdiction the emergency field use of a chemical toxicant for the purpose of killing predatory animals or of a chemical toxicant which causes a secondary poisoning effect for the purpose of killing other mammals, birds or reptiles, but only if in each specific case he makes a written finding, following consultation with the Secretaries of the Interior, Agriculture, and Health, Education, and Welfare, and the Administrator of the Environmental Protection Agency, that an emergency exists that cannot be dealt with by means which do not involve use of chemical toxicants, and that such use is essential:

(1) to the protection of human health or safety;

(2) to the preservation of one or more wildlife species threatened with extinction or likely within the foreseeable future to become so threatened; or

(3) to the prevention of substantial irretrievable damage to nationally significant natural resources.

(c) Any person convicted of any violation of this section, or of any regulation promulgated under this Act, shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

SEC. 6. Heads of Federal departments, agencies or establishments are hereby authorized to issue such regulations as may be necessary to carry out the purposes of this Act.

SEC. 7. There is hereby repealed in its entirety the Act of March 2, 1931 (7 U.S.C. 426–426(b)), pertaining to the eradication and control of predatory and other wild animals.

SEC. 8. Nothing in this Act shall be construed as superseding or limiting the authorities and responsibilities of the Administrator of the Environmental Protection Agency under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended.

SEC. 9. Except as otherwise provided in section 4 hereof, there is hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., February 8, 1972.

Hon. SPIRO T. AGNEW,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: There is enclosed a draft bill "To authorize the Secretary of the Interior to assist the States in controlling damage caused by predatory animals; to establish a program of research concerning the control and conservation of predatory animals; to restrict the use of toxic chemicals as a method of predator control, and for other purposes."

We recommend that this bill, a part of the environmental program announced today by President Nixon, be referred to the appropriate committee for consideration and that it be enacted.

This Department believes strongly that enactment of this legislation will provide much-needed redirection of programs for animal damage control consistent with our concern both for environmental quality and the preservation of wildlife. In brief, this draft bill would (1) authorize an expanded Federal program of research concerning the control and conservation of predatory animals; (2) prohibit on Federal lands the field use of chemical toxicants for the purpose of killing predatory animals and of chemical toxicants which cause secondary poisoning effects for the purpose of killing mammals, birds or reptiles, except where such use is essential in emergency situations to the preservation of human health or safety, protection of endangered wildlife species, or prevention of substantial damage to natural resources; (3) authorize Federal grants-in-aid to States for implementation of predator control programs; and (4) repeal in its entirety the Act of March 2, 1931 (7 U.S.C. 426–426(b)), pertaining to the eradication and control of predatory animals.

Predatory animal control has been a vexing problem since the advent of recorded history. Early settlers sought to cope with animal depredation through the provision of bounties for predatory species. Though the precedent for such legislation was established as early as 1630 in Massachusetts, most bounty laws have been repealed. Federal involvement in predatory animal control dates to 1885, and an operational program has been conducted by the Federal Government since 1915. Existing Federal programs are carried out pursuant to the Act of March 2, 1931 (7 U.S.C. 426–426(b)), which directs that we "conduct campaigns for the destruction or control of (predatory) animals." The Bureau of Sport Fisheries and Wildlife has thus provided predatory animal control services on public and private lands in many western States. These services are funded jointly by the Federal Government and interested agencies, public and private, at the State and local levels.

Through the years attitudes toward predatory animal control have changed. We as a people and a Nation are now coming to recognize the ecological significance of all living creatures, including those known as "predators". It is generally acknowledged that while there remain some situations in which wild animals must be controlled or killed to assure human health and safety and to prevent substantial property damage, these situations no longer warrant a Federal program of the size and scope as that contemplated in 1931. It is our conclusion that current predatory animal control programs are inconsistent with the changing scale of social values.

Of particular concern has been the use of non-selective poisons to kill predatory animals. Experience has shown that significant numbers of beneficial animals are vulnerable to the poisons used to control predatory animals. Public opposition to the use of such poisons and to predatory animal control programs in general has prompted two important studies by advisory committees composed of eminent wildlife scientists. The first advisory committee, reporting to the Secretary of the Interior in 1964, concluded that far more animals were being killed than required for effective protection of livestock, agricultural crops, wildlife resources, and human health. It recommended a complete reassessment of Federal goals, policies and field operations and that predatory animals be killed only when absolutely essential to the protection of human health or property.

The second advisory committee, reporting recently to the Secretary of the Interior and the Chairman of the Council on Environmental Quality, has recommended a prohibition against the use of poisons in predatory animal destruction, expanded research to determine the economics and ecology of predator losses, and the establishment of cooperative trapper extension programs to focus on individual offending predators.

Based on the reports of the advisory committees appointed to study the animal damage control problem, the expressions of the public with regard to predatory animal control, and our own analysis of the validity and need for animal damage control, it is the position of this Department that such animal damage control as may prove warranted can be accomplished effectively through State efforts. Since most animal damage control is directed toward resident animals, it follows that the States should be directly involved in animal damage control programs. Our proposed legislation would seek to encourage the States' assumption of this responsibility by authorizing the conduct and dissemination of relevant studies, and the demonstration of predator control methods developed as the result of such research. We have also provided for a three-year program of grants-in-aid to States whose predator control programs meet standards to be established by the Secretary. Grants for implementation of an approved State program would be made in amounts not to exceed 75 percent of costs or $300,000, whichever is less, in the first year, 50 percent of costs or $200,000 in the second year, and 25 percent of costs or $100,000 in the third fiscal year following enactment. No Federal assistance would be available to a State whose program entails the use of chemical toxicants, or whose share of program costs is to be paid from non-appropriated funds. Repeal of the Act of March 2, 1931, would result in cessation of direct Federal participation.

In recognition of growing concern over the use of non-selective poisons for animal damage control, and of the recommendations that such uses be sharply curtailed, section 5 of the draft bill would prohibit the use on all Federal lands of chemical toxicants for the purpose of destroying predatory animals, except when such use is found, in emergency situations, to be essential to the preservation of human health or safety, to the protection of wildlife species which are threatened with extinction, or the prevention of substantial damage to nationally significant natural resources. Violation of this prohibition would be punishable by a fine of not more than $10,000, or imprisonment for not more than one year, or both.

By the enactment and implementation of this legislation, the Congress and the Federal Government will demonstrate a keen awareness of the change in scientific and public opinion which compels a redirection of predator control activity. There is enclosed an environmental impact statement prepared pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969.

The Office of Management and Budget has advised that this legislative proposal is in accord with the program of the President.

Sincerely yours,

ROGERS C. B. MORTON,
Secretary of the Interior.

By Mr. MAGNUSON (by request):

S. 3335. A bill to authorize appropriations for the fiscal year 1973 for certain maritime programs of the Department of Commerce. Referred to the Committee on Commerce.

Mr. MAGNUSON. Mr. President, by request, I introduce for appropriate ref-

erence a bill to authorize appropriations for the Department of Commerce for certain maritime programs.

I ask unanimous consent that the bill be printed in the RECORD at this point, together with the letter from the Secretary of Commerce to the Vice President.

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

S. 3335

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That funds are hereby authorized to be appropriated without fiscal year limitation as the appropriation act may provide for the use of the Department of Commerce, for the Fiscal Year 1973, as follows:

(a) acquisition, construction, or reconstruction of vessels and construction-differential subsidy and cost of national defense features incident to the construction, reconstruction, or reconditioning of ships, $250,000,000;

(b) payment of obligations incurred for ship operation subsidies, $232,000,000;

(c) expenses necessary for research and development activities (including reimbursement of the Vessel Operations Revolving Fund for losses resulting from expenses of experimental ship operations), $30,000,000;

(d) reserve fleet expenses, $3,900,000;

(e) maritime training at the Merchant Marine Academy at Kings Point, New York, $7,670,000; and

(f) financial assistance to State Marine Schools, $2,290,000.

THE SECRETARY OF COMMERCE,
Washington, D.C., February 17, 1972.

HON. SPIRO T. AGNEW,
President of the Senate,
U.S. Senate,
Washington, D.C.

DEAR MR. PRESIDENT: Enclosed are four copies of a draft bill, "To authorize appropriations for the fiscal year 1973 for certain maritime programs of the Department of Commerce," together with a statement of purposes and need in support thereof.

The Office of Management and Budget advises that enactment of this legislation would be in accord with the program of the President.

Sincerely,

JAMES T. LYNN,
Acting Secretary of Commerce.

STATEMENT OF THE PURPOSES AND PROVISIONS OF THE DRAFT BILL TO AUTHORIZE APPROPRIATIONS FOR THE FISCAL YEAR 1973 FOR CERTAIN MARITIME PROGRAMS OF THE DEPARTMENT OF COMMERCE

Section 209 of the Merchant Marine Act, 1936, provides that after December 13, 1967 there are authorized to be appropriated for certain maritime activities of the Department of Commerce only such sums as the Congress may specifically authorize by law.

The draft bill authorizes specific amounts for those activities listed in section 209 for which the Department of Commerce proposes to seek appropriations for the fiscal year 1973, and reflects the continuing Department efforts to provide the essential resources required to accomplish the objectives of the Merchant Marine Act of 1970.

"(a) *acquisition, construction, or reconstruction of vessels and construction-differential subsidy and cost of national defense features incident to the construction, reconstruction, or reconditioning of ships, $250,000,000.*"

In fiscal 1973, it is planned to enter into contracts for the construction of 12 ships on a multiyear procurement basis with 7 of these ships being funded in that year. The other 5 will be funded subsequently. Additional funding requirements for fiscal 1973 are for 10 ships to be contracted for in FY 1972 for a total of 17 vessels funded in fiscal 1973. These are estimated to cost $250 million in Government subsidy, an increase of $20.3 million over the fiscal 1972 level of $229.7 million. FY 1973 will represent the third year of phased build-up to the goal of 30 ships per year.

"(b) *payment of obligations incurred for ship operation subsidies, $232,000,000.*"

A significant portion of operating subsidy funds requested for FY 1973 in this category would provide $15.8 million in order to permit direct subsidy to be paid to qualified bulk cargo operators in place of indirect subsidy in the form of premium freight rates now being paid by the Department of Agriculture. In addition, the fiscal 1973 funding request provides for payment of operating subsidy for the passenger ships Cleveland and Wilson which were not budgeted for within the fiscal 1972 request. At that time, it was expected that these ships would cease operation prior to the beginning of fiscal 1972. The 1973 request includes $8.8 million for operating subsidy under existing contracts with the operator of these vessels. Funding of ODS for these vessels in FY 1972 will be accomplished through reprogramming of ODS available as a consequence of ship lay ups incident to longshore strikes and also as a consequence of other minor program shortfalls. The requested FY 1973 funding will also provide for normal escalation of subsidizable operating costs for continuing operations. The total FY 1973 request provides primarily for operating subsidies under ODS contracts for 4 passenger ships, 196 cargo liners, and 24 bulk carriers during the year.

"(c) *expenses necessary for research and development activities (including reimbursement of the Vessel Operations Revolving Fund for losses resulting from expenses of experimental ship operations), $30,000,000.*"

A total of $30.0 million is requested in fiscal 1973 for research and development activities, representing an increase of $6.2 million over the $23.8 million available in fiscal 1972. The Maritime Administration research and development program is designed to modernize the entire American maritime industry thru a program of near-term, high payoff research in the areas of advanced ship development, ship operations, and maritime technology. The program encompasses a wide range of projects including those related to prevention and control of ocean pollution resulting from ship operations. Significant government/industry coordination has been achieved with operating shipping lines and shipbuilding companies. As a consequence, the thrust of the Maritime Administration's research and development effort has been augmented through substantial cost-sharing by industry on major programs thus extending the impact of Government expenditures and encouraging participation by the industry in moving toward increased private R&D effort. Industry cost-sharing in FY 1971 amounted to over $8.0 million in cash in addition to contributions of ships, crew and special operations for experimental programs. The requested increase for fiscal year 1973 is required as the major portion of the R&D program enters into the most expensive phases of the research and development cycle—the engineering development and prototype fabrication and testing stages for major programs. Fiscal year 1973 will be a critical year in bringing to completion a number of the programs begun in 1971 and 1972.

"(d) *reserve fleet expenses $3,900,000.*"

Included funding provides for the preservation and security of ships held for national defense purposes, distributed among three active fleet sites. Periodic represervation of hulls, machinery, and electrical components, combined with continuous application of cathodic protection to the bottoms, are methods employed in maintaining the ships for further service.

In fiscal 1973, funds will be used for the care of approximately 400 ships retained for national defense purposes. Custody is also provided for several hundred ships awaiting disposal.

"(e) *maritime training at the Merchant Marine Academy at Kings Point, New York,* $7,670,000."

This requested authorization is for the operation of the Merchant Marine Academy at Kings Point to train cadets as officers for the U.S. merchant fleet in both peacetime and national emergencies. An estimated 190 officers will graduate in fiscal 1973. This requested authorization includes funds for the planned renovation of the presently substandard physical education facilities at the Academy.

"(f) *financial assistance to State Marine Schools, $2,290,000.*"

Under the provisions of the Maritime Academy Act of 1958, as amended, (72 Stat. 622–624), this program provides for training of cadets at State marine schools for service as officers in the United States merchant marine. The program is aimed at a level of graduating approximately 400 deck and engineering officers each year. The six participating State schools, Maine, Massachusetts, Michigan, New York, Texas, and California, prepare officers to man our merchant ships in times of peace and national emergency.

The funding level of $2,290,000 will provide for grants in the amount of $75,000 to each of the participating State schools, allowances not to exceed $600 to cadets for uniforms, textbooks and subsistence, and funds for the maintenance and repair of the training ships used by the schools.

By Mr. MANSFIELD (for himself and Mr. AIKEN):

S.J. Res. 215. A joint resolution proposing an amendment to the Constitution of the United States relating to the nomination of individuals for election to the offices of the President and Vice President of the United States.

Mr. MANSFIELD. Mr. President, following New Hampshire, a headline writer last week put it clearly: "The Road Show Moves to Florida." That caption said everything there is to say about the effect of the current system of presidential primaries upon the democratic processes of this Nation. What is happening in Florida today gives one cause to suggest that the winter headquarters of Ringling Brothers-Barnum and Bailey have failed to close on schedule this year.

The truth is, the happenstance primaries have just begun and if everything goes as it has in the past, the results will never be in. Indeed, there will be no results. As in the past, no two of this year's primary tests offer the voter or the hopeful candidates any resemblance of similar opportunities. The real issue in Florida, for instance, has little, if anything at all to do with the matter of selecting a presidential candidate. In some States what the voter faces is a long list of strange names and even stranger circumstances. The delegates he selects may go to a convention where votes are cast, not as the people back home prescribe, but in the manner a particular delegate himself happens to decide.

This is not the case with all such primaries. But that is the point. This year, what the candidate faces is the same

mismash of inconsistent and often conflicting primary laws that were confronted 4 years ago—with one exception: There are 25 primaries this year, up from 14 in 1968. And what does the increase tell us? That States are genuinely responding to the demand of citizens who, for the enhancement of the democratic system, ask that they be added to the list? I think not. Let us face it. Primaries have become big business—as nearly important to the coffers of some States as tourism, agriculture, heavy industry, or whatever.

For the candidates it means facing each other in areas that simply do not represent valid cross sections of the American electorate. Candidates must, therefore, pick and choose and maneuver in efforts to come out as apparent winners. In some cases, this has even meant running against themselves. They must compete for delegates that are often not bound to support them even when apparently successful. At the very least the candidate finds himself enmeshed in a maze of laws, customs, and bad practices that leave him physically exhausted, financially deflated, and, more often than not, politically defeated. In the wake of such a result has fallen enormous effort and a huge sum of money. For the underfinanced and understaffed candidate, the effect is always fatal. For the American voter, the effect is one of bewilderment, confusion, and, at times, revulsion.

For the good of this Nation and for the preservation of its democratic processes as they were constituted originally, it is high time that we end these drawn-out political extravaganzas and institute a national presidential primary. I know this path has been attempted before. And the suggestion is by no means original with me. Together with the distinguished Senator from Vermont (Mr. AIKEN), we have introduced proposals to establish a national primary in the past. Other Senators have urged similar steps. I would hope the task could be finished.

Simply stated, what this present plan envisions is the nomination of presidential candidates by a single, nationwide, closed primary. It would be held in early August. To get on the ballot, a major party candidate would be required to file petitions signed by qualified voters equal to 1 percent of the vote cast in the last election for presidential candidates in a given number of States. Provision would be made for minor party candidates as well. There could be no cross filing and for the most part, the place and manner of holding the primary would be left to individual States. There would be a runoff only when no candidate receives more than 40 percent of the vote.

For Vice President, this proposal leaves it open for each party to designate an official candidate. Conventions are not abolished, though their role would change considerably. Assisting in the selection of the vice presidential candidate, drafting a platform and deciding other matters of party procedures would no doubt consume a substantial time of the convention delegates.

It should be noted that the campaign spending reforms enacted recently by the Congress would apply to the national primary. The ceiling on media spending imposed by this law particularly in my judgment will have a continuing and lasting effect upon election processes that can only benefit further generations.

One last matter. Before introducing this proposal for election reform, I would like to pay special tribute to the senior Senator from Vermont (Mr. AIKEN) who has again joined me in this endeavor to evoke constitutional change. In my judgment, no member of this institution is better able to pass judgment on the inadequacies and inequities of our political processes than the wise and prudent ranking Republican of the Senate. I welcome this support once more. It has meant a great deal in the past. It means a great deal more than ever today.

Mr. President, on behalf of the distinguished Senator from Vermont (Mr. AIKEN) and myself, I send the joint resolution to the desk and ask that it be printed in the RECORD.

The PRESIDING OFFICER (Mr. STEVENSON). Without objection, the joint resolution will be received and appropriately referred; and, without objection, will be printed in the RECORD.

The text of the joint resolution is as follows:

S.J. RES. 215

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid for all intents and purposes as part of the Constitution if ratified by the legislatures of three-fourths of the several States within 7 years after its submission to the States for ratification:

"ARTICLE —

"SECTION 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years and, together with the Vice President, chosen for the same term, be elected as provided in this Constitution.

"SEC. 2. The official candidates of political parties for President shall be nominated at a primary election by direct popular vote. Except with respect to qualifications relating to requirements of periods of residency, voters in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature, but, in the primary election each voter shall be eligible to vote only in the primary of the party of his registered affiliation.

"SEC. 3. No person shall be a candidate for nomination for President except in the primary of the party of his registered affiliation, and his name shall be on that party's ballot in all the States if he shall have filed a petition at the seat of the Government of the United States with the President of the Senate, which petition shall be valid only if (1) it is determined by the President of the Senate to have been signed, on or after the first day in January of the year in which the next primary election for President is to be held, by a number of qualified voters, in each of at least seventeen of the several States, equal in number to at least 1 per centum of the vote cast for electors for presidential and vice-presidential candidates of his party in those several States in the most recent previous presidential election; or, in the event the electors for the candidates of a political party shall have appeared on the ballot in fewer than seventeen of the several States in the most recent previous presidential election, it is determined by the President of the Senate to have been signed, on or after the first day in January of the year in which the next primary election for President is to be held, by a number of qualified voters, in any or all of the several States, equal in number to at least 1 per centum of the total number of votes cast throughout the United States for all electors for candidates for President and Vice President in the most recent previous presidential election, and (2) it is filed with the President of the Senate not later than the first Tuesday after the first Monday in April of the year in which the next primary election for President is to be held.

"SEC. 4. For the purposes of this article a political party shall be recognized as such if the electors for candidates for President and Vice President of such party received, in any or all of the several States, an aggregate number of votes, equal in number to at least 10 per centum of the total number of votes cast throughout the United States if the electors for condidates for President and Vice President in the most recent previous presidential election.

"SEC. 5. The time of the primary election shall be the same throughout the United States, and, unless the Congress shall by law appoint a different day, such primary election shall be held on the first Tuesday after the first Monday in August in the year preceding the expiration of the regular term of President or Vice President.

"Sec. 6. Within fifteen days after such primary election, the chief executive of each State shall make distinct lists of all persons of each political party for whom votes were cast, and the numbers of votes for each such person, which lists shall be signed, certified, and transmitted under the seal of such State to the Government of the United States directed to the President of the Senate, who, in the presence of the Speaker of the House of Representatives and the majority and minority leaders of both Houses of the Congress, shall forthwith open all certificates and count the votes and cause to have published in an appropriate publication the aggregate number of votes cast for each person by the voters of the party of his registered affiliation. The person who shall have received the greatest number of votes cast by the voters of the party of his registered affiliation shall be the official candidate of such party for President throughout the United States, if such number be a plurality amounting to at least 40 per centum of the total number of such votes cast. If no person receives at least 40 per centum of the total number of votes cast for candidates for nomination for President by the voters of a political party, then the Congress shall provide by law, uniform throughout the United States, for a runoff election to be held on the twenty-eighth day after the day on which the primary election was held between the two persons who received the greatest number of votes cast for candidates for the presidential nomination by voters of such political party in the primary election: *Provided, however,* That no person ineligible to vote in the primary election of any political party shall be eligible to vote in a runoff election of such political party.

"SEC. 7. Each party, for which, in accordance with sections 2, 3, 4, and 5 of this article, the name of a presidential candidate shall have been placed on the ballot, shall nominate a candidate for Vice President, who, when chosen, shall be the official candidate of such party for Vice President throughout the United States. No person constitutionally ineligible for the office of President shall be eligible for nomination as a candidate for the office of Vice President of the United States.

"SEC. 8. In the event of the death or resig-

nation or disqualification of the official candidate of any political party for President, the person nominated by such political party for Vice President shall resign the vice-presidential nomination and shall be the official candidate of such party for President. In the event of the deaths or resignations or disqualifications of the official candidates of any political party for President and Vice President, a national committee of such party shall designate such candidates, who shall then be deemed the official candidates of such party, but in choosing such candidates the vote shall be taken by States, the delegation from each State having one vote. A quorum for such purposes shall consist of a delegate or delegates from two-thirds of the several States, and a majority of all States shall be necessary to a choice.

"SEC. 9. The places and manner of holding any such primary or runoff election shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations. For purposes of this article the District of Columbia shall be considered as a State, and the primary elections shall be held in the District of Columbia in such manner as the Congress may by law prescribe.

"SEC. 10. The Congress may provide by appropriate legislation for cases in which two or more candidates receive an equal number of votes and for methods of determining any dispute or controversy that may arise in the counting and canvassing of the votes cast in elections held in accordance with sections 2, 3, 4, 5, 6, and 9 of this article.

"SEC. 11. The Congress shall have power to enforce this article by appropriate legislation."

Mr. AIKEN. Mr. President, in joining Senator MANSFIELD in proposing a constitutional amendment providing for a nationwide primary election for the nomination of the President, I am not doing so under the illusion that such an amendment will result in making campaign contributors more honest, candidates less susceptible to temptation, or even guaranteeing that only qualified persons will be nominated for the Presidency in future elections.

This proposed amendment is designed to end the practice of individual State Presidential primaries and to restore some order to the Presidential selection process.

Candidates in a statewide primary are swayed by different motivations—most of them believing that as President they could provide us with better Government.

But there is also another motivation which tells them that even though convention delegates are not listed on the commodity market, they certainly do have a market value at the national party convention.

I do not mean a cash value, but a value in terms of prestige and influence should the recipient of their generosity be elected President.

For most candidates, campaign contributions are easy to come by and while most of these contributions come in small amounts from honest, patriotic citizens who thoroughly believe in a better Government, there is ample evidence that many of the larger contributions are made by individuals and organizations who regard a campaign contribution as an investment which may pay good dividends later on if the candidate is successful.

To be on the safe side, some families or organizations make contributions directly or indirectly to two or more candidates.

This, of course, is an investment in security.

Tomorrow, this country will witness the second statewide presidential primary held this year. We have already had one in New Hampshire. I feel rather safe in saying that, as a result of the primary in New Hampshire and the large number of candidates who sought the Democratic nomination in that State, probably none of them will be nominated to be the Democratic candidate for President.

There are 23 more to follow and by the time they are all completed, the public may well come to the conclusion that no one is fit to be President.

Seriously, Mr. President, I feel that the show now going on in half of the States of the Union is no credit to the democratic form of Government.

I do not think that candidates are more dishonest than they used to be.

I believe in the sincerity of most of those who now seek the Presidency, but the pitiless publicity of today spread their weaknesses before the public in a discouraging and devastating manner.

Most of them are not nearly so bad as their rivals make them out to be, but I do believe that a single nationwide primary to nominate candidates for the Presidency and leaving the formulation of platform and policies to the national convention would be a vast improvement over what we have now and will, in my opinion, result in better Government.

Mr. President, I have been asked about the establishment of the machinery necessary to carry out the provisions for a nationwide primary. I call attention to section 11 of the resolution which states:

The Congress shall have power to enforce this article by appropriate legislation.

Mr. PERCY. Mr. President, I should like to comment briefly, first of all, that if this constitutional amendment is accepted, it might be called something like "The Development and Relief Act of 1972 or 1974." For now at least, all the States in which these primaries occur look upon them as a significant economic boost to their economies. I have heard that New Hampshire, Florida, Wisconsin, Oregon, and other States benefit tremendously from the influx of tourism. We feel neglected in Illinois. Only two candidates are running in the State and we feel left out. Our department of tourism is bleeding to think that all the tourist dollars are going to other States.

I should like to ask a question whether, in the judgment of the sponsors of this amendment, it might tend to shorten campaigns and reduce the huge physical burden on the candidates who are running.

Mr. AIKEN. There is no question about that. Vermont has its statewide primary in early September which leaves about 2 months for campaigning and for incurring major campaigning expenses. It would be much better to have a shorter campaigning season than we have right now, where some candidates start to campaign for the presidency about the time they finish high school or college at the least [laughter] and they keep it up for years. I am not mentioning any such candidates but we do have them. It takes a long, long time. But we should have a shorter period between nominations and elections.

Mr. PERCY. I would also hope that a national presidential primary might shift the emphasis from gimmicks to a solid adult education program.

I notice that the gimmick used by the candidates in Florida this morning happens to be bicycle riding. It has been pizza eating and all sorts of other tactics that public relations experts have thought of to get their candidates pictures on the front pages. That is the kind of competition they are engaged in now.

I commend the authors of the proposal for its uniqueness and for their consistency in supporting this approach. I would hope that we can move into an area in which candidates compete on the basis of ideas, and not on their ability to be seen in the right places at the right times.

Mr. AIKEN. Mr. President, I would think that through a nationwide primary a candidate would be more likely to be nominated on his merits and not as a mere circumstance.

Mr. PERCY. Mr. President, I hope that we all look seriously on a campaign as a great time for us to assess our values and to talk about what kind of a nation we want to be and what kind of a nation we want to become. I would hope that any attempts to contribute to the seriousness of the dialog can be a great educational program. It should be in that respect an eminently worthwhile exercise.

Mr. GAMBRELL. Mr. President, I point out that I would hate to see anything done to the presidential nomination system to take the candidates off the streets and to put them in television studios and concentrate them in Washington for the purpose of seeking the support of the public for the office of the Presidency or for any other office.

Although I realize that it is a wear-and-tear process to have to go through the primaries, I think that such primaries as we have had so far have done a lot of good. If they gain as much out of the 22 or 23 primaries remaining as they have gained from the two primaries had thus far, it will do the Nation a great deal of good.

A nationwide primary might not be the answer. I think that the best place for candidates to be is on the streets, whether on foot or on bicycle. I do not think that the best place to have the candidates is in Washington or in the television studios. I caution the Senators who are in favor of a nationwide primary that they should set it up in such a way that the voters can see the candidates in the flesh and can talk to them and ask them questions on the street rather than merely seeing them on the television.

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

S. 1457

At the request of Mr. SPARKMAN, the Senator from Georgia (Mr. GAMBRELL)

was added as a cosponsor of S. 1457, a bill to amend the Clayton Act by adding a new section to prohibit sales below cost for the purpose of destroying competition or eliminating a competitor.

S. 3115 AND S. 3142

At his own request, Mr. ALLOTT was added as a cosponsor of S. 3115, a bill to provide financial and other aid to enable the United States to assist Jewish refugees to emigrate from the Soviet Union to Israel or the country of their choice; and

S. 3142, a bill to authorize the Secretary of State to furnish assistance for the resettlement of Soviet Jewish refugees in Israel.

S. 3157

At the request of Mr. MANSFIELD (for Mr. JACKSON), the Senator from Wyoming (Mr. MCGEE) and for the Senator from Alaska (Mr. GRAVEL) were added as cosponsors of S. 3157, a bill to promote maximum Indian participation in the government of the Indian people by providing for the full participation of Indian tribes in certain programs and services conducted by the Federal Government for Indians and by encouraging the development of the human resources of the Indian people, and for other purposes.

SENATE JOINT RESOLUTION 191

At the request of Mr. CRANSTON, the Senator from Maryland (Mr. MATHIAS) was added as a cosponsor of S.J. Res. 191, designating the week of May 1–7, 1972, as "National Bikecology Week."

SENATE RESOLUTION 276—SUBMISSION OF A RESOLUTION AUTHORIZING THE PRINTING OF ADDITIONAL COPIES OF HEARINGS ENTITLED "THE BUDGET OF THE UNITED STATES, 1973"

(Referred to the Committee on Rules and Administration.)

Mr. ELLENDER submitted the following resolution:

S. RES. 276

Resolved, that there be printed for the use of the Committee on Appropriations, 550 (five hundred and fifty) additional copies of its hearings entitled, "The Budget of the United States, Fiscal Year 1973."

NATIONAL VOTER REGISTRATION ACT—AMENDMENTS

AMENDMENT NO. 1042

(Ordered to be printed and to lie on the table.)

Mr. TUNNEY (for himself, Mr. BAYH, Mr. CRANSTON, Mr. HARRIS, Mr. HARTKE, Mr. HUMPHREY, Mr. JAVITS, Mr. MONDALE, Mr. MUSKIE, Mr. MCGOVERN, and Mr. PERCY) submitted an amendment intended to be proposed to the bill (S. 2574) to amend title 13, United States Code, to establish within the Bureau of the Census a National Voter Registration Administration for the purposes of administering a voter registration program through the mail.

AMENDMENT NO. 1043

(Ordered to be printed and to lie on the table.)

Mr. TAFT submitted an amendment intended to to be proposed by him to the bill (S. 2574), supra.

EQUAL RIGHTS FOR MEN AND WOMEN—AMENDMENTS

AMENDMENTS NOS. 1044 THROUGH 1047

(Ordered to be printed and to lie on the table.)

Mr. ERVIN submitted four amendments intended to be proposed by him to the joint resolution (H.J. Res. 208) proposing an amendment to the Constitution of the United States relative to equal rights for men and women.

ADDITIONAL COSPONSOR OF AN AMENDMENT

AMENDMENT NO. 955

At the request of Mr. STEVENSON, the Senator from Kansas (Mr. PEARSON) was added as a cosponsor of Amendment No. 955, intended to be proposed to the bill (H.R. 1), the Social Security Amendments of 1972.

REMOVAL OF A COSPONSOR

At the request of Mr. STEVENSON, the Senator from California (Mr. CRANSTON) was removed as a cosponsor of Amendment No. 955, intended to be proposed to the bill (H.R. 1), the Social Security Amendments of 1972.

ANNOUNCEMENT OF HEARINGS ON RFK STADIUM

Mr. EAGLETON. Mr. President, I am today announcing hearings on the prospects of baseball at RFK Stadium by the Senate District of Columbia Committee at 10 a.m. in room 6226, New Senate Office Building, on Wednesday, March 15, and Tuesday, April 18.

The witnesses for Wednesday, March 15, will be Congressman SISK and Mr. Joseph Cronin, president, American League. Mr. Bowie Kuhn, commissioner of baseball will be testifying on Tuesday, April 18.

Other persons interested in testifying on this matter should contact Mr. Robert Harris, staff director, in room 6222, New Senate Office Building.

ANNOUNCEMENT OF HEARINGS ON ACDA AUTHORIZATION

Mr. MANSFIELD. Mr. President, on behalf of Senator FULBRIGHT, chairman of the Committee on Foreign Relations, I wish to announce that on Thursday, March 16, it will have an open hearing on S. 3200, a bill to amend the Arms Control and Disarmament Act, as amended, in order to extend the authorization for appropriations.

The hearings will take place in room 4221, New Senate Office Building at 10 a.m. The Director of the Arms Control and Disarmament Agency, Gerald C. Smith, will be the principal administration witness. Any person wishing to testify should communicate with Arthur M. Kuhl, chief clerk of the committee.

ADDITIONAL STATEMENTS

FORTHCOMING VISIT TO CHINA BY SENATE MAJORITY AND MINORITY LEADERS

Mr. GAMBRELL. Mr. President, I was particularly pleased to read last week that Premier Chou En-lai had extended an invitation to the majority and minority leaders of the Senate to visit China in the near future. It is important that the legislative, as well as the executive branch of the Government participate in the steps now being taken which will vitally affect our future relations in the Far East.

An editorial published in the Atlanta Constitution of March 2, 1972, referred to the invitation extended to the Senate leaders to visit China. I ask unanimous consent that the editorial be printed in the RECORD.

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

THE INVITATION

Premier Chou En-lai's invitation to Republican and Democratic Senate leaders to visit China shows a commendable understanding of this country's political system and indicates a sincere desire for better relations with our nation.

Chou obviously understands that without strong bipartisan congressional support meaningful American foreign policy is impossible. The executive branch may propose, but in the final analysis it is the legislative branch that disposes.

Historically the Congress has put party and politics aside and supported our presidents in dealings with other nations. But in those instances where they have disagreed it was the President who found himself powerless.

Woodrow Wilson discovered this to his lasting grief when he unsuccessfully sought ratification of the Treaty of Versailles, which, among other things, would have brought the United States into the League of Nations.

And the treatment of China under that Treaty, interestingly enough, was the club the Congress used to batter Wilson into bitterness and disillusionment.

Hopefully our sense of self-preservation as a nation is stronger now, and we will not repeat the mistakes of our past.

AMERICAN TECHNOLOGY SPURRED BY THE SPACE SHUTTLE

Mr. CURTIS. Mr. President, over the past few years, a dramatic change has occurred in the patterns of international trade concerning high technology goods. America has, in relative terms, been losing its preeminent position.

For example, in 1965, we exported $13 billion worth of high technology goods, while imports in this category amounted to $3.9 billion. By contrast, in 1970, America exported $22.6 billion in high technology wares, but on the other hand, imports in this category had risen to a whopping $13 billion.

While it is true that in that 5-year period our balance in high technology goods had risen from $9.1 billion to $9.6 billion, it is also true that imports in this category had increased threefold.

As might be expected, automotive products showed the greatest increase in

the statistics. Nevertheless, America is facing increased competition in the entire range of high technology goods. The Europeans, the Japanese, and the Russians, at international trade fairs and in actual sales, have demonstrated increased capability to compete with us. Helicopters, general aviation aircraft, and commercial aircraft are being produced abroad for the world market, where 15 or 20 years ago, we were, for all practical purposes, the sole supplier.

In the past, we have been able to offset the imports of low-technology products through the export of high-technology items such as aircraft, computers, and chemicals. It we should lose our strong position in high-technology trade, a further assault on the dollar could almost certainly be expected.

This Tuesday, the Senate Aeronautical and Space Sciences Committee will begin hearings on the NASA authorizations for fiscal year 1973. One of the important matters before the committee this year is the decision to go ahead with an American space shuttle transportation system.

I believe the space shuttle is justified on grounds of economy because it holds the promise of saving the taxpayers and space users billions of dollars. There is another justification, difficult to measure in dollar terms, but I believe equally important: the space shuttle can spur a continued high level of technology in the Nation.

Business Week magazine of January 15, 1972, contains an informative article entitled "Making U.S. Technology More Competitive." In describing the changed situation in technology during the past decade, Business Week said:

As the U.S. surplus in international trade has turned into a deficit, analysts have been looking to the historical record to see just how America has managed to lose what was thought of as its commanding technological lead. To some extent they have been rewriting the popular record of American industrial and scientific inventiveness, spreading the realization that many of the products and processes on which the country prided itself have, in fact, come from abroad.

I commend the article to Senators who are concerned about keeping America competitive in foreign trade. I ask unanimous consent that the article be printed in the RECORD.

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

MAKING U.S. TECHNOLOGY MORE COMPETITIVE

THE PRESIDENT WANTS TO STIMULATE R. & D. TO HELP AMERICAN INDUSTRY REGAIN THE EDGE IT ONCE HAD IN TRADE

In the mid-1960s, Europe's industrialists spent a lot of time bewailing the "technology gap" between the U.S. and Europe. Today, it is becoming almost as common for U.S. businessmen and economists to warn of the growing danger that a reverse gap is appearing, or will do so soon unless the nation takes steps to halt the trend.

As the U.S. surplus in international trade has turned into a deficit, analysts have been looking to the historical record to see just how America has managed to lose what was thought of as its commanding technological lead. To some extent they have been rewriting the popular record of American industrial and scientific inventiveness, spreading the realization that many of the products and processes on which the country prided itself have, in fact, come from abroad.

"Where we had a lead," says Robert A. Winslow, president of Enjay Chemical Co., a Jersey Standard subsidiary, "was not in the development of technology itself but in the application of that technology, the marketing and management of it."

In two major areas, the U.S. has held a lead in the past decade: in fields such as the design and application of computers, semiconductors, commercial jet aircraft, nuclear power, and aerospace; and in the mass production of products from processes and ideas often developed abroad.

THE URGENT NEED FOR A NATIONAL POLICY

The growing sense of anxiety about a reverse technology gap has reached Washington. When President Nixon goes before Congress next week, he will devote a significant part of his State of the Union address to the problem. Later, he will send Congress a special message on the subject and will reveal the outlines of new national programs designed to stimulate and direct the nation's technological progress. These programs are intended to encourage industry to boost its research and development spending and to insure that a substantial part of that R&D is directed toward solving national problems.

In the view of some economists, a national policy on technology is long overdue. No factor, they say, is more fundamental to a nation's security and standard of living than its technology—the inventiveness of its people, the cost-effectiveness of its products, and the productivity of the means by which it makes them.

Right after World War II, and on through the 1950s and into the mid-1960s, the U.S. was unmatched in its ability to produce new products, to get them into a mass marketplace, and to keep raising the productivity of its industry. Several factors besides Europe's postwar hangover contributed to the U.S. lead in the 1950s and 1960s. The U.S. was spending more than $20-billion a year on R&D—four times the European total. The European market was still fragmented, while U.S. industry could spread its new-product development costs over a huge domestic market. Divisive pressures of nationalism were not hampering America's work on massive projects such as computers and nuclear power, as they were in Europe. Proportionately, the U.S. also had a much larger force of technical manpower. Risk capital was much more readily available. And U.S. companies moved fast to introduce new products.

Through the mid-1960s, the billions spent on missiles and space were force-feeding many areas of U.S. technology. The money helped to propel the technology of computers and microelectronics by enormous leaps, and the demand for high degrees of reliability in manufacturing pushed contractors to perform jobs they had thought impossible. European industrialists complained that American industry, fueled with money from space and missile budgets, would leave them forever behind.

Most of the world's airlines flew U.S.-made jetliners. Most of the world's computers were U.S.-made, and virtually all of those that were not were based on U.S. designs and U.S.-developed equipment. Most of the world's electronic gear had first come out of U.S. plants, U.S. engineers, such as Brown & Root and M. W. Kellogg, roamed the world setting up petrochemical plants based on U.S. expertise. And in the less developed lands, U.S. contractors such as Peter Kiewit and Morrison-Knudsen seemed to have a stranglehold on the business of building dams and bridges and huge harbor facilities.

HOW THE TECHNOLOGY LAG DEVELOPED

In all these highly visible glamour industries, Americans were undeniably leading the way. But elsewhere, as the Europeans and Japanese rebuilt war-devastated industries, a U.S. techology lag was developing. Foreign steelmakers, for instance, were already installing new processes, such as the basic oxygen furnace, on a wider scale than American steelmen. And even in the early 1960s, U.S. heavy machinery builders, such as the makers of turbine generators, were running into intense foreign competition on design as well as on price. Simultaneously, two other trends were developing. Twenty years of foreign aid had built many nations' economies to a scale that made them significant in world trade. And at the same time, U.S. multinational companies began producing U.S.-designed products overseas in far less time than the world had seen before. Where 20 years had elapsed between first production in the U.S. of certain kinds of plastics and the production of these plastics in Japan, it recently took barely a year for Japanese plants to catch up with production of U.S.-designed semiconductors.

These days, some of Europe's older high-technology industries, such as chemicals and electrical equipment, are selling more and more of their products and licensing more and more of their technology to U.S. companies. Polypropylene, a plastic now widely used in U.S. cars and appliances, was invented in Italy. Extra-high-voltage transmission, a more efficient way of conducting electric power for long distances, was pioneered in the U.S. by ASEA, the Swedish electrical equipment maker. When Colt Industries sought to rescue its faltering program for developing big diesel engines, it had to turn to Austrian consultants for help. Georgia-Pacific Corp. went to Britain's Imperial Chemical Industries when it wanted a more economical way to make methanol in its new Plaquemines (La.) plant. Some U.S. shipbuilders are finally adopting cost-cutting methods that were developed in Sweden. The American construction industry is just beginning to use "systems building" techniques that are already widely applied in Europe.

THE COMPETITION IN AIRCRAFT

The aircraft industry is a notable example of the new international competition. For years, the U.S. competed comfortably in world aircraft markets, helped by the fact that a lot of its heavy R&D costs had already been paid by the military. From the days of the DC–6 onward, most commercial airliners' engines were developed first for the military. For the supersonic generation of civilian aircraft, the substitute for military support was to be the Transportation Dept.'s SST program. When that collapsed last spring, Robert Anderson, president of North American Rockwell Corp., declared, "We have just abdicated to Russia, France, and Britain a lead we held for 40 years."

The value of the Franco-British Concorde, the European SST, is still widely disputed. But there are other signs of the new competition. An LTV Aerospace Corp. subsidiary is now assembling helicopters designed by France's Aerospatiale. Nippon Aeroplane Mfg. Co. is taking aim at U.S. feeder airlines with its YS–11 short-hop turboprop. The European builders of the Mercure short-haul jet and the A–300B airbus also are aiming at the U.S. market. Says Allen E. Puckett. executive vice-president of Hughes Aircraft Co., "Our R&D money just isn't keeping pace."

"We're in a horse race now," says Everett Yelton, Jr., assistant general manager of Du Pont's Plastics Dept. "We have got to disabuse ourselves of the myth that the U.S. can invent itself into a position where it owns 90% of the technology in plastics."

On both sides of the Atlantic, there are many who believe that the U.S. and Europe are technologically competitive today in most industries. The U.S. still has undisputed leadership, they say, in areas that ac-

count for only about 10% of its gross national product.

From Japan, too, the U.S. faces increasingly tough technological competition. The Japanese "are superb in the management of technology," says William H. Forster, technical director of giant ITT-Europe. The Japanese, who have already proved themselves adept at putting Western technology to work, have also begun to contribute to the reverse flow of technology. In 1966, when Japan's Mitsubishi renewed a licensing agreement with its U.S. partner, Westinghouse Electric Corp., the contract called for a two-way exchange of technology for the first time. Says one U.S. chemical company executive: "We are seeing opportunities to buy new technology in Japan that doesn't exist anywhere else."

Government planners have good reason to worry about the consequences of the U.S. losing its technological leadership in too many fields. Production costs would rise. Consumers would pay more for less value. New products would become fewer. Exports would keep declining. More jobs would move overseas.

THE REASONS FOR NATIONAL CONCERN

The new Administration program for spurring American technology is intended to be an integral part of Nixon's economic program. Its origins stem partly from analyses by Michael Boretsky, a Commerce Dept. economist, of the impact of technological progress on international trade.

Nixon in September told Congress that "we need new programs to insure that America's enormous wealth of scientific and technical talent is used to the fullest." The President could find many reasons for concern:

The trade balance

The favorable U.S. trade balance in high-technology products has leveled off at about $9.6-billion. In recent years, U.S. imports of these products has been growing 2½ times as fast as exports. And in its trade in high-technology products with Japan, the U.S. has been running a deficit since 1965, which has now reached the $1-billion level.

Productivity

New technology has not been contributing much to U.S. production efficiency. The rate of productivity growth in U.S. industry has dropped in the last few years from its post-war average of 2.6% a year to just 1.7%, a decline accelerated by the shift to a service economy. In contrast, Western Europe's productivity growth rate is running at 4.5% a year, and Japan's has zoomed to 10.6%.

Spending cuts

The growth of R&D spending, which fueled military and industrial strength, has leveled off, and the proportion of GNP that the U.S. spends on R&D has declined. Commerce's Boretsky estimates that when military R&D is factored out, the U.S. spent 1.5% of its 1968 GNP in civilian research, compared with West Germany's 2.6%.

Basic research

Scientists agree that, because of federal R&D cutbacks, the U.S. has fallen behind other nations in some key areas of basic research, among them high-energy physics, radio astronomy, magnetohydrodynamics, and fusion power. Anderson of North American Rockwell charged recently that the U.S. is "confronted with scientific starvation." Industry, moreover, has cut to the bone its own spending on basic research, putting its emphasis on the short-term payoff.

Wasted resources

Some 3% of U.S. scientists and engineers now are unemployed. This has helped discourage many youths who ordinarily would have started studying for technical careers, and manpower experts predict future shortages in the technically trained workforce.

New attitudes

An anti-technology attitude has taken firm hold of an influential segment of the public. In the words of Edward E. David, Jr., scientific adviser to the President, "Society is losing its courage to experiment." If this persists, David warns, "our society will become dull, stodgy, and altogether stagnant."

These trends add up, in the eyes of many experts, to a slowdown in U.S. technology. The impact of such a slowdown would not be apparent to consumers for several years, but it shows up quickly in industry. And because of the accelerating pace of technology, even a temporary slackening can put a company far behind. The technological life of some communications equipment, for example, is only two years. "If you fall just one year behind in research," says John B. Dwyer, vice-president of research and engineering for M. W. Kellogg Co., "the loss . . . is much, much greater in the 1970s than it was in the 1920s."

SETTING NEW GOALS

The help-technology program now under final review in the White House has as its most spectacular element a "New Technological Opportunities" program. This would set new technological goals for the nation, such as better health care, and harness the technology needed to reach them. The aim is to attack national problems in a way that would also help the U.S. trade posture.

The Administration also has before it a package of proposals developed by the Commerce Dept. and the Council of Economic Advisers. Closest to the heart of Commerce Secretary Maurice Stans is a kind of super technology agency. Such an agency, which Stans hopes would be formed within the Commerce Dept., would focus on programs to forecast, assess, and enhance industrial technology. Priority would probably go to the high-technology industries that still produce a positive trade balance.

The idea also calls for financial incentives to stimulate development and use of new technology. The incentives could include loan guarantees, grants, procurement contracts, and tax incentives for R&D and capital expenditures. The CEA wants particularly to help small companies.

Some antitrust restrictions that prevent companies from participating in joint research programs might also be dropped. Says Stans: "It may well be time to modernize antitrust laws, which evolved to deal with the different problems of an earlier era, in order to permit the pooling of funds and risks that must accompany major technological breakthroughs."

The technological opportunities program could have a major impact on patterns of federal and industry R&D. William M. Magruder, former SST project chief, is managing the new program, and he is seeking to focus on problem areas where critical needs exist: transportation, development of natural resources, and two key areas affecting trade—new commercial products, and productivity. More socially oriented goals include better communication (especially for education), urban and suburban development, health care, nutrition, waste management, economical means of meeting air quality standards, better weather prediction and control, and better protection from natural disasters.

Neither the technological opportunities program nor the other elements of the Nixon technology program has yet taken precise shape, and so far industry executives tend to be wary in their comments. But it is already becoming clear that some of the approaches being considered would find tough going in Congress. Antitrusters and tax policymakers have serious reservations. And the science lobby is worried that the new emphasis on applied technology will be at the expense of basic research.

HOW MUCH FEDERAL CONTROL?

But the major battle will be over how much control the federal government should exercise over U.S. industry's R&D policies. There is considerable opposition to the idea of a central technology bureaucracy. "It could become a boondoggle," says Kellogg's Dwyer. "Disastrous" is the word used by Robert Winslow, of Enjay. He maintains that "competitive enterprises usually have been much more efficient than government in managing research." Besides, questions of efficiency aside, industry does not like to devote its own technical talent to projects that end with the government owning the patents.

Boretsky is one within the government who is not impressed with the efficacy of massive R&D. "Some people think if we set up the kind of agency (we had) to send men to the moon, our problems will be solved." But a better solution, he says, is "general incentives to encourage productivity growth and innovation."

The incentives most seriously considered are additional tax benefits for companies that spend money on R&D contracts. "We should not give R&D a blank check on the U.S. Treasury," says Murray L. Weidenbaum, formerly Assistant Secretary of the Treasury for economic policy and now teaching at Washington University in St. Louis. "The mistake in military programs was that the federal government picked up virtually all the R&D costs."

According to Weidenbaum, tax benefits are the commonest way of encouraging R&D abroad. In Canada, an approved research program can win a company a tax credit of 25% of its cost. In Australia, capital spending for R&D can be written off in three years; in Norway, in one year.

Within industry, there is considerable support for such tax incentives. "The concept is right," says Harvey J. Taufen, vice-president and chairman of the research policy committee at Hercules, Inc. Paul B. Stam, vice-president for R&D at Burlington Industries, Inc., thinks a tax incentive would be effective, "but it would have to be substantial to make a difference in company decisions." Roger R. Ringham, engineering vice-president for International Harvester Co., likes the tax credit theory but wonders about trying to encourage certain kinds of R&D. He asks: "How do you administer such a program without making Jovian decisions" about who deserves what?

GETTING A PLAN THROUGH CONGRESS

Others want no part of a tax credit, fearing increased federal involvement in their industry. In effect, says Yelton of Du Pont's Plastics Dept., 50% of R&D already comes off taxes. "Additional tax credits," he says "could lead to government intervention and possibly control."

Some industry managers point out that a giant infusion of cash is no guarantee of R&D results. In the fifties and sixties, American industry fell in love with the concept of R&D, and most big companies built big laboratories. But one survey of 120 companies showed that half of them got no usable product out of 60% of their R&D projects. "I don't think the R&D community as a whole has a high level of productivity," says Kellogg's Dwyer. "The pressure for results has never been transmitted properly."

Yet the unit costs of R&D have been soaring. Total R&D expenditures in the U.S. plateaued in the late 1960s and have actually declined in constant dollars since 1969. But the cost of keeping each technical person at work has gone up more than threefold since 1950 and by 12% just since 1968, according to figures developed by Battelle Memorial Institute. So it takes a constantly growing R&D budget just to maintain a steady level of effort.

In any case, it is questionable whether an R&D tax credit could get through Congress.

Representative Wilbur Mills (D-Ark.), chairman of the House Ways & Means Committee, "looks askance at anything that erodes the tax base," warns a Mills aide. Even more important, while Congress can review and force changes in direct federal R&D spending, a tax benefit program would put federal support of R&D outside Congressional clutches.

Those who want to help U.S. technology are likely to find it at least as difficult to win antitrust exemption for industrywide, cooperative R&D programs.

In Japan, the government encourages joint efforts to improve productivity. And Milton C. Shaw, mechanical engineering head at Carnegie Mellon University believes the U.S. government also should help, instead of "harass," companies that attempt joint efforts.

HOW MUCH WILL COMPANIES SHARE?

But recent precedents are not encouraging. The auto industry tried to share information about its emission-control R&D, but the Justice Dept. forced it to stop. The consent decree that the auto makers signed has had repercussions in many industries that are under the gun on pollution. "It's wasteful and slow for every outfit that makes an internal combustion engine to work on its own way of controlling emissions," says Frederick C. Lindvall, engineering vice-president of Deere & Co. "It's a shame that engineers can't talk to each other, even in technical society meetings, because the corporate lawyers are so afraid of antitrust."

"But," adds Lindvall, "to lose competition is dangerous, too." In fact, while many in industry feel that antitrust fervor is in some cases retarding rather than promoting U.S. competitiveness, no one seems certain what changes should be made. And many, particularly in the more innovative industries, are skeptical about how much sharing would be done anyway. "It's hard to visualize companies cooperating," says C. Lester Hogan, president of Fairchild Camera & Instrument Corp. "To me it would be like giving away the crown jewels." Bernard Plansky, president of Frequency Sources, Inc., a small microwave company in Massachusetts, is even less enthusiastic about antitrust relaxation. "It would encourage the large companies to bury us," he says.

The fate of small, innovative companies like Plansky's is getting special attention in Washington these days, and help for such companies could be a major ingredient of the new Nixon recipe for technology. Many large companies, too, are well aware of the flow of innovation that can come out of small businesses. Ford Motor, Hercules, and many others have set up special operations to look for small, innovative companies that they might buy into or buy out.

The technological contributions of small companies have not gone unnoticed in Congress, either, Senator Philip A. Hart (D-Mich.), chairman of the Senate Antitrust subcommittee, plans to introduce legislation early in the coming session of Congress aimed at breaking up corporate concentration in such "low-competing" industries as steel, drugs, petroleum, chemicals, metals, and electrical equipment.

CAPITAL FOR THE INNOVATORS

However, both large and small companies often play essential and complementary roles in bringing advanced technology to the U.S. marketplace. A study of semiconductors by John E. Tilton, recently published by the Brookings Institution, shows how Bell Laboratories and the large tube manufacturers, such as RCA, General Electric and Westinghouse, used their immense R&D resources to lay the technical groundwork for semiconductors, yet failed to capitalize on this work in the marketplace. Bell, of course, was constrained by the Justice Dept. from doing so. But the others could not move fast enough to compete in this area. New companies, for the most part, devloped the successful products and became the industry leaders.

But small companies have been hurt the most by the recent cutbacks and changed priorities in federal R&D. As federal agencies, particularly the field centers of the National Aeronautics & Space Administration and the Air Force, have found their budgets dwindling, they have tended to do more of their R&D themselves. Even with recent boosts in federal spending, military R&D is still "very, very difficult to get," says Plansky.

Adding to the woes of newcomers has been the drying up of venture capital for new high-technology companies—a resource in which the U.S. has always had an advantage over Europe. Venture capital is plentiful but "harder to get than ever" for a high-technology business says Patrick Liles, a new venture specialist at Harvard Business School. Arthur Rock, one noted investor in high-technology is so bearish on the field that he is putting his money into commercial paper. He is discouraged by the government's R&D policies and, in the computer area, by the renewed aggressiveness of giant IBM's marketing strategy.

On the other hand, Ray Sanders, president of the fledgling Computer Transmission Corp. in Los Angeles, says, "The only ideas left around without money behind them are the bad ones." Frank G. Chambers, president of Continental Capital Corp., says that venture capitalists are still interested in high technology but, having been burned often in the 1960s, "they are extremely cautious of investing in single individuals. They now want a team that has worked together for some time." And, he says, the team must have "a detailed marketing strategy."

Entrepreneur Plansky, however, believes that investors want a good deal more: They want to get their money out in three years, they want "very high interest rates," and they want control of the company.

A TECHNOLOGY "GIVEAWAY"

While most of the new game plan for technology is intended to step up innovation in the U.S., there is also growing support for an additional bit of strategy: slowing down the rate at which foreign nations get their hands on U.S. technology. If such a strategy is adopted, it may put roadblocks in the path of U.S. corporations that now consider the rapid transfer of technology to licensees or subsidiaries abroad vital to their profits.

In recent years, the worldwide operations of multinational companies have speeded up the diffusion of technology abroad. Joint ventures abroad are also becoming popular, most recently in the ailing aircraft industry. Boeing Co. has teamed up with Aeritalia, a new Italian company, to develop a commercial STOL airliner. And the Aircraft Engine Div. of General Electric Co., which recently laid off 7,500 employees, has teamed up with France's SNECMA to build an advanced, low-noise, low-production jet engine.

Critics charge that licensors and multinationals are "giving away" U.S. technology. Organized labor, which complains about the export of jobs along with technology, is most vocal. "We do not believe that the managements of these multinational firms should be determining the basic economic policies of the U.S. government or of the American people," says Nathaniel Goldfinger, research director for the AFL–CIO.

Treasury Dept. economists who are directing a multiagency study of the problem, concede that income from investment abroad can take the place of trade income as the U.S. becomes a "mature creditor." But then, they say, companies have to be encouraged to invest that income at home if it is to create jobs in the U.S. The trend in thinking at the Treasury is made clear by John R. Petty, Assistant Secretary for international affairs. Says he: "The country's competitive advantage in technology will quickly dissipate when you have a broad network of corporate structures licensing and cross-licensing."

However, industry executives insist that technology transfer is a good way to exploit U.S. technology for profit, and a good way to get hold of technology the U.S. does not have. "Since the birth of the chemical industry," says Enjay's Winslow, "a significant portion of the technology has come from overseas, and it still does."

"Hoarding technology and protecting the gap is the old way of thinking," says James A. D. Geier, president of Cincinnati Milacron, Inc., a multinational machinery builder. Foreign technology, he says, "can only strengthen our industry and the national balance of payments, and provide more jobs in the U.S. in the long run."

HOW U.S. INDUSTRIES SHAPE UP

Each major industry has its own technological track record. Here is how some key U.S. industries stack up against their foreign competition:

COMPUTERS

The U.S. technological lead in computers is well-established. And, boasts one computer executive, "we have enough technology to last us to the year 2000."

But computer and semiconductor technology has spread rapidly around the world. Japan's Fujitsu, for example, recently was able to show prospective U.S. buyers a minicomputer that many found attractive. Other nations have sometimes been faster to put computers to work, too—the Norwegians to run ships, the Swedes to link up medical facilities, the Germans to control traffic lights.

Increasingly, the U.S. lead appears to be due not to technology but to superior marketing and service. Moreover, the cutting edge of U.S. computer technology is wielded not by IBM, but by minicomputer builders and independent peripheral makers. To keep U.S. technology up to scratch, some experts say, it will be necessary to make certain that the behemoth's competitive thrashings do not drive the innovators out of business.

STEEL

"We are still ahead of them," says Donald Blickwede, vice-president and director of R&D for Bethlehem Steel Corp. And there is little doubt that U.S. steelmen lead the world in developing new products—such things as porcelain-coated sheet for appliances, stronegr pipeline steels, and more wear-resistant steels for mining machinery. But the industry still spends only 0.35% of its sales dollar on R&D, and it generally has not been innovative in production.

Of 13 major innovations in steel-making, one study shows, not one originated with a U.S. steel producer. The latest innovation announced by U.S. Steel Corp.—a kind of cross between the basic oxygen process and the old Bessemer process—actually started with a West German steel producer.

Building on the work of an American inventor, the U.S.S.R. is well ahead of the U.S. in adopting electroslag refining and in scaling up the process to make giant ingots. While productivity of the Japanese steel industry continues to rise, productivity growth for U.S. steelmakers has virtually halted.

ELECTRONICS

The U.S. maintains its lead in semiconductors. And, thanks to large-scale integration (LSI), which eliminates much assembly work, the electronics industry may be winning back from Japan the domestic manufacture of some semiconductor-based products—notably calculators.

Slowness of the U.S. industry to automate allowed the Japanese to grab off virtually all radio and black-and-white TV production. But makers of color TV sets think that innovations in design, manufacture, and marketing will keep their production at

home. "We are all moving to solid-state," says one executive. Charles Phipps, manager of strategic planning for Texas Instruments' Components Group, estimates that ICs will take over 70% to 80% of color TV's socket functions within three to five years. RCA is using ceramic circuit modules, made in a highly automated plant, for some color sets and stereo phonographs.

But the Sony three-gun picture tube (Trinitron), the Philips casette player, and AEG-Telefunken's video-recording disk are signs that the U.S. has no lock on innovation in consumer electronics. And U.S. companies are wary lest the Japanese come up with a major breakthrough, such as flat-screen TV.

AUTOS

The automotive industry, conservative as it is, has always been ready to look at new materials and machines that would cut its manufacturing costs. "No one in the world can beat Detroit at saving a buck," says an inventive engineer. With some notable exceptions, such as the automatic transmission and power steering and braking, the industry has resisted major product changes, however. Front-wheel drive, disk brakes, radial tires, and the Wankel rotary engine all had to prove themselves in Europe first. U.S. automakers still are resisting electronic fuel injection, standard on serveral Volkswagens.

TEXTILES

Fragmented and fiercely competitive, the textile industry spends less of its sales dollar on R&D than any other major U.S. industry. At huge Burlington Industries, Inc., one of the most R&D-conscious manufacturers, for example, only $7.2-million of last year's $1.8-billion in sales went into R&D.

Increasingly, the industry has become dependent on foreign machinery. "Most of the innovations in textile machinery are coming from Europe," says Paul B. Stam, Burlington's vice-president for R&D. In the industry's hottest area—producing knit goods—all of the 12,000 double-knitting machines in the U.S. are foreign made, according to other industry estimates. The reason, says Stam, is performance.

AMICUS BRIEF FILED IN ARMY SURVEILLANCE CASE

Mr. ERVIN. Mr. President, I have recently filed an amicus curiae brief with the Supreme Court in the case of Tatum against Laird. The brief was prepared in behalf of four religious organizations for which I am acting as counsel. All claim to have been affected in some way by the threat or actual use of Army surveillance, the legitimacy of which is at issue in the Tatum case.

What is specifically challenged by the brief is the general, preliminary investigation of almost every form of peaceful political activity, having no relationship to actual situations requiring the use of military force. Such broad and indiscriminate surveillance has the unavoidable effect of inhibiting the exercise of our most precious of first amendment rights.

I feel every citizen ought to be aware of these repugnant activities and the threat they pose to the exercise of individual rights. The public's education was begun by the disclosures made during last year's hearings of the Subcommittee on Constitutional Rights. I ask unanimous consent that the text of my brief, which sheds light on the scope of the surveillance and fully develops the legal issues before the Court, be printed in the RECORD in order that it may receive wide public scrutiny.

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

[In the Supreme Court of the United States, October Term, 1971]

MELVIN R. LAIRD, SECRETARY OF DEFENSE, ET AL., PETITIONERS, v. ARLO TATUM, ET AL., RESPONDENTS, No. 71-288

ON WRIT OF CERTIORARI TO THE U.S. COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Brief of Unitarian Universalist Association, Council for Christian Social Action, United Church of Christ, American Friends Service Committee, National Council of Churches of Christ, Amici on behalf of the respondents.

INTEREST OF THE AMICI CURIAE

Unitarian Universalist Association

The Unitarian Universalist Association is a religious association established more than 200 years ago and incorporated under the laws of New Hampshire and New York. The Association, in its constitution, "is empowered to, and shall devote its resources to and exercise its corporate powers for, religious, educational and charitable purposes." In accordance with these purposes, the Association, among other things, seeks "to cherish and spread the universal truths taught by the great prophets and teachers of humanity . . . ; to affirm, defend and promote the supreme worth of every human personality, the dignity of man, and the use of the democratic method in human relationships;" and "to implement our vision of one world by striving for a world community founded on ideas of brotherhood, justice and peace."

The Association, its member churches and fellowships have long regarded the Constitution and the Bill of Rights as a bulwark of religious and civil liberty. Individual members, churches, and congregations of the Association have long believed that social action on issues of public concern is an important part of their religious and personal obligations. As a result, many congregations and individual members have actively exercised their rights of free expression and assembly under the Constitution with respect to the controversial public issues of our times. It was a matter of grave concern, therefore, to the Association, its churches, and members to discover that at least four churches and an undetermined number of individual members have been the subject of military investigation and surveillance. Because of its belief that such surveillance is alien to our form of government and foreign to a society of free men and women, the General Assembly of the Association on June 11, 1971, unanimously resolved to oppose such surveillance and to support efforts to bring it to a halt.

COUNCIL FOR CHRISTIAN SOCIAL ACTION, UNITED CHURCH OF CHRIST

The Council for Christian Social Action is a national instrumentality established by the United Church of Christ to "study the content of the gospel in its bearing on man in society, provide and publish information and literature on social issues, cooperate with . . . appropriate bodies in making the implications of the gospel effective in society, and formulate and promote a program of social education and action for the United Church of Christ." The United Church of Christ is a major American Protestant denomination of some 2,000,000 members, the union of the Congregational Christian churches and the Evangelical and Reformed Church.

Although the Council speaks only for itself, addressing both churches and the civil society in the interests of justice and mercy, on occasion it represents the broader convictions of the communion as expressed through pronouncements of its General Synods. This is the case in the Councils' long-term promotion of civil liberties in American society and its opposition to all forces which deny rights of privacy and of association, suppress political participation, stifle dissent, or punish critics of national policy.

Thus the Council can also speak for the Fourth General Synod of its church, which called upon churchmen "as Christians and citizens" to safeguard the right of freedom of expression as guaranteed in the First Amendment of the Constitution of the United States, including the right within constitutional limits to express opposition or commendation to our government or to advocate peaceful change to alternative political and economic systems without being intimidated or harassed.

More recently, this church's Eighth General Synod, meeting in 1971, as part of its concern to enable U.S. power to serve humane ends and contribute to world peace, took as one of its prime objectives "to have the Instrumentalities, churches and members work to restrain the power of the Pentagon in probing into the private lives of American citizens."

AMERICAN FRIENDS SERVICE COMMITTEE

The American Friends Service Committee is an independent, voluntary, privately-owned Quaker organization, founded in 1917, and active since that time in works of humanitarian relief and service, reconciliation between nations and peoples, public education about peace, and programs to overcome discrimination and oppression occasioned by race, poverty and injustice. It has devoted major energy to opposing war, militarism and conscription and to assisting people who have suffered from their consequences.

On February 28, 1970, the press reported that the American Friends Service Committee was the subject of Army military intelligence files and that there had been military surveillance of the AFSC and individuals associated with it. Subsequent press and other public disclosures alleged that the surveillance had been indiscriminately directed at civilians engaged in legitimate anti-war, anti-draft and pro-civil rights activities. These disclosures had a disruptive effect on the peace education work of the AFSC and are believed to have discouraged some Americans, otherwise ready to participate publicly in activities related to U.S. war and draft policies and practices, from risking such official military surveillance.

On May 11, 1970, the AFSC wrote to the Secretary of the Army requesting factual information about the press statement and the Army authority for maintaining such files. The reply stated that under Army policy, the Army has no interest in investigating the AFSC because the national activities and goals of the AFSC do not constitute a threat to the Army's operations, property or personnel. But the Army further stated that "certain members" of the AFSC at the local level were and can be "of investigative interest" to the Army, and that, aside from any such individual files on "local members," the Army did maintain a file on the AFSC containing information and material "generally derived from other agencies and sources." We were informed that the file on the AFSC was examined to determine whether it could be retained under current policy and, in the words of the General Counsel's letter, "It could not be retained and was, therefore, destroyed." No proof of such destruction has been offered and no information has ever been given as to which individuals associated with the AFSC had been under surveillance and the subject of past or present files.

The American Friends Service Committee believes that American citizens must be accorded protection against the silent and *sub-rosa* dissipation of their rights of privacy and against the invalidation or subversion of their rights of assembly, press, speech and dissent by means of secret or even brazen surveillance, data storage and information dissemination by the military authorities. The American Friends Service Committee seeks protection for itself and the American citizens associated with it against such military dangers.

NATIONAL COUNCIL OF CHURCHES OF CHRIST

The National Council of the Churches of Christ in the United States of America is a federation of thirty-three Protestant and Eastern Orthodox religious bodies in the United States with aggregate membership totaling approximately 43,000,000. It is governed by a General Board of 250 members chosen by the member denominations in proportion to their size and support. The General Board determines the policies of the organization through debate, amendment and adoption of carefully-prepared statements and resolutions brought to it by its subordinate program divisions.

Several of those policies have affirmed the rights of all persons to freedom of religion, speech, press and assembly without fear of intimidation, retribution or obloquy. It is in implementation of those policies that the National Council of Churches participates in this brief. An additional consideration is the fact that one of the plaintiffs which has been subjected to military surveillance, Clergy and Laymen Concerned About Vietnam, originated in one of the program units of the National Council and has since become an independent organization. Many of the leaders of the National Council are or have been active as individuals in that organization, and while no less concerned for the like rights of all, feel a special kinship for it and a resentment against military surveillance of persons whom they know and trust.

Permission is granted by both parties for the filing of this brief.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional provisions involved are:

Article 1, section 8, relating to the legislative power over the armed forces, and especially the congressional powers "To provide for calling forth the Militia to execute the laws of the Union, suppress Insurrections and repel invasions;"

Article IV, section 4, which provides that: "The United States . . . shall protect each [state] . . . on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic violence;"

The First Amendment:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The statutory provisions, 10 United States Code 331–333 are set forth in Appendix A, pages 43–44, of the petitioner's brief.

Section 334, of title 10, U.S.C. reads as follows:

Proclamation to disperse.

Whenever the President considers it necessary to use the militia or the armed forces under this chapter, he shall, by proclamation, immediately order the insurgents to disperse and retire peaceably to their abodes within a limited time.

Section 1385, of title 18, U.S.C., reads as follows:

Use of Army and Air Force as possee comitatus.

Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force as a possee comitatus or otherwise to execute the laws shall be fined not more than $10,000 or imprisoned not more than two years, or both.

QUESTION FOR REVIEW

The writ of certiorari presents the following question: Do individuals and organizations not affiliated with the armed services present a justiciable issue under the First, Fourth, Fifth and Ninth Amendments when they allege that their rights of free expression, privacy and association have been infringed by unauthorized, unnecessary and indiscriminate military investigation of their political activities and personal lives?

STATEMENT [1]

Sometime in the 1960's, prompted by an increase in civil violence, the United States Government, acting through the armed forces and primarily the Army, began a massive program of investigation and surveillance [2] of the thoughts, habits, attitudes, political activities and associations of individual American citizens.[3] This Army program took the form of the development and maintenance of investigative files in manual and computerized systems. It was an expansion of pre-existing investigative operations of the armed forces, such as personal background investigations, and was in many aspects inseparable from these other functions. The program was ostensibly developed in connection with the increased use of the Army to put down civil violence. Although there is little evidence available to support the contention, it has been explained as an effort to "predict" situations in which the use of military force would be required.

At the height of the program in the late 1960's, thousands of agents of the United States Army Intelligence Command were involved. In addition, numerous other investigative personnel and other sources of military manpower from the Continental Army Command, the Navy and the Air Force were employed. According to Army documents, the responsibility of these investigators was to gather information on persons and organizations engaged in various activities associated with racial problems, antiwar, antidraft, and other controversial public issues. Intelligence activities have been conducted in public places, on college campuses, at high schools, in churches, and at private meetings. Persons subjected to this program have ranged from leaders of active organizations, to ordinary members, the curious and the passerby. Individuals expressing support or sympathy with subjects of the surveillance have also come under investigation. Subjects have included numerous Congressmen and United States Senators and family members of a Senator, state and local officials, a member of this Court, newspaper reporters, clergymen, and thousands of other Americans. Although no total number can be estimated, it is not an exaggeration to talk in terms of hundreds of thousands of individuals, organizations, events, and dossiers.

The information gathered on these citizens has included their participation or presence at political events, their political views, their relationships with other political activities, their travel, their family associations, finances, education, and other types of personal data. Once a person becomes the subject of investigation, the data gathered about him and his activities is unlimited.[4] Information for the Army dossiers has been obtained by observation of public activities, by covert infiltration, by electronic devices, tape-recorders, cameras, and by videotape, as well as by requesting data from other governmental agencies and from private sources. The Army analyzed and attempted to categorize and label individuals according to their utterances and the way they exercised their rights of free speech, assembly, association, and petition.

The bulk of investigative activity by the Army's own personnel occurred at the field level. Agents collected information and filed "spot reports," "agent reports", and "summaries of investigation". Most of this data was forwarded up the chain of command but record copies were kept in data centers at every level of command. Manual files were maintained at every level. At least four and possibly more computer systems were employed to store, analyze, and retrieve the information collected. Many files were microfilmed and integrated with other files on persons who were suspected of violations of security and espionage laws. These were located at the headquarters of the Intelligence Command (Fort Holabird), the Continental Army (Fort Monroe), the Third Army Corps (Fort Hood), and in the Pentagon. More than one computer data bank was maintained in some of these locations.

Information gathered in this program and political analyses produced as part of it were indiscriminately shared and exchanged by the Army and were distributed to other military record systems, and to other federal, state, and local agencies maintaining investigative files. Although subsequent to the filing of this lawsuit, many of the Army computer systems and other collections of data were ordered destroyed, much of the data still exists in files maintained by the Department of the Army, the Defense Department, and the other federal, state, and local agencies to which it was regularly sent. The Department of the Army has been unwilling or unable to ensure the complete elimination of the information collected under this program from its own and other governmental records.[5]

Examples of the type of organizations put under investigation include the following: The Southern Christian Leadership Conference, the National Association for the Advancement of Colored People, the State Rights Party, the Presbyterian Interracial Council of Chicago, the American Civil Liberties Union, Clergy and Laymen Concerned About Vietnam, the Congress of Racial Equality, the Mexican-American Youth Organization, National Organization for Women, Operation Breadbasket, United Christian Community Service, the Urban League, Young Americans for Freedom, SANE, Milwaukee United School Integration Committee, American Friends Service Committee and hundreds of others.[6]

This action was brought by a group of citizens and organizations challenging the constitutionality under the First, Fourth, Fifth and Ninth Amendments of intelligence activities conducted against them by the Department of Defense. They allege that military investigation of peaceful and lawful political activity by persons unconnected with the armed forces has infringed upon their ability to exercise constitutionally protected rights, and that it infringes the rights of others. They seek a declaratory judgment that such military activity is unconstitutional or otherwise illegal, injunctions forbidding such activity in the future, and mandatory relief requiring the destruction of all information which resulted from the military program. The District Court dismissed the complaint on the government's motion without permitting a hearing on the request for a preliminary injunction. The Court of Appeals reversed and ordered further proceedings. This Court granted the government's application for a writ of certiorari over plaintiff's opposition.

The facts necessary to an informed consideration of the issues raised in the petition for certiorari do not sufficiently appear in the materials presented by the parties in their joint appendix. That information consists of

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Footnotes at end of article.

what little was known of Army surveillance as of April. 1970. Subsequent to that date and continuing to the present, additional information has been uncovered on the nature of the military program, its origins, purpose, authority, scope, and actual implementation, and its effect on constitutional rights. Consideration of this additional information is necessary to a proper determination of the questions now before the Court. For that reason, copies of the hearings conducted by the Constitutional Rights Subcommittee, United States Senate Committee on the Judiciary, have been submitted as as an appendix to this brief.

SUMMARY OF ARGUMENT

Plaintiffs present a justiciable issue by alleging that their rights to free expression, association and privacy have been infringed by an unauthorized, unnecessary, and indiscriminate military program of investigation into their political views, activities, associations and personal lives. The injuries they suffer to their First Amendment rights consist of a legally perceivable inhibition on the desire or ability to exercise the rights of free expression, an invasion of their right to associational privacy, and an infringement of other areas of protected activity under the First Amendment. Under our Constitution, citizens do not have to pay the price of these consequences in order to voice opinions or to associate with groups which are unpopular with the government. Not only has military surveillance directly caused these injuries, but it has contributed to or facilitated inhibitions on free expression by joining with and fostering other social and personal forces which supply coercive or deterrent effect to the Government's action. Despite such harm to First Amendment rights, the government lacks a compelling interest for conducting the military program. The other strict requirements which must be met to save the activity from constitutional infirmity—proper legal authority, careful standards and strict administrative control, and precise implementation—are also absent. In such a context, it is insufficient to argue, as the government does, that plaintiffs are free to exercise their rights despite surveillance and that injury to First Amendment rights must be shown by empirical proof that the surveillance actually prevented plaintiffs or others from exercising their rights.

Freedoms such as these are protected not only against heavy-handed frontal attacks, but also from being stifled by more subtle governmental interferences. *Bates* v. *Little Rock* 361 U.S. 516, 523 (1960).

ARGUMENT

Plaintiffs have satisfied the requirements of justiciability by alleging an unauthorized, unnecessary, and indiscriminate program of military surveillance which has infringed upon the peaceful exercise of their First Amendment rights to free expression and association.

A. MILITARY SURVEILLANCE INFRINGES ON FIRST AMENDMENT RIGHTS

Although the issues immediately before the Court involve technical questions of justiciability, these questions arise in a First Amendment case and must be considered in that special context. The challenge by the plaintiffs (respondents here) is to the Army's system of political surveillance of citizens unassociated with the armed forces, who are merely exercising in a peaceful manner their constitutionally guaranteed rights to free expression. The plaintiffs seek to vindicate those First Amendment rights.

The Founding Fathers rightly believed that truth alone makes men free, and they desired most of all that the people of America be politically, intellectually and spiritually free. That is the supreme purpose of the First Amendment. It guarantees to every person in our land the freedom to think as he pleases; the freedom to convey information and ideas by speech and other means of communication; the freedom to associate with others to accomplish any lawful purpose; the freedom to meet peacefully for consultation and protest; the right to petition those in power for redress of grievances, either real or imagined; and the freedom to entertain such religious beliefs as comport with his own conscience. As Justice Brandeis, in *Whitney* v. *Calif.* 274 U.S. 357, 375–76, (1927), eloquently put it:

Those who won our independence believed . . . that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; that without free speech and assembly discussion would be futile; that with them, discussion affords ordinarily adequate protection against the dissemination of noxious doctrine; that the greatest menace to freedom is an inert people; that public discussion is a political duty; and that this should be a fundamental principle of the American government. They recognized the risks to which all human institutions are subject. But they knew that order cannot be secured merely through fear of punishment for its infraction; that it is hazardous to discourage thought, hope and imagination; that fear breeds repression; that repression breeds hate; that hate menaces stable government; that the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies; and that the fitting remedy for evil counsels is good ones. Believing in the power of reason as applied through public discussion, they eschewed silence coerced by law—the argument of force in its worst form. Recognizing the occasional tyrannies of governing majorities, they amended the Constitution so that free speech and assembly should be guaranteed.

These freedoms are impartial and inclusive. They apply to all persons, whether they are wise or foolish, learned or ignorant, profound or shallow, brave or timid, and regardless of whether they love our country or hate it and its institutions. There can be no doubt that these freedoms are often grossly abused and that society is, consequently, often tempted to demand or countenance their curtailment by government.

Essential though the freedoms are, they are not easily exercised in a climate of fear, discord, and dissension, especially when the ideas being expressed are those which are displeasing to government and unsettling to the majority of citizens. The critical views expressed by plaintiffs and others on racial issues, military policy, the war in Vietnam, and the state of our society and the policies of our government are indeed displeasing to those in power and perhaps to most of society. They are voiced in a time of fear and doubt, when other nations threaten the peace of the world and our nation's security, when crime and violence stalk our land, when riotous mobs have burned our cities, and when disquieting demonstrators have staged violent, unlawful demonstrations on streets and campuses. These ideas and the recent discord associated with them have frightened many Americans, including those in high office.

It is at such a time that the First Amendment is most necessary, most in danger, and most difficult to exercise. It is most necessary because it serves at least two purposes: if the complaint being voiced is justified, it will lead to action to ameliorate that complaint; if it is not justified, free speech nonetheless serves as a safety valve for pressures which otherwise might lead to violence. Free expression is most in danger in times of fear because it is then that demands for suppression of unpopular ideas are strongest. And free speech is then most difficult to exercise, because it takes a brave man to voice unpopular ideas and face the anger of his neighbor and his government. The First Amendment, however, was made for the timid as well as the brave. While government cannot instill courage in the meek, it may not take advantage of a climate of fear to undertake a program which has the effect of restricting the First Amendment only to the very courageous. Government action, such as military surveillance, seemingly innocuous in the abstract, has the very real effect of apprehension of some unknown form, or retment. The coercive power of this government action lies in the national climate of fear and doubt, and in the very real, tangible apprehension of some unkown form, or retribution by government on those whom it fears and therefore watches. That such apprehension exists in America today is manifest.[7]

1. DETERRENCE OF FREE EXPRESSION

There can be no doubt surveillance by the military has an inhibiting effect on the exercise of freedom of expression. The spectre of thousands of military agents dutifully observing, noting, and reporting to higher authority information about peaceful citizens expressing views distasteful to government, the gathering of information about the personal lives of these citizens, the collection of similar data held by local, state, and other federal agencies, the placing of this information in computers, and its interchange with other governmental agencies at all levels, have created an atmosphere of official repression. The type of political activity subjected to this surveillance is what is currently termed "dissent." The views which have attracted the Army's attention consist in large part of those which are antagonistic to the Army's policies, its interests, and its own political attitudes. Quite clearly, the Army has put under surveillance its political opponents. The surveillance, however, is even broader than this. For included in the surveillance are racial matters, community affairs, labor unions, churches, colleges, the press, political figures, and thousands of common, ordinary citizens opposed to existing governmental policies. Army surveillance has had as its target almost the entire range of political attitudes which differ from "accepted," "mainstream" opinion.

The fact that the government, through the instrumentality of the Army, has seen fit to investigate the views and personal lives of those who disagree with it cannot help but clothe those views and the people who hold them with the taint of official disapproval and suspicion, and encourage the public to regard them as somehow disloyal. This Court has always been suspicious of attempts by government to label or characterize political views as "approved" or "disapproved."[8] The reason is obvious. Government, by force of example, has considerable power to encourage or discourage the expression of ideas. The vice of military surveillance is that it serves to discourage the expression of controversial views and to impede their acceptance by others.

The impact of widespread governmental investigations of those who hold unpopular views is even greater, because military surveillance, even if it has served no real purpose, is generally thought to have a purpose.

"These freedoms are delicate and vulnerable, as well as supremely precious in our society. The threat of sanctions may deter their exercise almost as potently as the actual application of sanctions." *NAACP v. Button,* 371 U.S. 415, 433 (1963).

Surveillance creates an apprehension that some harm, its exact nature unknown, will befall those under surveillance, and those who associate with them.[9]

"We have recently had occasion to hold in two cases that there are times and circumstances when States may not compel mem-

Footnotes at end of article.

bers of groups engaged in the dissemination of ideas to be publicly identified . . . The reason for those holdings was that identification and fear of reprisal might deter perfectly peaceful discussions of public matters of importance." *Talley v. California,* 362 U.S. 60, 65 (1960).

The coercive power of the unknown is very great, and may be more of a deterrent than the threat of some specific sanction. This quite tangible fear is not eliminated by statements from those in authority that they intend no ill to those whom they are investigating.

The social ostracism which meets those who express distasteful views to popular opinion makes it an act of personal courage in many cases to oppose the sentiments of the community. Military surveillance in this context can only make the individual's ability and desire to speak out more difficult. Not only must he face the disapproval of his fellows, but he must also incur the price of a loss of his privacy, the recording of his actions in the recesses of the files and computers of the armed forces, and the fear of some future detrimental use of those records by the Army or the other governmental bodies to whom the information is distributed. *Talley v. California,* 362 U.S. 60 (1960); *Bates v. Little Rock,* 361 U.S. 516 (1960); *NAACP v. Alabama,* 357 U.S. 449 (1958). Since the Army program is ostensibly conducting surveillance of "unlawful" civil disturbance, the citizen whose peaceful, lawful activities are put under surveillance has to bear the added burden, and the added fear, of being arbitrarily designated as one who aids, abets, encourages, supports, or even engages in unlawful acts of violence.[10] The harm is well illustrated by the reaction of citizens who support military surveillance: "The military wouldn't be investigating them if they weren't doing something wrong." The military, by conducting surveillance, fosters this public attitude, and thereby inhibits free expression in violation of the First Amendment.

It is no reply to say that empirical proof of this injury has not been demonstrated. The effect of the military program is to increase or encourage silence. How does one measure silence? It would be paradoxical, and obviously impossible to require the production of witnesses to confess publicly that they have been frightened out of expressing their true feelings because of military surveillance.[11] That would result in the nullification of the proof at the very moment of its assertion. *NAACP v. Alabama* 357 U.S. 449, 459 (1958). It is enough that the government's actions can be "perceived to have the consequence of unduly curtailing the liberty of freedom of [speech] . . ." 337 U.S. at 461.

The First Amendment's protection for freedom of speech, of association, and the right to petition government for redress of grievances is not limited to governmental action which operates directly on those rights and whose avowed purpose is to limit or regulate them.

Freedoms such as these are protected not only against heavy-handed frontal attack, but also from being stifled by more subtle governmental interference *Bates v. Little Rock* 361 U.S. 516, 523 (1960).

The reason for so extending the protection of the First Amendment to prohibit "subtle governmental interference" is that freedom of expression needs "breathing space to survive" *NAACP v. Button* 371 U.S. 415, 433 (1963). Therefore, governmental "action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny." *NAACP v. Alabama* 357, U.S. 449 460–61 (1958). In recent years challenges to government action impinging on the free exercise of the First Amendment have involved a wide range of situations. The Court has limited the requirement of oaths, (*Baggett v. Bullitt* 377 U.S. 360 (1964)); restricted the operation of laws designated to protect the national security, (*U.S. v. Robel* 389 U.S. 258 (1967)); struck down controls on obscenity, (*Smith v. Calif.* 361 U.S. 147 (1959)); limited libel laws, (*New York Times v. Sullivan* 376 U.S. 254 (1964)) and restricted the congressional power of investigation. (*Watkins v. U.S.* 354 U.S. 178 (1957)). These cases have involved otherwise legitimate governmental interests, but because government had trenched upon protected areas in the course of pursuing its interests its action was impermissible under the First Amendment.

The fact that Alabama, so far as is relevant to the validity of the contempt judgment presently under review, has taken no direct action, . . . to restrict the right of petitioner's members to associate freely, does not end inquiry into the effect of the production order. . . . In the domain of these indispensable liberties, whether of speech, press, or association, the decisions of this Court recognize that abridgment of such rights, even though unintended, may inevitably follow from varied forms of governmental action. . . .

The governmental action challenged may appear to be totally unrelated to protected liberties. Statutes imposing taxes upon rather than prohibiting particular activity have been struck down when perceived to have the consequence of unduly curtailing the liberty of freedom of press assured under the the Fourteenth Amendment. *NAACP v. Ala.* 357 U.S. 449, 461 (1958).

The deterrent effect may be caused by fear of possible loss of employment[12] or of a security clearance, by the threat of a government sanction, by the imposition of a tax, or by some other loss of a government benefit or threat of a legal sanction. But government action may be unconstitutional if it serves as the occasion, although not the direct source of this deterrence.

Petitioner has made an uncontroverted showing that on past occasions revelation of the identity of its rank-and-file members has exposed these members to economic reprisal, loss of employment, threat of physical coercion, and other manifestations of public hostility. . . .

It is not sufficient to answer, as the State does here, that whatever repressive effect compulsory disclosure of names of petitioner's members may have upon participation by Alabama citizens in petitioner's activities follows not from *state* action but from *private* community pressures. The crucial factor is the interplay of governmental and private action, for it is only after the initial exertion of state power represented by the production order that private action takes hold. *NAACP v. Ala.* 357 U.S. 449, 462–63 (1958). See also *Bates v. Little Rock* 361 U.S. 516, 523–524 (1960).

The deterrent effect need not, however, stem from forces external to the citizen. It may be self-generated. In *Lamont v. Postmaster General* 381 U.S. 301 (1965), the minor inconvenience of filing a card requesting delivery of foreign propaganda was not a great imposition on an addressee's time. Yet it was ruled unconstitutional because some citizens in sensitive positions "might think they would invite disaster if they read what the Federal Government says contains the seeds of treason." The ordinary citizen moreover, "is likely to feel some inhibition in sending for literature which federal officials have condemned as 'communist political propaganda.'" 381 U.S. at 307. The earlier practice of maintaining lists of such addresses had been discontinued by the time the case reached the Court. Quite clearly, that practice, also involved in military surveillance, would have occasioned even stronger judicial condemnation.

The Communist registration cases underline this conclusion. Here the deterrent effect is caused by the public antipathy towards organizations of this nature and the effect of explicit governmental disapproval of these organizations, both of which factors operate to discourage citizens from engaging in free expression of views which are encompassed or might be encompassed by the registration laws. Government action which inspires or even facilitates self-censorship is deterrence enough, *Smith v. California* 361 U.S. 147 (1959). *Time Inc. v. Hill* 385 U.S. 374 (1967).

The oath cases provide additional examples in which the deterrent effect is not dependent on government applied sanctions alone. Oaths may not have the morally binding force they once had in a more God-fearing age. Yet some who sign disclaimer oaths will endeavor to abide by them, not only because of a speculative fear of future sanctions for violating the oath, but also because of a conscientious desire to avoid conduct and ideas they have sworn to forbear. *Baggett v. Bullitt* 377 U.S. 360 (1964). Furthermore, the oaths also serve as warnings to members of the general public to avoid views and associations on the possibility that some day they may have to ascribe to the oath. The deterrent effect applies not only to those who must take the oath, but to those who may never have to take it.

The lengths the Court has gone to in identifying such deterrence are well-illustrated by the "abstention" cases. They are not directly relevant here because the plaintiffs do not seek an exceptional interference with the normal requirements of federalism but only the exercise of the Court's responsibility to review the constitutionality of federal action. *Marbury v. Madison* 1 Cranch 137 (1803). Yet, the abstention cases show that even delay caused by litigation amounts to a legally cognizable deterrent.

[T]o force the plaintiff who has commenced a federal action to suffer the delay of state court proceedings might itself effect the impermissible chilling of the very constitutional right he seeks to protect. *Zwickler v. Koota* 389 U.S. 241, 252 (1967).

The line of cases dealing with indirect infringements on First Amendment rights demonstrates that it is the injury to First Amendment interests which is important, and not merely the method by which it is accomplished. To view these cases as prohibiting only certain types of government action which have deleterious effects on the First Amendment is to give them a narrow and artificial construction, and to reflect a strained and grudging appreciation of the vital interest in preserving free expression. It would champion form over substance and put a premium on ingenuity when government seeks to silence those of whom it disapproves. In First Amendment cases especially, government may not restrain speech by indirection any more than by a frontal assault. Any lesser rule would demean the First Amendment and give solace to the ear but deny it to the heart.

2. *Interference with freedom of association*

The Court has explicitly recognized that effective advocacy may require associational privacy, especially when the ideas advanced are controversial.

"It is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association as the forms of governmental action in the cases above were thought likely to produce upon the particular constitutional rights there involved. This Court has recognized the vital relationship between freedom to associate and privacy in one's associations. When referring to the varied forms of governmental action which might interfere with freedom of assembly, it said in *American Communications Assn. v. Douds, supra,* at 402:

A requirement that adherents of particular religious faiths or political parties wear identifying arm-bands, for example, is obvi-

Footnotes at end of article.

ously of this nature. Compelled disclosure of membership in an organization engaged in advocacy of particular beliefs is of the same order. Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs. *NAACP v. Alabama* 357 U.S. 449, 462 (1958).

Anonymity is necessary not only when groups meet in private, but also when they demonstrate on the public streets. There is a very real difference between a public event in which the individual participants are essentially anonymous and the official recording of that act in order to identify the individual permanently with that event. The privacy of a citizen who is one of a faceless crowd at a demonstration or speech is totally destroyed when the Army observes and identifies the citizen, seeks out other data held by private and governmental agencies, infiltrates secret meetings,[13] permanently records this data, and makes it generally available to other governmental agencies. The harm done to the citizen—loss of his associational privacy—is even greater than when government merely compels self-disclosure of organizational memberships. Unlike other situations (*Bates v. Little Rock* 361 U.S. 516 (1960), *NAACP v. Button* 371 U.S. 415 (1963), and *NAACP v. Alabama* 357 U.S. 449 (1958)), in which government sought to further other, admittedly legitimate purposes and only incidentally infringed upon associational anonymity, military surveillance is an intentional and not an incidental invasion of associational privacy. There can be no question that plaintiffs can point to an injury done to their First Amendment rights, because the action they complain of was designed to dispel the anonymity so necessary for political dissent. *Zwickler v. Koota* 389 U.S. 241 (1967), *Talley v. California* 362 U.S. 60 (1960). That privacy is especially necessary when one is opposing antagonistic governmental forces.

3. INFRINGEMENT OF FREEDOM OF RELIGION

The Army's indiscriminate intrusion into domestic civilian affairs has also had the effect of interfering with a number of other constitutionally protected activities. Its surveillance of the activities of elected representatives at the federal, state, and local levels, or unions, of the press and of the judiciary and the legal process, for example, are also infringements of the special constitutional rights of citizens engaged in these protected areas. It is of particular concern to your amici that a large portion of this program has also been directed at members of the religious community, and at religious activities. The record is replete with examples of this special invasion into religious aspects of our society. We agree with plaintiffs that the Army's program is an unconstitutional infringement of every citizen's freedom of expression, but we are especially disturbed by the fact that the program was also oblivious to the religious freedoms secured by the First Amendment. The Constitution erects a high wall separating the military from intrusion into domestic life. In ignoring this principle, the Army also breached the wall of separation between the state and the religious activities of Americans. When it included in its program the peaceful and lawful religious activities of Americans, the Army also violated the free exercise clause of the First Amendment.[14]

B. THERE IS NO COMPELLING GOVERNMENT INTEREST IN MILITARY SURVEILLANCE

Not all action by government which has an effect of deterring the free exercise of First Amendment rights is necessarily unconstitutional, but once such an effect can be identified, the action is constitutionally defective unless the government satisfies strictly imposed limitations. As was succinctly stated by then Assistant Attorney General William Rehnquist, "While there is obviously no justification for surveillance of any kind that does not relate to a legitimate investigative purpose, the vice is not surveillance per se, but surveillance of activities which are none of the Government's business." [15]

The government must have a "compelling" interest in taking the action, it must be precisely defined, and the action must be closely supervised and carefully conducted.

"In the area of First Amendment freedoms, government has the duty to confine itself to the least intrusive regulations which are adequate for the purpose." *Lamont v. Postmaster General* 381, U.S. 301, 310, Brennon, J. concurring.

"Broad prophylactic rules in the area of free expression are suspect . . . Precision of regulation must be the touchstone in an area so closely touching our most precious freedoms." *NAACP v. Button,* 371 U.S. 415, 438 (1962).

(See *U.S. v. Robel,* 389 U.S. 258, 269 (1967), Brennan, J. concurring, for a discussion of the constitutional defects of inadequate standards in statutes touching on the First Amendment).

The fact that the program of political investigation being challenged has been conducted by the military serves both to underscore the seriousness of its deterrent impact on the First Amendment,[16] and also to identify its defective aspects.

As Chief Justice Warren has said:

Determining the proper role to be assigned to the military in a democratic society has been a troublesome problem for every nation that has aspired to a free political life. The military establishment is, of course, a necessary organ of government; but the reach of its power must be carefully limited lest the delicate balance between freedom and order be upset. The maintenance of the balance is made more difficult by the fact that while the military serves the vital function of preserving the existence of the nation, it is, at the same time, the one element of government that exercises a type of authority not easily assimilated in a free society.

The critical importance of achieving a proper accommodation is apparent when one considers the corrosive effect upon liberty of exaggerated military power. In the last analysis, it is the military—or at least a militant organization of power—that dominates life in totalitarian countries regardless of their nominal political arrangements. This is true, moreover, not only with respect to Iron Curtain countries, but also with respect to many countries that have all the formal trappings of constitutional democracy. Warren, *The Bill of Rights and the Military* 37 N.Y.U.L. Rev. 181, 182 (1962)

1. *Military surveillance is unauthorized by law.*

Recognizing this danger, the Founding Fathers took pains to subject the nation's military forces to strict controls.[17]

In six separate clauses of Article I, Section 8, they carefully spelled out that Congress was to have legislative authority over the military, yet at the same time they were also careful to guard against legislative tyranny or excessive discretion.

Thus, the Constitution restricts military appropriations to two years, divides jurisdiction over the militia between the central and state governments, and limits the domestic use of the military to repelling invasions, suppressing insurrection, and executing the laws. Command of the Army was given to the nation's chief civilian officer, the President, and his limited authority for domestic use of the military was repeated in art. IV, §4—repelling invasion and suppressing domestic violence—together with the exact procedure required to be followed in such cases.

The Constitution, therefore, is extremely explicit in limiting the domestic role of the armed forces. Congress, pursuant to art. I, § 8 and art. IV, § 4, has enacted 10 USC 331–334 which are the sole statutory grants authorizing intervention by the armed forces into American domestic life. Yet, it is clear that these statutes nowhere by their terms specifically authorize [18] or even contemplate surveillance by the military. The statutes govern only the circumstances in which the President may use military force. Unless these conditions are present, the President may not loose the Army on the American people, and any direction by him purporting to do so is without statutory or constitutional support. Even when the necessary preconditions for use of the armed forces under these statutes exist, these statutes also prescribe the procedure that must be employed before the President may call out the Army. Unfortunately, recent American history has provided us with examples where this has been deemed necessary.[19] But the actual use of military force to suppress violence, pursuant to art. IV, § 4 and these statutes, is not challenged here; nor is the power of the Army to perform necessary investigation when actually committed pursuant to these statutes; nor even its right to receive intelligence when such a commitment is about to be made. What is challenged is a program of political surveillance and investigation of persons throughout the entire country, and encompassing almost every form of peaceful political activity, with no relationship to actual situations requiring the use of military force.

The authority to conduct political and personal investigations of such a general nature cannot be read into these statutes. First, the Constitution and American history demonstrates that grants of power to the military to act in domestic affairs must be narrowly construed.

On the whole, it seems to me plain that the Court has viewed the separation and subordination of the military establishment as a compelling principle. When this principle supports an assertion of substantial violation of a precept of the Bill of Rights, a most extraordinary showing of military necessity in defense of the Nation has been required for the Court to conclude that the challenged action in fact squared with the injunctions of the Constitution. While situations may arise in which deference by the Court is compelling, the cases in which this has occurred demonstrate that such a restriction upon the scope of review is pregnant with danger to individual freedom. Warren, *supra* at 197

Second, Congress has expressed itself in the past against a broad view of any military involvement in domestic affairs. The *posse comitatus* act, 18 U.S.C. 1385, prohibits the use of military forces to aid in the enforcement of law by civilian authorities as a "posse comitatus *or otherwise*" unless *"expressly authorized* by the Constitution or Act of Congress." [20] (Emphasis added).

The statute is not an anachronistic relic of an historical period the experience of which is irrelevant to the present. It is not improper to regard it, as it is said to have been regarded in 1878 by the Democrats who sponsored it, as expressing "the inherited antipathy of the American to the use of troops for civil purposes." (Sparks, National Development 1877–1885, p. 127, in Vol. 23, The American Nation, A History) Its relevancy to this age is sadly clear (1957, 41 Op. A.G. No. 67). . . . [It is] a statute that is absolute in its command and explicit in its exceptions. *Wrynn v. U.S.* 200 F. Supp. 457, 465 (1961), Dooling, J.

It is clear that the entire operation of military surveillance is a violation of the federal criminal laws. But even in the absence of these legal and constitutional prin-

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ciples which restrict the military's authority in domestic activities, the Court must apply the principle "that statutory words are to be read narrowly so as to avoid questions concerning the 'associational freedom' that *Shelton v. Tucker* protected and concerning other rights within the purview of the First Amendment." *Schneider v. Smith* 390 U.S. 17, 27 (1968). If, ordinarily, deference will be given to the President and the Congress in matters of military affairs outside the borders of our country or in times of war, this broad latitude cannot apply when the military power is involved in domestic affairs, *Youngstown Sheet and Tube Co. v. Sawyer* 343 U:S: 579 (1952), and certainly not when constitutional rights are at stake.

The Government seeks to defend the statute on the ground that it was passed pursuant to Congress' war power. The Government argues that this Court has given broad deference to the exercise of that constitutional power by the national legislature. That argument finds support in a number of decisions of this Court. However, the phrase "war power" cannot be invoked as a talismanic incantation to support any exercise of congressional power which can be brought within its ambit." "[E]ven the war power does not remove constitutional limitations safeguarding essential liberties." *Home Bldg. & Loan Assn. v. Blaisdell,* 290 U.S. 398, 426 (1934). *U.S. v. Robel* 389 U.S. 258, 263–64 (1967)

2. *Military surveillance serves no military purpose.*

If, despite these principles, an implied authority to conduct surveillance can be read into these statutes,[21] such surveillance still does not avoid challenge unless it is necessary to the effective performance of the Army's statutory function.

. . . [G]overnmental action does not automatically become reasonably related to the achievement of a legitimate and substantial governmental purpose by mere assertion in the preamble of an ordinance. When it is shown that state action threatens significantly to impinge upon constitutionally protected freedom it becomes the duty of this Court to determine whether the action bears a reasonable relationship to the achievement of the governmental purpose asserted as its justification. *Bates v. Little Rock* 361 U.S. 516, 525 (1960)

Because of the unusual posture of this case, the formal record is devoid of much evidence which illuminates the contentions of plaintiffs that the program has been overbroad in concept, that it has not been controlled in operation, and that it has provided the military with no assistance of any value to the efficient performance of statutory duties. A consideration of the other information available to the Court demonstrates that the argument of military necessity does not withstand the evidence.

The function of the armed forces in civil disturbance is simply to assist the civilian authorities in suppressing violence. In the absence of a declaration of martial law, the Army performs no civil, governmental functions of its own.

In civil disturbances, the Army acts as an arm of the civilian authorities, but it is not a law enforcement body. It is only an instrument of power whose limited function is to suppress violence. The information the Army actually needs to prepare for civil disturbance is limited to that logistical information necessary to move troops, quarter them, and deploy them. The Army needs no advance political information, no information on personalities, views, opinions, personal data, and the like.

The First Amendment's ban against Congress "abridging" freedom of speech, the right peaceably to assemble and to petition, and the "associational freedom" (*Shelton v. Tucker, supra,* at 490) that goes with those rights create a preserve where the views of the individual are made inviolate. This is the philosophy of Jefferson that "the opinions of men are not the object of civil government, nor under its jurisdiction. . . . [I]t is time enough for the rightful purposes of civil government for its officers to interfere when principles break out into overt acts against peace and good order. . . ." *Schneider v. Smith,* 390 U.S. 17, 25 (1968)

The assessment of the need for troops to suppress civil violence is one to be made by the civilian officials, state and federal, whose constitutional and statutory responsibility it is to decide to employ troops. This Court need not assume the functions of a military commander or the President to recognize the limited nature of the information the military needs to perform its limited responsibilities in this area.

3. *Military surveillance is overbroad in direction and indiscriminate in its operation.*

The various senior officials responsible for Army surveillance have repeatedly expressed the view that the military surveillance has not been necessary or helpful.[22] Their judgments confirm the conclusion ordinary common sense dictates. Whatever value this political and personal information might have to civilian authorities, the political views of peaceful critics, much less personal facts about their private lives, can be of no use to the commander deploying his troops to put down violence, nor to the soldier on the street.

The statements of these officials also confirm plaintiff's allegations that the program has permitted an unnecessarily broad scope of discretion to those who implemented the surveillance program,[23] and that it has been implemented in a totally indiscriminate manner.[24] The broad, ill-defined nature of the program is demonstrated graphically by the documents which have so far come to light. The successive Intelligence Collection Plans of 1968 and 1969, the Intelligence Annexes, and similar documents disclose that the Army agents have been told to conduct surveillance on those who practice violence, those who advocate it, those who hold political views similar to those of persons who are sympathetic to violent tactics, and anyone remotely associated or sympathetic to them.[25] No activity protected by the First Amendment has been immune. Peaceful assemblages, speeches, marches, the filing of lawsuits, and any other kind of public activity connected with politics have been fit subjects for military surveillance. Once an individual has become the subject of surveillance, almost no information about him is irrelevant. The Collection Plans permitted and indeed required the collection of almost all information possible.[26]

Compounding this excessive requirement on the Army has been a corresponding lack of control actually exercised by senior authority.[27] These officials apparently did not know how many computers were involved, what information was being collected by the Army, and indeed who was actually collecting it. It appears that the first glimmer of knowledge of the actual nature of this surveillance by senior civilians in the Department came quite by accident in late 1968. For at least two years afterwards, revelations continued to surprise these officials, despite repeated efforts on their part to learn and to control the actions of their subordinates.[28]

The evidence available illustrates that the program as actually conducted has been as broad as the directives permit, and if anything, even broader, and has sometimes been conducted in violation of the Army's own regulations.[29] Documents segregated for possible use in this action, and made available to counsel,[30] confirm that the surveillance was indiscriminate as regards the persons investigated, the activities observed, the details of the information collected and stored, and the arbitrary classification of individuals and their views. An examination of the products of this surveillance discloses no conceivable usefulness that they might have had for any authorized military responsibility. Indeed, these materials defy all attempts to imagine any governmental purpose they might have served, whether "military necessity" or otherwise.

It is well-settled that activities of government having an inhibiting effect on the First Amendment will be carefully scrutinized. Those activities which are unauthorized by law, unnecessarily broad in their design, which commit too large a degree of discretion to those who are charged with implementing them, or which in actual operation are overbroad, are defective constitutionally if they infringe upon First Amendment rights. Plaintiffs have alleged each of these deficiencies and have substantial evidence to prove their allegations at trial. It is evident, therefore, that they have adequately presented the Court with necessary ingredients of a challenge under the First Amendment.

CONCLUSION

For the reasons above, and for the reasons submitted by respondents, the Court should affirm the decision below and remand the case for trial on the merits.

Respectfully submitted,

SAM J. ERVIN, Jr.,
Attorney for Amici.

FOOTNOTES

[1] Because of the incomplete nature of the record before the Court, this statement is based in part on the investigations of the Constitutional Rights Subcommittee, United States Senate, from January, 1970, to present. The bulk of the Subcommittee's investigations has been printed. See Hearings on Federal Data Banks, Computers, and the Bill of Rights, Subcommittee on Constitutional Rights, Committee on the Judiciary, United States Senate, 92d Congress, 1st session, 1971. Hereinafter cited as "Hearings." Copies of these hearings are submitted separately as an appendix to this brief. Additional information is contained in various classified and unclassified documents which have been segregated for possible discovery proceedings in this litigation.

[2] Although popularly termed "surveillance", the military program has consisted of far more than the passive observation and recording of public events that this term might suggest.

[3] Surveillance of this type by the armed forces has been conducted with varying degrees of intensity ever since World War I.

[4] *Hearings,* p. 384. Statement of Assistant Secretary of Defense Froehlke.

[5] Letter from J. Fred Buzhardt, General Counsel, DOD, to Senator Sam J. Ervin, Jr., Chairman, Constitutional Rights Subcommittee, June 10, 1971. *Hearings,* pp. 1232, 1233, 1235.

[6] See "The Phoenix," Boston, Mass., October 27, 1971, and Dispatch News Service International release no. 218 for a more comprehensive list of organizations. These news stories are based on an Army collection plan dated April 23, 1969. *Hearings,* pp. 1731–34. See also *Hearings,* pp. 184, 264–66 for examples of other individuals and organizations.

[7] For examples of the widespread concern over government surveillance and repression, see the collection of letters, news articles, and editorials in *Hearings,* Part II.

[8] The Army's attitude towards these views is well illustrated in the February 1, 1968, Annex B (Intelligence) to the DA Civil Disturbance Plan, in which those active in civil rights and antiwar movements are listed as "dissident elements" and only the Army is listed as the "friendly force." *Hearings,* p. 1121.

[9] See testimony of Ralph Stein, *Hearings,* pp. 244, 257.

[10] The Army made no distinction in its investigations or in its dossier systems between those who engaged in perfectly legitimate

activity, those who had been convicted of violating criminal laws or even those who were convicted espionage agents. All were lumped together. It routinely used undefined characterizations such as "militant," "radical," "communist," "right-wing" and the like, to describe these people. See testimony of Ralph Stein, *Hearings*, pp. 244, 248.

[11] *Cf.* Testimony of Pete Parra, *Hearings*, p. 355.

[12] On occasion Army surveillance has resulted in loss of employment. *Hearings*, pp. 1451–1457.

[13] The Army also engaged in covert operations. *E.g.*, statement of Assistant Secretary of Defense Froehlke, *Hearings*, p. 422.

[14] See, *e.g.*, testimony of John A. Sullivan, *Hearings*, p. 351 and Oliver A. Peirce, *Hearings*, p. 305.

[15] *Hearings*, p. 601.

[16] See also *Tatum v. Laird*, 444 F.2d 947, 958 (1971), Wilkey, J.

[17] The necessity of limiting the military's involvement in domestic affairs and of keeping it under strict civilian control has been recognized throughout history. For example:

(a) *The Revolution Period:* The king "Kept among us, in times of peace, Standing Armies, without the Consent of our legislatures" and "He has effected to render the Military independent of and superior to the Civil power." *Declaration of Independence;*

(b) *The Constitutional Convention:* "It was further observed that, when a government wishes to deprive its citizens of freedom, and reduce them to slavery, it generally makes use of a standing army for that purpose, and leaves the militia in a situation as contemptible as possible, lest they might oppose its arbitrary designs; that, in this system, we give the general government every provision it could wish for, and even invite it to subvert the liberties of the States and their citizens; since we give it the right to increase and keep up a standing army as numerous as it would wish, and by placing the militia totally unorganized, and undisciplined, and even to disarm them; while the citizens so far from complaining of this neglect, might even esteem it a favor in the general government, as thereby they would be freed from the burden of military duties, and left to their own private occupations or pleasures. Luther Martin, Address to the Maryland legislature, November 29, 1787, in 3 Farrand, *Records of the Federal Convention* 209 (1939 Revised Edition, 1966);

(c) *The Federalist Era:* During the whiskey rebellion "Hamilton had hoped to capture a sufficient number of proper persons for examples, but of the 150 men brought in by the Army few could qualify for this distinction. In obedience to Washington's orders, the Army remained in strict subordination to the civil authorities. Suspects were not haled before a military tribunal and no man was condemned without due process of law. *Nevertheless*, Hamilton sent out scouting parties to round up suspects, who, in some cases, were brought before him for preliminary examination. While he did not succeed in ferreting out many traitors by these methods, his inquisitorial activities later provided his political enemies with a rich vein of propaganda." Miller, *Alexander Hamilton and the Growth of the New Nation*, 409 (1969 ed.);

(d) *The Civil War:* "If this position is sound to the extent claimed, then when war exists, foreign or domestic, and the country is subdivided into military departments for mere convenience, the commander of one of them, can, if he chooses, within his limits, on the plea of necessity, with the approval of the Executive, substitute military force for and to the exclusion of the laws, and punish all persons, as he thinks right and proper, without fixed or certain rules."

"The statement of this proposition shows its importance; for, if true, republican government is a failure, and there is an end of liberty by law. Martial law, established on such a basis, destroys every guaranty of the Constitution, and effectually renders the 'military independent of and superior to the civil power'—the attempt to do which by the King of Great Britain was deemed by our fathers such as offense, that they assigned it to the world as one of the causes which impelled them to declare their independence. Civil Liberty and this martial law cannot endure together; the antagonism is irreconcilable and, in the conflict, one or the other must perish." Davis, J. *Ex Parte Milligan*, 71 U.S. (4 Wall) 2, 124–5, (1866);

(e) *Reconstruction:* Arguing the necessity of the *possee comitatus* act, Senator Merrimon of North Carolina stated:

"Now sir, we know by sad experience that the Army has been used not once, but time and time again, in a way that not a court in this country would sanction. The Army has not only been used in the collection of the internal revenue in a way not authorized by law, but it has been used and prostituted to control elections repeatedly. Statehouses have been seized over and over again, and not a great while in the past. The objection of this section is to prevent a like prostitution of the Army in the future. I maintain that it is right and proper that we should insist upon it. Let us examine it candidly and see that it is right, and if not make it so; . . . I trust sir, that the President will not improperly employ the Army in the future; but I trusted on former occasions that the President would not do so, but we saw that he did do it, not once, but oftentimes, and where a supposed or pretended emergency may arise he may do so again. Nobody can tell. I cannot and I am not willing to risk any President with such power, even if Congress has the right to confer it."

7 *Congressional Record*, Part 5, 4245 45th Cong., 2d sess. (June 7, 1878) (remarks of Senator Merrimon);

(f) *The Korean War:* "The order cannot properly be sustained as an exercise of the President's military power as Commander in Chief of the Armed Forces. The Government attempts to do so by citing a number of cases upholding broad powers in military commanders engaged in day-to-day fighting in a theater of war. Such cases need not concern us here. Even though 'theater of war' be an expanding concept, we cannot with faithfulness to our constitutional system hold that the Commander in Chief of the Armed Forces has the ultimate power as such to take possession of private property in order to keep labor disputes from stopping production. This is a job for the Nation's lawmakers, not for its military authorities." Black, J., *Youngstown Sheet and Tube Co., v. Sawyer*, 343 U.S. 579, 587 (1952).

[18] See, *e.g.*, statement of Defense Dept. General Counsel Buzhardt: "As I have said, Senator, there is no act that we know of that deals with the subject one way or the other, in specific terms." *Hearings*, p. 416.

[19] See "U.S. Army Intelligence Role in Civil Disturbances" (undated). *Hearings*, p. 1291.

[20] 18 USC 592 and 593, prohibiting the use of troops in elections, are other examples of Congress' efforts to protect domestic political life from the inimical influence of military involvement.

[21] There is also the question of whether such authority to conduct political surveillance has been properly delegated to the Army. The "Delimitations Agreement" of 1940, as amended, assigns this responsibility to the Justice Department. *Hearings*, p. 1172. The record is devoid of any Executive Order or other written order by the President expressly transferring to the Department of Defense the authority to conduct domestic intelligence operations of the type involved in this litigation.

[22] " "They [the pictures and reports] were the most worthless damn things I have ever seen in my life. It was a waste of paper. We said "Burn 'em," ' Jordan said. 'Even if we didn't have any concerns about civil liberties, which we do, we would have said it was worthless and to do away with it,' Jordan said." Interview with Robert E. Jordan, General Counsel, Dept. of the Army, in "Army Explains Civil Snooping," Washington, D.C. *Star*, Dec. 6, 1970, *Hearings*, pp. 1728, 1729. See also letters from Jordan to Ervin, Feb. 25, 1970 and Nov. 27, 1970, *Hearings*, pp. 1048, 1049; 1106, 1107.

[23] Since early 1970, the rules and regulations governing Army surveillance have been repeatedly defined and redefined by the Department of the Army and by the Secretary of Defense.

[24] *E.g.*, *Hearings*, p. 421: "As I indicated in my statement this morning, Mr. Chairman, both the collection plans of February 1, and May 2, could be interpreted in such a way that would permit surveillance of almost anybody who is active in a community where there was civil disturbance. Both plans were very broad." Statement of Assistant Secretary of Defense Froehlke.

[25] See the various Intelligence Collection Plans, *Hearings*, pp. 1119, 1123, 1154.

[26] "So comprehensive were the requirements levied in the civil disturbance information collection plan that any category of information related even remotely to people or organizations active in a community in which the potential for a riot or disorder was present, would fall within their scope." Statement of Assistant Secretary Froehlke, *Hearings*, p. 384.

[27] As of early 1971, rules governing military surveillance still depended on the "discretion" of government officials. See *Hearings*, pp. 385, 435, statements of Assistant Secretary Froehlke.

[28] See, *e.g.*, statement of Assistant Secretary of Defense Froehlke, *Hearings*, p. 427; statements of Army General Counsel Jordan, *Hearings*, pp. 454, 462, 464; testimony of Edward Sohier, *Hearings*, p. 227. The degree to which various officials were aware of the surveillance and their success in controlling it is only partially disclosed by the unclassified materials presently available. On January 12, 1972, the Constitutional Rights Subcommittee was informed by the Defense Department that most of the intelligence responsibilities of the individual services had been reorganized under the direct control of the Secretary of Defense. Letter, Buzhardt to Ervin, January 10, 1972. See *Hearings*, p. 2086.

[29] See *e.g.*, *Hearings*, p. 422, statement of Assistant Secretary of Defense Froehlke; Letter, Buzhardt to Ervin, March 26, 1971, *Hearings*, pp. 1220, 1222.

[30] These include the computer printouts and other Army intelligence materials transferred to the Department of Justice for possible use in this litigation. See *Hearings*, p. 1220.

WYOMING ASSISTANT PROFESSOR RECEIVES FELLOWSHIP

Mr. HANSEN. Mr. President, a University of Wyoming assistant professor, Dr. Sami G. Hajjar, will attest to the fact that America still is indeed the land of opportunity for people throughout the world.

Dr. Hajjar is a naturalized citizen of the United States, who came to Wyoming in 1966 from Beirut, Lebanon. He currently is an assistant professor of political science at the University of Wyoming.

It gives me considerable pleasure to announce that he has been awarded a fellowship by the National Endowment for the Humanities for the 1972–73 academic year.

The award will allow him to spend the

next school year at the American University of Beirut, where he will study and research in the area of Islamic studies. He plans to develop a number of course offerings in this field upon his return to Wyoming.

Mr. President, I ask unanimous consent that a brief account of some of Dr. Hajjar's accomplishments be printed in the RECORD.

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

DR. SAMI G. HAJJAR

Sami G. Hajjar, Assistant Professor of Political Science at the University of Wyoming, has been awarded a fellowship for the academic year 1972–73 by the National Endowment for the Humanities. The award was made on the basis of Dr. Hajjar's study and research proposal of the relationship between the principles of Islam and the phenomenon of political development and modernization.

Dr. Hajjar, who will be on sabbatical leave during 1972–73, plans to research in the areas of Islamic and Arabic Studies on the Campus of the American University of Beirut, Lebanon, which has one of the finest programs in these areas of scholarship.

Prof. Hajjar, a naturalized U.S. citizen, came to Wyoming in 1966. Since 1967 he has occupied the position of Director of the International Studies Program. He has been promoted to Associate Professor of Political Science effective July 1972. Dr. Hajjar earned his B.A. and M.A. degrees from the American University of Beirut, and his Ph. D. degree from the University of Missouri, Columbia.

WEST FRONT OF THE CAPITOL

Mr. KENNEDY. Mr. President, once again the West Front is under attack by those who seek to undermine our Nation's Capitol, perhaps the most priceless single monument in our Nation.

For years, leaders in and out of Government have been in the forefront of the fight to preserve the West Front. Organizations like the American Institute of Architects have given us their strong support. Last year, we won strong additional encouragement in the sympathetic report by the outstanding engineering firm of Praeger, Kavanagh, and Waterbury.

For years, we have worked to persuade Congress that the right approach is restoration and not extension—that history ought to count for something in the Nation's capital, that we ought to preserve the plans personally selected by men like George Washington and Thomas Jefferson, and respect the work of renowned pioneers of American architecture like William Thornton, Benjamin Latrobe, Charles Bulfinch, and Frederick Law Olmsted.

Today, the debate has entered a new and much more critical stage. George White, for whom I have immense respect, was with us in the fight in other days. Now, he wears a different hat, and we now hold different views.

It would be nice if every senior Senator and Representative in Washington could have a room in the West Front of the Capitol, with a window and a view of the monument and the mall. A few distinguished leaders have such rooms today. I once had one myself, in my brief career as Senate whip. But surely such considerations of personal status have no place in the great debate over the integrity of the Nation's Capitol.

Instead, our first priority for the Capitol must be a full round of public hearings and debate on the ominous new plans announced last week. I urge the appropriate committees of both the Senate and the House to act now to give this issue a full and open airing, so that the merits of all the administrative, economic, historical, and esthetic aspects of the question may be spread out on the public record.

The Capitol belongs to all Americans. They are entitled to know that a decision so basic to the people has been made only after robust and open discussion, not just by the secret and unexplained decision of a congressional commission.

We have won before against great odds. With the strong support of the Nation's architects and engineers, I think we shall win again. I, for one, do not believe that either Congress or the American people are prepared to sacrifice the historic beauty and integrity of their Capitol for want of imagination and a little office space. That is not the sort of symbolic gift we ought to be planning for the Nation as we approach the 200th anniversary of our independence.

Mr. President, I hope that we can rally the conscience of the Nation to prevent this act of desecration of our Capitol.

I ask unanimous consent that an editorial on the subject entitled "Capitol Crime," published in this morning's New York Times, be printed in the RECORD.

I also ask unanimous consent that a statement released last Friday by the AIA on the action of the congressional commission be printed in the RECORD.

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

[From the New York Times, March 13, 1972]

CAPITOL CRIME

The United States Capitol does not belong to the seven Congressmen of the Commission for the Extension of the Capitol. It belongs to the people of the United States and to history. In spite of public and professional opinion that the controversial extension of the Capitol's West Front is a gross error of art and judgment, these gentlemen seem determined to proceed with this gigantic bungle and boondoggle.

They have, in fact, insured it by booby-trapping the legislation that called for the recent feasibility study that recommended restoration instead of new construction. They built in a proviso that the extension scheme must go ahead if certain criteria could not be met by preservation, and they guaranteed it could not be met by setting a totally unrealistic $15-million maximum cost for restoration. No limits have been set on the extension, however. They are quite willing to let that price go up from the original $36 million to $50 or $60 million today and ever onward. Call it cynicism or sabotage.

Even if the extension scheme were not a contradiction of the historical and esthetic values that this country has been promoting in recent years in landmark legislation and preservation, the proposal is an appallingly bad plan. It is architecturally atrocious, loaded with ill-considered features. It is based on no adequate space utilization studies to correctly determine real present and future needs. It is a third-rate railroading job. With the destruction of the West Terraces designed by Frederick Law Olmsted timed for national celebration of the Olmsted Sesquicentennial, irony is added to irresponsibility.

The decision is reported to have been made by the Commission because its members feel that preservation involves too many unknowns of cost and durability. Of course there are procedural unknowns, but no reason to doubt results. The skill and ingenuity required are becoming an American specialty as the body of landmarks being restored grows daily.

The extension plan offers the Congressmen certainty if that is what they want—the certainty of irreversible damage to an irreplaceable structure and of absurd costs for minimum space gains and maximum loss of architectural integrity, just as the East Front was treated a few years ago.

And there is the certainty of a monumental national display of arrogance and ignorance in the cold permanence of marble. That is not a memorial any Congress should want to leave.

STATEMENT OF THE AMERICAN INSTITUTE OF ARCHITECTS

We deplore the decision of the Commission to destroy the last portion of the original wall of the Capitol. The AIA refuses to accept this decision as irrevocable; we intend to make every effort to prevent the destruction of part of the nation's heritage. The Institute, which has always been in the forefront of the battle to save the East and West Fronts of the Capitol, will again take a leadership role in marshaling the support of all those concerned in this fight against demolition of the West Front.

THE 122D ANNIVERSARY OF BIRTH OF THOMAS G. MASARYK

Mr. PERCY. Mr. President, March 7 marked the 122d anniversary of the birth of Thomas G. Masaryk, who symbolized the unity of his people and their quest for freedom, democracy, and peace.

Masaryk was the essence of the philosopher-statesman and the practical idealist. He was also a moral leader of his generation, not only for Czechoslovakia but for all of Europe. He fought discrimination and social injustice with the same fervor that he fought for his nation's independence.

In 1918 Thomas Masaryk was elected president-liberator of Czechoslovakia and successfully established a strong democratic state. As an "emancipator" of his people, Masaryk is often compared with Abraham Lincoln. Masaryk was also a lecturer at the University of Chicago, which honored him with a magnificent statue on its campus.

Even today the spirit and the memory of Thomas Masaryk inspires the people of Czechoslovakia. Thousands of his countrymen visit his grave every year, and he continues to be the inspiration of his land. A professor of history has said:

After 300 years of Austro-Hungarian suppression, Masaryk was the first and only man to realize what had to be done to make a state here. A towering figure, humane, a philosopher, a cosmopolitan in the best sense. Our youth worships him even though they have no access to Masaryk's writings.

Thomas Masaryk set an example for free men. For him democracy and freedom were the essence of life. Czechoslovakia can be proud to have produced such a man.

BUSING AND QUALITY EDUCATION

Mr. TALMADGE. Mr. President, I recently received a copy of a letter written by the Honorable Jack P. Nix, State superintendent of schools in Georgia, to President Nixon. Accompanying the letter was a resolution adopted by the Georgia State Board of Education. I hope that the President will pay close attention to the letter and the resolution.

The U.S. Senate recently had occasion to consider this issue. Many fine words were spoken, but little was actually done to aid the parents and children of my State, who have labored for so long under this burden. During the debate, the President did not see fit to express himself or to exercise his prerogative of leadership.

The man who wrote the letter and the board which adopted the resolution have a bitter firsthand experience of the yield we are reaping from busing. They have to live with the problem day by day, which is not a burden endured by the courts and bureaucrats who created it. I commend the letter and the resolution, to the serious attention of the Senate. I ask unanimous consent that they be printed in the RECORD.

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

STATE OF GEORGIA,
DEPARTMENT OF EDUCATION,
Atlanta, Ga., February 24, 1972.

Hon. RICHARD M. NIXON,
The President of the United States, The White House, Washington, D.C.

DEAR PRESIDENT NIXON: The problems resulting from the application of the 1964 Civil Rights Act continue to cause a deterioration in the instructional program of the public schools of this Nation. The numerous unrealistic federal court orders, added to unreasonable demands made by officials of the Department of Health, Education and Welfare requiring students to be bussed from their neighborhood for the purpose of bringing about racial balance within an individual school, have resulted in the lack of financial support for public education.

In many instances parents with financial means have removed their children from the public schools and others continue to withdraw their personal and financial support as the busing problem becomes a part of their family life. As State Superintendent of Schools, and on behalf of the State Board of Education, I can assure you that unless you, as President, and the Congress of these United States take immediate action to enhance support for public education in this Nation, our national welfare will be at stake.

The Georgia State Board of Education, in official session on February 17, 1972, adopted the enclosed resolution reiterating the position expressed in a resolution dated September 16, 1971 and transmitted to your office. We are providing copies of this resolution to our Governor, the Secretary of Health, Education and Welfare, Attorney General Mitchell, and members of the Georgia delegation of the United States Congress with the hope that together we can eliminate the unreasonable demands placed on Georgia citizens and be better able to expand the educational opportunities for all our people.

With kindest regards, I am

Sincerely,

JACK P. NIX,
State Superintendent of Schools.

RESOLUTION OF THE GEORGIA STATE BOARD OF EDUCATION

Whereas, the Georgia State Board of Education did, on the 16th day of September, 1971, adopt unanimously a Resolution totally and unequivocally rejecting the concept or idea of transporting or busing school children away from the school nearest his or her residence offering the curriculum meeting that child's needs; and

Whereas, copies of said Resolution were disseminated to appropriate officials of the governments of the State of Georgia and the United States of America; and

Whereas, recent press reports indicate that legislation to prevent the forced busing of school children has been introduced in the Federal Congress; and

Whereas, press reports further have quoted the President of the United States as being opposed to such busing; and

Whereas, this Board recognizes the impossibility of dealing with this problem on a state level due to arbitrary decisions by Federal Court judges,

Therefore, be it resolved:

1. That this Board reaffirms its Resolution of September 16, 1971, and

2. That this Board does hereby call upon the government of the United States of America in behalf of quality public education, the parents of school age children in the State of Georgia, the taxpayers of the State of Georgia who support public education, and the public school children of this State to adopt appropriate legislation without further delay to insure that each child attends the school nearest his or her residence offering the curriculum meeting that child's needs, and

3. That the President of the United States, Richard M. Nixon, is urged to give his public declarations practical, immediate, and adequate effect without political equivocation, and

4. That the Executive Secretary of this Board is directed to provide a copy of this Resolution to the President of the United States, the Attorney General of the United States, the Secretary of the Department of Health, Education and Welfare, Senators Talmadge and Gambrell, the members of the United States House of Representatives representing this State, the Governor of the State of Georgia, the members of the General Assembly of the State of Georgia, and all superintendents of local school systems in the State of Georgia.

Passed and adopted by the Georgia State Board of Education in regular session at Atlanta, Georgia, this the 17th day of February, 1972.

Mr. GAMBRELL. Mr. President, we have heard with increasing frequency in recent days that the real issue faced by this country is not busing, but the provision of quality education for all students. I support quality education for every child, as does the State Board of Education of Georgia, and as do the people of Georgia. The truth of the matter is that in school systems where busing is being forced on school children, the instructional program has been disrupted, and the quality of education provided has been, and remains, seriously threatened.

In a letter to President Nixon dated February 24, 1972, Georgia State Superintendent of Schools Jack Nix stated:

The problems resulting from the application of the 1964 Civil Rights Act continue to cause a deterioration in the instructional program of the public schools of this Nation. The numerous unrealistic federal court orders, added to unreasonable demands made by officials of the Department of Health, Education and Welfare requiring students to be bused from their neighborhood for the purpose of bringing about racial balance within an individual school, have resulted in the lack of financial support for public education.

Superintendent Nix implored the President and Congress to take immediate action to correct the course which public education is taking in this country, or at least in the Southern section of this country. It is time for us to face up to this deplorable situation.

I join my senior colleague from Georgia in calling attention to Superintendent Nix's letter to the President and the resolution adopted by the Georgia Board of Education, dated February 17, 1972.

THE KENNEDY CENTER FOR THE PERFORMING ARTS

Mr. ALLOTT. Mr. President, the arts section of the New York Times of Sunday, February 27, contains an interesting profile of Roger L. Stevens, Chairman of the Kennedy Center for the Performing Arts. The article also touches on the problem the Center seems to have living within its means.

There is some mention in the final paragraphs about a need for future subsidies from Congress. Mr. Stevens is said to "not rule out" asking Congress to bail out the Center. It is this Senator's hope that Mr. Stevens will not find it necessary to ask the American people to pay for his Center.

Mr. President, I ask unanimous consent that the article be printed in the RECORD.

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

CRY THE BELOVED STEVENS

(By Christopher Lydon)

WASHINGTON, D.C.—By all measures, the most powerful performance of the Kennedy Center's first six months has been that of Roger L. Stevens, the deceptively shy, vaguely monkish-looking millionaire who has come to dominate the Center almost to the point of making it a personal vehicle. "Some day," says a Broadway producer, admiringly and only half-kiddingly, "it will be renamed The Roger Stevens Center for the Performing Arts." Younger artists who question his taste and his authoritarianism had begun to call him "the Robert Moses of Culture" in unhappy memory of New York's master highway builder. Like him or not, almost everyone recognizes by now a distinctive Stevens style about the place.

A large part of Stevens' power results from his versatility. A self-made success in real estate, he took complete charge of the Center's difficult and often controversial construction. As the producer of more than 100 Broadway plays through the 1950's and 1960's, he has done all the booking at the Center's three theaters. A man of innumerable roles, he often meets himself coming and going.

Roger Stevens, the Kennedy Center chairman, has arranged, for example, with Roger Stevens, the independent producer, to bring his New York production, "Old Times" by Harold Pinter, to Washington this week. The same Mr. Stevens was able to ease out the Kennedy Center's first artistic director, George London, by naming him executive director of the National Opera Institute,

which Stevens created when he headed President Johnson's Arts Council and of which Stevens happens still to be president.

Besides booking traveling shows into the Kennedy Center, Stevens has occasionally listed himself as producer—of Leonard Bernstein's Mass, for example, because he had commissioned it, and of Odets's "The Country Girl," because the revival was his idea and he had done the casting. For "The Time of Your Life," which played the Eisenhower Theater for three weeks in January, he did not credit himself, though in fact he had served a producer's function by posting a $35,000-a-week guarantee for the Plumstead Playhouse venture.

Even if theater professionals did not know Stevens was shaping every detail of the Kennedy Center program, they could guess it. There are details, like the prominent consulting assignments given to Oliver Smith, Stevens's long-time stage designer, adviser and occasional collaborator in New York productions. But there are larger and more important patterns, like Stevens's preference for "classics" and for big-name stars, and the upper-middlebrow tone with which he stretched but seldom escaped the boundaries of commercial theater in New York. Two of the Kennedy Center's big opening productions, the Mass and "Candide," were the work of Leonard Bernstein, the composer with whom Stevens struck it rich in "West Side Story." And the Center's current musical is "Lost in the Stars," an adaptation of "Cry the Beloved Country," which Mr. Stevens guided to Broadway some 20 years ago.

It is widely—and for the most part ungrudgingly—observed that the Kennedy Center, a $70-million joint venture of private and government effort, would never have been built without Stevens's tireless pushing. Gradually, and with somewhat more misgiving, it is recognized that production, too, is a one-man show—that Roger Stevens in one form or another stands behind every policy, every triumph and every embarrassment.

"I respect Roger Stevens as a theater man," says Joseph Rapp, founder of the New York Shakespeare Festival and a strong promoter of the idea of a government-supported "national theater." "He's a serious theater person. I have grave doubts that anyone can do better at selecting plays and booking them into the theater. But if you're going to create theater there, you're going to need other people."

Steven's defense of his program—as it is of the building, which he is happy to have finished in the face of innumerable difficulties—is a pragmatic one: at a time when half the theaters in New York are dark and attractive product is scarce, he is keeping three theaters busy and audiences coming in droves. Yet as some of the opening euphoria wears off, questions hinting at an identity crisis keep coming up among the staff as well as among critical outsiders.

Is the Kennedy Center going to be a home of the arts or just a house? Can it be satisfied without initiating a single new play this season, settling instead for touring shows like the Broadway-bound musical "Sugar," and revivals like "Captain Brassbound's Conversion" with Ingrid Bergman? Will it expand its audience beyond the rich, white and middle-aged who predominate night after night?

And, at the root, should it keep trying to break even, as Stevens still aspires to make it do? Or must it acknowledge that any truly national theater (if that is what the Kennedy Center wants to be) needs and deserves continuing outside support? "It's hard to argue with success if he's filling the house with nice stuff," Papp observed the other day. "They can make this case: why create a problem where none exists—that is, a situation where you *need* a subsidy. But the danger of institutions like that is they do the old stuff over and over again until they become moribund.

"Where are the new plays?" Papp persists. "And where are the American authors who are writing today? Being located in Washington, the Kennedy Center should reflect the serious work that's going on in this country. It should be provocative, challenging, political, strong in social content. There should be a Vietnam play there, and a black play. The way a theater grows is by producing its own stuff."

"Well, I mean, where *are* the new plays?" Stevens inquires in response. He has seen Mr. Papp's new season, with its plays on Vietnam and black militancy, but prefers not to discuss it specifically. "I read three or four plays a week, and they've all come to me from substantial people, but I just don't see any new plays that are worth doing. It's one thing to try out a play in a small theater where it doesn't cost you an arm and a leg, but not in a theater where it's going to cost you $150,000. We're not in a position to amortize the cost of a play in a week."

Stevens's critics see that high level of cost—a lavish production standard and a rich stagehands' contract that was only rewritten under public pressure last month—as a sad inhibition on the Kennedy Center. But Stevens seems to consider it as inevitable as his own exclusive control over the selection of shows. "I'm supposed to be in charge of the theater," he says. "I put 125 plays on Broadway and I didn't go around asking people's opinions before I did them. I take the responsibility for that. You can't have a committee sit around and choose the plays."

Producer Jerry Schlossberg, whose new mystery, "The Others," with Julie Harris and Richard Kiley, would have been the first new play to appear at the Kennedy Center, found that the Washington opening he had hoped for would have been substantially more expensive than the Philadelphia tryout he settled for. "A play that could break even in New York with a weekly gross around $32,000 might need $41,000 to break even at the Kennedy Center."

Much more important, Schlossberg says, the Eisenhower Theater lacks the beam or ceiling lights that can be cast down over the front of the stage and that are essential to theatrical effects his and many other modern plays require. "They haven't done anything new at the Kennedy Center," Schlossberg says, "and the arrangements at the Eisenhower Theater almost preclude it"—at least under the old stagehands' contract that had most of the local production staff on overtime rates from midweek on.

It is an "absolute lie" that lighting problems forced Schlossberg out, Stevens rejoins. He walked away from a commitment to the Kennedy Center because he got a guarantee in Philadelphia and we didn't have any Theater Guild subscriptions left. How could he say you can't light a play in there? We've had five successful plays."

If there is a distinctive Stevens smoothness about many of the Kennedy Center operations, there is an equally characteristic acrimony when things go wrong. Stevens claims he was forced to absorb a substantial loss, about $30,000, on the opening two weeks of the American Ballet Theater last fall. Sherwin M. Goldman, the ballet company's president, who suspects that Stevens is covering up embarassing losses on "Candide" and the two enormously expensive performances of the opera "Ariodante," has charged "hokum" and insists that the Kennedy Center made money on his ballet. Stevens, outraged, says bluntly, "American Ballet Theater won't come back as long as Sherwin Goldman is president." There evidently has been no effort to let auditors from either side resolve the disputed profit and loss figures.

Stevens gets the last word in these little squabbles; but he also controls—or is stuck with—financial and political decisions that must shape the Kennedy Center's future. Persuading Congress to grant him $1.5-million a year to maintain the memorial functions of the building and reopen it to tourists is Stevens' most immediate problem.

But the question of production subsidies—seemingly unavoidable after unexpectedly large opening losses—would seem to be closer to the heart of the matter. The $1-million production fund that Stevens raised for the start of the season is "pretty well decimated," he says. The deficit on Bernstein's Mass alone is about $400,000—much more than the Kennedy Center is likely to recover from its 40-cents-a-record share of royalties of the cast album. Anticipated profits from commercial shows like "Sugar" were supposed to have replenished the artistic production fund, but they have largely vanished into the Center's huge overhead. And the recently announced plan to take Center productions out of town—starting with New York bookings this spring of "The Country Girl," "Lost in the Stars," and the Mass—are not based on any clear prospect of profit.

For Joseph Papp, asking for subsidy and getting it is important in itself—a test of whether the theater will free itself of the primary need to fill its seats with people who can afford $10 apiece for an evening's entertainment. For others the critical need for subsidy would be welcome if it forced questions of purpose that have never been openly debated at the Kennedy Center. For Stevens, who seems to sense the dilemma of purpose, the question of where the Center must look for help is another of the issues he keeps largely to himself.

The original hope was that the theaters in the Center would pay for themselves. The next best thing would be private sponsorship by individuals and corporations. Stevens does not rule out the last resort to Congress but, in fact, his concrete plan does not extend beyond finishing the Center's construction and paying off his building bills.

"Then," he promises, "We will see where we're going."

THE EMERGENCY-CREATING LABOR DISPUTES—A CHALLENGE TO CONGRESS

Mr. HANSEN. Mr. President, the executive branch of our Government more than 2 years ago proposed legislation that would bring to a halt crippling strikes in the transportation industry when all traditional methods of ending the disputes have failed.

If that legislation had been enacted, our Nation would not have had to sustain the rail strike last summer or the even more staggering recent west coast dock strike, both of which put great economic penalty upon Americans throughout the Nation. The latter cost our country more than $2 billion, and I do not believe we can accurately assess at this time how many more millions or even billions may be lost in the long run from damaged overseas markets. The American farmer was damaged significantly by the dock strike, and it is estimated that millions of dollars were lost to Wyoming's farmers and small businessmen, resulting in investment and job cutbacks, because of the strike. We still have no legislation on the books to deal properly with crippling strikes of this nature.

The distinguished Senator from Oregon has improved upon the administration's proposal and has introduced new legislation to prevent crippling strikes. I am a cosponsor of the bill. I hope the Senate will recognize the urgency for such law and will act favorably and expeditiously on the proposal.

The Secretary of Labor wrote to me on February 29 on this matter and enclosed a review of the challenge before the Congress in this area. I ask unanimous consent that his letter and the review be printed in the RECORD.

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

U.S. DEPARTMENT OF LABOR,
Washington, D.C., February 29, 1972

Hon. CLIFFORD P. HANSEN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HANSEN: Men are again working on the West Coast docks. But the memory of the longest dock strike in history lingers. So does the memory of the crisis-inspired special legislation Congress enacted.

Each such experience serves to convince just about everyone involved that there must be a better way. That way, we believe, is the enactment of permanent labor legislation to avoid these emergencies.

Attached is a review of the challenge this circumstance presents the Congress as I see it. I hope it will enhance understanding of the considerations involved.

Sincerely,

JIM HODGSON,
Secretary of Labor.

EMERGENCY-CREATING LABOR DISPUTES—A CHALLENGE TO CONGRESS

Labor disputes in the transportation industry are bringing crisis after crisis to our nation. And they wind up on Congress' doorstep. Four times in less than two years Congress has had to enact special legislation to restore the flow of commerce.

Congress is no place to settle individual labor disputes and no one knows this more than members of the Senate and House. President Nixon has had his Crippling Strikes Prevention Act before Congress for two years but it is still not out of Congress.

Why then has this legislation not moved in Congress? The question deserves examination. The explanation starts with a recognition that in the sphere of labor-management relations Congress realizes that emotions run high and parties have strong views.

So we must examine the view of both organized labor and management on this bill. Within each group views vary widely but a few point are clear.

Some labor people attack the administration's proposal as an anti-labor bill—one that somehow discriminates against organized labor.

In some parts of the management sector the bill has been called a threat to private enterprise and it is opposed by some businessmen.

How about these claims? Is there anything to them? Briefly, the answer is a resounding "NO"! The bill isn't anti-anybody or a threat to anybody. The bill has one purpose only—to protect the public welfare.

Why then do some continue to protest? The straight-forward answer is this. The proposed act makes changes in collective bargaining as it is now practiced in the transportation industry—only limited changes, but nonetheless changes that do place some ultimate limitation on the free actions of both labor and management. The bill does not involve compulsory arbitration but it does involve some limited compulsion. *Any* law that is designed to protect the public welfare must necessarily place some limitations on someone. Importantly, however, the limitations in this act are not "anti" anyone. They are simply "pro" public.

Let us see what the bill does.

In one industry only—transportation—it gives the President powers to avoid a widespread crisis caused by a labor dispute. It recognizes that as of now our labor laws contain a paradox; they protect the right of a private group to create a widespread public emergency. This right was hardly what was envisioned by the framers of those laws.

Since those laws were passed decades ago, several things have happened. First, the scope of bargaining has broadened. A single labor contract now often covers the entire nation in an essential industry. Second, bargainers have lost their longtime fear of ad hoc Congressional intervention, in fact their actions now often seem to invite it. Third, our economy has become an intermeshed web of commerce wholly dependent on an expeditious and orderly distribution of goods and services. Finally, the parties have learned through experience to minimize the effect of their strikes on themselves.

So today we have a whole new ballgame. The result is that strikes that once hurt few except the participating parties now cause widespread public damage. And the public is fed up with it.

Either a change of our collective bargaining system must be made or the public will demand that collective bargaining itself must go.

We can't let that happen. Collective bargaining is a great institution. It should not be tossed on the ash heap; it should be preserved and strengthened. This is exactly what the President's new legislation proposes to do.

The preservation of bargaining is clearly in the interest of both labor and management. If this is so, again we must ask why are there objections to the legislation?

First, because it changes the status quo. Labor and management now know the present system, they have learned to live with it, to manipulate it and to protect themselves at least partially from its failures. The unhappy result is that the public now suffers from the failures more than the parties.

Second, unions have a special concern. They fought for decades for the right to strike. Now they see this legislation as a threat to limit that right. But is their view realistic? Can we really tell the man who pays his railroad union dues today that he has an unlimited right to strike? Of course not. The "right" is only on paper. Comes a nationwide rail strike and Congress stays up half the night to pass a law that sends the striker back to work. Clearly one thing is worse than a limited right. That is an illusory right. The time has come to deal squarely with this situation.

Third, management also has reservations about the law. The essence of management is control. Clearly management loses at least some control of its enterprise when a labor contract that it has not voluntarily agreed to can be forced on it by a third party. But isn't that what happens now when Congress steps in with ad hoc legislation? Assuredly it is. So here too we find concern about a "right" that in actuality no longer exists.

Today the Congress should not be asking *whether* a change is needed, but rather *what* change should be made. What is the *best* change? What is a *fair* change?

Whatever the detailed form of ultimate provisions, we believe legislation must contain three basic ingredients. First, it should provide the President with effective powers to prevent a widespread emergency. Second, it should encourage collective bargaining rather than providing a substitute for it. Finally, it should remove the obsolete disputes procedures of the outmoded Railway Labor Act.

The refinements of this legislation contained in the Packwood Bill in the Senate are constructive. This is fair legislation; there is not a punitive or discriminatory feature in it. It now deserves conclusive hearings and Congressional action.

There is one thing we must avoid—inaction. By now Congress knows a law is needed. The public knows it and it is demanding it. By and large the only opposition comes from those protective of narrow interests and who can produce no better answer than the Crippling Strikes Prevention Act. The time to move is now. And only Congress can do it.

LIST OF IMPOUNDED FUNDS

Mr. ERVIN. Mr. President, almost a year ago the Judiciary Subcommittee on Separation of Powers, of which I am privileged to serve as chairman, conducted hearings on Executive impoundment of appropriated funds. During the subcommittee's study of this widespread practice, the Office of Management and Budget revealed that more than $12.7 billion in funds lawfully appropriated by the Congress were being withheld from expenditure by the Nixon administration.

Two weeks ago, OMB released a new list of funds which are being impounded or held in reserve for one reason or another. According to this list, approximately $1.7 billion has been placed in reserve under a heading that most appropriately should be entitled "impounded." OMB reports that these funds include those which—

> Could or might be used (i.e., obligated) during the apportionment period, but which have not been apportioned because of the Executive's responsibility to (1) help keep total Government spending within a congressionally-imposed ceiling, (2) help meet a statutory limitation on the outstanding public debt, (3) develop a governmentwide financial plan for the current year that synchronizes program-by-program with the budget being recommended by the President for the following year, or (4) otherwise carry out broad economic and program policy objectives.

It seems to me, based on the information and opinions adduced at the subcommittee's hearings last year, that the reasons listed by OMB for impounding this $1.7 billion flies in the face of the constitutional duty of the Congress to set the priorities of our Government through the appropriations process. In other words, OMB says that the Executive's responsibility is to impound appropriated funds to "carry out broad economic and program policy objectives" apparently without regard to the decisions made by the Congress when it appropriated this money in the first place.

A total of $1.7 billion impounded seems small when compared to the $12.7 billion reported a year ago. However, OMB also has released a list of funds which it says have been placed in budgetary reserve "for routine financial administration." This "routine" list totals more than $10.5 billion. When added to the $1.7 billion that OMB admits it has impounded, the aggregate of funds being withheld for one reason or another amounts to $12.3 billion, or nearly the amount reported to have been impounded at this point last year.

It appears to me, as it has appeared to other observers of the incumbent administration, that the "broad economic and program policy objectives" of OMB may well include the release of large sums of these impounded funds during the next few months. The influx of several billion dollars would provide a long-overdue stimulus to our stagnant economy, and

I suppose that the occurrence of the resulting boomlet just before the presidential election this fall would be purely coincidental.

One of the persistent problems involved with the question of impoundment of funds has been the reluctance of the executive branch to reveal promptly just how much is being withheld. On this score, I must give credit to the present administration for reporting this information to the Congress—even if it does so only once a year, which is not often enough. Last November the Senate adopted an amendment offered by the distinguished Senator from Minnesota (Mr. HUMPHREY) to the Revenue Act of 1971 which would have provided that the President promptly report the impoundment of funds to the Congress. Unfortunately, the conference committee dropped the Humphrey amendment.

Also, I introduced a bill (S. 2581), which would provide for such information and also establish a procedure whereby either Congress would improve the impoundment or the President would cease it after 60 days. To my mind, Congress should act swiftly and firmly in this area in order to reestablish its constitutional role in the financial operations of the Government.

Mr. President, I ask unanimous consent that the list entitled "Budgetary Reserves and 'Impoundment'" prepared by the Office of Management and Budget, be printed in the RECORD.

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

BUDGETARY RESERVES AND "IMPOUNDMENTS"

Under authority delegated by the President, the Office of Management and Budget operates a system of apportioning the funds provided by the Congress. The apportionments generally are for the current fiscal year and limit the amounts the agencies may obligate during specified periods.

There are occasions when the amounts of available funds are not fully apportioned. That is, some amounts are either withheld from apportionment, or their use is temporarily deferred.

The reasons for withholding or deferring the apportionment of available funds usually are concerned with financial administration. They have to do with the effective and prudent use of the financial resources made available by the Congress. Thus, specific apportionments sometimes await (1) development by the affected agencies of approved plans and specifications, (2) completion of studies for the effective use of the funds, including necessary coordination with the other Federal and non-Federal parties that might be involved, (3) establishment of a necessary organization and designation of accountable officers to manage the programs, (4) the arrival of certain contingencies under which the funds must by statute be made available (e.g., certain direct Federal credit aids when private sector loans are not available).

Under these and other related conditions the funds not apportioned are said to be held or placed "in reserve." This practice is one of long standing and has been exercised by both Republican and Democrat Administrations as a customary part of financial management. Amounts are frequently released from reserve—and put to use—during each fiscal year as plans, designs, specifications, studies, project approvals, and so on are completed. Thus, the total amount held in reserve usually reaches a low point at the end of the fiscal year.

At the end of fiscal years 1959 through 1961, the funds held in reserve ranged from 7.5% to 8.7% of total unified budget outlays. At the end of fiscal 1967, the comparable percentage was 6.7%, and a range in the neighborhood of 6% has been normal in recent years. Currently, the fiscal year 1972 percentage is 5.1% and the total amount held in reserve is expected to decline during the remainder of the fiscal year. It is apparent that most reserves are, in fact, temporary deferrals and their need or wisdom is not usually questioned. In other cases, however, the affected reserves have been criticized as "impoundments" of funds.

Thus, the term "impoundment" has generally been applied to funds which could or might be used (i.e., obligated) during the apportionment time period, but which have not been apportioned because of the Executive's responsibility to (1) help keep total Government spending within a congressionally-imposed ceiling, (2) help meet a statutory limitation on the outstanding public debt, (3) develop a governmentwide financial plan for the current year that synchronizes program-by-program with the budget being recommended by the President for the following year, or (4) otherwise carry out broad economic and program policy objectives.

The items in the list below have been reserved for one or more of the reasons set forth in the preceding paragraph. On the basis of past experience changes in this listing may occur—to take account of changing conditions—before the fiscal year 1972 ends. The list itself is consistent with the estimates in the 1973 budget transmitted on January 24, 1972.

Description:	*Million*
Reserves established pursuant to President's August 15, 1971 directive to curtail previously planned Federal employment levels	[a] $280
Additional reserves established so that the funds will be available for later use:	
Department of Agriculture:	
Farmers Home Administration—sewer and water grants	[b] 58
Rural Electrification Administration—Loans	[c] 107
Department of Commerce:	
Regional Action Planning Commissions	*
Department of Housing and Urban Development:	
Rehabilitation loans	[c] $53
Grants for new community development assistance	[c] 5
Basic water and sewer grants	[b] 500
Department of Transportation:	
Federal-aid highways	623
Rights-of-way for highways	50
Rights-of-way for highways	[d] [300]
Atomic Energy Commission	18
NERVA-Nuclear Rocket	(17)
Plowshare	(1)
National Aeronautics and Space Administration:	
NERVA-Nuclear Rocket	24
National Science Foundation:	
Educational and institutional support	[c] 21
Graduate traineeships	[e] 10
Total	1,748

* Less than $500,000.

[a] Consists primarily of funds that had been appropriated prior to the President's directive. Excludes the comparable savings in trust fund and public enterprise accounts and the corresponding savings reflected in appropriation actions of the Congress after August 15, 1971. Includes accounts transferred to economic stabilization activities pursuant to the First Supplemental Appropriations Act, 1972. The accounts being reserved are currently under review, and in many cases they are likely to be released and apportioned to cover part of the cost of the Federal pay raise that took effect early in January 1972.

[b] This amount is planned to be used for continuation of the water and sewer grant program in fiscal years 1973 and 1974.

[c] Apportionment of entire amount is planned on July 1, 1972, consistent with program and financial plan in the 1973 budget.

[d] This item is listed here only because of public and congressional interest. It is not counted in the total below because its planned use is consistent with congressional intent. The Congress provided a total of $3.1 billion of contract authority for the five-year period 1971–1975. Executive Branch apportionments will result in $1.0 billion of this amount having been used by June 30, 1972, another $1.0 billion (including this $300 million) will be apportioned July 1, 1972, for fiscal 1973, leaving $1.1 billion, or $550 million per year for the fiscal years 1974 and 1975. The $300 million shown is the difference between the $600 million apportioned for 1972 and the $900 million upper limit for which administrative expenses may be incurred under the 1972 Appropriation Act for the Department of Transportation:

"Sec. 308. None of the funds provided in this Act shall be available for administrative expenses in connection with commitments for grants for Urban Mass Transportation aggregating more than $900,000,000 in fiscal year 1972."

[e] Apportionment awaiting NSF review of how these funds can be used effectively without worsening the current unemployment among scientists and engineers.

BUDGETARY RESERVES FOR ROUTINE FINANCIAL ADMINISTRATION

(In thousands of dollars)

Funds appropriated to the President:	
International development assistance:	
Prototype desalting plant	20,000
Apportionment awaits development by the agency of approved plans and specifications.	
Philippine education program	1,282
Apportionment awaits development by the agency of approved plans.	
Executive Office of the President:	
Council on Environmental Quality	140
Apportionment awaits development of proposals for contract studies of environmental problems.	
National Security Council	318
Apportionment awaits development by the agency of approved plans.	
Department of Agriculture:	
Farmers Home Administration:	
Farm labor housing grants	2,963
Amount shown here is in excess of current estimates of 1972 needs. If conditions change and the funds are needed, apportionments will be made.	
Mutual and self-help housing grants	729
Amount shown here is in excess of current estimates of 1972 needs. If conditions change and the funds are needed, apportionments will be made.	
Animal and Plant Health Service	3,500
This amount is in excess of current estimate of 1972 needs. The funds will be apportioned, if needed, for animal and pest control.	
Agricultural Research Service:	
Construction	70

Residual amount appropriated, but not required for planning. Apportionment awaits additional appropriation for construction.

Special foreign currency program ----------

Amount shown here is in excess of current estimates of 1972 needs. If conditions change and the funds are needed, apportionments will be made.

Cooperative State Research Service:

Payments and expenses---------- 4,600

As provided by the 1972 appropriation act, funds are to be held in reserve pending determination of "qualified and necessary projects."

Extension Service:

Payments and expenses---------- 2,000

Funds are available for use by Land Grant Colleges of 1890 and Tuskegee Institute as soon as project guidelines are developed and necessary personnel available.

Consumer and Marketing Service:

Consumer protective, marketing, and regulatory programs---- 1,011

Amount shown here is in excess of current estimates of 1972 needs. If conditions change and the funds are needed, apportionments will be made.

Perishable Commodities Act Fund---------- 14

Amount shown here is in excess of current estimates of 1972 needs. If conditions change and the funds are needed, apportionments will be made.

Food and Nutrition Service:

Food stamp program---------- 198,516

Funds appropriated by Congress in excess of estimated need under food stamp regulations announced earlier. These funds will be apportioned if and as needed to meet the cost of revisions in the regulations announced January 15, 1972.

Foreign Agricultural Service:

Salaries and expenses, special foreign currency program------ 3,087

Amount shown here is in excess of current estimates of 1972 needs. If conditions change and the funds are needed, apportionments will be made.

Forest Service:

Expenses, brush disposal-------- 13,170

Amount shown here is in excess of current estimates of 1972 needs. If conditions change and the funds are needed, apportionments will be made.

Restoration of forest lands and improvements---------- 6

Amount shown here is in excess of current estimates of 1972 needs. If conditions change and the funds are needed, apportionments will be made.

Forest fire prevention---------- 115

Amount shown here is in excess of current estimates of 1972 needs. If conditions change and the funds are needed, apportionments will be made.

Forest protection and utilization:

Cooperative range improvement-- 1,910

Amount shown here is in excess of current estimates of 1972 needs. If conditions change and the funds are needed, apportionments will be made.

Forest roads and trails---------- 401,869

Amount shown here is in excess of current estimates of 1972 needs. If conditions change and the funds are needed, apportionments will be made.

Department of Commerce:

Bureau of the Census:

19th Decennial Census---------- 11,028

These funds are to be used for printing costs and will be apportioned when needed for this purpose.

Promotion of industry and commerce:

Inter-American Cultural and Trade Center---------- 5,446

Funds will be released when plans for participation in U.S. Bicentennial are completed and approved.

Trade adjustment assistance---- 50,000

Amount shown here is in excess of current estimates of 1972 needs. If conditions change and the funds are needed, apportionments will be made.

National Oceanic and Atmospheric Administration:

Promote and develop fishery products and research pertaining to American fisheries ---------- 257

Amount shown here is in excess of current estimates of 1972. If conditions change and the funds are needed, apportionments will be made.

Research, development, and facilities ---------- 564

These funds are for disaster relief to fisheries. Apportionment awaits arrival of contingencies under which the funds must, by statute, be made available.

Research, development, and facilities:

Special foreign currency program- 411

Apportionment awaits development of research contracts with foreign organizations.

National Bureau of Standards:

Plant and facilities---------- 1,495

Funds are for a new laboratory now in the planning stage. Apportionment awaits development of approved plans and specifications.

Maritime Administration:

Ship construction---------- 14,804

Funds are for engineering changes and contract cancellation contingencies.

Department of Defense—Military:

Shipbuilding and conversion---- 1,388,946

For use in subsequent years; these projects are fully funded when appropriated.

Other procurement programs--- 46,020

For use in subsequent years; these projects are fully funded when appropriated.

Research, development, test, and evaluation, Air Force-------- 25,000

This balance of unobligated 1971 appropriations was set aside by Appropriations Committees to meet potential 1972 requirements. Will be released and apportioned if and as needed.

Military construction and family housing ---------- 839,107

Apportionment awaits development by the agency of approved plans and specifications.

Special foreign currency program ---------- 5,506

Apportionment awaits development by the agency of approved plans and specifications.

Civil defense programs--------- 1,080

Amount is in excess of currently estimated needs. It will be used, as needed, in subsequent fiscal years.

Department of Defense—Civil:

Wildlife conservation---------- 529

Includes estimated receipts not needed for current year program. Will be used in subsequent years.

Corps of Engineers:

Construction, General:

Lafayette Lake, Ind---------- 183

Funds are being held in reserve because of local opposition to initiation of construction of the project.

Lukfata Lake, Okla---------- 450

Funds are being held in reserve because the State of Oklahoma is considering designating one of the streams to be inundated as a wild and scenic stream.

New York Harbor collection and removal of drift---------- 80

Funds are being held in reserve because, although the project has been authorized by the Congress for initiation and partial accomplishment, initiation of construction must await approval of the Secretary of the Army and the President. The Secretary of the Army has neither approved the project nor sent the project report to the President.

Department of Health, Education, and Welfare:

Food and Drug Administration:

Building and facilities--------- 13,545

Apportionment awaits development by the agency of approved plans and specifications. Construction obligations are to be incurred in subsequent years.

Health Services and Mental Health Administration:

Medical facilities construction-- 4,928

Apportionment awaits development by the agency of approved plans and specifications. Construction obligations are to be incurred in subsequent years.

Building and facilities--------- 2,158

Apportionment awaits development by the agency of approved plans and specifications. Construction obligations are to be incurred in subsequent years.

Indian health facilities--------- 1,312

Apportionment awaits development by the agency of approved plans and specifications. Construction obligations are to be incurred in subsequent years.

National Institutes of Health:

Buildings and facilities--------- 5,702

Apportionment awaits development by the agency of approved plans and specifications. Construction obligations are to be incurred in subsequent years.

Gallaudet College---------- 516

Congress appropriated $616 thousand to Gallaudet College for a national continuing education program for the deaf. Funds are being withheld pending the development of a plan for the effective use of the funds, in-

BUDGETARY RESERVES FOR ROUTINE FINANCIAL ADMINISTRATION—Continued

(In thousands of dollars)

cluding any necessary coordination with the other Federal and non-Federal parties that might be involved.

Department of Housing and Urban Development:

Model cities programs 105,000

The 1972 appropriation is available for use in 1972 and 1973; the amount reserved is being allocated among cities to cover obligations to be made early in 1973. Thus, each city will have in advance a target figure against which to plan.

Interstate land sales, special fund 1,468

Amount shown here is in excess of current estimates of 1972 needs. Fee collections are used to cover part of the costs of operating the interstate land sales registration program. Because of the unpredictability of fee collections, there is a substantial lag between collection and use. Thus 1971 fee collections are planned for use in 1973, and are carried in reserve in 1972.

Department of the Interior:

Bureau of Land Management:

Public lands development, roads and trails 16,694

Reserve reflects amounts of available contract authority above the obligation program that was financed by the appropriation Congress enacted to liquidate the obligations.

Bureau of Indian Affairs:

Road construction 53,941

Reserve reflects amounts of available contract authority above the obligation program that was financed by the appropriation Congress enacted to liquidate the obligations.

Bureau of Outdoor Recreation:

Land and water conservation fund 30,000

Consists of 1972 annual contract authority which the 1973 budget shows as not being obligated. This contract authority, which was made available annually through fiscal year 1989 by Public Law 91-308, approved July 7, 1970, is not being used because the Federal agencies purchasing park lands have found annual contract authority cumbersome to administer. Instead, they prefer ordinary appropriations to finance such land purchases and the budget proposes appropriation of the full $300,000,000 annual authorization for the fund, of which about $98,000,000 is for Federal land purchases in 1973.

Bureau of Sport Fisheries and Wildlife:

Construction 9,075

Appropriated funds for the District of Columbia Aquarium withheld because authorized facility cannot be constructed within the funding limits established by the authorization.

Bureau of Mines:

Drainage of anthracite mines ... 3,623

Funds are spent on a matching basis with Pennsylvania as that State and the Department of the Interior develop projects for this purpose. Apportionment awaits development of approved plans and specifications.

National Park Service:

Parkway and road construction .. 79,051

Reserve reflects amounts of available contract authority above the obligation program that was financed by the appropriation Congress enacted to liquidate the obligations.

Bureau of Reclamation:

Construction and rehabilitation .. 1,055

Funds are being held in reserve pending completion and review of the economic restudy to determine the most effective use of funds for the Second Bacon Siphon and Tunnel Unit, Washington

Department of State:

Educational exchange fund (earmarked proceeds of payments by Finland on World War I debt) .. 22

Apportionment awaits development by the agency of specific plans for the exchange of students.

Department of Transportation:

Coast Guard:

Acquisition, construction, and improvements 3,380

Funds are for equipment or improvements and will not be needed until construction on seven projects is in an advanced stage. They will be released when needed.

Retired pay 571

Appropriation is in excess of needs due to a lag in voluntary retirements.

Federal Aviation Administration:

Facilities and equipment 58,958

Facilities and equipment (airport and airway trust fund) .. 157,000

Operations (airport and airway trust fund) 247,269

Research and development (airport and airway trust fund) .. 11,409

Operation and maintenance, National Capital airports 5,279

Safety regulation 40,152

Research and development 353

Funds for these accounts have not been apportioned for the fourth quarter of 1972. Apportionment is awaiting agency development of a financial plan for the remainder of the year.

Grants-in-aid for airports (airport and airway trust fund) ... 56,459

Construction, National Capital airports 900

U.S. International Aeronautical Exposition 218

Civil supersonic aircraft development termination 4,506

Apportionment of the above FAA accounts awaits development of approved plans and specifications.

Federal Highway Administration:

Federal-aid highways:

(1) Contract authority intended for use in 1973 5,700,000

(2) Remaining balance from prior reductions to meet outlay ceiling and abate inflation ... 267,830

Territorial Highways 5,000

New program established by the 1970 Highway Act, effective December 30, 1970. No appropriation was provided until August 1971, although $4.5M of contract authority was authorized for each of 1971 and 1972. Territories were not prepared to handle program and have just begun to organize agencies and prepare studies for use of the funds. Total obligations through December 31, 1971 were about. $93,000.

Darien Gap Highway 100

Apportionment awaits development of approved plans and specifications. Reserve will be released as soon as the agency has organized field offices requiring these funds.

Urban Mass Transportation Administration:

Urban mass transportation* 300,000

The Congress provided a total of $3.1B of contract authority for the five-year period 1971–1975. Executive Branch apportionments will result in $1.0B of this amount having been used by June 30, 1972, another $1.0B (including this $300M) will be apportioned July 1, 1972, for fiscal 1973, leaving $1.1B, or $550M per year for the fiscal years 1974 and 1975. By appropriation action in fiscal years 1971 and 1972, the Congress effectively limited the amount of the contract authority that could be used each fiscal year. Thus, the $300M shown is the difference between the $600M apportioned for 1972 and the $900M *upper limit* for which administrative expenses may be incurred under the 1972 Appropriation Act for the Department of Transportation: "Sec. 308. None of the funds provided in this Act shall be available for administrative expenses in connection with commitments for grants for Urban Mass Transportation aggregating *more than* $900,000,000 in fiscal year 1972." Italic supplied.)

Treasury Department:

Construction, Federal Law Enforcement Training Center .. 22,239

Apportionment awaits development by the agency of approved plans and specifications.

Atomic Energy Commission:

Plant and capital equipment:

Funds held in reserve awaiting AEC's development of firm plans or specifications for two projects in the nuclear materials and weapons programs .. 9,600

Funds held in reserve awaiting AEC's completion of feasiblity studies or the results of research and development efforts for the national radioactive waste repository and two other projects 3,133

Funds held in reserve for cost overruns and other contingencies 5,000

Operating expenses:

Funds held in reserve for the Liquid Metal Fast Breeder Reactor (LMFBR) demonstration plant awaiting the completion of detailed negotiations now underway involving AEC and the Commonwealth Edison Company and TVA 43,650

Biomedical Research:

Funds held in reserve pending development of a plan for effective utilization 400

Environmental Protection Agency:

Operations, research and facilities 46,794

Awaiting completion of: (1) EPA study of requirements for Cincinnati laboratory ($28.0M) and other laboratory facilities

*Similarly (for background information), the Congress established the same limitation at $600M in 1971. The Administration used $400M in 1971. The difference of $200M is being applied to the years after 1971.

($7.294M); and (2) CEQ–EPA contract study on technology and reports leading to the development of criteria for selection of projects for use of resource recovery (solid waste) demonstration grants ($11.5M).

General Service Administration:

Operating expenses, Property Management and Disposal Service ----------

Amount shown here is in excess of the current estimate of 1972 needs for stockpile disposals. If conditions change and the funds are needed, apportionments will be made.

Operating expenses, Public Service ----------

Amount shown here is in excess of 1972 needs. It reflects revised estimates of utility costs and rent receipts from the Postal Service. If conditions change and the funds are needed, apportionments will be be made.

Construction, public buildings projects ----------

San Antonio, Texas, project awaiting OMB and Congressional approval of revised prospectus—$7,402 thousand.

Philadelphia project awaiting appropriation of additional funds needed to permit letting contract—$23,033 thousand.

$10,803 thousand to be reprogrammed upon enactment of pend legislation authorizing private investment financing.

$4,273 thousand is reserved to meet possible contingencies that might arise in the course of construction.

Sites and expenses, public buildings projects----------

Reserved to meet possible contingencies or for use in subsequent years—$10,380,000.

Projects involving space for Postal Service are being restudied—$4,286,000. Apportionment awaits the completion of this study for the effective use of the funds.

National Aeronautics and Space Administration:

Research and development (space shuttle program) ----------

Although the decision has been made in the fiscal year 1973 budget to proceed with the development of the shuttle, final plans and schedules have not yet been completed by NASA. After NASA has selected the booster option and issued its request for proposals (RFP) to the contractors, it is anticipated that the $25 million will be released.

Veterans' Administration:

Grants to States for extended care facilities ----------

State plans and requests for funds have not been presented to the extent originally expected.

Appalachian Regional Commission:

Appalachian regional development program----------

Apportionment awaits development by the agency of approved plans and specifications.

Cabinet Committee on Opportunities for Spanish-Speaking Peoples----------

The obligation rate has been lower than anticipated because of operation under continuing resolution for two quarters.

District of Columbia:

Loans to the District of Columbia for capital outlay----------

Reserves represent prior appropriations not required to finance the planned fiscal year 1972 capital outlay program.

Federal Communications Commission:

Salaries and expenses (construction) ----------

These funds are intended for replacement of a monitory station. They cannot be used until the Congress raises the current limitation on FCC's 1972 construction program. It is expected that this will take place before the end of fiscal year 1972.

Foreign Claims Settlement Commission:

Payment of Vietnam and Pueblo prisoners of war claims-----

Apportionment awaits arrival of contingencies under which the funds must, by statute, be made available.

Salaries and expenses----------

Apportionment awaits development by the agency of approved plans.

Selective Service System:

Salaries and expenses----------

Since enactment of the 1972 appropriation, the expected number of inductions into the Armed Forces has declined, permitting this amount to be reserved for savings. The reserve would be released in the unlikely event that the declining trend of inductions should be reversed.

Smithsonian Institution:

Salaries and expenses, Woodrow Wilson International Center for Scholars----------

Reserved for contingenies. Will be apportioned if and when needed.

Temporary Study Commissions:

Aviation Advisory Commission--

Funds in 1972 reserve will be used in 1973 to carry Commission through its expiration date of March 1973.

Commission on Highway Beautification ----------

For completion of Commission's work in 1973.

Commission on Population Growth and the American Future ----------

A small contingency amount is set aside to cover any increases in contracted costs after the Commission completes its work and disbands in May 1972.

National Commission on Consumer Finance----------

For terminating the Commission in 1973 after the report is completed.

U.S. Information Agency:

Salaries and expenses (special foreign currency program)----

Special international exhibitions ----------

Apportionment of the above accounts awaits development of approved plans and specifications.

2,200	
5,000	
45,514	
14,666	
25,000	
8,420	
40,000	
30	
49,015	
460	
150	
19	
1,600	
11	
587	
25	
30	
50	
407	
746	
Total ----------	10,558,778

DREAD DISEASES

Mr. PERCY. Mr. President, as I stood before the Senate on August 3, 1970, and called for a crash program to eliminate the dread diseases—cancer, heart, and stroke—by no later than 1976, I never dreamed that I might see the fulfillment of that goal as soon as 1972. However, 1971 saw the successful enactment of legislation creating the authority for an all-out attack on cancer. I was a strong supporter and a cosponsor of that legislation. Now, 1972 may very likely see the successful enactment of legislation to deal with another dread disease, the No. 1 cause of death in this country—cardiovascular diseases. I am pleased today to join Senators KENNEDY and JAVITS as consponsor of the National Heart, Blood Vessel, Lung, and Blood Act of 1972.

The number of people who succumb to heart and blood vessel diseases has reached enormous proportions in every developed nation of the world. This phenomenon, in fact, has been called the "greatest sustained epidemic confronting mankind." Every year about a million Americans die because of heart disease. About 600,000 of these deaths are due to coronary heart disease. Another 200,000 are due to arteriosclerotic disease in some other area of the body. Approximately 165,000 of the coronary deaths occur in persons under 65 years of age, with a greater toll—3 to 1—among men than women. In Illinois alone, there were an estimated 67,600 deaths due to cardiovascular diseases in 1971, accounting for 57 percent of all deaths in the State.

Studies have shown that one out of every five American men will develop heart disease before he reaches age 60. One victim in four will die within 3 hours of his first heart attack. Of those who survive, another one in 10 will die a few weeks after an initial attack. People who have had one heart attack are approximately five times as likely to die within 5 years after the event as people without known heart ailments.

Compounding the problems with cardiovascular diseases is our current crisis in blood banking. Unfortunately, I do not believe that the provisions in the National Heart, Blood Vessel, Lung, and Blood Act of 1972 dealing with blood and blood products are adequate to deal with that crisis. The provisions offer neither safeguards against the dangers of contaminated blood reaching our citizens nor any means for ending the often shoddy and dangerous procedures used in some commercial blood banks to procure blood. I would recommend as an alternative the more comprehensive blood-banking provisions contained in the National Blood Bank Act, introduced by myself and Senator HARTKE in the Senate and by Congressman VEYSEY in the House.

The need for action to accelerate research and its application to the diagnosis, prevention and cure of heart, blood, and lung diseases is critical. I say the time for action is now.

ANNOUNCEMENT OF POSITION ON VOTES

Mr. GAMBRELL. Mr. President, I was necessarily absent when several record votes were taken on amendments to H.R. 12910, the public debt limitation bill, because of prior commitments in Georgia.

Had I been present on March 7, when votes were taken on these amendments, I would have voted as follows:

First. I would have voted "yea" on the Moss amendment No. 997 to the Roth amendment No. 956, to require the President to cut all controllable appropriations at a relatively uniform rate.

Second. I would have voted "yea" on the Spong amendment No. 995—as a substitute to Roth amendment No. 956—limiting to $246.3 billion Federal expenditures for fiscal year 1973, and providing that when the President determines that future appropriations would require or permit expenditures in excess of this limitation, he shall propose to the Congress reductions necessary to keep expenditures within stated limitation, and the Congress would then have 30 days to rescind such proposed cuts.

Third. I would have voted "yea" on the Roth amendment No. 956 as amended.

Fourth. I would have voted "nay" on part I of the Long amendment to allow the $246.3-billion spending limitation to be increased by the amount which future appropriation bills exceed budget requests.

Fifth. I would have voted "nay" on part II of the Long amendment, to exempt from the limitation certain so-called uncontrollable items.

A MOST UNWISE DECISION

Mr. HANSEN. Mr. President, for the first time in many years, America's meat producers have been able to enjoy for a brief period a realistic return on their production, for which they invest so much in time, money, and plain hard work.

The distinguished editor of the Wyoming State Tribune, James M. Flinchum, in an editorial published on March 10, called the decision to increase imports and force domestic farm and ranch prices down to an unnatural level "a most unwise decision." He stated that it is a serious mistake to seek to bring down retail meat prices through "simplistic solutions."

The retail price of meat is attributable to increases that occur between the time the farmer delivers and the time the consumer buys meat at the market. The price for the producer is only now again reaching the level he received 20 years ago, after two decades of low farm-product prices, while the cost of production has continued to grow by leaps and bounds.

Mr. President, I ask unanimous consent that this analytic editorial be printed in the RECORD.

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

A MOST UNWISE DECISION

Eight years ago when slaughter steers were selling for $20 to $22 a hundred, and retail beef was going for $.69 to $1 a pound, an uproar developed in the West at the spread in prices between what the producer received and the consumer paid over the counter.

In the June, 1964, issue of the Farm Journal, reporter Ovid Bay painstakingly traced the course of a shipment of steers from a Nebraska farm to a supermarket counter in Cincinnati. What the Farm Journal study showed was that there are many factors all along the way that take their cut out of a piece of retail meat. These include profits and wages for the processors, shippers, wholesalers, and retailers and their employes.

Commencing that same year with a speech by then Gov. Cliff Hansen at the American National Cattlemen's Association in Memphis, the western livestock industry represented by its senators, congressmen and governors, launched an intensive campaign to reverse a depressed trend in the cattle market of this country.

The objective was to inhibit massive imports of beef, veal and mutton, into this country from Australia and New Zealand which Sen. Milward L. Simpson, R., Wyo., said in testimony before the Senate Finance Committee that year was running as high as a billion pounds per year.

Heavy production of beef and sheep at home coupled with the massive influx of foreign-grown meat had dropped the average price for live cattle from $27.67 a hundred in 1961 to $21.63 in May, 1964. Everywhere throughout the West stockmen faced the threat of disaster. The solution to their economic bind, so said the members of Congress and governors of their home states, was to sharply curb the foreign meat imports.

After months of campaigning in Congress, an act of which Senator Simpson was a cosponsor was signed into law by President Johnson. Then influx of foreign meat stopped, and the meat price situation as reflected in the prices paid the producers began reversing itself.

Today the ranchers and farmers of this country, chiefly in the West, have commenced to enjoy an adequate rate of return for their product no longer are they facing economic ruin in many cases, or suffering from a marginal operation. In Omaha, slaughter steers are selling now for $31 to $36 a hundred, up $11 to $14 over 1964's prices, an increase of 50 to 60 per cent.

But retail meat prices have jumped two to three times what they were in 1964. The reason is not difficult to understand, in the general inflationary rise in prices and wages between 1964 and 1972, the hidden cost factor in the production of goods has greatly accelerated the price received by the producer compared with that paid by the consumer.

Yet the Nixon Administration, with an eagerness toward simplistic solutions, now is attempting to penalize the American livestock producer by letting down the bars once again on foreign meat imports. If this is the answer to rising prices, then we would suggest that the Administration also rescind its surtax on all foreign imports in order to lower prices paid domestic American producers of all goods, all along the line.

And while it is about it, the Administration might negotiate a reduction in wages that have been paid American employes and workers beginning first with the federal government's 3,000,000 employees which a willing and beneficent Congress is ever ready to grant, and which a generous Administration is always prepared to sign into law.

Why penalize one segment of the U.S. economy, the producer of basic goods, in order to bring about a rollback in prices?

Does the Administration know, for example, what clothes, housing, fuel and other necessities of life sell for now in this country compared with 1964? It might investigate these and make some sort of preparation to attack these cost problems as well.

None of this, of coure, will be done, for the political pressures would be too great, especially from labor. The Administration, bowing to the shrill cries from the great urban centers, where costs of living are predicated on something else beyond basic production costs, is willing to risk the political alienation of the lightly populated West and its most Republican rural residents.

Yet the unfairness of this, particularly when it took the leaders of the West months to induce a Democratic president to approve legislation halting the ruinous policy of huge meat imports, will not be lost on the people of this area who already have suffered one flip decision by the Nixon Administration on predator control.

President Nixon gives signs of turning his back on the people of this region. The latest Gallup Poll shows him with a 56 per cent margin of support among the people of the country. Such popular leads can be eroded in very quick order, however, when political decisions are made that are antipathetic toward a basic way of life such as that represented by agriculture.

OUTLAW THE CRIME GUNS

Mr. STEVENSON. Mr. President, the latest issue of the Nation contains an excellent article entitled "Some Facts About Homicide," written by Franklin E. Zimring. Mr. Zimring is an associate professor of law at the University of Chicago and associate director of the University's Center for Studies in Criminal Justice. In addition, it may be recalled that Mr. Zimring was the director of research for Firearms Violence in American Life, the comprehensive and well-documented staff report to the Eisenhower Commission on the Causes and Prevention of Violence.

The article is based on a study of the changes in the pattern of criminal homicide in Chicago between 1965 and 1970, a study undertaken by Mr. Zimring and Richard Block, an assistant professor of sociology at Loyola University of Chicago.

In studying the pattern of criminal homicide in Chicago, Mr. Zimring notes that:

Half of the total increase in homicide is attributable to black males between the ages of 15 and 24, a group less than one-thirtieth of Chicago's population.

As to the reasons for the increase in this particular age group, the author focuses on the easy accessibility of guns:

The lethal combination is one of reckless youth, loose affiliations and available guns. . . In this single age group, homicide by all means other than firearms increased 69 percent while gun killings increased 444 per cent.

The author further notes that there is reason to believe that these aspects of Chicago's case apply nationwide.

The conclusion is inevitable, and Mr. Zimring does not shrink from it:

The contributory role of firearms, most importantly handguns, in the modern homicide problem deserves special attention.

The author knows that administering handgun controls nationally will be difficult, but he strongly feels that—

At the same time, the data from Chicago tell us that effective controls appear to be an indispensable part of any rational approach to our present rate of violent killing.

What more evidence do we in Congress need? The evidence is clear already and can only mount, just as the senseless killing and violence caused by handguns can only mount. Let us act to control—effectively—the use of handguns, the crime guns.

I ask unanimous consent that the article be printed in the RECORD.

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

SOME FACTS ABOUT HOMICIDE

(By Franklin E. Zimring)

CHICAGO.—In the violence-conscious past few years, criminal homicide, this ultimate threat to personal security, has received both too much public attention and not enough. Sensational killings receive sustained attention from the news media and the public, but the typical homicide is too typical, its setting too squalidly common, and its participants—both victim and offender—too obscure to seem to merit public attention. Uneven publicity surrounding criminal homicide has led to a number of public misconceptions about the nature of the problem and the risk of criminal killing. Any discussion of the recent increase in homicide in the United States must therefore begin by setting straight a few basic facts.

The Federal Bureau of Investigation estimates that last year there were about 16,000 willful homicides in the United States, or a rate of eight for every 100,000 citizens. That would mean that the average citizen's chance of becoming a victim in any year would be slightly less than one in 10,000, if there were any such thing as an average citizen when discussing the incidence of homicide in the United States. But it is important to note that the risk is very different among different groups in the population. Criminal homicide, like all crimes, occurs far more frequently in dense cities than in suburbs, towns or rural areas. Men are on the average three times as likely to become victims of homicide as women. Overshadowing these differences is the factor of race. Male or female, blacks are about ten times as likely as whites to suffer criminal homicide.

Statistics on homicide offenders are startlingly similar to statistics on the victims. The more likely a particular race, sex or age group to be victimized, the more likely also that it will be overrepresented in the statistics on homicide offenders—only slightly more so. Thus men are killers more than five times as often as women; blacks twelve times as frequently as whites. The similarity between homicide victims and offenders is no accident. Nationally, three out of four killings involve people with some prior relationship or acquaintance—family, friends, lovers, drinking companions, adversaries in argument. Nine out of ten criminal homicides involve a victim and an offender of the same race. In most cases, the offense is an outgrowth of the ordinary life and social relationships of the persons involved. It is also a highly regressive tax, levying both victims and offenders in gross disproportions from the black poor.

Homicide rates do not fluctuate as wildly as do the reported rates of many other crimes; that is in part because the seriousness of the offense makes it likely that it is one crime for which police statistics supply a fairly accurate count. The homicide rate does, however, seem to change significantly over periods as long as a decade. The rate of criminal killings was high in the United States during the 1920s and 1930s, decreased during the World War II years, and remained low through the 1950s and early 1960s. Since 1963, the homicide rate has been rising sharply, from 4.5 per 100,000 that year to 7.8 in 1970, an increase of 73 per cent

In an attempt to explain this increase, Richard Block and I have been studying changes in the pattern of criminal homicide in Chicago, where the rate doubled between 1965 and 1970. Taking 1965, which was an ordinary year in Chicago's homicide experience, as typical of what patterns of homicide had been in the city, we were looking to find out whether the increased number of killings were accompanied by changes in pattern or were simply more of the same. One important similarity between 1965 and 1970 was the continuing difference in relative risks of homicide experienced by blacks and whites, males and females. In 1965 a black man was ten times as likely to be a homicide victim as his white counterpart, and the same was true in 1970, the real difference being that each was twice as likely to become a victim in the latter year. The risk of homicide to males increased somewhat faster than the risk to females. In 1970, as in 1965, nearly nine out of ten homicides involved a victim and offender of the same race.

We also found important changes in the types of homicide. All types of killings increased substantially during the period, but those arising from domestic disputes showed less increase than other kinds of killings, while the number of robbery killings in the city increased four times as fast as all other types. There were thirty-three robbery killings in Chicago during 1965, 8 percent of the total number of homicides. In 1970 there were 147 robbery killings, 18 percent of the total. The increase in robbery killings accounts for 27 per cent of the total increase in homicide in Chicago. Also, killings in which the police had reason to believe there was more than one offender increased from thirteen in 1965 to 119 in 1970.

Along with the changes in the number and kinds of killings, the weapons used and the kinds of people involved changed significantly. Homicide by firearms increased 169 per cent between 1965 and 1970—three times as fast as homicide by all other means. But the most striking difference in pattern is the increase in the number of killings of and by black males between the ages of 15 and 24. In this single age group the offense rate per 100,000 increased from 108 in 1965 to 298 in 1970, and the victimization rate of this group rose fourfold—from 54 per 100,000 in 1965 to 193 per 100,000 in 1970.

When these statistics are more carefully analyzed, a significant pattern emerges. Half of the total increase in homicide is attributable to black males between the ages of 15 and 24, a group less than one-thirtieth of Chicago's population. The lethal combination is one of reckless youth, loose affiliations and available guns. In this age group, the number of offenses involving only one offender increased from fifty-nine in 1965 to 139 in 1970, or 136 per cent. The number of offenses involving more than one offender increased from thirteen in 1965 to 119 in 1970, or about ninefold. Whether this means that "gang" killings are the important contributor to the increase in homicide is, at most, problematic, for the interference from "more than one offender" to "gang membership" must be a matter of evidence and proof rather than mere attribution.

And the role of guns? In this single age group, homicide by all means other than firearms increased 69 per cent while gun killings increased 444 per cent. These are not the only changes that are taking place in Chicago, and not the sole explanation for the increase in the homicide rate, but the combination of youth groups and guns is by far the most important set of changes that Chicago has experienced, and understanding that can help one understand many of the other changes in pattern.

One of these is the alarming increase in robbery-murder, noted above. Robbery killings are particularly frightening because, unlike most homicides, they do not involve a victim and offender who are previously acquainted, they are frequently interracial, and they inject an element of fear into activities such as conducting a small business and walking the streets. Robbery killings by all groups other than black males between the ages of 15 to 24 increased from fifteen in 1965 to twenty-five in 1970. In that 15-to-24 age group, the number increased from eleven in 1965 to ninety in 1970.

Is the "Chicago pattern" consistent with a national trend? We cannot answer the question decisively, because the published statistics on nationwide homicide are not as detailed as the information we gathered in Chicago. There are, however, indications that at least two elements of the youth groups-guns equation have national significance. FBI statistics show that, since 1963, homicide arrests of persons 15 to 24 have increased about twice as much as arrests of persons 25 and older. One should not, of course, confuse arrest with guilt, but there is a direct relationship between them. And the same statistics show that gun homicide has increased 124 per cent since 1963, while killing by all other means has increased 48 per cent. Whether the other symptoms of Chicago's new homicide problem are also of national significance is not yet known, but there is reason to believe so.

There is no reason to suppose that homicide rates will continue to rise as dramatically as they have in the past few years. They have risen rapidly in the past only to subside, and it is at least as likely as not that rates will begin to level off in the near future. Yet the situation is too serious to be allayed by historical perspective.

Unfortunately, identifying problems is less complex than finding solutions. If the current wave of violent killing is attributable to younger offenders, how best to reduce violence? Apart from massive social reconstruction, relatively few options are available to promote nonviolence in ghetto neighborhoods. More effective policing can help some; but much, even most, of criminal violence takes place beyond police range, and more aggressive policing may bring additional problems to the inner city.

The contributory role of firearms, most importantly handguns, in the modern homicide problem deserves special attention. Guns contribute to the death toll from assault because they increase by a factor of four the chances that death will result from the typical assault that leads to homicide—that is to say that 100 gun attacks kill five times as many victims as 100 knife attacks made by the same kinds of people in the same circumstances. When this fact is related to the dramatic increase in gun use over the past few years, it suggests that reversing the trend will help reduce the death rate from homicide.

But how to get guns off city streets and out of the hands of the young? The boom in gun attacks we found in Chicago persists in spite of some city, state and national gun legislation in the late 1960s, and it is undoubtedly true that an epidemic of handgun carrying and use is easier to start than to finish, in part because crimes inspire fear and disposed civilians to arm themselves. It appears that handgun controls are difficult to apply with great selectivity—taking guns away from one group, or the residents of one city, will not effect much benefit as long as rates of general handgun ownership increase; and rates of ownership have increased in the past six years. At the same time, the data from Chicago tell us that effective controls appear to be an indispensable part of any rational approach to our present inflated rate of violent killing.

RADIO FREE EUROPE AND RADIO LIBERTY

Mr. ALLOTT. Mr. President, the Rocky Mountain News of March 7 contains an intelligent, spirited and correct editorial assessment of the current attempt on the part of some persons to shut down Radio Free Europe and Radio Liberty, thereby helping the totalitarian regimes of East Europe to hermetically seal their despotisms.

I ask unanimous consent that the editorial be printed in the RECORD.

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

ARROGANT MISCHIEF-MAKING

Among his many attainments, Sen. J. William Fulbright, D-Ark., is author of "The Arrogance of Power," a book that disparages America's postwar foreign policy and national character.

It is therefore ironic to find Fulbright arrogantly using his own power—as chairman of the Foreign Relations Committee—to block the will of Congress.

The issue is the fate of Radio Free Europe and Radio Liberty, which for two decades have been broadcasting uncensored news, popular music and political commentary to the peoples of the Soviet Union and its satellites in east Europe.

The broadcasts are heard regularly by many millions, and they thwart efforts by the Communist regimes to impose thought-control on their subjects. Naturally, they are painfully unpopular with the party bosses, who unsuccessfully use electronic jamming, threats and arrests to prevent foreign news from getting through the Iron Curtain.

For some fuzzy reason, Fulbright has decided the stations are "relics of the cold war." He is relentlessly waging a vendetta against them.

First, he commissioned a Library of Congress study, hoping it would produce an excuse to silence the free radio. To his great disappointment, the study upheld the quality and value of the staffs and broadcasts.

Then, when House and Senate passed differing bills to fund the two stations, Fulbright deliberately provoked a deadlock between the two houses. He is now stalling, knowing that Radio Free Europe and Radio Liberty will have to go off the air when they run out of money, which will be very soon.

Incidentally, the Administration, the State Department, 53 of his Senate colleagues and many academic specialists on communism urge Fulbright to let the radios live. He insists on his way. How about that for arrogance of power?

In an extremely cogent discussion of the issue, Prof. William E. Griffith of the Center for International Studies at MIT, recently wrote:

"Senator Fulbright may naively expect that the Soviets and East European rulers would reciprocate their (stations') liquidation, but he is mistaken.

"Indeed, to end them unilaterally now, just before President Nixon is going to Moscow, would deprive the U.S. of one of its major assets in the Soviet Union and Eastern Europe. No way to start bargaining.

"He (Fulbright) is indeed a willful man but he is not and should not be in charge of U.S. foreign policy. It is high time that the President and the Congress overrule him and ensure that Radio Free Europe and Radio Liberty can continue their good work."

AERIAL RECONNAISSANCE OF FOREIGN FISHING VESSELS OFF THE ATLANTIC COAST—REPORT BY SENATOR SPONG

Mr. SPONG. Mr. President, on Saturday, March 4, I accompanied Coast Guard officials and representatives of the Virginia Institute of Marine Science on an aerial reconnaissance flight to observe the activities of foreign fishing vessels off the Atlantic coast.

Relatively few vessels were sighted on that particular flight, but it was disturbing to observe that Soviet ships were operating onboard dehydration plants, and apparently were reducing to fish meal their catch of sea robins. This is a new development this year, a development which could portend problems of the U.S. menhaden industry.

If the Russians are interested in making fish meal from sea robins, they may well want to do the same with menhaden. Unfortunately, neither menhaden nor river herring are adequately protected under the existing fishing agreement between the United States and the Soviet Union. The agreement falls short of the protections which this country has a right and responsibility to demand for its fishing industry.

Mr. President, I also am disturbed over a report of an omission from one of the weekly foreign fishing surveillance reports of the National Marine Fisheries Service. It is my understanding that the Service sighted a group of some 34 vessels in international waters off Chesapeake Bay with moderate catches on board which possibly were sea herring. However, this information was not included in the report.

I would hope that all available information collected through surveillance of foreign fishing vessels would be freely distributed, so that those who make up our own fishing industry can be kept apprised of vessel movements and catches.

ANNOUNCEMENT OF A POSITION ON VOTES

Mr. GAMBRELL. Mr. President, I was necessarily absent when the vote was taken on the conference report to H.R. 1746, the Equal Employment Opportunity Act of 1972 because of a prior commitment in Georgia.

Had I been present on Monday, March 6, when this vote was taken, I would have voted "yea."

SUPPORT OF AID FOR SOVIET JEWS

Mr. ALLOTT. Mr. President, today I am joining in cosponsoring two bills, S. 3142 and S. 3115.

Both bills address an urgent humanitarian need: the need to help with resettling Jews who are fortunate enough to be allowed to leave the Soviet Union.

Both bills would make available funds to assist the resettlement of Jewish refugees. This is a noble project, fully in the American tradition of refugee aid. Since World War II the United States had been properly generous in aiding refugees. A total of $2.8 billion has been spent for this purpose. This is a commendable cause for this Nation, which is wealthy enough to afford generosity, and principled enough to know when it is called for. It is called for now.

I am cosponsoring both bills to emphasize my conviction that we need prompt action on this matter. But I should emphasize that one of these bills seems superior to the other.

The bill proposed by Senator MUSKIE and others (S. 3142) is well intended; it is better than nothing; but it has three significant flaws.

First, the Muskie bill is too parsimonious. It calls for only $85 million in aid, all of it this year. But informed estimates place the need at well over $300 million per year, and the need is expected to extend over several years. Obviously the United States should not bear the full burden of this need.

That is not required. But it is appropriate for the United States to do all that is necessary, and to contribute a share proportionate to our means and our traditional commitment to refugee aid.

In this regard, the bill submitted by Senator JACKSON (S. 1115), the first bill submitted to address this unique refugee problem, is superior. This bill would provide a total of $250 million over a 2-year period—$100 million in fiscal year 1972 and $150 million in fiscal year 1973.

Lest anyone imagine that Senator JACKSON's bill is too generous, and that we are without obligation to be generous, we should all remember one thing.

The Soviet Union is departing from long established practice in permitting a portion of its persecuted Jewish population to leave the Soviet Union. The Soviet Union is not suffering a sudden attack of altruism. It has only modified its customary cruelty because of the pressure of world public opinion, and because the brave community of Soviet Jews has been making a commendable nuisance of itself to the Kremlin.

But both these phenomenon—the pressure of world opinion on behalf of the Jews, and the courageous agitation of the Jews on their own behalf—have been encouraged by Members of the Senate.

I, for one, have spoken often, and vigorously, against the Soviet persecution of its Jewish citizens. I am delighted that various pressures have caused even a slight improvement in the conduct of the Soviet Government. Now I am delighted to have the opportunity to do my further duty: I am delighted to help defray the costs of freedom for persecuted refugees.

There are many areas in which I wish I could interest Senators in pinching pennies. But this is not such an area. That is one reason why I think S. 3115 is superior to S. 3142.

Second. The Muskie bill calls for the State Department to administer the funds. This is a most unfortunate provision. There does seem to be reason to believe that there are pressures within the State Department that might inhibit the vigorous administration of this refugee aid. On the one hand, there are those in the State Department who sometimes seem to feel that they have a single, categorical mandate to offend no foreign government. Obviously, the Soviet Government is going to be miffed at American generosity on behalf of persecuted refugees from the Soviet Union. I should emphasize, Mr. President, that I can think of no higher calling than getting the despots miffed. But not everyone—and certainly not everyone in the State Department—shares my enthusiasm for this enterprise.

In addition, Mr. President, it is often said that there are pressures, in the State Department that cause it to act with undue circumspection toward the more militant Arab nations. These pressures may have something to do with the career opportunities in the Department and the

Foreign Service: there are many Arab nations, and only one Israel. It is clear that most of the refugees will wish to settle in Israel, and thus our aid will constitute a substantial support for Israel. This, we may be sure, will get Arab militants miffed at us. There are times, Mr. President, when I think the second highest calling is getting various militants miffed because of aid tendered to Israel. But not everybody shares my conviction in this matter, and it is very clear that this enthusiasm is not universally felt in the State Department. That is why I think S. 3115, the original Jewish refugee aid bill, is superior. This bill would give the President power to administer this aid. The President's deftness at diplomacy cannot be doubted. Nor is there any doubt about his commitment to strong and prosperous Israel.

Third, the Muskie bill would only permit aid to Israel. This is unfortunate. Not only does the Muskie bill involve too little aid, inadequately administered, but it denies aid to those Jews who might chose to relocate somewhere other than Israel. We must understand that some Soviet Jews might wish to settle in other nations—where they might have relatives, or feel cultural ties.

The Jackson bill would provide aid to other nation's receiving Jewish refugees. This is the third reason why the Jackson bill is superior.

To sum up, Mr. President, I support the venerable American principle of aid to refugees.

I rejoice in the opportunity to aid refugees whose freedom has been hard won.

I support both aid bills.

Both are better than inaction in the face of perhaps as many as 60,000 Jewish refugees from the Soviet Union. But the original Jewish refugee aid bill, S. 3115, seems to me to be the better choice. I hope the Senate will act promptly on one or the other of these bills, and that S. 3115 will be the choice of a majority of Senators.

A GUIDE TO BILKING THE PUBLIC

Mr. PERCY. Mr. President, a constituent recently sent me an advertising flyer for a "money-making Guide" entitled "Today Great Opportunities for Getting Rich in Real Estate." This guide, prepared by an organization called Executive Reports Corp., purports to tell the reader about nine opportunities in real estate which will "make thousands of people rich beyond anything they've ever dreamed of."

As a man who spent many years in the business world, I have nothing against making a profit. I believe in the profit motive, and I believe it has helped to make this country great. All our people benefit greatly from the operation of the free enterprise system.

But I was shocked and dismayed by the general tone and much of the wording of this advertising brochure. The message comes through plainly: If you play your cards right and stay within the letter—if not the spirit—of the law, then you can make thousands off of a naive and unsuspecting public.

Let me quote some of the more repugnant passages from this brochure:

Look around you in your own neighborhood for small properties that are loaded . . . sites for gas stations, . . . nursing homes, hospitals. . . .

(H)ere's the payoff that makes these sites so rich for anyone looking for fast, juicy profits: you can get options on such sites for small sums and then sell the property on which you have your option. . . . (A man) can clean up on site after site—handle a string of such profit projects—using very limited funds.

The demand for apartment houses and office buildings is reaching crisis proportions. . . .

You'll want to see how to start this operation right down the block with a small "main street" office building or a 3-family apartment house, swing deal after deal and grow rich. Here's how to pick "the cream-puffs from all these spacious, well-constructed older buildings—here's the trick of giving them a glamor renovation to make them catnip in today's market—how to handle these projects—with very limited capital. And then, to top it all off, how to get the special tax breaks that let you keep much more of these exciting profits.

Any one can get into (remodeling individual homes). . . .

A special Data Sheet guides you through the dozen steps. You are given hints that are worth a fortune: the kind of house to avoid, what to rip off and out of the house, why kitchens and bathrooms are such big stuff in the market, how a couple of $3 improvements at the front entrance give a red hot first impression, works wonders.

You can build, say, a $100,000 apartment house with just a few thousand dollars by using investment leverage (other people's money)—and then start immediately taking the first tax depreciation (which pays money right back into your pocket). And then when the time is ripe, sell out at a hefty profit which comes to you as low-taxed capital gain (inflation).

Some 20,000,000 retired people in America are a real estate operators dream. . . .

And they have money! They are buying into retirement communities right and left—making the developers of such communities rich.

Mr. President, I do not doubt that these activities are all very legal, but I do question the business ethics of those who would so blatantly urge other businessmen to take advantage of the consumer and the community at large for their own personal gain. The get-rich-quick notions which are being peddled in this publication are just an additional reason why strong and effective consumer protection legislation is needed at all levels of government.

I ask unanimous consent that the complete text of the brochure be printed in the RECORD.

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

EXECUTIVE REPORTS CORP.,
Englewood Cliffs, N.J.

[For the one person in a thousand who is downright avaricious—determined to get rich]

THE NINE GREATEST OPPORTUNITIES FOR PROFIT EVER TO HIT THE REAL ESTATE WORLD

(A mighty once-in-a-century conflux of economic forces—now ready to break wide open—create a vast new explosion in real estate fortunes.)

DEAR SIR: If all you want is "a nice little profit" you can get it almost anywhere in today's real estate market.

But if you're out after big money—not just thousands, but hundreds of thousands and more—here are 9 opportunities that will lift you right out of your chair.

These 9 situations are the result of a once-in-a-century confluence of giant economic forces—forces building up explosive pressures on real estate values—now ready to come crashing through—make thousands of people rich beyond anything they've ever dreamed of.

To show you how to clean up—keep you right on top of these fast-moving opportunities—we are releasing an always-up-to-the-minute looseleaf Guide dealing exclusively with these 9 situations—the hottest money-making Guide ever published: Today's Great Opportunities for Getting Rich in Real Estate.

The Guide explains the following 9 boomshells and tells just what to do about each—

NO. 1. THE COMING BOOM IN RAW ACREAGE

There's only just so much land—won't be any more. Hence the greatest land squeeze in history is on. Raw acreage is the key to new fortunes. A vast network of highways is opening up the land right and left (making 500 strategically-placed acres worth $40,000, $50,000—and more). You can buy a whole tract of land for a song and have it develop into a virtual city—a farm can be bought for $100 an acre and soon bring from $3,000 to $4,000 an acre—a thousand acres of far off woods can swiftly pay off big for the man who sells it to a gun club.

There are 6 "ground rules" you must follow to get the full benefit of this potential fortune in raw acreage. These ground rules give you an instant "in"—enable you to find and pick up the hottest sites—situations that are loaded with profit—where you have just about everything going for you.

NO. 2 WATCH FOR THESE HOT LITTLE SPOTS IN YOUR OWN NEIGHBORHOOD

Look around you in your own neighborhood for small properties that are loaded—sites for gas stations—franchise operations—nursing homes—hospitals—post offices—professional buildings—motels. The Guide gives you a list of what to look for—attributes that can turn such small sites into goldmines.

But here's the payoff that makes these sites so rich for anyone looking for fast, juicy profits: you can get options on such sites for small sums and then sell the property on which you have your option. Here is a bonanza for the man who knows how to select and sew up these desirable plots—and how to market them. He can clean up on site after site—handle a string of such profit projects—using very limited funds.

NO. 3 "EVERYBODY WANTS A SECOND HOME"

The second-home market is where the second-car market was 15 years ago. The weekend rush to the country is on. About two hours from the city is just right for second-home acreage. The big money here lies not in getting just a small property for your own home—but in latching on to some real acreage.

Be sure that the land you tie up has "the four musts" for a second-home fortune. Without these attributes it's just country property and it may take years to multiply in price—but with "the four musts" it can quickly be transformed into a profit explosion. This whole field is boiling—owners of large second-home acreage are selling lots hand over fist—and operators who go in for selling the plot with a home built on it are booked for months ahead.

NO. 4 OLDER APARTMENT HOUSES AND OFFICE BUILDINGS—THE HOTTEST ITEM IN THE COUNTRY

The demand for apartment houses and office buildings is reaching crisis proportions (few such structures have been built in recent years because of soaring construction costs and prohibitive interest rates). This situation has given rise to the hottest profit

opportunity you can find in today's very hot real estate market—and here it is—

There are a *hundred billion* dollars' worth of older office buildings and apartment houses now more than 20 years old. These constitute the juiciest item in our whole economy. These buildings are ripe for renovation—the market for them is close to "breaking down the doors."

You'll want to see how to start this operation right down the block with a small "main street" office building or a 3-family apartment house, swing deal after deal and grow rich. Here's how to pick "the creampuffs" from all these spacious, well-constructed older buildings—here's the trick of giving them a glamor renovation to make them catnip in today's market—how to handle these projects with very limited capital. And then, to top it all off, how to get the special tax breaks that let you keep much more of these exciting profits.

NO. 5 ACREAGE FOR SUBDIVISION IS LOADED WITH PROFIT

Subdivisions can yield six-figure profits, but it takes know-how—for example, the know-how that gives you your profit as low-tax capital gain instead of at high ordinary rates. This section of the Guide delivers point-by-point directions all down the line.

The first big secret is getting a tract of land for subdivision that's big enough—before your development makes surrounding land so valuable you won't be able to pick up more. Then you can sell off the land you've bought by the hundred acres in half-acre plots—*or* you can work with a builder—and clean up either way.

Here is the most valuable concise package of information on subdivisions in existence. It opens the door to the richest, most continuous profit situation in the whole real estate field—from how to buy your land without "showing your hand"—how to get started with virtually no capital—to the fine points on how to market your lots.

NO. 6 REMODELING INDIVIDUAL HOMES

Anyone can get into this on just about any scale he wants, set up profits that are fast and continuous. It's a 1, 2, 3 setup: (1) buy an old run-down home, (2) give it a face lifting, (3) sell it or rent it. But there's a definite pattern you must follow to clean up. It's all worked out to a "T"—the kind of house to buy—what to do to it—how to sell or rent it.

A special Data Sheet guides you through the dozen steps. You are given hints that are worth a fortune: the kind of house to avoid, what to rip off and out of the house, why kitchens and bathrooms are such big stuff in this market, how a couple of $3 improvements at the front entrance give a red hot first impression, work wonders. There's one point on "choosing the worst home in a good neighborhood" that's priceless. With this information you can work out a regular formula of operations for remodeling house after house—with little capital and heady profits.

NO. 7 BUILD AN APARTMENT HOUSE (WITHOUT MONEY)

This is the richest setup in the whole real estate field—a perfect combination of today's three big money makers—*leverage, depreciation, inflation*—a situation in which the three combine to set off a profit explosion, and all of it virtually out of nothing.

You can build, say, a $100,000 apartment house with just a few thousand dollars by using investment leverage (other people's money)—and then start immediately taking the fast tax depreciation (which puts money right back into your pocket). And then when the time is ripe, sell out at a hefty profit which comes to you as low-taxed capital gain (inflation).

Nothing is so juicy as this triple play—the hottest play in real estate today. And it's all spelled out for you in the Guide—with worked-out examples for you to follow—from finding the site to completing the sale.

NO. 8 RETIREMENT COMMUNITIES

Some 20,000,000 retired people in America are a real estate operator's dream. But don't follow the general ideas about them that most people have. Most senior citizens don't want to move away—they want to stay near their old homes—and want a "country club setup" without the chores of a regular house.

And they have money! They are buying into retirement communities right and left—making the developers of such communities rich.

But the pattern for this explosive success is so much different from what you'd expect—and the Guide gives you the exciting lowdown: where to locate your community—how much to charge for homes in one of these Home Villages—the special features that make it duck soup for senior citizens (it's a dozen of these senior-citizens' special features that do the trick).

NO. 9 HOW TO PROFIT FROM AMERICA'S RECREATIONAL BINGE

The implication in America's sporting binge—in terms of real estate profits—is enormous. Twelve acres for a golf driving range can give king sized profits on a small investment—and give you current income right off the bat while the value of your land along-the-road multiplies.

Today the whole recreational field is jumping with activity—from camp sites to rod and gun clubs—from tennis to marinas—from target ranges to Par-3 golf (there's even the exciting setup of a "*waterfront* driving range").

But here, too, know-how is king and with this Guide you are led unerringly to the top dozen opportunities in this seething recreation field.

The above 9 situations are the hottest opportunities in today's hot real estate setup—9 situations that will soon be making waves in a flood of activity inundating every town, city and countryside in America.

If the Guide did nothing more than point out these 9 opportunities, it would be worth a fortune—but it does much more:

It keeps you right up to the minute in each instance with monthly Action Reports and new pages—shows just what steps to take in order to clean up. All of this continuous wealth-building help is written in clear style by ERC's top business editors, in consultation with experienced specialists in these fields—and comes to you for less than 24¢ a day—itself a tax-deductible expense.

Today's real estate market is so rich it makes the potential in other fields seem small potatoes indeed. The biggest fortunes in the past have been real estate fortunes. The vast new fortunes now to come in America will be real estate fortunes. Here's your chance to make it big in the next 5 years—the hottest period the real estate world has ever seen.

Simply return the enclosed postfree Reservation Card. Prompt action brings an Extra Bonus: the Action Reports and new pages *free* to April 1, 1972. So mail the card today. We'll do the rest.

Sincerely,

EDWARD R. CARLTON.

INEQUITIES IN PRESENT FORM OF TAXATION

Mr. MATHIAS. Mr. President, we are all well aware of the need to eliminate the inequities of our present form of taxation. To this end I wish to offer, for the full consideration of the Senate, the remarks of a respected Maryland citizen, John A. Whitney, on the subject of the property tax, which add to the growing national debate on this subject.

Mr. President, I ask unanimous consent that Mr. Whitney's comments be printed in the RECORD.

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

JOHN A. WHITNEY,
Bethesda, Md., February 10, 1972.

Hon. CHARLES MCC. MATHIAS, Jr.,
U.S. Senate,
Washington, D.C.

Subject: Property Tax

DEAR MAC: I have read with interest your recent Capitol Comment on the property tax, printed in some of the local Montgomery County papers. I would like to give you a few brief comments, which you can add to the material you collected at your recent hearings.

I am not an ardent advocate of the property tax. It is too regressive and grows too slowly to be satisfactory as a nearly complete supporting base for local government. Fortunately in Maryland we have moved away from much dependence by authorizing local income taxes.

On the other hand, I do not know of any responsible person who advocates getting rid of the property tax, so far as real property is concerned. Real estate has been subject to the tax long enough that it is built into the capitalization. Furthermore, local governments depend rather heavily on taxation of business property to support the services needed by residents. Rather, the aim should be to try to stabilize property tax rates to avoid accentuating the inequities of the tax and to foster the fulfillment of reasonable expectations. So our goal should be to find an alternative to *increases* in the property tax rate, not an alternative to the property tax as such.

Our search for other methods of raising large amounts of revenue does not require great study. There are three and only three types of broad based taxation: income, sales, and property—gross receipts and value added being akin to the sales tax. All the other types of taxation available to local governments, sometimes referred to as nuisance taxes, are peripheral to the central question of how local governments should be financed. Thus the impediment to the use by local governments of more equitable and faster growing taxes lies simply in the prohibition by most states of the imposition of local sales and income taxes. Nothing would do more to stimulate local responsibility for self government than the repeal or relaxation of these prohibitions.

It is distinctly anomalous to suggest that the solution to local fiscal problems is a new federal tax. On the contrary, the single fact that most inhibits greater state and local use of income taxation is the relatively high level of existing federal income tax rates. So, while revenue sharing in various forms continues to pend, I think it is fair to say that Congress has already enacted in 1969 and 1971 the kind of revenue sharing that is most conductive to increased assumption of state and local responsibility—namely, reduction of taxes. This is also the kind of revenue sharing that is most favorable to a state like Maryland. The state and local governments can now pick up these reductions without increasing the overall burden on the taxpayers.

A particularly troublesome aspect of a proposed federal tax would be its distribution. The distribution would undoubtedly be unfavorable to Maryland, which would pay in substantially more than it would get back. That is not the kind of help we need. Particularly ominous is the suggestion that conditions would be put on the grants to the local governments, such as having to reduce their property taxes by an equivalent

amount in order to qualify for their entitlement. This would seem to be unenforceable after the first year, since the local governments could then proceed to raise their taxes back up again as much as they wanted to; or, worse, it would require all local governments to submit their budgets to a federal agency for review and approval in order to demonstrate their compliance with the federal condition. Surely this is not the way to strengthen local government.

In conclusion then, what we need is greater authority for the local governments to solve their own problems, rather than for central levels of government to attempt to solve them and provide handouts. In Maryland our county governments are dependent on the property tax more than they would like to be, solely because state law discriminates in favor of their use of the property tax. The state trusts the counties to impose property tax at an unlimited rate, income tax at a strictly limited rate, and no sales tax at all. Up until last year, some of the counties had unused sales tax authority, but the Legislature took it away at the request of the Governor. Surely this does not foster local responsibility.

When you are advising the President on the ingredients of his forthcoming plan, I wish you would bring these considerations to his attention and to the attention of the people who are putting his plan together. If you think it would be helpful, I would be happy to meet with you and discuss the mattter in greater depth. I applaud your interest in this important subject and would be glad to help in any way possible.

Sincerely yours,

JOHN A. WHITNEY.

SAVE YOUR VISION WEEK

Mr. EAGLETON. Mr. President, this week has been proclaimed by the President as Save Your Vision Week, by authority of a joint resolution of Congress passed in December 1963.

Save Your Vision Week was instituted by the American Optometric Association in 1937, as a method of calling the attention of all Americans to the need for preservation and enhancement of human vision. Over the years, this special event served the Nation well by providing an occasion when all of us could be reminded of the need for professional vision care as a preventive measure against blindness and for correction of those vision problems detected in the course of a complete visual analysis.

Hopefully, my remarks will further serve to highlight the importance of good vision in society today. The safety and well being of our senior citizens, the learning ability of our youngsters, and the productivity of working Americans all depend directly upon visual performance.

I find it especially appropriate to remind my fellow colleagues and all Americans of the importance of this special observation. The American Optometric Association, a federation representing the associations or societies of all 50 States and the District of Columbia, is headquartered in my home State of Missouri. It is equally appropriate that I take this opportunity to remind Americans of this event, because in June the American Optometric Association will begin a year long celebration of its 75th year of service to the public, with presentation of its annual congress in St. Louis, Mo.

I join in urging all Americans to learn more about their eyes and the symptoms of vision problems, and to take the steps necessary to assure for themselves and their families a lifetime of useful vision. At the same time, I salute the professional vision care practitioners of America—optometrists and ophthalmologists alike—for their skill and dedication in providing an important primary health service to citizens of all ages.

INTEGRATION AND BUSING

Mr. ALLOTT. Mr. President, in recent days, two of the Nation's most intelligent journals, the Wall Street Journal and Commentary magazine, have performed a great service for the Nation by raising the level of debate about busing.

The March issue of Commentary contains an article by the distinguished Harvard educator, Prof. Nathan Glazer. His article is entitled "Is Busing Necessary?" I think all Senators will be interested in the answer Professor Glazer gives to this question.

The same issue of Commentary contains an essay by editor Norman Podhoretz commenting on Professor Glazer's article. The title of this essay is "School Integration and Liberal Opinion." I think all Senators will be interested in Mr. Podhoretz's conclusions.

Friday's Wall Street Journal contains an editorial commenting upon Professor Glazer's article. And that edition of the Journal also contained relevant excerpts from Chief Justice Berger's opinion for a unanimous Court in the Charlotte-Mecklenburg decision.

Mr. President, I ask unanimous consent that these important items be printed in the RECORD.

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

IS BUSING NECESSARY?

(By Nathan Glazer)

It is the fate of any social reform in the United States—perhaps anywhere—that, instituted by enthusiasts, men of vision, politicians, statesmen, it is soon put into the keeping of full-time professionals. This has two consequences. On the one hand, the job is done well. The enthusiasts move on to new causes while the professionals continue working in the area of reform left behind by public attention. But there is a second consequence. The professionals, concentrating exclusively on their area of reform, may become more and more remote from public opinion, and indeed from common sense. They end up at a point that seems perfectly logical and necessary to them—but which seems perfectly outrageous to almost everyone else. This is the story of school desegregation in the United States.

For ten years after the 1954 Supreme Court decision in *Brown*, little was done to desegregate the schools of the South. But professionals were at work on the problem. The NAACP Legal Defense Fund continued to bring case after case into court to circumvent the endless forms of resistance to a full and complete desegregation of the dual school systems of the South. The federal courts, having started on this journey in 1954, became educated in all the techniques of subterfuge and evasion, and in their methodical way struck them down one by one. The federal executive establishment, reluctant to enter the battle of school desegregation, became more and more involved.

The critical moment came with the passage of the Civil Rights Act in 1964, in the wake of the assassination of a President and the exposure on television of the violent lengths to which Southern government would go in denying constitutional rights to Negroes. Under Title IV of the Civil Rights Act, the Department of Justice could bring suits against school districts maintaining segregation. Under Title VI, no federal funds under any program were to go to districts that practiced segregation. With the passage of the Elementary and Secondary Education Act in 1965, which made large federal funds available to schools, the club of federal withdrawal of funds became effective. In the Department of Justice and in the Department of Health, Education and Welfare, bureaucracies rapidly grew up to enforce the law. Desegregation no longer progressed painfully from test case to test case, endlessly appealed. It moved rapidly as every school district in the South was required to comply with federal requirements. HEW's guidelines for compliance steadily tightened, as the South roared and the North remained relatively indifferent. The Department of Justice, HEW, and the federal courts moved in tandem. What the courts declared was segregation became what HEW declared was segregation. After 1969, when the Supreme Court ordered, against the new administration's opposition, the immediate implementation of desegregation plans in Mississippi, no further delay was to be allowed.

The federal government and its agencies were under continual attack by the civil-rights organizations for an attitude of moderation in the enforcement of both court orders and legal requirements. Nevertheless, as compared with the rate of change in the years 1954 to 1964, the years since 1964 have seen an astonishing speeding-up in the process of desegregating the schools of the South.

Writing during the Presidential campaign of 1968, Gary Orfield, in his massive study, *The Reconstruction of Southern Education*, stated:

"To understand the magnitude of the social transformation in the South since 1964, that portrait of hate [of black students walking into Little Rock High School under the protection of paratroopers' bayonets] must be compared to a new image of tense but peaceful change. Even in the stagnant red clay counties in rural backwaters, where racial attitudes have not changed much for a century, dozens or even hundreds of black children have recently crossed rigid caste lines to enter white schools. Counties with well-attended Ku Klux Klan cross-burnings have seen the novel and amazing spectacle of Negro teachers instructing white classes. It has been a social transmutation more profound and rapid than any other in peacetime American history.

"This is a revolution whose manifesto is a court decision and whose heroes are bureaucrats, judges, and civil-rights lawyers. . . ."

Mr. Orfield thought it was all coming to an end. With Nixon attacking the guidelines that had brought such progress, and with the civil-rights coalition coming apart in the fires of the cities of the North, Mr. Orfield wrote, "A clear electoral verdict against racial reconciliation [that is, the election of Mr. Nixon] could mean that the episode of the school guidelines may recede into history as an interesting but futile experiment." Mr. Orfield underestimated the bureaucrats, the courts, and the overall American commitment to the desegregation of Southern schools. While Mr. Nixon's appointees were suffering the same abuse as Mr. Johnson's before them for insufficient zeal, the desegregation of the racially divided school systems of the South proceeded. Thus the Di-

rector of the HEW Office of Civil Rights, J. Stanley Pottinger, could summarize some of the key statistics as of 1970 in the following terms:

"When school opened in the fall of 1968, only 18 per cent of the 2.9 million Negro children in the Southern states attended schools which were predominantly white in their student enrollments. In the fall of 1970, that figure had more than doubled to 39 per cent . . . [and] the percentage of Negroes attending 100 per-cent black schools dropped . . . from 68 per cent to 14 per cent. In 1968, almost no districts composed of majority Negro (and other minority) children were the subject of federal enforcement action. It was thought . . . that the limited resources of government ought to be focused primarily on the districts which had a majority of white pupils, where the greatest educational gains might be made, and where actual desegregation was not as likely to induce white pupils to flee the system. . . . 40 per cent of all the Negro children in the South live in [such] systems. . . . Obviously, the greater the amount of desegregation in majority black districts, the fewer will be the number of black children . . . who will be counted as "desegregated" under a standard which measures only those minority children who attend majority white schools.

"In order to account for this recent anomaly, HEW has begun to extract from its figures the number of minority children who live in mostly white districts and who attend mostly white schools. Last year, approximately 54 per cent of the Negro children in the South who live in such districts attended majority white schools. Conversely, nearly 40 per cent of the 2.3 million white children who live in mostly black (or minority) districts now attend mostly black (or minority) schools." [1]

There has been further progress since, and if one uses as the measure the number of blacks going to schools with a majority of white children, the South is now considerably more integrated than the North.

Yet the desegregation of schools is once again the most divisive of American domestic issues. Two large points of view can be discerned as to how this has happened. To the reformers and professionals who have fought this hard fight—the civil-rights lawyers, the civil-rights organizations, the government officials, the judges—the fight is far from over, and even to review the statistics of change may seem an act of treason in the war against evil. Indeed, if one is to take committed supporters of civil rights at their word, there is nothing to celebrate. A year ago the Civil Rights Commission, the independent agency created by the Civil Rights Act of 1957 to review the state of civil rights, attacked the government in a massive report on the civil rights enforcement efforts. "Measured by a realistic standard of results, progress in ending inequity has been disappointing. . . . In many areas in which civil-rights laws afford pervasive legal protection—education, employment, housing—discrimination persists, and the goal of equal opportunity is far from achievement." And the report sums up the gloomy picture of Southern school segregation, 16 years after *Brown:* "Despite some progress in Southern school desegregation . . . a substantial majority of black school children in the South still attend segregated schools." [2] Presumably, then, when a majority of Negro children attended schools in which whites were the majority, success by one measure should have been reported. But in its follow-up report one year later, this measure of success in Southern school desegregation was not even mentioned. The civil-rights enforcement effort in elementary and secondary schools, given a low "marginal" score for November 1970 (out of four possibilities," "poor," "marginal," "adequate,' and "good"), is shown as having regressed to an even *lower* "marginal" score by May 1971, after HEW's most successful year in advancing school integration!

But from the point of view of civil-rights advocates, desegregation as such in the South is receding as a focus of attention. A second generation of problems has come increasingly to the fore: dismissal or demotion of black school principals and teachers as integration progresses and their jobs are to be given to whites; expulsions of black students for disciplinary reasons; the use of provocative symbols (the Confederate flag, the singing of "Dixie"); segregation within individual schools based on tests and ability grouping; and the rise of private schools in which whites can escape desegregation.

But alongside these new issues, there is the reality that the blacks of the North and West are also segregated, not to mention the Puerto Ricans, Mexican Americans, and others. The civil-rights movement sees that minorities are concentrated in schools that may be all or largely minority, sees an enormous agenda of desegregation before it, and cannot pause to consider a success which is already in its mind paltry and inconclusive. The struggle must still be fought, as bitterly as ever.

There is a second point of view as to why desegregation, despite its apparent success, is no success. This is the Southern point of view, and now increasingly the Northern point of view. It argues that a legitimate, moral, and Constitutional effort to eliminate the unconstitutional separation of the races (most Southerners now agree with this judgment of *Brown*), has been turned into something else—an intrusive, costly, painful, and futile effort to regroup the races in education by elaborate transportation schemes. The Southern Congressmen who for so long tried to get others to listen to their complaints now watch with grim satisfaction the agonies of Northern Congressmen faced with the crisis of mandatory, court-imposed transportation for desegregation. On the night of November 4, 1971, as a desperate House passed amendment after amendment in a futile effort to stop busing. Congressman Edwards of Alabama said:

"Mr. Chairman, this will come as a shock to some of my colleagues. I am opposing this amendment. I will tell you why. I look at it from a rather cold standpoint. We are busing all over the First District of Alabama, as far as you can imagine. Buses are everywhere . . . people say to me, 'How in the world are we ever going to stop this madness?' I say, 'It will stop the day it starts taking place across the country, in the North, in the East, in the West, and yes, even in Michigan.' "

And indeed, one of the amendments had been offered by Michigan Congressmen, longtime supporters of desegregation, because what had been decreed for Charlotte, North Carolina, Mobile, Alabama, and endless other Southern cities was now on the way to becoming law in Detroit and its suburbs.

As a massive wave of antagonism to transportation for desegregation sweeps the country, the liberal Congressmen and Democratic Presidential aspirants who have for so long fought for desegregation ask themselves whether there is any third point of view: whether they must join with the activists who say that the struggle is endless and they must not flag, even now; or whether they must join with the Southerners. To stand with the courts in their latest decisions is, for liberal Congressmen, political suicide. A Gallup survey last October revealed that 76 per cent of respondents opposed busing, almost as many in the East (71 per cent), Midwest (77 per cent), and West (72 per cent), as in the South (82 per cent); a majority of Muskie supporters (65 per cent) as well as a majority of Nixon supporters (85 per cent). Even more blacks opposed busing than support it (47 to 45 per cent). But if to stand with the further extension to all the Northern cities and suburbs of transportation for desegregation is suicide, how can the liberal Congressmen join with the South and with what they view as Northern bigotry in opposing busing? Is there a third position, something which responds to the wave of frustration at court orders, and which does not mean the abandonment of hope for an integrated society?

How have we come from a great national effort to repair a monstrous wrong to a situation in which the sense of right of great majorities is offended by policies which seem continuous with that once noble effort? In order to answer this question, it is necessary to be clear on how the Southern issue became a national issue.

After the passage of the Civil Rights Act of 1964, the first attempt of the South to respond to the massive federal effort to impose desegregation upon it was "freedom of choice." There still existed the black schools and the white schools of a dual school system. But now whites could go to black schools (none did) and the blacks could go to white schools (few dared). It was perfectly clear that throughout the South "freedom of choice" was a means of maintaining the dual school system. In 1966 HEW began the process of demanding statistical proof that substantially more blacks were going to school with whites each year. The screw was tightened regularly, by the courts and HEW, and finally, in 1968, the Supreme Court gave the *coup de grâce,* insisting that dual school systems be eliminated completely. There must henceforth be no identifiable black schools and white schools, only schools.

But one major issue remained as far as statistical desegregation was concerned: the large cities of the South. For the fact was that the degree of segregation in the big-city Southern schools was by now no longer simply attributable to the dual school systems they, too, had once maintained; in some instances, indeed, these schools had even been "satisfactorily" (by some federal or court standard) desegregated years before. What did it mean to say that their dual school systems must also be dismantled "forthwith"?

Contrast, as a concrete instance, the case of rural New Kent County in Virginia, where the Supreme Court declared in 1968 that "freedom of choice" would not be accepted as a means of desegregating a dual school system. Blacks and whites lived throughout the country. There were two schools, the historic black school and the historic white school. Under "freedom of choice," some blacks attended the white school, and no whites attended the black school. There was a simple solution to desegregation, here and throughout the rural and small-town South, and the Supreme Court insisted in 1968, fourteen years after *Brown,* that the school systems adopt it: to draw a line which simply made two school districts, one for the former black school, and one for the former white school, and to require all children in one district, white and black, to attend the former black school, and all children in the other, white and black, to attend the former white school.

But what now of Charlotte, Mobile, Nashville, and Norfolk? To draw geographical lines around the schools of these cities, which had been done, meant that many white schools remained all white, and many black schools remained all black. Some schools that had been "desegregated" in the past—that is, had experienced some mix of black and white—had already become "resegregated"—that is, largely black or all black as a result of population movements rather than any official action.

If there were to be no black schools and

[1] In *Inequality in Education,* Center for Law and Education, Harvard University, Aug. 3, 1971.

[2] *Federal Civil Rights Enforcement Effort,* 1970, p. 14.

no white schools in the city, one thing at least was necessary; massive transportation of the children to achieve a proper mix. There was no solution in the form of geographical zoning.

But if this was the case, in what way was their situation different from that of Northern cities? In only one respect: the Southern cities had once had dual school systems, and the Northern cities had not. (Even this was not necessarily a decisive difference, for cities outside the Old South had also maintained dual systems until 1954. Indiana had a law permitting them until the late 1940's, and other cities had maintained dual systems somewhat earlier.) Almost everything else was the same. The dynamics of population change were the same. Blacks moved into the central city, whites moved out to the suburbs. Blacks were concentrated in certain areas, owing to a mixture of formal or informal residential discrimination, past or present, economic incapacity, and taste, and these areas of black population became larger and larger, making full desegregation by contiguous geographical zoning impossible. Even the political structures of Southern and Northern cities were becoming more alike. Southern blacks were voting, liberal candidates appealed to them, Southern blacks sat on city councils and school boards. If one required the full desegregation of Southern cities by busing, then why should one not require the full desegregation of Northern cities by busing?

Busing has often been denounced as a false issue. Until busing was decreed for the desegregation of Southern cities, it was. As has been pointed out again and again, buses in the South regularly carried black children past white schools to black schools, and white children past black schools to white schools. When "freedom of choice" failed to achieve desegregation and geographical zoning was imposed, busing sometimes actually declined. In any case, when the school systems were no longer allowed to have buses for blacks and buses for whites, certainly the busing system became more efficient. After 1970, busing for desegregation replaced the busing for segregation.

But this was not true when busing came to Charlotte, North Carolina, and many other cities of the South, in 1971, after the key Supreme Court decision in *Swann v. Charlotte-Mecklenburg County Board of Education*. The City of Charlotte is 64 square miles, larger than Washington, D.C., but it is a part of Mecklenburg County, with which it forms a single school district of 550 square miles, which is almost twice the size of New York City. Many other Southern cities (Mobile, Nashville, Tampa) also form part of exceptionally large school districts. While 29 per cent of the schoolchildren of Mecklenburg County are black, almost all live in Charlotte. Owing to the size of the county, 24,000 of 84,500 children were bused, for the purpose of getting children to schools beyond walking distance. School zones were formed geographically, and the issue was, could all-black and all-white schools exist in Mecklenburg County, if a principle of neighborhood school districting meant they would be so constituted?

The Supreme Court ruled they could not, and transportation could be used to eliminate black and white schools. The Court did not argue that there was a segregative intent in the creation of geographical zones—or that there was not—and referred to only one piece of evidence suggesting and effort to maintain segregation, free transfer. There are situations in which free transfer is used by white children to get out of mostly black schools, but if this had been the problem, the Court could have required a majority-to-minority transfer only (in which one can only transfer from a school in which one's race is a majority, and to a school in which one's race is a minority), as is often stipulated in desegregation plans. Instead the Court approved a plan which involved the busing of some 20,000 additional children, some for distances of up to 15 miles, from the center of the city to the outer limits of the county, and vice versa.

Two implications of the decision remain uncertain, but they may lead to a reorganization of all American education. If Charlotte, because it is part of the school district of Mecklenburg County, can be totally desegregated with each school having a roughly 71–29 white-black proportion, should not city boundaries be disregarded in other places and larger school districts of the Mecklenburg County scale be created wherever such action would make integration possible? A district judge has already answered this question in the affirmative for Richmond, Virginia.

But the second implication is: If Charlotte is—except for the background of a dual school system—socially similar to many Northern cities, and if radical measures can be prescribed to change the pattern that exists in Charlotte, should they not also be prescribed in the North? And to that question also a federal judge, ruling in a San Francisco case, has returned an affirmative answer.

San Francisco has a larger measure of integration probably than most Northern cities. Nevertheless *de facto* segregation—the segregation arising not from formal decisions to divide the races as in the South, but from other causes, presumed to be social and demographic—has long been an issue in San Francisco. In 1962, the NAACP filed suit against the school board, charging it with "affording, operating, and maintaining a racially segregated school system within the San Francisco Unified School District, contrary to and in violation of the equal protection and due process clause of the Fourteenth Amendment of the Constitution of the United States." As John Kaplan has written:

"The history of this suit is a short and strange one. The Board of Education retained for its defense a distinguished local attorney, Joseph Alioto [now the mayor], who was primarily an anti-trust specialist. Alioto started discovery proceedings and the heart seemed to go out of the plaintiffs.

"In any case, after admitting in depositions that the Board had no intention to produce a condition of racial imbalance; that it took no steps to bring about such a condition; that its lines were not drawn for the purpose of creating or maintaining racial imbalance; that there was no gerrymandering; and finally that the Board was under no obligation to relieve the situation by transporting students from their neighborhoods to other districts, the plaintiffs' attorney allowed the suit to be dismissed for want of prosecution on December 2, 1964."

It was assumed that this disposed of the legal issue. Meanwhile the San Francisco school system continued to struggle with the problem. After a long series of censuses, disputes, and studies, the school board proposed to set up two new integrated complexes, using transportation to integrate, one North and one South of Golden Gate Park. They were to open in 1970. When, however, one was postponed because of money problems, suit was brought once again by integration-minded parents, this time charging *de jure* segregation on the ground that the school board's failure to implement the two integrated school complexes amounted to an official act maintaining the schools in their presently segregated state.

Judge Stanley Weigel, before whom the matter was argued, very sensibly decided to wait for the Supreme Court's ruling in the Charlotte-Mecklenburg County case which, he and many others thought, might once and for all settle the question of whether *de facto* segregation was no less unconstitutional than *de jure* segregation. Although one may doubt from certain passages in the Charlotte-Mecklenburg decision that the Supreme Court did indeed mean to outlaw *de facto* segregation, Judge Weigel seems to have decided that it did. "The law is settled," he declared, "that school authorities violate the constitutional rights of children by establishing school attendance boundary lines knowing that the result is to continue or increase substantial racial imbalance."

But in ordering the desegregation of the San Francisco schools by transportation, Judge Weigel did not simply rest the matter on *de facto* segregation; he also listed acts of commission and omission which he believed amounted to *de jure* school segregation.

Now one can well imagine that a school board which does not or did not recently operate under state laws that required or permitted segregation could nevertheless through covert acts—which are equally acts under state authority—foster segregation. It could, for example, change school-zone lines, so as to confine black children in one school and permit white children to go to another school. It could build schools and expand them so that they served an all-black or all-white population. It could permit a transfer policy whereby white children could escape from black schools while blacks could not. It could assign black teachers to black schools and white teachers to white schools.

Judge Weigel charged all these things. The record—a record made by a liberal school board, appointed by a liberal mayor, in a liberal city, with a black president of the school board—does not, in this layman's opinion, bear him out, unless one is to argue that any action of a school board in construction policy or zone-setting or teacher assignment that precedes a situation in which there are some almost all-black schools (there were no all-black schools in San Francisco) and some almost all-white schools (there were no all-white schools in San Francisco) can be considered *de jure* segregation.

Under Judge Weigel's interpretation, there is no such thing as *de facto* segregation. All racial imbalance is the result of state actions, either taken or not taken. If not taken, they should have been taken. *De facto* disappears as a category requiring any less action than *de jure*.

This is the position of many lawyers who are arguing these varied cases. I have described the San Francisco case because it led to a legal order requiring desegregation by transportation of the largest Northern or Western system so far affected by such an order. But massive desegregation had also been required by a district judge in Denver, who had then had his judgment limited by the Circuit Court of Appeals. It is this Denver case that will become the first case on Northern or Western *de facto* school segregation—if we still allow the term some meaning—to be heard by the Supreme Court. What the Supreme Court will have to decide is whether the historical difference between Charlotte and Denver permits Denver or any other city to do any less than Charlotte has been required to do in order to integrate its schools.

Simultaneously, Detroit and the surrounding counties and the state of Michigan are under court order to come up with a plan that permits the desegregation of the school children of Detroit by busing to the neighboring suburbs, and a federal judge is moving toward the same result in Indianapolis. If the Supreme Court should uphold the district judge's ruling in the Richmond case, it will then similarly have to decide whether anything in the history or practices of Detroit and Indianapolis justifies ordering less in those cities than has been ordered in the city of Richmond.

The hardy band of civil-rights lawyers now glimpses—or glimpsed, before the two latest

appointments to the Supreme Court—a complete victory, based on the idea that there is no difference between *de facto* and *de jure* segregation, an idea which is itself based on the larger idea that there is no difference between North and South. What is imposed on the South must be imposed on the North. As Ramsey Clark, a former Attorney-General of the United States, puts it, echoing a widely shared view:

"In fact, there is no *de facto* segregation. All segregation reflects some past actions of our governments. The FHA itself required racially restrictive covenants until 1948. But, that aside, the consequences of segregated schooling are the same whatever the cause. Segregated schools are inherently unequal however they come to be and the law must prohibit them whatever the reason for their existence."

In other words, whatever exists is the result of state action. If what exists is wrong, state action must undo it. If segregated schools were not made so by official decisions directly affecting the schools, then they were made so by other official decisions—Clark, for example, points to an FHA policy in effect until 1948—that encouraged residential segregation. Behind this argument rests the assumption, now part of the liberal creed, that racism in the North is different, if at all, from racism in the South only in being more hypocritical. All segregation arises from the same evil causes, and all segregation must be struck down. This is the position that many federal judges are now taking in the North—even if, as Judge Weigel did, they try to protect themselves by pointing to *some* action by the school board that they think might make the situation *de jure* in the earlier sense as well.

II

I believe that three questions are critical here. First, do basic human rights, as guaranteed by the Constitution, require that the student population of every school be racially balanced according to some specified proportion, and that no school be permitted a black majority? Second, whether or not this is required by the Constitution, is it the only way to improve the education of black children? Third, whether or not this is required by the Constitution, and whether or not it improves the education of black children, is it the only way to improve relations between the races?

These questions are in practice closely linked. What the Court decides is constitutional is very much affected by what it thinks is good for the nation. If it thinks that the education of black children can only be improved in schools with black minorities, it will be very much inclined to see situations in which there are schools with black majorities as unconstitutional. If it thinks race relations can only be improved if all children attend schools which are racially balanced, it will be inclined to find constitutional a requirement to have racial balance.

This is not to say that the courts do not need authority in the Constitution for what they decide. But this authority is broad indeed and it depends on a doctrine of judicial restraint—which has not been characteristic of the Supreme Court and subordinate federal courts in recent years—to limit judges in demanding what they think is right as well as what they believe to be within the Constitution. Indeed, it was in part because the Supreme Court believed that Negro children *were* being deprived educationally that it ruled as it did in *Brown*. They were being deprived because the schools were very far from "separate and equal." But even if they were "equal," their being "separate" would have been sufficient to make them unconstitutional: "To separate them from others of similar age and qualifications simply because of their race generates a feeling of inferiority as to their race and status in the community that may affect their hearts and minds in a way unlikely ever to be undone."

While much has been made of the point that the Court ruled as it did because of the evidence and views of social scientists as to the effects of segregation on the capacity of black children to learn, the fact is that the basis of the decision was that distinctions by race had no place in American law and public practice, neither in the schools, nor, as subsequent rulings asserted, in any other area, whether in waiting rooms or golf courses. This was clearly a matter of the "equal protection of the laws." It was more problematic as to what should be done to insure the "equal protection of the laws" when such protection had been denied for so long by dual school systems. But remedies were eventually agreed upon, and the Court has continued to rule unanimously—as it did in *Brown*—on these remedies down through *Swann* v. *Charlotte-Mecklenburg Board of Education*.

Inevitably, however, the resulting increase in the freedom of black children—the freedom to attend the schools they wished—entailed a restriction on the freedom of others. In "freedom of choice," the freedom of white children was in no way limited. In geographical zoning to achieve integration, it was limited, but no more than that of black children. But in busing to distant schools, white children were in effect being conscripted to create an environment which, it had been decided, was required to provide equality of educational opportunity for black children. It was perhaps one thing to do this when the whites in question were the children or grandchildren of those who had deprived black children of their freedom in the past. But when a district judge in San Francisco ruled that not only white children but Chinese children and Spanish-speaking children must be conscripted to create an environment which, be believed, would provide equality of educational opportunity for black children, there was good reason for wondering whether "equal protection of the laws" was once again being violated, this time from the other side.

We are engaged here in a great enterprise to determine what the "equal protection of laws" should concretely mean in a multiracial and multi-ethnic society, and one in which various groups have suffered differing measures of deprivation. The blacks have certainly suffered the most, but the Chinese have suffered too, as have the Spanish-speaking groups, and some of the white ethnic groups. Is it "equal protection of the laws" to prevent Chinese-American children from attending nearby schools in their own community, conveniently adjacent to the afternoon schools they also attend? Is it "equal protection of the laws" to keep Spanish-speaking children from attending school in which their numerical dominance has led to bilingual classes and specially trained teachers? Can the Constitution possibly mean that?

One understands that the people do not vote on what the Constitution means. The judges decide. But it is one thing for the Constitution to say that, despite how the majority feels, it must allow black children into the public schools of their choice; and it is quite another for the Constitution to say, in the words of its interpreters, that some children, owing to their race or ethnic group alone, may not be allowed to attend the schools of their choice, even if their choice has nothing to do with the desire to discriminate racially. When, starting with the first proposition, one ends up with the second, as one has in San Francisco, one wonders if the Constitution can possibly have been interpreted correctly.

Again and again, reading the briefs and the transcripts and the analyses, one finds the words "escape" and "flee." The whites must not escape. They must not flee. Constitutional law often moves through strange and circuitous paths, but perhaps the strangest yet has been the one whereby beginning with an effort to expand freedom—no Negro child shall be excluded from any public school because of his race—the law has ended up with as drastic a restriction of freedom as we have seen in this country in recent years. No child, of any race or group, may "escape" or "flee" the experience of integration. No school district may facilitate such an escape. Nor may it even (in the Detroit decision) fail to take action to close the loopholes permitting anyone to escape.

Let me suggest that, even though the civil-rights lawyers may feel that in advocating measures like these they are in the direct line of *Brown*, something very peculiar has happened when the main import of an argument changes from an effort to expand freedom to an effort to restrict freedom. Admittedly the first effort concerned the freedom of blacks, the second in large measure concerns the freedom of whites (but not entirely, as we have seen from the many instances in the South where blacks have resisted the elimination of black schools, and in the North where they have fought for community-controlled schools). Nevertheless, the tone of civil-rights cases has turned from one in which the main note is the expansion of freedom, into one in which the main note is the imposition of restrictions. It is ironic to read in Judge Stanley Weigel's decision, following which every child in the San Francisco elementary schools was placed in one of four ethnic or racial categories and made subject to transportation to provide an average mix of each in every school, an approving quotation from Judge Skelly Wright:

The problem of changing a people's mores, particularly those with an emotional overlay, is not to be taken lightly. It is a problem which will require the utmost patience, understanding, generosity, and forbearance from all of us, of whatever race. But the principle is that we are, all of us, freeborn Americans, with a right to make our way, unfettered by sanctions imposed by man because of the work of God."

That was the language of 1956. One finds very little "patience, understanding," etc., in Judge Weigel's own decision, which required the San Francisco School District to prepare a plan to meet the following objectives:

Full integration of all public elementary schools so that the ratio of black children to white children will then be and thereafter continue to be substantially the same in each school. To accomplish these objectives the plans may include:

(a) Use of non-discriminatory busing if, as appears now to be clear, at least some busing will be necessary for compliance with the law.

(b) Changing attendance zones wherever necessary to head off racial segregation.

According to Judge Wiegel, the law even requires:

"Avoidance of the use of tracking systems or other educational techniques or innovations without provision for safeguard against racial segregation as a consequence."

Can all this be in the Constitution too?

A second issue that would seem to have some constitutional bearing is whether those who are to provide the children for a minority black environment are being conscripted only on the basis of income. The prosperous and the rich can avail themselves of private schooling, or they can "flee" to the suburbs. And if the Richmond and Detroit rulings should be sustained, making it impossible to "escape" by going to the suburbs, the class character of the decisions would become even more pronounced. For while many working-class and lower-middle class people can afford to live in suburbs, very few can afford the costs of private education.

Some observers have pointed out that leading advocates of transportation for integration—journalists, political figures, and judges—themselves send their children to

private schools which escape the consequenses of these legal decisions. But even without being *ad hominem*, one may raise a moral question: If the judges who are imposing such decisions, the lawyers who argue for them (including brilliant young lawyers from the best law schools employed by federal poverty funds to do the arguing), would not themselves send their children to the schools their decisions bring into being, how can they insist that others poorer and less mobile than they are do so? Clearly those not subject to a certain condition are insisting that others submit themselves to it, which offends the basic rule of morality in both the Jewish and Christian traditions. I assume there must be a place for this rule in the Constitution.

A key constitutional question with which the Supreme Court will now finally have to do deal is whether *de facto* segregation is really different from *de jure* segregation, and if so, whether lesser remedies can be required to eradicate it.

Is there really a meaningful difference between a 100 per-cent black school under a law that prohibits blacks from going to school with whites, and a 100 per-cent black school that is created by residential segregation? The question has become even subtler: is there a difference between a majority black school in a city which once had *de jure* segregation, and such a school in a city which did not? I believe that the answer to the second question is no. But in the first case the distinction was meaningful when the Supreme Court handed down *Brown* and is meaningful today. In the *de facto* situation, to begin with, not all schools are 100 per cent segregated. Indeed, none may be. A child's observation alone may demonstrate that there are many opportunities to attend integrated schools. The family may have an opportunity to move, the city may have open enrollment, it may have a voluntary city-to-suburb busing program. The child may conclude that if one's parents wished, one could attend another school, or that one could if one lived in another neighborhood—not all are inaccessible economically or because of discrimination—or could conclude that the presence of a few whites indicated that the school was not segregated.

Admittedly social perception is a complicated thing. The child in a 100 per-cent black school as a result of residential concentration and strict zoning may see his situation as identical to that of a child in a 100 percent black school because of state law requiring separation of the races. But the fact is that a black child in a school more than 47 per-cent black (the San Francisco definition of "segregation") may also see himself as unfairly deprived. Or any black child at all, in view of his history, and the currently prevailing interpretation of his position, even if he is the only black child in a white school, may so conclude. Perception is not only based on reality a, reality which to me makes the *de facto* segregated school a very different thing from the *de jure* segregated school. Perception can turn the lovely campuses of the West Coast into "jails" which confine young people, and can turn those incarcerated by courts for any crime into political prisoners. If we feel a perception is wrong, one of our duties is to try to correct it, rather than to assume that the perception of being a victim must alone dictate the action to be taken. False perceptions are to be responded to sympathetically, but not as if they were true.

If one finds segregation of apparently *de facto* origin, what is the proper remedy?

In some cases, one can show that it is not really *de facto* by pointing to actions that the school board took with a segregatory intent—for example, changing a school-zone line when blacks moved into an area to keep a school all or mostly black or another one all or mostly white. I do not think this was demonstrated in the case of San Francisco, but it was the crucial issue in the first Northern school desegregation case, that of New Rochelle, which was never reviewed by the Supreme Court, and in Pontiac, Michigan, and for some schools in Denver. In districts with a hundred or more schools and a long history, with perhaps scores of school-zone lines changed every year, it would be unlikely if one could not come up with some cases that seemed to show this. Sometimes it was done under pressure of local white parents. Finding this, a court might require something as simple as that the zone line be changed back (this, of course, by the time it came to court would hardly matter since the black residential area would almost certainly have expanded and both zone lines would probably be irrelevant). Or it might require that no zone line be set in the future which had the effect of maintaining segregation. Or that no parental wishes of this sort be taken into account. In cases where segregatory zone lines were commonly or regularly set (Pontiac) more radical relief would be more appropriate.

But there is a basic and troubling question here. School boards are either elected, or appointed by elected officials. They are thus directly or indirectly responsible to citizens. One can well understand the constitutional doctrine which asserts that no elected or appointed board, no governmental official, may deny constitutional rights—e.g., allowing a Communist to speak in a school building—regardless of the wishes of its constituency. But in the case of schooling and school-zone boundary-setting, a host of issues is involved: convenience of access, quality of building, assumed quality of teaching staff, racial composition of students, etc. A board is subject to a hundred influences in making such a decision. It is not as simple a matter as proving this Communist was not allowed to speak because of mass pressure. Nor is the motivation of parents and boards ever unmixed.

In Boston the school board opened a new school in a black section. It tried to save the state aid that would be lost if it did not take some action to desegregate, and it zoned children living at some distance away into the new school. The white parents protested and eventually the board succumbed to their pressure and allowed them to send their children to their old nearby schools. To the minds of most enforcers of school desegregation, state and national, the board condemned itself for a segregatory act. One of the things the boycotting parents said was that they were afraid their children would get beaten up going through the area they had to traverse in order to get to school. Who is to say that this was pure fantasy, in the conditions of the modern city, and that what the white parents really meant was that they did not want their children to go to a mostly black school? It is this kind of determination on the intent and effect of hundreds of school-board decisions that judges are now required to make. When one read cases such as those in Indianapolis, Detroit, and elsewhere, the mind reels with the complexity of numerous school-zoning and construction decisions. Briefs, hearing transcripts, exhibits run to thousands of pages. And at least one conclusion that this reader comes to is that no judge can or ought to have to make decisions on such issues, and the chances are that whatever decision he makes will be based on inadequately analyzed information.

Is it the law—and, not being a lawyer, I do not know—that if a segregatory intent plays *any* part in school decisions, then *every* measure of relief, no matter how extensive is justified? If so, from a non-legal point of view it seems odd that one uncertain act with an uncertain effect on the social and racial patterns of an entire city should justify massive measures to reconstruct a school system.

Perhaps the most serious constitutional issue in a line of cases erasing the distinction between *de jure* and *de facto* segregation and also erasing the political boundaries between school districts in order to achieve a racial balance in which every black student is in a minority in every school (and presumably, as the cases develop, every Spanish-speaking student, and so on), is that all this makes impossible one kind of organization that a democratic society may wish to choose for its schools: the kind of organization in which the schools are the expression of a geographically defined community of small scale and regulated in accordance with the democratically expressed views of that community. This is the point Alexander Bickel has argued so forcefully. We have had a good deal of discussion in recent years of "decentralization," "community control," and "parental control" of schools. There were reasons for "community control" long before the issue exploded in New York in the late 1960's, and there were reasons for "parental control" long before the educational voucher scheme was proposed. Now the new line of cases makes the school ever more distant from the parents who send their children to it.

While busing schemes vary, in some, children from a number of different areas are sent to a single school and children from one area are sent to a number of schools. It becomes hard for parental or community concerns to be exercised on the particular school to which one's children go. Thus, in San Francisco, in the Mission district, owing to the effective work of the Mission Coalition (an Alinsky-style community organization), the local community has considerable influence on public programs in the area. With a wide base of membership, this organization can help determine what is most effective in the local schools. But if it wants to create an atmosphere in the school best suited to the education of Spanish-speaking children, what sense does this make when the schools are filled with children from distant areas? And how can it influence the education the Mission children receive in the distant schools to which many of them are now sent?

In effect, the new line of cases gives enormous control to central school bureaucracies, who will make decisions subject only to the courts and the federal government on the one hand, and the mass opinion of a large area dominated by the inevitable slogans which can create majorities on the other. Clearly this is one way of reducing the influence of people over their own environment and their own fate. I believe indeed that the worst effect of the current crisis is that people already reduced to frustration by their inability to affect a complex society and a government moving in ways many of them find incomprehensible and undesirable, must now see one of the last areas of local influence taken from them in order to achieve a single goal, that of racial balance.

The one reason for community control that has recently been considered most persuasive is that the inadequate education of black children may be improved under a greater measure of black community control. This may or may not be the case, but I believe that all people, black and white, have the right to control as much of their lives as is possible in a complex society, and the schools are very likely the only major function of government which would not suffer—and might even benefit—from a greater measure of local control. In education, there are few "economies of scale." It has always seemed fantastic that educators, in proposing "complexes" for 20,000 elementary-school children for purposes of desegregation, could also argue that schools of that size would also

be more "efficient." Interestingly, lawyers and judges, in their effort to find *de jure* segregatory intent in the acts of Northern school boards, will sometimes claim that schools were deliberately made small to lessen the chances of integration. Thus in Detroit, one charge against the school board, accepted by Judge Roth, was that the board built small schools of 300 in order to contain the population and make desegregation more difficult. Paul Goodman and many others would argue that even schools of 300 are probably too large. In San Francisco, on the other hand, the argument was that schools were expanded to "contain" the black and white population. The Detroit judge, it seems, would have preferred the large San Francisco schools, and the San Francisco judge would have preferred the small Detroit schools, if one takes their arguments at face value. But one may be allowed to suspect that if the situations had been reversed, they would still both have found *"de jure"* segregation in their respective cities.

ONE CONSEQUENCE of this transfer of ports for racial balance is that there is no local pressure to build a school to serve a local population, since one cannot know what the effect of any local school will be. Thus all decisions on school building revert to the hands of the central school authorities, only affected, as I have already pointed out, by judges and the federal government on the one hand, and a mass opinion unrelated to local district needs on the other. I am skeptical as to whether this will improve school-construction policies. Federal civil-rights agencies and judges have not as yet shown themselves very perceptive in their criticism of local school-construction policies. One piece of evidence of *de jure* segregation, cited by the San Francisco judge, was the building of a new school in Hunter's Point, a black area. The school authorities had resisted building there. The local people insisted on a new school. Just about everyone who supports desegregation in San Francisco supported the local people, even though they knew that the school would be segregated. The local NAACP also supported the building of the new school. The judge, in his decision, cited the building of this school as a sign of the "segregatory" policies of the San Francisco school authorities. To the judge, the black people of Hunter's Point were being "contained," when they should have been sent off elsewhere, leaving their own area devoid of schools (or perhaps any other facilities). But for the people of the area who demanded the school, they were being served. That their school would be, to a federal judge's mind, "segregated" did not seem to them a good reason for all city facilities to be built only in white or Spanish-speaking or Chinese areas.

The attempts of judges and civil-rights lawyers to argue that this or that school was built to be "segregated" for whites or blacks is in any case often naive. The dynamics of population movements in the cities have been too rapid (the black population of San Francisco increased from 5,000 in 1940 to 96,000 in 1970) and the process of school-building too slow, for any such intention to be easily demonstrated or realized in Northern cities. One of the schools cited in the San Francisco case as "segregated" blacks (64 per-cent black in 1964), had been cited as recently as 1967 in the Civil Rights Commission's report on *Racial Isolation in the Public Schools* as having been built in order to foster the "segregation" of white, since it had opened in 1954 with a student body that was almost all white. Presumably, at least for the intervening period, it must have been integrated.

The crucial point is: Do federal courts have the right to impose a school policy that would deprive local communities and groups, white and black, of power over their schools? Some of them seem quite sure that they do. Judge Roth in Detroit is critical of the blacks of that city for contributing to what he considers "segregation" by demanding black principals and teachers:

"In the most realistic sense, if fault or blame is to be found it is that of the community as a whole, including of course the black components. We need not minimize the effect of the actions of federal, state, and local governmental officers and agencies . . . to observe that blacks, like ethnic groups in the past, have tended to separate from the larger group and associate together. The ghetto is a place of confinement and a place of refuge. There is enough blame for everyone to share."

We would all agree with Judge Roth that the ghetto must not be a place of confinement and that everything possible must be done to make it as easy for blacks to live where they wish as it is for anyone else. But why should it be the duty or the right of the federal government and the federal judiciary to destroy the ghetto as a place of refuge if that is what some blacks want? Judge Roth is trying to read into the Constitution the crude Americanizing and homogenizing which is certainly one part of the American experience, but which is just as certainly not the main way we in this country have responded to the facts of a multi-ethnic society. The doctrines to which Judge Roth lends his authority would deny not only to blacks, but to any other group, a right of refuge which is quite properly theirs in a multi-ethnic society built on democratic and pluralist principles.

I do not speak here of limiting what communities may freely choose to do in order to integrate their schools. I speak only of the judicial insistence that they must do certain things. Much busing for desegregation is engaged in by school boards independently of court decisions, because the board feels this is good for education; or because it is under pressure from blacks and white liberal citizens who demand such measures; or because it is required or is under pressure to do so from state education authorities—who, in the major Northern and Western states, and in particular in Massachusetts, New York, Pennsylvania, and California, require local school districts to eliminate racial imbalance defined in various ways. More than 50 percent black is racial imbalance in Massachusetts, and 15 percent more or less of each group in each school than the proportion of that group in the entire district is racial imbalance in California. (It was on the basis of the 15 percent rule that more than 47 percent black was considered segregrated in San Francisco, for the proportion of black students in the schools was 32 per cent.) Thus, the City of Berkeley has been transporting its children to achieve integration for three years now, without any court or federal action. Riverside has done the same. Many cities have implemented, independently of court action, some degree of transportation for integration. Many of these actions have been attacked in the courts from the other side—that is, by white parents charging that for racial reasons alone they were being assigned to schools far from their homes. All these challenges have been struck down in the courts, in spite of state laws (such as New York's) which declare transportation for desegregation illegal. Interestingly enough, while the San Francisco school board was under attack from one side for having failed to implement one of its integration-through-busing school complexes, it was under attack from the other side for having implemented the one it had. It was of course the first of the two attacks that was supported by the district judge.

It is not this kind of action-to-integrate—undertaken by elected school boards, or by school boards appointed by elected officials, for educational or political reasons—that is under discussion here. Unless a political decision is clearly unconstitutional it should stand. Indeed, it is very likely that decisions to achieve racial balance taken by school boards not under judicial or federal order but because the political forces in that district demand it, have better effects than those undertaken under court order by resentful school administrations. In the first case, the methods of reducing racial imbalance have been worked out through the processes of political give-and-take, the community and teachers and administrators have been prepared for the change by the political process, the parents who oppose it have lost in what they themselves consider a fair fight. The characteristics of judge-imposed decisions are quite different.

III

There is, then, considerable room for doubt as to whether the Constitution actually mandates a system whereby every school shall have a black minority and no school shall have a black majority. Nevertheless present-day judges, with whom the doctrine of judicial restraint is not especially popular, seem able to find constitutional warrant for whatever policies they feel are best for the society. And so we come to the other crucial questions raised by the new line of cases: Is school desegregation the only way to improve the education of black children and/or the relations between the races?

Without rehearsing the terrible facts in detail, we know that blacks finish high school in the North three or more years behind whites in achievement. We also know with fair confidence that this huge gap is not caused by differential expenditures of money. Just about as much is spent on predominantly black schools outside the South as on predominantly white ones. Classes in black schools will often be smaller than classes in white ones—because the black schools tend to be located in old areas with many school buildings, while white schools tend to be in newer areas with fewer and more crowded school buildings. Blacks will often have more professional personnel assigned, owing to various federal and other programs. There are, to be sure, lower teacher salaries in the predominantly black schools, because they usually have younger teachers with less seniority and fewer degrees. Anyone who believes this is a serious disadvantage for a teacher has a faith in experience and degrees which is justified by no known evidence. (It is quite true that the big cities spend much less on their schools, white and black, than the surrounding suburban areas, which are almost entirely white. Regardless of the fact that spending more is unlikely to do much to improve education—it tends mostly to improve teachers' salaries and fringe benefits—it is quite unconscionable that more public money should be spent on the education of those from prosperous backgrounds than on those from poorer families. But this is quite separate from the issue of whether within present school districts less is spent on the education of black children, and whether spending more would reduce the gap in achievement.)

If money is not the decisive element in the gap between white and black, what is? In 1966 the Coleman report on *Equality of Educational Opportunity* reviewed the achievement of hundreds of thousands of American school children, black and white, and related it to social and economic background, to various factors within the schools, and to integration. In 1967, another study, *Racial Isolation in the Public Schools*, anlayzed the effects of compensatory-education programs and reviewed the data on integration. Both studies—as well as subsequent experience and research—suggested that if anything could be counted on to affect the education of black children, it was

integration. However, the operative element was not race but social class. The conclusion of the Coleman report still seems the best statement of the case:

"The apparent beneficial effect of a student body with a high proportion of white students comes not from racial composition per se, but from the better educational background and higher educational aspirations that are, on the average, found among white students."

On the other hand, if such integration did have an effect, it was not very great. The most intense reanalysis of Coleman's data[3] concludes:

"Our finding on the school racial composition issue, then, are mixed. . . . the initial *Equality of Educational Opportunity* survey overstressed the impact of school social class. . . . When the issue is probed at grade 6, a small independent effect of schools' racial composition appeared, but its significance for educational policy seems slight."

The study of these issues has reached a Talmudic complexity. The finding that integration of different socioeconomic groups favors the achievement of lower socioeconomic groups apparently stands up, but the effect is not large. One thing, however, does seem clear: integrating the hapless and generally lower-income whites of the central city with lower-income blacks, particularly under conditions of resentment and conflict, as in San Francisco, is likely to achieve nothing, in educational terms.

In San Francisco, the number of children enrolled in elementary schools dropped 6,519 against a projected drop of 1,508 (a 13 per cent decline against a projected 3 per cent decline) in response to Judge Weigel's decision. The junior-high-school enrollment, not yet subjected to full-scale busing, declined only 1 per cent, and high-school enrollment remained the same. In Pasadena, California, there was a 22 per cent drop in the number of white students in the school system between 1969—before court-imposed busing—and 1971. In Norfolk, Virginia, court-imposed busing brought a drop of 20 per cent. If, as seems probable, it is the somewhat better-off and more mobile who leave the public-school system when busing is imposed, the effect on the achievement of black children is further reduced.

It is in response to such facts as these and in the light of such findings as Coleman's that judges in Detroit and Indianapolis and elsewhere now call for combining the central city and the suburb into unified school districts. But if this elaborate reorganization of the schools is being undertaken so that the presumed achievement-raising effect of socioeconomic integration may occur, we are likely to be cruelly disappointed. There is little if any encouragement to be derived from studies, published and unpublished, of voluntary busing programs even though such busing takes place under the most favorable circumstances (with motivated volunteers, from motivated families, and with schools acting freely and enthusiastically). Indeed, much integration through transportation has been so disappointing in terms of raising achievement that it may well lead to a revaluation of the earlier research whose somewhat tenuous results raised what begin to look like false hopes as to the educational effects of socioeconomic integration.

IV

There is yet a final argument. One will hear it in Berkeley, which underwent full desegregation by busing three years ago, and which has seen no particular reduction of the white-black achievement gap. The argument is that school integration will improve relations between the races and that in view of the extremity of interracial tensions in this country, anything that improves these relations must be done. In Berkeley, a liberal community with an elected school board which voluntarily introduced transportation for racial balance and was not turned out for doing so, one can perhaps make this argument. But race relations are not ideal even in Berkeley, as Senator Mondale's committee discovered last year when it conducted hearings there on the most successful American case of racial balance through transportation.

The Mondale committee discovered, for example, that after the schools were fully integrated, a special program for blacks—Black House—was established at the high-school level from which non-black students and teachers were excluded. (Berkeley High School, the only one in the city, has always been integrated.) The committee discovered, when it spoke to students—selected, one assumes, by the school authorities because they would give the best picture of integration—that students of different groups had little to do with one another. The black president of the senior class said: ". . . the only true existence of integration of Berkeley High is in the hallways when the bell rang everybody, you know, pass [sic] through the hallways, that is the only time I see true integration in Berkeley High." Senator Brooke probed deeper. Since the young man was black and a majority of his classmates were white, had they not voted for him? "The whites didn't even participate in voting. . . . They felt the student government was a farce." (The opposing candidate was also black.) What about social activities? "Like we have dances, if there is a good turnout you see two or three whites at the dances. . . ." Intramural sports? "The basketball team is pretty integrated, the crew team is mainly white, soccer team mainly white, tennis team mainly white." Did this mean, Senator Brooke asked, "that blacks don't go out for these teams that are white and whites don't go out for those teams that are all black?" The class president guessed that "whites like to play tennis and blacks like to play basketball better." Still, he did think integration was a good idea, as did a Japanese girl who told the Senators: "I think like the Asian kids at Berkeley High go around with Asian kids."

A Chicano student testified:

"I think the integration plan is working, started to work in junior high, it is different levels, the sixth graders go up to seventh grade now. I think now the Chicanos and blacks, they do hang around in groups. Usually some don't, I admit, like I myself hang around with all Chicanos but I am not prejudiced. I do it because I grew up with them, because they were my school buddies when there were segregated schools."

A black girl in elementary school said: "About integration, I don't think it is too integrated, but it is pretty well integrated. I have a lot of white friends. . . ." She lives in an integrated neighborhood. A white girl from the high school testified:

"Integration, ideally, as far as I can see it isn't working. I mean like as far as everybody doing things together . . . I have one class where there are only two whites in it, I being one of them, you know, like I don't have any problems there, but outside . . . [with other blacks] we just do different things. I am not interested in games. I couldn't care less. I don't know anything about Berkeley as far as the athletics go. . . . I wear very short skirts and walking down the halls I get hassled enough by all the black Dukes, you know. . . ."

Senator Brooke was surprised she wasn't hassled by the white boys too and suggested that they might use a different technique.

This is about the most positive report one can make on school integration. Why should anyone be surprised? There is a good deal of hanging around in groups, and there is some contact across racial lines, but the groups seem to have different interests and different social styles. The younger children have more in common than the older ones. It would be hard to say whether this commonality of interest will continue through high school—a popular Berkeley theory—or whether differences will assert themselves as the children grow older even though they were exposed to integration earlier than those now in high school. In other communities which have been studied, black children who are bused tend to become more anti-white than those who are not bused. One can think of a number of reasons for this.

If, then, the judges are moving toward a forcible reorganization of American education because they believe this will improve relations between the races, they are acting neither on evidence nor on experience but on faith. And in so acting on faith they are pushing against many legitimate interests: the interest in using tax money for education rather than transportation; the interest of the working and lower-middle classes in attending schools near their homes; the interest of all groups, including black groups, in developing some measure of control over the institutions which affect their lives; the interest of all people in retaining freedom of choice wherever this is possible.

There is unfortunately a widespread feeling, strong among liberals who have fought so long against the evil of racial segregation, that to stop now—before busing and expanded school districts are imposed on every city in the country—would be to betray the struggle for an integrated society. They are quite wrong. They have been misled by the professionals and specialists—in this instance, the government officials, the civil-rights lawyers, and the judges—as to what integration truly demands, and how it is coming about. Professionals and specialists inevitably overreach themselves, and there is no exception here.

It would be a terrible error to consider opposition to the recent judicial decisions on school integration as a betrayal of the promise of *Brown*. The promise of *Brown* is being realized. Black children may not be denied admittance to any school on account of their race (except for the cases in which courts and federal officials insist that they are to be denied admittance to schools with a black majority simply because they are black). The school systems of the South are desegregated. But more than that, integration in general has made enormous advances since 1954. It has been advanced by the hundreds of thousands of blacks in Northern and Western colleges. It has been advanced by the hundreds of thousands of blacks who have moved into professional and white-collar jobs in government, in the universities, in the school systems, in business. It has been advanced by the steady rise in black income which offers many blacks the opportunity to live in integrated areas. Most significantly, it has been advanced because millions of blacks now vote—in the South as well as the North—and because hundreds of blacks have been elected to school committees, city councils, state legislatures, the Congress. This is what is creating an integrated society in the United States.

We are far from this necessary and desirable goal. It would be a tragedy if the progress we made in achieving integration in the 1960's were not continued through the 70's. We can now foresee within a reasonable time the closing of many gaps between white and black. But I doubt that mandatory transportation of schoolchildren for integration will advance this process.

For, so far as the schools in particular are

[3] David K. Cohen, Thomas F. Pettigrew, and Robert S. Riley "Race and the Outcomes of Schooling," in Frederick Mosteller and Daniel P. Moynihan, eds., *On Equality of Educational Opportunity*, Random House, 546 pp., $15.00.

concerned, the increase in black political power means that blacks—like all other groups—can now negotiate, on the basis of their own power, and to the extent of their own power, over what kind of school systems should exist, and involving what measure of transportation and racial balance. In the varied settings of American life there will be many different answers to these questions. What Berkeley has done is not what New York City has done, and there is no reason why it should be. But everywhere black political power is present and contributing to the development of solutions.

There is a third path for liberals now agonized between the steady imposition of racial and ethnic group quotas on every school in the country—a path of pointlessly expensive and destructive homogenization—and surrender to the South. It is a perfectly sound American path, one which assumes that groups are different and will have their own interests and orientations, but which insists that no one be penalized because of group membership, and that a common base of experience be demanded of all Americans. It is the path that made possible the growth of the parochial schools, not as a challenge to a common American society, but as one variant within it. It is a path that, to my mind, legitimizes such developments as community control of schools and educational vouchers permitting the free choice of schools. There are as many problems in working out the details of this path as of the other two, but it has one thing to commend it as against the other two: it expands individual freedom, rather than restricts it.

One understands that the Constitution sets limits to the process of negotiation and bargaining even in a multi-racial and multi-ethnic setting. But the judges have gone far beyond what the Constitution can reasonably be thought to allow or require in the operation of this complex process. The judges should now stand back, and allow the forces of political democracy in a pluralist society to do their proper work.

School Integration and Liberal Opinion

(By Norman Podhoretz)

If Nathan Glazer is right—and I find his arguments entirely convincing—no benefit will accrue to anyone, whether white or black, from the requirement now apparently being established by the courts that no American public school shall have a black majority and that the student population of every school shall be racially balanced as far as possible in accordance with a specific mix. It used to be thought that the academic performance of black children would improve in integrated schools, but there is, as Mr. Glazer demonstrates, no evidence to confirm this idea. What the evidence actually suggests is that integration has little or no effect on academic performance, neither helping the blacks, as so many had hoped, nor hurting the whites, as so many had feared.

It also used to be thought that relations between the races would improve as a result of school integration, but here the evidence is if anything less encouraging than in the case of academic performance. I myself attended integrated schools as a child, and nearly ten years ago, I attempted in an essay called "My Negro Problem—and Ours" to show that such schools bore not the slightest resemblance to the rosy fantasies being scattered about in those days by the prevailing winds of liberal opinion. Liberal opinion said that sending white children and black children to school together would lead to greater mutual understanding and respect; I said that in my own experience it had led to violence and greater animosity. The studies Mr. Glazer cites of integrated schools of more recent vintage tend to prove that the experience of the integrated schools of the 30's and 40's was a more reliable guide to the future than the generous expectations of liberal opinion. At best relations between the races continue to remain cool in integrated schools, and often enough they are exacerbated to an intolerable, and to me altogether familiar, degree.

If, then, no good is likely to come of it, why should we persist in forcibly integrating the schools? The question becomes even more difficult to answer when we consider how vast, even among liberals and even among blacks, the opposition has grown to the measures which must now be adopted if school integration is to proceed—measures which have found their definitive political summation in the great symbol of busing. In effect the country is being ordered against its own wishes to undergo a major reorganization without being given a reasonable assurance that some good will thereby be served, either immediate or ultimate, short-run or long. But if it is all to be for nothing, and if no one wants to do it, why should it be done at all?

Because, answer the activists and the bureaucrats and the lawyers and the judges, it is the law and the law must be obeyed. And indeed they are right, the law must be obeyed—if indeed it *is* the law that racial concentrations in the schools may not exist even if they arise from causes other than legal measures designed to bring them about. We already know for certain that legally sanctioned (or *"de jure"*) segregation of any kind, overt or covert, in the schools and out, is against the law of the land. No one any longer questions this, not even in the South. But until the Supreme Court settles the issues involved in busing and redistricting, we will not know for certain whether *"de facto"* separation in the schools is also against the law of the land. And even then, if the Supreme Court should declare that it is, given the huge numbers of people who do not agree, redress from what they may decide is judicial tyranny parading as constitutional warrant is likely to be sought in legislative action and perhaps in constitutional amendment.

Hopefully it will never come to that. Hopefully in the end the country will avert the major constitutional crisis which seems to threaten it now. Hopefully good sense will prevail—the good sense which leads so many people, often uneasily because they are liberals and well-intentioned and influenced by an irrational dogma, to wonder nevertheless why a specified racial balance must be imposed on the schools at such great cost in money and bitterness and anxiety when the strongest of probabilities is that doing so will neither overcome educational deficiency nor enhance the relations of the races.

Behind the Busing Fuss

In pursuit of our conviction that it will be best if the courts themselves solve the "busing problem," we have been reading about trying to find some available rationale that will preserve some impetus toward racial justice without falling into the absurdities of racial quotas. We can report that such a rationale does exist, as extracts printed alongside testify.

The source comes as something of a surprise, though, being the unanimous Supreme Court decision in Swann v. Charlotte-Mecklenburg County Board of Education, the very case in which the court first backed the use of quotas and busing to dismantle previous dual school systems. As the administration weighs its position on busing, we hope it takes note of how careful the high court has been, how much room for maneuver it has left in the judicial process itself.

The rationale in these extracts is precisely what we, at least, have been looking for as a way out of the present impasse. It rejects racial quotas, though recognizing the prudence of starting any discussion of desegregation by looking at the existing racial balance. It does not flatly outlaw all-black or all-white schools. It preserves pressure toward dismantling dual school systems where they exist, but recognizes that there will come a point when the transgression will be atoned.

The implication is that with the South desegregating, we will with all deliberate speed, as it were, reach a point where the school systems in North and South will be on equal footing. Then the nation will be in position to repair to the great principle the first Justice Harlan offered in his dissent to the notorious Plessy v. Ferguson decision, that "our Constitution is color blind, and neither knows nor tolerates classes among citizens."

But if all this is already the law of the land, or at least the direction indicated by the most crucial Supreme Court decision since Brown v. Board of Education, what in the world can be behind all the fuss? There is a good answer to that question, which is one reason why Nathan Glazer's article in the current Commentary ought to be required reading for anyone who hopes to understand the current "busing" controversy.

Mr. Glazer, the Harvard sociologist and long-time student of ethnic amalgamation, reviews a great many aspects of the problem, one of the most revealing being what the lower courts have been doing since Charlotte-Mecklenburg. He quotes a San Francisco judge's ruling, for example, "that the ratio of black children to white children will then be and thereafter continue to be substantially the same in each school." He quotes a Detroit judge blaming segregation on blacks as well as whites because "blacks, like ethnic groups in the past, have tended to separate from the large group and associate together." The Detroit court ordered busing between the central city and suburbs to end such separation.

The fuss, in short, arises because these and other lower courts have been going far beyond anything the Supreme Court mandated; indeed, they have been ordering precisely the things the Charlotte-Mecklenburg decision told them the Constitution did not require. The lower court judges have not been waiting for the legislature or even for the Supreme Court itself; they have simply been writing their own social opinions into the Constitution.

Mr. Glazer has trenchant things to say about the "crude Americanizing and homogenizing" that make up the substance of those social opinions. What's wrong with blacks wanting to associate with blacks, for example? In fact, the chief American answer to ethnic diversity has been to allow each group to pick its own associations under cover of a color-blind law, and to open the way for advance through political bargaining. He finds it healthy and hopeful that blacks are winning bargaining power today.

Meanwhile, though, the law has reached such confusion that Mr. Glazer can pack into one sentence irony like this: "The promise of Brown is being realized. Black children may not be denied admittance to any school on account of their race (except for the cases in which the courts and federal officials insist that they are to be denied admittance to schools with a black majority simply because they are black)."

The Supreme Court can correct much of the confusion by starting to overrule lower court decisions that are excessive in the use of busing and especially quotas, by writing the sensible obiter dicta of the Charlotte-Mecklenberg decision into binding law. It would seem to us appropriate if the administration concluded that Justice Department intervention in current suits could help achieve this result, and might also help rein

back the lower courts to the pace the high bench sets.

This, in fact, is a point that goes beyond busing and desegregation. Unquestionably the legal system now and then—as in the Brown decision—needs a way for the Supreme Court to put aside cold precedent and follow the feelings and opinions of its human members. Yet this freedom to write personal opinion into law can easily be abused even by Supreme Court Justices, and we can scarcely how a meaningful legal system can long function if it is abused by every district court judge as well.

THE HIGH COURT'S BUSING DECISION

(NOTE.—Following are excerpts from the Supreme Court's unanimous decision of April 21, 1971, upholding busing to end school segregation in the school district covering Charlotte, N.C. and surrounding Mecklenburg County. The opinion was written by Chief Justice Burger.)

We are concerned in these cases with the elimination of the discrimination inherent in the dual school systems, not with the myriad factors of human existence which can cause discrimination in a multitude of ways on racial, religious or ethnic grounds.

The target of the case from Brown 1 to the present was the dual school system. The elimination of racial discrimination in public schools is a large task and one that should not be retarded by efforts to achieve broader purposes lying beyond the jurisdiction of school authorities. . . .

We do not reach in this case the question whether a showing that school segregation is a consequence of other types of state action, without any discriminatory action by the school authorities, is a constitutional violation requiring remedial action by a school desegregation decree. This case does not present that question and we therefore do not decide it.

Our object in dealing with the issue 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; it does not and cannot embrace all the problems of racial prejudice, even when those problems contribute to disproportionate racial concentrations in some schools.

In this case it is urged that the district court has imposed a racial balance requirement of 71%–29% on individual schools. . . .

If we were to read the holding of the district court to require, as a matter of substantive constitutional right, any particular degree of racial balance or mixing, that approach would be disapproved and we would be obliged to reverse.

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.

As the voluminous record in this case shows, the predicate for the district court's use of the 71%–29% ratio was twofold: first, its express finding approved by the court of appeals and not challenged here, that a dual school system had been maintained by the school authorities at least until 1969; second, its finding, also approved by the court of appeals, that the school board had totally defaulted in its acknowledged duty to come forward with an acceptable plan of its own, notwithstanding the patient efforts of the district judge who, on at least three occasions, urged the board to submit plans. . . .

We see . . . that the use of mathematical ratios was no more than a starting point in the process of shaping a remedy, rather than an inflexible requirement. From that starting point the district court proceeded to frame a decree that was, within its discretionary powers, an equitable remedy for the particular circumstances.

As we said in Green, a school authority's remedial plan or a district court's remedial decree is to be judged by its effectiveness. Awareness of the racial composition of the whole school system is likely to be a useful starting point in shaping a remedy to correct past constitutional violations. In sum, the very limited use made of mathematical ratios was within the equitable remedial discretion of the district court.

The record in this case reveals the familiar phenomenon that in metropolitan areas minority groups are often found concentrated in one part of the city. In some circumstances certain schools may remain all or largely of one race until new schools can be provided or neighborhood patterns change.

Schools all or predominantly of one race in a district of mixed population will require close scrutiny to determine that school assignments are not part of state-enforced segregation.

In 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 which still practices segregation by law. . . .

The scope of permissible transportation of students as an implement of remedial decree has never been defined by this Court and by the very nature of the problem it cannot be defined with precision. No rigid guidelines as to student transportation can be given for application to the infinite variety of problems presented in thousands of situations.

But 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.

The district court's conclusion that assignment of children to the school nearest their home serving their grade would not produce an effective dismantling of the dual system is supported by the record.

The decree provided that the buses used to implement the plan would operate on direct routes. Students would be picked up at schools near their homes and transported by the schools they were to attend. The trips for elementary school pupils average about seven miles and the district court found that they would take "not over 35 minutes at the most."

The system compares favorably with the transportation plan previously operated in Charlotte under which each day 23,600 students on all grade levels were transported an average of 15 miles one way for an average trip requiring over an hour.

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.

An objection to transportation of students may have validity when the time or distance of travel is so great as to risk either the health of the children or significantly impinge on the educational process. . . .

At some point, these school authorities and others like them should have achieved full compliance with this Court's decision in Brown 1. The systems will then be "unitary" in the sense required by our decisions in Green and Alexander.

It does not follow that the communities served by such systems will remain demographically stable, for in a growing, mobile society, few will do so. 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.

This does not mean that federal courts are without power to deal with future problems; but in the absence of a showing that either the school authorities or some other agency of the state has deliberately attempted to fix or alter demographic patterns to affect the racial composition of the schools, further intervention by a district court should not be necessary. . . .

AMERICA'S NEW TOTALITARIANISM: OCCUPATIONAL SAFETY AND HEALTH ACT

Mr. CURTIS. Mr. President, the distinguished editor of the Wyoming State Tribune at Cheyenne, in my neighbor State, earlier this week in an editorial pointed out the dangers to America's freedoms under the present Occupational Safety and Health Act.

The editor, James M. Flinchum, in his article of March 7, quotes a letter from a Mrs. Genielle Brown of Byron, Wyo. She puts it in terms no American should have trouble understanding:

> Do you really think some bureaucrat in Washington is capable of telling us how to operate our ranch?

Mr. President, the present Occupational Safety and Health Act is doing great harm to the morale of the small businessman in America. To cripple the incentive for participation in the free enterprise system which has been America's great strength throughout her history is to project economic failure for our Nation in a not-too-distant future.

Let us act now to correct the mistakes application of this law has revealed. In behalf of the other sponsors of the legislation, I have introduced to eliminate a great many of the shortcomings of the act, I urge the Senate to move expeditiously in consideration of the amendments bill, S. 3262.

Mr. President, I ask unanimous consent that Mr. Flinchum's editorial be printed in the RECORD.

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

[From the Wyoming State Tribune, Mar. 7, 1972]

AMERICA'S NEW TOTALITARIANISM

The growing outrage over the Steiger-Williams Occupational Health and Safety Act points up a developing situation that should be the concern of every citizen. It is the total politicization of American life in which government, or some form of the political process, plays a role in the minutest forms of human activity.

It was the Spanish philosopher Jose Ortega who warned against such a development in human existence. Donald Atwell Zoll, professor of political sicence at Arizona State University, addressed himself to the problem in the current issue of Modern Age, a quarterly review. In essence, Professor Zoll says people are prone to pin their faith for solutions to every problem imaginable on politics.

A column by Paul Harvey appearing on this page today noted the paperwork maze afflicting small businessmen in this country, all of it originating with the government. The question may rightly be asked: With our almost total dependence on some form of governmental activity throughout life, and the total commitment to the political nature of existence, has the totalitarianism that we

have feared would come with some alien philosophy ensnared us with our own institutions?

Professor Zoll suggests that the public has been led to believe that politics is the solution to all problems, but that politics "as a human artifice" has not been capable "of delivering all the benefits that were recklessly guaranteed by ambitious politicians." He adds: "There were (are) many areas of social life in which political remedy was (is) impotent or inappropriate; political change and reform did not, per se, make men happier or more contended or more creative or more morally enlightened."

Nevertheless, for some time now there have been politicians who have managed to make people think the sole answer to every problem was to be achieved in the halls of Congress, by Presidential order, in the state legislatures or governors' offices. And there has been an accelerating trend in this direction, so that every ill or problem demands a political answer.

Thus our entire society finds itself caught up in a political maze which is most intricate, for it no longer is a process that merely stems from action by the people, but from the decisions of a remote elite that is unanswerable to popular will. That is governmental bureaucracy by which every entrenched elite has ruled from the days of Rameses II through the Czarist days in Russia and the Bourbon monarchs, to what we call democracy today in the United States of America.

Some people are awakening to what has happened. Whether it is too late to do anything about reversing the process is questionable. A lady who lives at Byron, Wyo., last week addressed a letter to the members of the Wyoming congressional delegation. Her subject was the Steiger-Williams Act which Sen. Cliff Hansen now is attacking both through the Nixon Administration and Congress.

Among other things Mrs. Genielle Brown asked the two senators and one congressman: "Do you really think some bureaucrat in Washington is capable of telling us how to operate our ranch? Do you know that most of the accidents occur in the home? Does that mean that eventually a government snooper-visor can come into my home and fine me for unsafe practices?"

We would say yes to all of these, modifying the first question to read that some bureaucrat thinks he is capable of telling Mrs. Brown how to run her ranch.

She also asks: "How much further will we go before we no longer have any say over that which is ours? Because that which is ours is very rapidly being taken over by our 'Big Brother' government."

Mrs. Brown hasn't caught up with the times; the time already is here when we have no say over what is ours. And the Big Brother government that she speaks of, is already here. It has been in the process of arriving for many years now, at least 40, perhaps even longer than that. A people's loss of their liberties does not necessarily occur in one fell swoop, overnight; it creeps upon you, as does Death to some people, scarcely noticed.

Mrs. Brown adds a plea: "Please fight for the repeal of this (Steiger-Williams) law and all others which destroy my incentive and the incentive of my fellow Americans to work and sweat for our daily bread!"

A worthy, but probably futile, hope; for generations of politicians in this country have promised Americans they have the ultimate solution to every ill that besets the people.

Even though this has been proven false; even though as new solutions are offered more ills appear, they nevertheless maintain this claim. For in essence they are the political process, and in the total politicization of America, they cannot renounce their own form of God.

Steiger-Williams and all of the other petty tyrannies foisted off on this nation probably will not be either repealed or seriously amended for that would attack a very fundamental institution in this country, the bureaucracy which rules us and which feeds upon the host, the body politic.

But we can try, and to that end we wish Senator Hansen, who has announced he seeks a reversal of this trend at least in this one act, a great deal of success. Hope springs everlastingly eternal in the human heart. If even so very faintly.

NATIONAL ADVISORY COUNCIL ON CHILD NUTRITION

Mr. PERCY. Mr. President, the National Advisory Council on Child Nutrition recently submitted its first annual report to President Nixon and to the Congress. I have read the report carefully and I wish to commend Mr. Richard Lyng, Assistant Secretary of Agriculture and Chairman of the Council and his fellow members for their thoughtful and well-researched recommendations.

This administration has a proud record in the field of nutrition. As Secretary Butz noted in discussing this report, the number of children receiving free and reduced-price lunches has grown by some 5 million in 3 years and the total Federal assistance for all food programs has risen from about $1 billion in 1969 to about $4.2 billion this year.

This accomplishment is also the result of the tireless efforts of the Senate Select Committee on Nutrition and Human Needs, a committee upon which I have the privilege to serve as ranking Republican member, to conquer hunger and malnutrition in America. The committee has played a major role in stimulating the rapid expansion in the food programs which has occurred in recent years.

As the Advisory Council noted, however, all too many needy children still do not have the benefit of free or reduced-price meals. I welcome the Council's recommendation that

Within 3 years all schools needing a school lunch or breakfast program will be participating and all schoolchildren from low-income families will have access to free and reduced-price meals under the program.

I also welcome Secretary Butz' endorsement of this and the other recommendations found in the report. I look forward to the administration's proposal for implementing these recommendations.

Mr. President, this report deserves close reading by all my colleagues. I ask unanimous consent that the text be printed in the RECORD at this point along with extracts from a news article about its release.

There being no objection, the excerpt from the article and the report were ordered to be printed in the RECORD, as follows:

WIDER SCHOOL LUNCH PROGRAM URGED

(By Richard Halloran)

WASHINGTON, March 7.—The National Advisory Council on Child Nutrition urged President Nixon today to have all needy children in America provided with free or reduced-price school lunches within the next three years.

The council, which presented its first annual report to the President, also recommended that much greater emphasis be put on teaching children the essential elements of good nutrition. It said that all teachers should be required to take nutrition courses before they are certified to teach.

The report was presented to the President in his Oval Office this morning by the Secretary of Agriculture, Dr. Earl L. Butz, who was accompanied by members of the council. It comprises 13, educators, school administrators, and nutrition experts and is headed by Richard Lyng, an Assistant Secretary of Agriculture.

The report said that about "20,000 schools with an enrollment of over six million children do not offer any type of food service."

"The tragedy of this situation," it continued, "is heightened by the fact that a substantial number of needy children perhaps over a million, cannot obtain free and reduced-price meals, which they are eligible for and need, simply because the schools they attend do not participate in the programs."

The report also said that the teaching of nutrition "has become a forgotten part of the curriculum, with teachers reluctant to include it in their instruction due in many instances to their own lack of training in nutrition and to the press of other curriculum subjects."

"In addition," the report continued, "the funding and emphasis given to other subjects, such as drug abuse education, has not been provided for nutrition education."

After the Nutrition Council met briefly with the President this morning, Secretary Butz told newsmen that the Administration would support the recommendations of the council. He said that "tremendous progress" had been made in Federal food-assistance programs in recent years.

Dr. Butz said that the number of children reached with free and reduced-price lunches had increased from 3 million in 1969 to 8.1 million today. He said that Federal assistance for all food programs had risen from about $1-billion in 1969 to about $4.2-billion this year.

Asked whether part of this was not the result of current economic conditions, Dr. Butz said that the number of persons receiving assistance did fluctuate with economic conditions but contended that the major part of the increase was due to efforts to reach them by the Department of Agriculture.

To implement its recommendations, the council urged the Department of Agriculture and the state departments of education to concentrate on extending the child nutrition program to those schools without them.

Hon. RICHARD M. NIXON,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: The National Advisory Council on Child Nutrition is pleased to submit its first annual report to you and to the Congress.

The Council's function is to make a continuing review of the Child Nutrition Programs administered by the Department of Agriculture and other related programs to determine how they can be improved. The Council is composed of thirteen members—four, including myself, from within the Department of Agriculture; and nine from specific fields of experience outside the Department.

Having completed the first year of review, the members of the Council have made five recommendations which are of major importance. These recommendations are summarized in the first two pages of the enclosed report.

Sincerely,

RICHARD LYNG,
Assistant Secretary and Chairman
National Advisory Council on
Child Nutrition.

NATIONAL ADVISORY COUNCIL ON CHILD NUTRITION ANNUAL REPORT, 1971

WASHINGTON, D.C.,
January 1972.

Mgsr. Bennett Applegate, Superintendent of Schools, Diocese of Columbus, Ohio.

Dr. Ruth Huenemann, Profesor of Public Health Nutrition, University of California, Berkeley, Calif.

Miss Jacqueline Johnson, Administrator, Program Resources & Medical Services, Odyssey House, New York, N.Y.

Miss Josephine Martin, Georgia School Lunch Director, Atlanta, Ga.

Dr. John F. Murphy, President, Swift Food Service Co., La Grange, Ill.

Dr. Dale Parnell, Superintendent of Public Instruction, Salem, Ore.

Mr. Edward Schwartzkopf, School Administrator, Lincoln, Nebr.

Mr. Cola D. Watson, Director, Vocation-Technical Education, Vermont Department of Education.

Mrs. Roger Whitcomb, School Board Member, Wichita, Kans.

Mr. Richard Lyng, Assistant Secretary for Marketing and Consumer Services, U.S. Department of Agriculture.

Mr. Edward J. Hekman, Administrator, Food and Nutrition Service, USDA.

Mr. Herbert D. Rorex, Director, Child Nutrition Division, FNS, USDA.

Mr. Russell H. James, Administrator, Southeast FNS Region, USDA, Atlanta, Ga.

FIRST ANNUAL REPORT OF THE NATIONAL ADVISORY COUNCIL ON CHILD NUTRITION

Public Law 91-248 authorized a National Advisory Council on Child Nutrition "to make a continuing study of the operation of programs carried out under the National School Lunch Act, the Child Nutrition Act of 1966, and any related Act under which meals are provided for children, with a view to determining how such programs may be improved."

The Council has concluded its first year of operation. It has noted the growth in the Child Nutrition Programs since the first program, the National School Lunch Program, was authorized 25 years ago.

At the same time, it recognizes that there are many areas in need of improvement, and it has identified those areas which are most deserving of immediate attention. These areas are as follows in order of priority, except that the first two are considered to be of equal importance:

I Nutrition education

The Council recommends that much greater emphasis be given to nutrition education through the Child Nutrition Programs, through classroom instruction, and through innovative means outside the classroom to help close the gap in public knowledge about nutrition. The Council further recommends that the State Departments of Education be encouraged to include nutrition education as a curriculum component for all grades in elementary and secondary school, and that nutrition courses be required for teacher certification.

II Reaching schools without programs

The Council recommends that the Department of Agriculture and the State Departments of Education concentrate on extending the Child Nutrition Programs to schools without such programs so that within three years all schools needing a school lunch or breakfast program will be participating and all school children from low-income families will have access to free and reduced-price meals under the programs.

III Upgrading school food service personnel

The Council recommends that the Department of Agriculture provide leadership and coordination with State Departments of Education and professional groups, such as the American School Food Service Association, to upgrade school food servce personnel by developing staffing patte.ns and qualifications for food service personnel and by further encouraging community colleges, universities, and other training institutions to provide training suitable for school food service.

IV Revising nutritional standards for child nutrition programs

The Council endorses the Department of Agriculture's pilot study to test the feasibility of providing alternative nutritional standards for the Child Nutrition Programs based on nutrient values, and urges the Department to give full consideration to the study.

V Implementing advance funding authority

The Council recommends that the authority contained in Public Law 91-248 be implemented and that the President direct the Office of Management and Budget and the Department of Agriculture to submit Child Nutrition Program appropriations requests for Congressional approval one year in advance of the beginning of the fiscal year in which the funds will be available, so that State and local officials will have a firmer base for long-range planning and expansion efforts.

The Council's bases for concern in these areas are set forth in the addendum. The addendum also contains sections on selected program statistics and activities of the Council.

The Council sincerely hopes that its recommendations will be heeded since these areas of concern must receive extensive consideration and action if the Child Nutrition Programs are to be truly effective in providing for the nutritional needs of children.

ADDENDUM

The National Advisory Council on Child Nutrition has identified five areas of priority concern and has recommended actions for improvements in these areas. This addendum provides background on the Council's concerns and recommendations.

I Nutrition education

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The role of the National School Lunch Program as a laboratory of learning for nutrition education has long been recognized. The first curriculum guide tying the lunch program to nutrition education efforts was published by the West Virginia State Department of Education in 1938, and numerous other States have published similar guides since that time. However, nutrition education has not had the continued attention or funding needed to make it available on a continuing basis to all school children. In many schools, it has become a forgotten part of the curriculum, with teachers reluctant to include it in their instruction due in many instances to their own lack of training in nutrition and to the press of other curriculum subjects. In addition, the funding and emphasis given to other subjects, such as drug abuse education, has not been provided for nutrition education.

This situation is of increasing concern in view of the changes in American food practices. The use of more manufactured foods and synthetic nutrients has brought with it the need for more technical nutrition knowledge on the part of all people if nutritional adequacy of the diet is to be assured. The need for nutrition education in this regard is shown by studies which reveal increasing inadequacies in the diets of Americans and continuing public unfamiliarity with basic nutritional concepts. For example, results of the food consumption study conducted by the Department of Agriculture in 1965 show that dietary levels among all income groups in the United States deteriorated materially from 1955 levels. In addition, the Preliminary Report on the Ten-State Nutrition Survey in the United States, dated April 1971, shows that many Americans are suffering from nutritional deficiencies.

In view of these factors, the National Advisory Council has made one of its two top priorities the need to improve the use of the Child Nutrition Programs as a nutrition education experience and to increase all nutrition education efforts. Specifically, the Council recommends that:

A. Nutrition education should receive greater priority both at the elementary and secondary education levels and should be included as a curriculum component at all grade levels.

B. Means should be explored to bring nutrition education to adults and very young children through television, children's books, adult education courses and other means.

C. The Department of Agriculture should work more closely with the Office of Education to encourage nutrition education in both the classroom and the lunchroom.

D. At the State level, the State Departments of Education should provide nutrition education specialists to coordinate food service programs and educational programs, and they should show in their State Plans of Child Nutrition Operations specifically how this coordination will be accomplished.

E. Nutrition education should be a requirement for certification of all teachers and should be made available as inservice training to teachers. Federal funding, in the form of grants to colleges and institutions and scholarships for teachers and would-be teachers, should be made available to assist in providing such training.

F. The Department of Agriculture should develop the new nutrition center at the National Agricultural Library with a view toward making the center a usable and effective resource for practical nutrition education and for the development of instructional materials.

G. The food industry should foster nutrition education through advertising, promotional materials and labeling practices which supplement educational programs and define the nutritional content of the foods provided under existing regulations of local, State and Federal Governments.

II Reaching schools without programs

"The Council recommends that the Department of Agriculture and the State Departments of Education concentrate on extending the Child Nutrition Program to schools without such programs so that within three years all schools needing a school lunch or breakfast program will be participating and all school children from low-income families will have access to free and reduced price meals under the program."

During the 25 years the National School Lunch Program has been in existence, the percentage of schools participating in the program has increased from 24 percent to 68 percent of the total schools in the United States, Puerto Rico, Virgin Islands, Guam, and American Samoa. This increase is even more impressive when it is considered that 82 percent of the total children enrolled in schools currently attend schools offering the program. In addition, the School Breakfast Program, in its brief five years of existence, has expanded to reach over one million in 6,800 schools, a number of which do not yet offer lunch service.

Numerous approaches have been developed and used in achieving this expansion. These approaches include satellite feeding operations from central kitchens or other schools with kitchen facilities; contracts with food

service management companies; the use of specially designed products in schools without food preparation facilities—i.e., precooked, pre-packaged frozen or ready-to-eat meals which require little or no kitchen equipment; and a new approach successfully tested during this past year in Philadelphia parochial schools involving the use of individually canned entrees which are heated in inexpensive ovens and eaten directly from the cans by the children.

Despite this commendable expansion, the fact remains that many children do not have access to any food service at all at school.

The latest figures available to the Department of Agriculture show that approximately 20,000 schools with an enrollment of over 6 million children do not offer any type of food service. The tragedy of this situation is heightened by the fact that a substantial number of needy children, perhaps over a million, can not obtain free and reduced-price meals, which they are eligible for and need, simply because the schools they attend do not participate in the programs.

Public Law 91–248, enacted in May 1970, recognized this problem and provided specific means to resolve it. One of the primary means is the provision for apportioning half the Nonfood Assistance funds among the States based on the number of children attending schools not offering food service in each State. These funds provide Federal cash assistance for the acquisition of kitchen equipment to start or improve food service in needy schools. New regulations issued by USDA in November 1971 further concentrate the use of these funds for starting programs by requiring that half of each State's apportioned funds must be reserved until February of each year for use in needy schools without food service, unless prior USDA approval is obtained to use the funds to improve food service in already participating schools.

Another primary means is the requirement that all State Departments of Education submit annual Plans of Child Nutrition Operations showing the specific steps they plan to take to extend the School Lunch Program to every school in the State and to extend the School Breakfast Program and Special Food Service Program to the extent practicable to reach needy children. The submission of an acceptable Plan is a prerequisite for the receipt of Federal cash and commodity assistance.

A third means is the authority contained in Public Law 91–248 to have funds for the Child Nutrition Programs appropriated one year in advance of the Fiscal Year in which they will be available. Such advance funding is needed to give States a much firmer basis for the long-range planning necessary for realistic expansion efforts.

The National Advisory Council's review of performance in carrying out these provisions reveals that improvements are needed. Specifically, not enough Nonfood Assistance funds are being used to reach needy schools currently without food service, the State Plans of Child Nutrition Operations show insufficient resolve to reach nonparticipating schools, and the advance funding provisions have not yet been implemented.

In view of these facts, the National Advisory Council specifically recommends that:

A. In line with the new regulations on Nonfood Assistance funds, the Department of Agriculture and the State Departments of Education should concentrate the use of these funds in schools which currently offer no food service and give priority to those which have the most needy students.

B. The States should set more realistic expansion targets in their State Plans and concentrate on reaching the neediest schools first, so that within three years, all schools needing a school lunch or school breakfast program will be participating.

C. In connection with Recommendations A and B, more accurate data should be developed on the number of needy children and their location in terms of the schools they attend and whether or not these schools offer food service.

D. The Department of Agriculture and State and local officials should continue to explore how new foods and approaches can assist in reaching nonparticipating schools, including those where constructing kitchen facilities is not a viable alternative.

E. The Department of Agriculture and State and local officials should further emphasize the need for schools receiving Federal assistance for their food service programs to reach all attending eligible children with free and reduced-price meals.

F. The provisions of Public Law 91–248 authorizing advance funding should be implemented.

III Upgrading school food service personnel

"The Council recommends that the Department of Agriculture provide leadership and coordination with State Departments of Education and professional groups, such as the American School Food Service Association, to upgrade school food service personnel by developing staffing patterns and qualifications for food service personnel and by further encouraging community colleges, universities and other training institutions to provide training suitable for school food service."

It has been recognized for some time that food service supervisors and workers in the Child Nutrition Programs are for the most part underpaid, undertrained, and especially in the case of supervisors, understaffed. The following facts, as reported in the recently released School Food Service and Nutrition Education volume of the National Educational Finance Project illustrate this situation:

1. A 1968–69 Bureau of Labor Statistics survey showed the following average hourly earnings for certain categories of school employees: School food service $1.68, custodial $2.28, office $2.37, skilled maintenance $3.44, bus drivers $2.62, and all employees $2.24.

2. The October 1969 *NEA Research Bulletin* contains a comparison of salaries paid to professional employees which shows that persons involved in food service administration received the lowest pay of all school administrators and second lowest increase in salary over a six year period.

3. A survey conducted by the Joint Committee (of USDA and Land Grant Colleges) on Education for Government Service showed that in the ten States surveyed, 40 percent of the 56,366 persons involved in school food service work did not have a high school diploma and only 2 percent had college degrees of some type.

4. The School Food Service and Nutrition Education section concludes that there is a supervisory personnel gap at the State level and system level for school food service of at least well over 5,000 positions between the actual number of trained supervisors now available and the number needed.

The situation is slowly changing for the better. Food service workers are now covered by Federal minimum wage laws, colleges and vocational education institutes are showing more interest in food service training, and money is now available and being used under Public Law 91–248 for "nutritional training and education for workers, cooperators and participants" in the Child Nutrition Programs. However, the rate of change is not fast enough, especially since well-trained, adequately paid and motivated workers must be available if the Child Nutrition Programs are to increase their current relatively low rate of student participation.

Only 55 percent of the children in schools with the National School Lunch Program participated in the program during Fiscal Year 1971. While it is difficult to isolate the precise causes on non-participation, experience shows that the capability of food service personnel is an important contributing factor. Well-trained workers are needed not only to improve the quality of school meals but also to operate lunch programs efficiently. Achieving these goals leads in turn to increased student participation.

Therefore, the Council recommends that the Department of Agriculture provide the necessary leadership in upgrading the training, qualifications, and status of school food service personnel, and that the following specific actions be carried out in cooperation with professional organizations and interested Federal and State Agencies:

A. The competencies required for food service work should be determined.

B. Standards and qualifications for personnel involved in food service work should be established.

C. Curriculum for both pre-service and in-service training of school food service personnel should be developed.

D. Funds that can be used for training school food service personnel should be identified and used, with particular attention to State and Federal funds available for vocational education and manpower training.

E. Community colleges, universities, and other training institutions should be further encouraged to provide suitable training for school food service personnel.

F. Manuals on school food service operations should be available in all programs.

IV Revising nutritional standards for child nutrition programs

"The Council endorses the Department of Agriculture's pilot study to test the feasibility of providing alternative nutritional standards for the Child Nutrition Programs based on nutrient values, and urges the Department to give full consideration to the study."

As a prerequisite for participation in the Child Nutrition Programs, schools and service institutions must agree to serve meals which meet certain nutritional standards as set forth by the Department of Agriculture. The Department has always set forth these standards in terms of quantities of certain types of foods. For example, the best known standard is the Type A pattern for the National School Lunch Program which requires that each lunch be composed of one-half pint of fluid whole milk as a beverage; two ounces of lean meat, poultry, or fish, or suitable substitutes such as cheese or eggs; three-fourths cup serving of two or more vegetables or fruits, or both (fruit juices may be counted); one slice of whole-grain or enriched bread; and one teaspoon of butter or fortified margarine. Substitutions may be made in the pattern to meet special medical needs, and the size of the servings may vary depending on the age of children.

This type of food-based pattern was basically set to enable all food service personnel, regardless of their training or lack of it, to easily understand the Federal requirements. The pattern also reflects the fact that, until recently, most schools and service institutions prepared most components of meals themselves and primarily by using non-processed foods.

This situation is changing in two ways. First, the gradual upgrading in the training and qualifications of food service personnel has resulted in workers with a more sophisticated understanding of nutrition and foods. Secondly, technological advances and the desire to minimize costs and yet provide an appealing variety of foods are resulting in schools and service institutions using more convenience foods and "engineered" products which provide nutrients at lower costs than traditional sources, e.g., textured vegetable protein products etc.

These new developments call into question the reliance on the established meal patterns required by the Department of Agriculture. As a result, the Department is engaged in a pilot study to provide alternative meal standards, based primarily on the nutrient values of food. The National Advisory Council endorses the Department's action in this matter and urges the Department to give full consideration to the study, to disseminating the findings of the study, and to approving such a nutrient approach as an alternative to the present meal patterns.

The Council takes this position in the belief that a nutrient approach will be more flexible and adaptable to regional, ethnic, and age preferences, that it will more readily permit the use of new and experimental foods, and that over-all it should result in making the Child Nutrition Programs more acceptable to children.

Finally, The Council specifically recommends, that in revising the nutritional standards, the Department of Agriculture should reconsider permitting the use of lowfat milk on a student choice basis, in order to help increase participation in the Child Nutrition Programs, particularly among weight-conscious teen-agers.

V Implementing advance funding authority

"The Council recommends that the authority contained in Public Law 91–248 be implemented and that the President direct the Office of Management and Budget and the Department of Agriculture to submit Child Nutrition Program appropriations requests for Congressional approval one year in advance of the beginning of the fiscal year in which the funds will be available, so that the State and local officials will have a firmer base for long-range planning and expansion efforts."

Although this subject was mentioned earlier in this report, the Council is treating the need for advance funding separately as one of its priority concerns in view of its importance in realizing improvements in the Child Nutrition Programs.

Many of the recommendations the Council has made call for realistic planning efforts by State and local officials involved with food service programs for children. In view of the tight money situation affecting most State and local Governments, funding considerations are necessarily given higher priority than planning considerations, particularly long-range planning. This situation need not exist with the Child Nutrition Programs, in view of the degree of Federal funding available for the program. Yet, it does.

The Council, therefore, strongly urges the Administration and Congress to implement the advance funding authority contained in Public Law 91–248 so that State and local officials will have one year's advance knowledge of available funds. The Council further urges the Administration to announce changes in the rules and regulations regarding the use of such funds well in advance of the school year to permit orderly reaction and adjustment to the changes.

SELECTED PROGRAM STATISTICS

	Fiscal year 1971	Fiscal year 1972
Total appropriation	$877,200,000	$1,053,989,000
Total children enrolled in schools (United States, Puerto Rico, Virgin Islands, Guam, and American Samoa)	52,400,000	
Percent of enrollment in national school lunch program schools, May 1971	82.0	
Percent of enrollment in schools offering no food service of any kind	12.5	
Percent of enrollment in schools offering food service other than national school lunch program	[1] 5.5	

	May 1970	May 1971	Preliminary, October 1971
PARTICIPATION COMPARISON			
National school lunch program:			
Schools participating	75,575	79,696	82,246
Children participating (millions)	22.5	24.7	25.4
Needy children receiving free and reduced-price lunches (millions)	5.1	7.3	7.8
School breakfast program:			
Schools participating	4,399	6,562	6,829
Children participating	573,233	922,899	1,007,693
Percent breakfasts served free or at reduced prices (percent)	70.9	78	76.5
Special milk program:			
Outlets participating	94,127	94,610	95,442
Half-pints of milk (million)	320.8	275.0	2923.

	July 1970	July 1971
Special food service program:		
Outlets participating, year-round	2,237	3,701
Children participating, year-round	93,349	149,232
Outlets participating, summer	1,853	4,088
Children participating, summer	521,475	1,025,589

[1] Many of these schools receive donated foods made available under USDA's price support and surplus removal programs (schools which receive such commodities are required by law to meet minimum nutritional standards in their lunches and to adhere to the same requirements on providing free and reduced price lunches to needy children as national school lunch program schools do).

ACTIVITIES OF THE NATIONAL ADVISORY COUNCIL ON CHILD NUTRITION DURING 1971

The following is a list of activities in which all the Council members or certain members representing the Council participated during 1971:

1. Three Council meetings in Washington, D.C., in April, July, and November 1971. These meetings included presentations on the current status and goals for the Child Nutrition Programs and research and evaluation projects related to the programs; on-site reviews of school lunch and summer feeding programs operations in Washington, D.C.; and detailed consideration of different aspects of program operations leading to the recommendations contained in this first Council report and to other recommendations which the Department of Agriculture is acting upon and which involve such matters as:

A. The development of a uniform school food service accounting manual.

B. The development of a structured course in nutrition education for school food service personnel and the general public to be telecast on Educational Television.

C. The development of a system for making sure that required nutritional standards are met in the "engineered foods," such as textured vegetable protein products, which are now being used in the Child Nutrition Programs in accordance with recently approved USDA specifications.

D. Assessing the overall status of program availability and progress in program expansion, and conducting a detailed survey of schools without food service and their characteristics in terms of location, enrollment, number of needy children, and whether they are public or private nonprofit schools.

2. Participation in Regional Seminars for School Food Service personnel held during the Summer. The seminars were funded under Section 6 of the National School Lunch Act, as amended, and involved nutrition education and training.

3. Consultation with Federal, State and local child nutrition officials and representative of other interested groups at a USDA sponsored meeting in September on developing guidelines for State Plans of Child Nutrition Operations.

4. Participation in the National Nutrition Education Conference in November, sponsored by the Interagency Council on Nutrition Education.

5. Consultation with Federal, State and local child nutrition officials at a USDA sponsored meeting in December on developing guidelines and a manual of operations for summer feeding programs under the Special Food Service Program for Children.

6. Review of proposed amendments to the National School Lunch Program and School Breakfast Program regulations. The Council members, along with other interested offices and persons, received copies of the proposed amendments for comment. In addition, the November 1 meeting of the Council gave the Council members an opportunity to advise the Department of Agriculture on its plans for the final National School Lunch Program regulations, which were published on November 17, and also on its planned wording of proposed School Breakfast Program regulations.

7. Preparation of first annual report of the National Advisory Council on Child Nutrition.

VICE PRESIDENT AGNEW IN THE NEW HAMPSHIRE PRIMARY

Mr. ALLOTT. Mr. President, allow me to call attention to one significant aspect of the New Hampshire primary that has been insufficiently noted by the press—for reasons that I cannot imagine—in the otherwise fulsome coverage of Tuesday's voting.

It seems that the Vice President of the United States, Mr. AGNEW, received 5 percent of the Democratic votes for Vice President.

Consider this.

He did not campaign in New Hampshire.

His name was not on the Republican ballot.

His name was not on the Democratic ballot.

The fact that he is not a Democrat is, I trust, well known—and lamented by a large number of sensible Democrats.

Yet Mr. AGNEW received a larger percentage of the Democratic vote for his office than several hard campaigning, heavy-spending Democratic candidates received for the Democratic presidential nomination.

It is also significant that results thus far tabulated indicate that Mr. AGNEW has received a very gratifying 70 percent of the write-in Republican votes for the vice presidential nomination.

But, then, this support for the Vice President is not really surprising. He deserves it; he has earned it; and I congratulate him for it.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business? If not, morning business is closed.

ORDER FOR ADJOURNMENT

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in adjournment until 12 o'clock noon tomorrow.

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

ORDER FOR PERIOD FOR TRANSACTION OF ROUTINE BUSINESS AND FOR UNFINISHED BUSINESS TO BE LAID BEFORE THE SENATE TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that at the completion of orders recognizing Senators for periods not to exceed 15 minutes tomorrow there be a period for the transaction of routine morning business for not to exceed 30 minutes, with statements therein limited to 3 minutes, at the conclusion of which the Chair lay before the Senate the unfinished business.

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

NATIONAL VOTER REGISTRATION ACT

The PRESIDING OFFICER. Under the previous order the Chair lays before the Senate the unfinished business, which the clerk will state.

The legislative clerk read as follows:

A bill (S. 2574) to amend title 13, United States Code, to establish within the Bureau of the Census a National Voter Registration Administration for the purpose of administering a voter registration program through the mail.

The Senate resumed the consideration of the bill.

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

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

The PRESIDING OFFICER (Mr. STEVENSON). The pending question is on agreeing to the motion to refer the bill (S. 2574) to the Committee on the Judiciary.

Mr. McGEE. Mr. President, the issue of referring this matter to the Committee on the Judiciary has been the source of a good bit of dialog in this body for the past several days. I have in my hand a list showing the Judiciary Committee's record on voting rights legislation, that is, on aspects of the problem as that committee has been involved with it since 1957, when the Civil Rights Act of that year was passed.

The record will speak for itself. In general, it has not been regarded as being within the jurisdiction of the committee to involve itself with voting rights as an election procedure, but only as it might involve a civil rights factor, as the record shown by the legislative history will reveal.

Likewise, Mr. President, on such occasions as the Committee on the Judiciary has acted in these matters, it has been in another context than that of voting rights per se. But I would also mention that there is scarcely a bill introduced in this body that is not made up of many parts, and thus requires a decision by the Parliamentarian as to what its main part is, and therefore how to refer it.

I recall just a year or two ago when the distinguished senior Senator from North Carolina, a member of the Committee on the Judiciary, was handling a series of hearings on Federal employees and their rights under the law. Ordinarily that would have been regarded, I suppose, as certainly within the purview of the Post Office and Civil Service Committee. It was referred to the Committee on the Judiciary and hearings were held there without objection from me, not because we had no jurisdiction over it—we probably had the primary jurisdiction—but because it seemed to me that in the special circumstance, the esteemed Senator from North Carolina had a great deal to contribute in that area, and that it was important to move ahead without tactical delays in trying to surface the issues.

There is a long list indeed of similar matters that have diverse elements present in the legislation that overlaps committees, but, as the distinguished majority leader (Mr. MANSFIELD) made abundantly clear in the discussion of this matter last Thursday in this body, there can be no serious question about this bill and several bills like it, all of which have been referred to the Post Office and Civil Service Committee, being within the proper jurisdiction of this committee.

It is likewise not without significance that no objection was raised, and that we were even permitted without objection to go through the process of ironing out the difficulties and complications of researching the matter, and then holding hearings, and that it was not until it appeared that we were serious and business-like in what we intended to do that we began to hear these voices raised against the jurisdiction of the committee.

I would think that, whatever the fallibility of judgment of the members of the committee themselves—we are all fallible on all of these questions; I know of no committee that has any particular monopoly on wisdom in the affairs of our Government—having gone though it as we did, the place to test the committee's proposal is openly on the floor of the Senate—openly, up or down on substance—and I am sure that our distinguished colleague from North Carolina and his colleagues on the Judiciary Committee, as well as our colleagues on nearly every other committee in this body, would have something constructive to offer, and we ought now to give this measure a chance for exposure before the collective judgment of the Senate, as we seek to approach the final judgment of this body on this measure.

I should like to make a comment on one other matter, after having first made a part of the RECORD the list of measures in the last 15 years that the Committee on the Judiciary may have been involved with in tangential ways on voting rights matters. I ask unanimous consent that the list be printed in the RECORD.

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

JUDICIARY COMMITTEE'S RECORD ON CIVIL RIGHTS AND VOTING RIGHTS LEGISLATION

(Seven out of the eight major bills had to by-pass the Judiciary Committee)

Source: Congressional Quarterly

1957 CIVIL RIGHTS ACT

Passed by the House, came to the Senate—Senators Douglas and Knowland blocked its referral to the Judiciary Committee—motion brought bill directly to the floor.

1960 CIVIL RIGHTS ACT

Referred to Judiciary Committee—never to be seen again—brought up as an amendment to a House passed bill by Senators Johnson and Dirksen.

1962 CIVIL RIGHTS ACT

Referred to Judiciary Committee—Judiciary Committee held hearings—bill never heard from again—offered as an amendment to House passed bill by Senators Mansfield and Dirksen—died at feet of filibuster.

1963—EVENTUALLY THE 1964 CIVIL RIGHTS ACT

House passed bill—motion from calendar directly to floor—Judiciary Committee was sitting on a similar bill.

1965 VOTING RIGHTS ACT

Referred to Judiciary Committee with instructions to report out with time certain.

1966 CIVIL RIGHTS ACT

House passed bill—motion from calendar to floor by Senator Mansfield—died in a filibuster.

1968 CIVIL RIGHTS ACT

Referred to Judiciary Committee—reported out of Judiciary Committee—(The bill reported out of the Judiciary Committee would make it a Federal crime to kill or assault a civil rights worker)—open housing provision added on the floor.

1970 VOTING RIGHTS ACT

Referred to the Judiciary Committee with instructions to report to floor at time certain—Committee refused to take any action on the bill—bill automatically came back to the floor.

Mr. McGEE. The question of the constitutionality of the subject matter of this bill (S. 2574) has been raised, although minimally—I think in only one or two instances—by court decisions that have been handed down in that regard, the basic one being Oregon against Mitchell, in which the court decided that, over the selection of Federal officials there was no question under the Constitution of the power and the right of Congress to legislate, and the Supreme Court sustained that judgment by a vote of 8 to 1.

In addition, in the last few days I have received from a rather distinguished constitutional authority from the Yale Law School, Prof. Alexander Bickel, a statement in which he has unquestionably supported the constitutionality of the voter registration bill S. 2574. After reading the legislation and the committee report on the legislation, he said:

In my judgment, there can be no serious question about the constitutionality of S. 2574.

Professor Bickel's endorsement of the constitutionality is really aside from or apart from whether or not one agrees with the idea. It is addressing to the sharp point of the legitimacy of such action under the Constitution. But, likewise, Professor Bickel's endorsement of the constitutionality factor is particular-

ly convincing in the light of his stand against the constitutionality of the 18-year-old vote provision in the 1970 Voting Rights Amendment.

It will be recalled that in this combination the distinction was rather clearly drawn; but, having drawn that distinction, for Professor Bickel to conclude there is no factor of constitutionality present in this particular measure ought to lay to rest any contention that that is an issue.

I think this brings us back to measuring it for what it really is—an effort to take the next step toward larger voter participation in the affairs of our Nation. We have had occasion to refer frequently to the fact that 47 million Americans did not vote in the last presidential year, 1968. Our drive is to give those who did not vote fewer and fewer alibis or excuses for not voting. We have already demonstrated in our country's history that, if the voters are registered, they do vote and that the nonregistration seems to be the key to the problem. Ninety percent of the American voters registered did vote in 1968.

Thus, if we can simplify the voter registration procedures, we will have contributed to the processes of voter participation, which must improve, which must increase, and which we believe S. 2574 will facilitate. It will facilitate it in reasonable ways, in predictable ways in terms of the mechanism, and in ways, as the committee hearings attest, that can be worked out in fact and in practice under the mechanism envisaged in the bill; namely, the creation of a National Voter Registration Administration under the Bureau of the Census.

I would stress the one limitation that is contained in this proposal, and that is that the real process of validating the registration rolls is retained completely in the hands of the local authorities, in the hands of the State Electoral Commission, in each instance. Only the mailing of the postcards occurs at the Federal level, and that is partially explained by the fact that the Federal bureau which has been selected is the Bureau of the Census, which already has the know-how, has the mechanism, has the computers, has the necessary breakdowns of where and how many, which a Federal voter registration measure would require.

When we remember that, in one State, North Dakota, there is virtually no registration—one registers as he votes—or that, in a State as large as Texas, people register by coupons printed in newspapers, without the emergence of any discernible efforts at graft or deception or illegal manipulation, I think we can rest at greater ease over the prospect of voter registration by postcard, a postcard prepared and mailed by the Federal Bureau of the Census, by means of the U.S. Postal Service.

When we remember that this is the collection of the income tax, I think we ought to go slow about exaggerating the specter of the ogre of fraud. Fraud is an understandable apprehension on the part of people in any new process but I think it has been demonstrated again and again in this dialog that nothing in this mechanism incites any kind of effort at graft or fraud that might not already be present under the present system and it has introduced no new factors that are not already present in the voting process.

We have had occasion in the committee to examine the registration forms and the registration cards currently required in every State in the Union. There is not a thing on those cards that could not as well be translated into business on a post card and dropped in the mails. The only affidavit on those registration cards as the voter's or the registrants' signature that attests to the validity of what he has filled in on the cards with the somber warning that if any of this is untrue or falsified he is subject to prosecution under the law. That is the kind of validation a post card would readily have upon it.

So I think we are simply suggesting a specter here for frightening purposes rather than for substantive ways to improve the voter participation in what we loosely and sometimes reservedly call free elections in the United States.

Mr. President, let me conclude with one last observation, that every Senator in this body should examine closely the history of the changes in our approach to the problem of voter participation over the past 15 years and then he should ask himself how best can we approach the problem of 47 million Americans not voting. While the present approach is not perfect, it is the best one that we have and the most reasonable one that we have. We cannot know how many of these nonvoters will then vote because of it, but we should get caught giving it a try. It might produce only 1 million more votes; but, Mr. President, who is to fault 1 million more votes? It may produce as many as 20 million more votes. It is good legislation. It is wedded to a good principle. We have to work at making it work rather than stalling it, killing it, diverting it, or postponing it. Its day is long past due in terms of its need and in terms of the urgency of its relevance.

I would hope, therefore, Mr. President, that my colleagues would be willing to proceed toward their modifications or their justifications toward their amendments so that in a substantive way we can come up with the wisest judgment of this body.

AMENDMENTS NOS. 990, 991, AND 992

Mr. GAMBRELL. Mr. President, I have introduced amendments to the voter registration bill, two of which would have the effect of limiting forced school busing, and another seeking a report by the Justice Department and the Department of Health, Education, and Welfare with respect to school segregation and desegregation throughout the country, and as to desegregation enforcement policy as applied in various sections of the country.

One of these amendments, No. 990, is identical to the so-called Griffin amendment which failed by a single vote to pass the Senate last week.

Another, No. 991, is identical to an amendment on this subject which I offered to the higher education bill, providing for the suspension of forced busing while the country seeks to develop a uniform school desegregation policy throughout the country.

The third, No. 992, calling for a report on the extent of desegregation, and on desegregation enforcement policies, is identical to another amendment which I offered to the higher education bill.

The latter two amendments were defeated by substantial majorities when previously voted on. I would like to think that the failure of these amendments to pass resulted from lack of information as to their content, rather than from opposition by the leadership of both parties to an effort to achieve a uniform national policy concerning school desegregation.

Mr. President, regardless of the reason for the failure of these measures, may I say that the entire busing issue has suffered from a default of leadership. It is the most intense domestic issue in the country today. Yet there is a constant effort here in Washington to avoid it, to sweep it under the rug, and to downgrade those who have faced it squarely and who are seeking to achieve a real and reasonable solution to the problem.

Although there have been numerous bills introduced for the control of busing, and for the achievement of a uniform national desegregation policy, no legislative hearings have been held on the subject in the Senate this year, to my knowledge. Thus, it became necessary to attack the problem by amendments to the higher education bill.

When my amendments were offered to the higher education bill, I asked the Education Subcommittee to give me an opportunity to be heard on them. I received no answer to my request.

As the amendments approached being called up or consideration, strict time limits were imposed, and the leadership of the Senate and of the Education Committee, made every effort to smother legislation contrary to the ends which the leadership personally preferred.

Well, Mr. President, although a so-called antibusing amendment has passed both Houses of Congress, the issue is not dead. Only one vote in the U.S. Senate prevented a permanent prohibition against forced school busing. Yet the leadership of our Education Committee, approaches the conference with the House on this bill as if the Senate were in a mood to water down strong antibusing legislation.

Likewise, the leadership seems oblivious to the announced intention of President Nixon, to put an end to forced busing as we now know it.

At least, Mr. President, the leadership of the House of Representatives has had the wisdom to hold hearings on the proposed antibusing constitutional amendment, where workable solutions can be investigated in an atmosphere free of sharp confrontations and excessive rhetoric.

One of the things which a fair hearing on this subject might have developed is the truth about sectional discrimination in desegregation enforcement. I feel confident that various desegregation techniques to which serious objections

is made would be found more acceptable if they were being applied in a uniform manner across the country. At the same time, I believe the people of this country have got better judgment than to undermine their educational systems throughout the country with forced busing programs of the type that are being implemented in limited areas under court and HEW orders. This has been forcefully demonstrated as the Senate has three times rejected the so-called Ribicoff amendment.

In any event, I think we are entitled to have the information requested by my amendment No. 992, and I do not think any fair-minded person would deny it, if fully informed of the request. In fact, most of the information is already available in various reports produced by the Justice and Health, Education, and Welfare Departments. All that is required is that the information be brought up to date and assembled in report form. I would be happy to have it in letter form from the respective departments, without any legislation, if I had a firm commitment from the heads of those departments to furnish it within a reasonable time.

It raises a deep suspicion in my mind that there is a calculated plan to discriminate against the South in this respect when I find those in authority refusing to hold a hearing, or even to furnish information on one of the most serious issues of the day. I hope that the discussions surrounding my amendments will result in some reasonable progress being made toward development of a uniform national policy on the school desegregation question.

I ask unanimous consent that the texts of my amendments Nos. 990, 991, and 992 be printed at this point in the RECORD.

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

AMENDMENT No. 990

At the end of the bill add the following new sections:

SEC. —. No court of the United States shall have jurisdiction to make any decision, enter any judgment, or issue any order the effect of which would be to require that pupils be transported to or from school on the basis of their race, color, religion, or national origin.

SEC. —. No department, agency, officer, or employee of the United States, empowered to extend Federal financial assistance to any program or activity at any school by way of grant, loan, or otherwise, shall withhold or threaten to withhold any such Federal financial assistance in order to coerce or induce the implementation or continuation of any plan or program the effect of which would be to require that pupils be transported to or from school on the basis of their race, color, religion, or national origin.

SEC. —. Notwithstanding any other law or provision of law, in the case of any order on the part of any United States district court, the effect of which is or would be to require that pupils be transported to or from school on the basis of race, color, religion, or national origin, the effectiveness of such order shall be postponed until all appeals in connection with such order have been exhausted, or in the event no appeals are taken, until the time for such appeals has expired.

SEC. —. If any provision of this title, or the application thereof to any person or circumstance, is held invalid, the remaining provisions of this title, or the application of such provision to other persons or circumstances, shall not be affected thereby.

AMENDMENT No. 991

SEC.—. Notwithstanding any other law or provision of law, in the case of any order on the part of any United States district court, to the extent that it has the effect of requiring in any school or school system the transportation of students or teachers in order to overcome racial imbalance, or in order to carry out a plan of racial desegregation, the effectiveness of such order shall be postponed until plans providing for the racial desegregation of schools without regard to the origin or cause of existing segregation shall have been adopted uniformly throughout the United States by the appropriate local educational agencies thereof. Plans shall not be deemed to have been uniformly adopted throughout the United States until—

(1) such plans have been adopted in school systems containing not less than 75 per centum of the school population in public school systems which have total minority student population greater than 15 per centum, or

(2) such plans are in effect in not less than seventy-five of the one hundred most populous school systems in the United States which have total minority student population greater than 15 per centum and such plans are in effect in 75 per centum of the States of the United States having a minority public school student population greater than 15 per centum.

Likewise no plan shall be deemed to have been adopted for the purpose of this section unless such plans, approved by the appropriate local educational agency after public hearing, has been submitted by the chief legal officer or other appropriate official of such agency to the Attorney General of the United States and the Attorney General has not interposed an objection within sixty days after such submission: *Provided*, That any plan objected to by the Attorney General shall be deemed to have been adopted for the purpose of this section if the Federal district court having jurisdiction of such agency shall have approved such plan for desegregation as being in accordance with the Constitution of the United States and as providing for the racial desegregation of such schools without regard to the origin or cause of existing segregation. The Attorney General shall interpose an objection under this section to any such plan if he shall find that the means of desegregation adopted therein are not substantially consistent with those provided for in the court-approved school desegregation plans throughout the United States.

AMENDMENT No. 992

At the end of the bill, add the following new section:

SEC. —. Not later than one hundred and twenty days after date of enactment of this bill, the Attorney General of the United States and the Secretary of Health, Education, and Welfare, either jointly or separately, shall submit, in writing, a report to the Congress, describing the conditions of segregation and desegregation by race, whether de jure or de facto, in the public school systems of the United States, and the policies, practices, procedures, guidelines, and criteria which have been implemented by the Department of Justice and the Department of Health, Education, and Welfare since April 1970, to assure that the policies of the United States Government in respect to segregation and desegregation of races in the public schools of the United States are applied uniformly in all regions of the United States, without regard to the origin or cause of such segregation and desegregation. Said report shall, without limiting the contents thereof, include the following:

1. The most recent statistics available of the extent of segregation and desegregation of students in the public schools of the United States including those in the one hundred most populous school districts in the United States.

2. A summary of such statistics—

(a) comparing the progress and extent of desegregation in eleven States comprising the southern region of the United States with the progress and extent of desegregation in other regional sections of the country and with that in the country as a whole.

(b) comparing the progress and extent of desegregation in the school districts referred to in subparagraph 1 which are located in the southern region, with such school districts as are located in other major regions of the country and with such school districts in the country as a whole.

(c) a statistical and descriptive summary, by States and major regions of the country, of the judicial public school desegregation enforcement proceedings in which the Department of Justice and the Department of Health, Education, and Welfare have been involved since enactment of the Civil Rights Act of 1964.

(d) a listing by States of each instance in which public assistance to local educational agencies has been denied or delayed (indicating length of delay) by the Department of Health, Education, and Welfare because of alleged failure to meet judicial and departmental requirements relating to desegregation of races in the schools of such local educational agency.

(e) a statement of what desegregation enforcement procedures, either judicial or administrative, are contemplated by the Department of Justice and the Department of Health, Education, and Welfare with respect to each of the one hundred school systems referred to in subparagraph 1 hereof in which the extent of desegregation shall be less than the average degree of desegregation in all of such school systems, or in which the extent of racial segregation has increased since the last previous statistical analysis has been made with respect to desegregation in such school systems. In respect to any such system in which no desegregation enforcement procedures are contemplated, said report shall give a full explanation of the reasons therefor.

Mr. MAGNUSON. Mr. President, I should like to make a brief comment on the pending bill.

What the Senator is trying to do, as he has aptly stated, is to increase voter participation. It is much the same situation in which I have been involved in my home State ever since my early days in the State legislature—to have the polls open from 8 a.m. until at least 10 o'clock at night. That has always been opposed by the same people who are opposing this bill.

We found that the working man comes home at 6 o'clock and does not want to go to the polls in his working clothes. By the time he has his dinner, he says, "They won't miss my vote," and the polls close at 8 o'clock. We would have 10 to 15 percent more voter registration if the polls did not close that early.

This is the same thing, is it not?

Mr. McGEE. Exactly; it seeks to make it easier.

FINANCIAL RESULTS OF AMTRAK PASSENGER SERVICE

Mr. MAGNUSON. Mr. President, last fall I remarked about the comparative financial results of Amtrak passenger train services, based on the results of the first 2 months' operations—May and June. I pointed out then that while the New York-Washington route was the only one showing a profit, a number of the long-distance routes—which according to conventional wisdom should be the most hopeless losers—where fairly close to breaking even.

I now have Amtrak financial results for the months of July and August. My staff has prepared a table which compares these later figures with the May and June figures I previously made available, and I ask unanimous consent that this table be printed in the RECORD.

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

FINANCIAL RESULTS OF PRINCIPAL AMTRAK ROUTES

[May and June 1971, consolidated; July and August 1971, consolidated]

Route and railroads	Miles	Number of daily trains	Revenues (thousands)	Expenses (thousands)	Revenue, percent of expenses
New York to Washington, PC	227	27			
May and June			$4,411	$3,348	131
July and August			5,490	4,054	135
Boston to Washington, PC	456	6			
May and June			1,418	1,436	99
July and August			1,625	1,413	115
New York to Philadelphia, PC	91	23			
May and June			1,311	1,472	89
July and August			1,266	1,365	93
New Orleans to Los Angeles, SP	2,033	1			
May and June			665	875	76
July and August			708	890	80
Chicago to Los Angeles, ATSF	2,222	2			
May and June			2,395	3,181	75
July and August			3,723	3,610	103
Chicago to Denver, BN	1,034	2			
May and June			505	700	72
July and August			982	886	110
Chicago to Seattle, MILW–BN	2,289	2			
May and June			1,571	2,383	66
July and August			2,725	2,855	95
New York to Florida PC–R.F. & P.–SCL	1,426	6			
May and June			3,226	5,284	61
July and August			4,898	5,951	82
Minneapolis to Spokane, BN	1,485	1			
May and June					
July and August			489	626	78
Los Angeles to Portland, SP	1,189	1			
May and June			224	383	58
July and August			284	402	71
Chicago to Oakland, BN–UP–SP	2,420	1			
May and June			598	1,026	58
July and August			768	1,078	71
Chicago to New Orleans, IC	921	2			
May and June			697	1,285	54
July and August			1,129	1,292	87
Chicago to Houston, ATSF	1,368	2			
May and June			743	1,414	53
July and August			882	1,735	51
New York to Boston, PC	229	10			
May and June			$502	$1,007	50
July and August			568	1,032	55
Chicago to New York, PC	907	2			
May and June			878	1,775	49
July and August			1,314	1,882	70
Chicago to St. Louis, G.M. & O	284	4			
May and June			229	642	36
July and August			223	615	36
New York to Albany to Buffalo, PC	435	15			
May and June			586	2,074	29
July and August			931	2,110	44
Chicago to Detroit, PC	283	4			
May and June			106	369	29
July and August			160	377	42
New York to Springfield, PC	134	18			
May and June			80	291	27
July and August			76	324	23
Seattle to Portland, BN	186	5			
May and June			90	361	25
July and August			136	433	31
Chicago to Milwaukee, MILW	85	6			
May and June			80	366	22
July and August			101	291	35
Newport News to Cincinnati, C. & O	655	2			
May and June			128	581	22
July and August			201	611	33
Chicago to Florida, PC–L. & N.–SCL	1,526	2			
May and June			391	1,862	21
July and August			582	1,794	32
New York to St. Louis, PC	1,050	2			
May and June			210	1,074	20
July and August			310	978	32
San Diego to Los Angeles, ATSF	128	5			
May and June			92	649	14
July and August			121	418	29

Mr. MAGNUSON. A number of comments suggest themselves from this statistical comparison. First, the New York-Washington services improved upon their already impressive profit record. Second, the biggest losers for the most part continued to be the short-to-medium distance "corridors" other than New York-Washington, in which substantial sums must be spent for capital improvements to provide the fast service necessary to attract large numbers of riders. Third, the long-distance trains not only retained their relatively favorable position, but in two instances joined the New York-Washington trains in the ranks of profitability—Chicago-Los Angeles and Chicago-Denver.

Amtrak's performance in the summer of 1971 indicates that significant numbers of people want to ride long-distance trains and are willing to pay for the cost of operating them. The record is all the more significant in view of the virtual absence of advertising and promotion, the mediocre on-time performance, and the deteriorated condition of much of the equipment, which both detracts from the quality of service and increases the expense of operation. There is little support for the contention of one of our distinguished railroad executives that long-distance trains are as obsolete as stagecoaches and should be abandoned forthwith.

I am aware that the economics of long-distance passenger trains are less favorable once the summer tourist and vacation season is past. Nevertheless, there are a number of things Amtrak could do to improve the picture, such as obtaining increased mail, or express traffic to supplement passenger revenues; orienting its services for example toward such winter recreation areas as the ranches and the several ski slopes of the West; and aggressively soliciting conventions and other group movements.

For quite some time, I have questioned the validity of railroad claims that passenger service will inevitably incur huge financial loss. Just last month, a prominent railroad executive alleged in a national magazine interview that continuation of long-distance trains would require an annual subsidy of $300 to $400 million per year. Amtrak results to date surely disprove this contention. I cannot help but note that this executive's railroad was for years the industry leader in doing everything possible to downgrade service, discourage patronage, and discontinue passenger service. Since Amtrak came into being, this same railroad had had one of the worst on-time performances of any of the roads operating Amtrak trains.

Passenger service is the window through which the public judges the railroads. If passenger service is unsatisfactory or nonexistent, the public is not likely to be sympathetic toward railroad pleas for Government amelioration of their problems, no matter how valid these pleas may be, nor how rationally they are presented. A continuing stream of constituent complaints about passenger service does not make it any easier for us to give favorable consideration to expensive or otherwise controversial proposals to assist the railroad industry.

SPACE SHUTTLE PROGRAM

Mr. MAGNUSON. Mr. President, recently I read two very important statements on the space shuttle program.

The first statement was made by the AFL–CIO Executive Council and the second was written by my colleague, Mr. JACKSON, in the Machinist, February 17, 1972 issue.

I feel that both of these articles are extremely informative and fairly represent the issues involved in this important decision.

I ask unanimous consent to have the two articles printed in the RECORD.

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

STATEMENT BY THE AFL–CIO EXECUTIVE COUNCIL ON SPACE SHUTTLE

The United States space program is reaching another milestone. At the peak of the

Apollo project, the space program employed 400,000 Americans—about half of whom have since been laid off. This year will see the end of Apollo.

In Apollo, American science, engineering and craftsmanship made possible the fulfillment of one of man's oldest dreams—to walk on the moon. In so doing, we unlocked vast new technologies, strengthened our national security and reinforced America's world position.

Next year, the Skylab will put nine astronauts into orbit to live and work for periods of from four to eight weeks, learning more about our world and the space around it.

The next logical step for the United States space program is the development of a space shuttle which will provide economical transportation from earth to space and back. It will make space as accessible as the airplane has made the other continents. The shuttle will assist us in exploration, in science and technology and, if necessary, in defense and provide 50,000 jobs in the United States. Without the shuttle we cannot develop our scientific and technological investments that already have given us space communications, weather satellites and geodetic programs.

The benefits of next generation space applications in such fields as the management of our natural resources, monitoring of pollution, weather modification and climate control, television distribution, earthquake prediction, and public health and safety will not be fully realized unless we can reduce costs, raise efficiency and acquire a flexibility of action not yet possible. That is what the space shuttle is for. Without it, we will lose many valuable programs.

International relations today involve space. We can no more ignore space than we can ignore the oceans or the continents. We would not have the free world without ships, without aircraft or without land mobility. We cannot envision a secure, technologically advanced western world without technologies that allow us the freedom of space as well.

For these reasons, we urge Congress to vote funds for the development of a space shuttle.

[From the Machinist, Feb. 17, 1972]

WHY THE SPACE SHUTTLE IS IMPORTANT TO YOU

(By Sen. HENRY M. JACKSON of Washington State)

A major effort is now under way to kill the space shuttle program. If the shuttle appropriation fails it will mean the end of even a minimum space program.

I believe the space shuttle is important to America.

I believe the space shuttle is vital to science.

I believe the space shuttle is important to working men and women.

I believe the space shuttle is a good investment which will return its costs to the people many times over.

The future of the space program is a central issue of the 1972 presidential campaign. Approval of appropriations this year for the space shuttle project is not a foregone conclusion at this juncture. In fact, the battle may be as close as the 1969 fight which I led over funding of the ABM.

The opportunities that exist for new discoveries with the shuttle are enormous. It would be tragic if we were to foreclose on that opportunity.

Let's look in greater detail at some of the reasons the space shuttle program is so important.

This shuttle program, as you know, provides for the development of a reusable "truck" to haul man and unmanned or automatic satellites into earth orbit and back, rather than continue to throw away the entire expensive hardware after each launching.

The shuttle will be capable of launching, repairing, and servicing existing and new satellites, and of providing a link to future manned space stations. It gives us new access to a space future. It enables us to utilize space more economically through the decades ahead—to capitalize on the big investment we have already made.

CAPITALIZE HOW?

I think we all give a high priority to the need for understanding and preserving our natural environment on this planet. Fortunately the tools of space technology are a timely part of the equipment we will need to manage this task, and the shuttle will multiply the potential.

For example, weather satellite observations have already saved millions of dollars through improved forecasting. But we still have not found the secret of total weather forecasting, and we will not do so until we have total global observation. Present weather satellites look mainly at clouds. Future ones will determine pressure and temperature and wind velocity profiles throughout the atmosphere to learn the details of weather formation and flow.

Five-day forecasting is just around the corner. That alone would save an estimated $6 billion dollars annually in agriculture, lumber industries, surface transportation, retail marketing and water resource management—twice the annual cost of the entire space program.

That is what I mean by capitalizing on our space investment, and putting space to work. Future satellites will analyze and patrol our resources—locate minerals and oil—study ocean changes and factors in fish production—detect air and water pollution and plant life infestation and other hazards. Estimates of damage to American agriculture and forestry by fire, insects and disease range from $13 to $20 billion per year. Space science gives us a tremendous lift in learning to master these problems.

Air and sea transportation, in this day of increasing traffic, require the protection of precise all-weather navigation, which space satellites will permit. Space is the path of future mass communications. A TV relay across the Atlantic via cable costs $25,000 per channel per year; a space satellite relay costs less than one-sixth of that. The use of space is not going to be a luxury but an economy and a necessity. As we gain easier access to space by shuttle vehicles, we can service and maintain this intricate orbiting equipment.

Let's not discount scientific discovery and pursuit of knowledge as an application of space to today's priorities. The 170 pounds of moon materials from Apollo 15 are already yielding surprises that may have great significance. Some plants placed in lunar soil are growing four times as fast as those in earth soil. Certain bacteria will not live in the moon dust. These and other discoveries, once understood, may hold untold benefits.

We are concerned over the finite limits of energy sources on earth, with the rapidly increasing demands for power. Yet the sun provides 5,000 times the combined available earth power source today. If we are ever to harness some of this enormous reserve of pollution-free energy, it is space science that will help show us the way. Our harnessing of nuclear energy began with the study of basic processes in the sun. Astronomy will have a whole fresh start once it is lifted above our blanket of shielding atmosphere.

The shuttle will permit us to carry supplies to the scientific teams manning U.S. orbital space stations, and to change the personnel at these high posts. This is not fantasy, it is the world today. The Russians have already placed an initial manned station in space and appear to be on their way to establishing a permanent orbiting station, which leads me to mention the obvious relationship of space surveillance to national security.

But let me come back to employment—certainly that is a priority which particularly interests organized labor today. The space shuttle program in full swing should provide in excess of 50,000 jobs, distributed among virtually all of the 50 states. It is still a moderate number compared with the 400,000 that were engaged in the Apollo program, but it is enough to have real economic impact.

Great numbers of craftsmen are available in the labor market for this work. Employment in the aerospace industry has been reduced by 288,000 since 1966. Many of those laid off remain unemployed or are working at jobs below their skill capability.

More than half of aerospace employment consists of production workers, and the average wage is 24% higher than the all-manufacturing average. This is attractive work.

WHAT IS THE COST?

But let's also take a hard look at the economics of the program for the country as a whole. First, we must get the space program into perspective with other U.S. expenditures. The entire NASA program at $3.2 billion represents less than 1½% of the U.S. budget for fiscal 1972. The space shuttle program of $200 million in 1973 represents less than one-tenth of 1% of the total federal budget.

At an average of one billion dollars per year through its six years' development it would amount to less than one-half of 1% of the budget. We need this to help give a balanced mix to our economy. We need to maintain our progress in high technology industry. It feeds into other industry and it is our most successful approach to reviving and maintaining our international balance of trade against increasing foreign competition.

There are those who say we should be spending our money on earth instead of in space. But space money is spent on earth, and in this country. Further, as we have seen, the benefits are on earth. But again keeping the program in perspective, it should be noted that national priorities are already being redirected, with HEW and HUD type expenditures now exceeding our national defense expenditures for the first time. NASA's space efforts by comparison are only 3½% the size of our social-oriented expenditures.

The economics of the shuttle program itself are as follows: Estimated cost of development over six years is $5.5 billion. After initial development, additional shuttles could be built for space use at an estimated $50 million per copy for the booster portion and $250 million for the orbiter portion. Instead of being thrown away on each flight as Saturn-Apollo equipment is—at a cost of approximately 280 million per flight—the orbiter and booster would be reused over and over again. The cost of carrying payloads into orbit will go down from the present $1,000 per pound to about $100 per pound, because of the reusability feature.

WHY TAKE THIS STEP NOW?

Already we have cranked down the Apollo program—we have dismantled our industrial base as far as Apollo is concerned. But NASA hopes and expects that many who worked on Apollo will still be available for the space shuttle. It would be dangerous and costly to lose this basic know-how and to have to start again from the point where Apollo had to start. This would not be economy.

I feel the space shuttle is the next logical effort for our efforts in space. It will permit our space program to proceed on the most economical basis; it will provide needed employment directly and it will help advance our economy to provide future employment to some of the fifteen million workers who will be added to our labor force in the next ten years.

TRIBUTE TO CARL HAYDEN

Mr. MAGNUSON. Mr. President, it is with heavy heart that I join my colleagues in the Senate in paying final tribute to Carl Hayden. In terms of his accomplishments, his legislative achievements on behalf of the people of Arizona, and of the entire United States, and his warm-hearted desire to help people, Senator Hayden was a mountain of a man. His tribute really came during his life by the people he was closest to, his Arizona constituents who returned him to the Senate a record number of times.

I am deeply honored to have been one of those who served with Senator Hayden. I am a better man for that experience as is the United States a better place because of the dedication and wisdom of our late, beloved, colleague.

AUTHORIZATION FOR COMMITTEE ON GOVERNMENT OPERATIONS TO HAVE UNTIL APRIL 1, 1972, TO PUBLISH ITS RULES OF PROCEDURE

Mr. PERCY. Mr. President, I ask unanimous consent that the Committee on Government Operations have until April 1, 1972, to publish its rules of procedure in the CONGRESSIONAL RECORD pursuant to section 133(b) of the Legislative Reorganization Act of 1946, as amended.

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

ORDER OF BUSINESS

Mr. McGEE. Mr. President, now I want to ask the distinguished majority whip if he has any other matters he wishes us to allow for or to hang on for this afternoon. I think that so far as the distinguished Senator from Florida, the acting minority leader, is concerned——

Mr. FONG. From Hawaii.

Mr. McGEE. Yes, from Hawaii. I am sorry. Everyone else seems to be in Florida so I thought the Senator from Hawaii was in Florida. I guess that is some kind of political Freudian slip. [Laughter]

Mr. FONG. I have nothing further.

QUORUM CALL

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum and I assume that this may be the final quorum call of the day.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

ORDER FOR RECOGNITION OF SENATOR EAGLETON TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that following the remarks of the distinguished Senator from Tennessee (Mr. BAKER) tomorrow, the distinguished Senator from Missouri (Mr. EAGLETON) be recognized for not to exceed 15 minutes.

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

PROGRAM

Mr. BYRD of West Virginia. Mr. President, the program for tomorrow is as follows:

The Senate will convene at 12 o'clock noon tomorrow. After the two leaders have been recognized under the standing order, the distinguished Senator from Kentucky (Mr. COOPER) will be recognized for not to exceed 15 minutes. He will be followed by the distinguished Senator from Tennessee (Mr. BAKER) for not to exceed 15 minutes. He will be followed by the distinguished Senator from Missouri (Mr. EAGLETON) who will be recognized for not to exceed 15 minutes; after which there will be a period for the transaction of routine morning business, for not to exceed 30 minutes, with statements therein limited to 3 minutes; at the conclusion of which the Chair will lay before the Senate the unfinished business, S. 2574, a bill to establish a voter registration program through the mails.

ADJOURNMENT

Mr. BYRD of West Virginia. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in adjournment until 12 o'clock noon tomorrow.

The motion was agreed to; and at 2:08 p.m., the Senate adjourned until tomorrow, Tuesday, March 14, 1972, at 12 meridian.

NOMINATIONS

Executive nominations received by the Senate March 13, 1972:

ACTION

Walter Charles Howe, of Washington, to be Deputy Director of Action; new position.

DEPARTMENT OF JUSTICE

Thomas A. Grace, Jr., of Louisiana, U.S. marshal for the middle district of Louisiana for the term of 4 years; new position created by Public Law 92-208, approved December 18, 1971.

IN THE AIR FORCE

The following officer to be placed on the retired list in the grade indicated under the provisions of section 8962, title 10 of the United States Code:

Gen. Bruce K. Holloway, xxx-xx-xxxx FR (major general, Regular Air Force) U.S. Air Force.

The following officers for appointment in the Reserve of the Air Force to the grade indicated, under the provisions of chapters 35 and 837, title 10, United States Code:

To be major general

Brig. Gen. John W. Hoff xxx-xx-xxxx FV, Air Force Reserve.

Brig. Gen. Robert B. Mautz, xxx-xx-xxxx FV, Air Force Reserve.

To be brigadier general

Col. Vincent S. Haneman, Jr., xxx-xx-xxxx FV, Air Force Reserve.

Col. Gilbert O. Herman xxx-xx-xxxx FV, Air Force Reserve.

Col. Edwin R. Johnston xxx-xx-xxxx V, Air Force Reserve.

Col. William J. Reals, xxx-xx-xxxx FV, Air Force Reserve.

Col. Joseph M. F. Ryan, Jr., xxx-xx-xxxx FV, Air Force Reserve.

The following officers for appointment as Reserve commissioned officers in the U.S. Air Force to the grade indicated, under the provisions of chapters 35, 831, 837, title 10. United States Code:

To be major general

Brig. Gen. William C. Smith xxx-xx-xxxx FG, Tennessee Air National Guard.

Brig. Gen. Charles S. Thompson, Jr., xxx-... xxx-xx-x... FG, Georgia Air National Guard.

Brig. Gen. Joseph D. Zink, xxx-xx-xxxx FG, New Jersey Air National Guard.

To be brigadier general

Col. William J. Crisler, xxx-xx-xxxx FG, Mississippi Air National Guard.

Col. Francis R. Gerard, xxx-xx-xxxx FG, New Jersey Air National Guard.

Col. Malcolm E. Henry, xxx-xx-xxxx FG, Maryland Air National Guard.

Col. Ralph E. Leader xxx-xx-xxxx FG, Massachusetts Air National Guard.

Col. Paul D. Straw xxx-xx-xxxx FG, Texas Air National Guard.

IN THE NAVY

Rear Adm. Merlin H. Staring, Judge Advocate General's Corps, U.S. Navy, to be Judge Advocate General of the Navy with the rank of rear admiral, for a term of 4 years.

IN THE MARINE CORPS

In accordance with the provisions of title 10, United States Code, section 5232, Maj. Gen. George C. Axtel, U.S. Marine Corps, having been designated for commands and other duties determined by the President to be within the contemplation of said section, for appointment to the grade of lieutenant general while so serving.

Maj. Dale L. Harpham, U.S. Marine Corps, for appointment to the grade of lieutenant colonel.

IN THE ARMY

The following-named officers for promotion in the Regular Army of the United States, under the provisions of title 10, United States Code, sections 3284 and 3305:

MEDICAL CORPS

To be colonel

Hanson, Chester A., xxx-xx-xxxx.

The following-named officers for promotion in the Regular Army of the United States, under the provisions of title 10, United States Code, sections 3284 and 3299:

To be lieutenant colonel

Anderson, William A., xxx-xx-xxxx

To be major

Bland, Andrew R. Jr., xxx-xx-xxxx
Brylia, Charles W., xxx-xx-xxxx
Burr, Jacky A., xxx-xx-xxxx
Crowle, James L., xxx-xx-xxxx
Dahl, Hans E., xxx-xx-xxxx
Davis, Marion L., xxx-xx-xxxx
Edes, Richard H., xxx-xx-xxxx
Gray, Thomas A., xxx-xx-xxxx
Knippa, Leroy E., xxx-xx-xxxx
McCarthy, Robert A., xxx-xx-xxxx
Neilson, Russell W., xxx-xx-xxxx
Paladino, Vito W., xxx-xx-xxxx
Sammt, Carl J., xxx-xx-xxxx
Vice, John R., xxx-xx-xxxx
Webster, Howard E., Jr., xxx-xx-xxxx

To be captain

Adams, Nolan J., xxx-xx-xxxx
Baker, Robert J., xxx-xx-xxxx
Beaton, Edward A., xxx-xx-xxxx
Behler, Gene R., xxx-xx-xxxx
Boegler, Kenneth G., xxx-xx-xxxx
Briggs, James B., xxx-xx-xxxx
Brown, Robert C., xxx-xx-xxxx
Campbell, Donald J., xxx-xx-xxxx
Carr, Byron H., xxx-xx-xxxx

Coats, Landis R., xxx-xx-xxxx.
Cook, Billie R., xxx-xx-xxxx.
Coonradt, Leo J., xxx-xx-xxxx.
Crown, Francis J., Jr., xxx-xx-xxxx.
Culbert, Harry J., xxx-xx-xxxx.
Dimsdale, Roger, xxx-xx-xxxx.
Gettig, Charles E., xxx-xx-xxxx.
Greer, Harold E., Jr., xxx-xx-xxxx.
Hamilton, Jack L., xxx-xx-xxxx.
Hartfield, Robert S., xxx-xx-xxxx.
Hartsell, Carroll F., xxx-xx-xxxx.
Hergen, James G., xxx-xx-xxxx.
Herring, Charles D., xxx-xx-xxxx.
Herrington, James W., xxx-xx-xxxx.
Kelsey, Arthur W., xxx-xx-xxxx.
Kirchner, John E., xxx-xx-xxxx.
Knight, David B., xxx-xx-xxxx.
Loeffler, Frank E., xxx-xx-xxxx.
Metzger, Robert M., xxx-xx-xxxx.
Morgan, Emmett K., II, xxx-xx-xxxx.
O'Brien, Dennis E., xxx-xx-xxxx.
Pflaster, Darrell J., xxx-xx-xxxx.
Pozniak, Edward J., xxx-xx-xxxx.
Richardson, Troy E., xxx-xx-xxxx.
Rawlinson, Jerry D., xxx-xx-xxxx.
Riddell, John M., xxx-xx-xxxx.
Riley, Harry G., xxx-xx-xxxx.
Rittenhouse, David, xxx-xx-xxxx.
Robinson, Glen E., xxx-xx-xxxx.
Roix, Robert J., xxx-xx-xxxx.
Rosenberg, Raymond, xxx-xx-xxxx.
Ross, Thomas P., xxx-xx-xxxx.
Salter, Avery T., Jr., xxx-xx-xxxx.
Shiver, Eustice M., xxx-xx-xxxx.
Slover, Harold L., xxx-xx-xxxx.
Smith, Wendell I., xxx-xx-xxxx.
Smoot, Charles V., xxx-xx-xxxx.
Stetson, Mark R., xxx-xx-xxxx.
Thomas, Robert E., Jr., xxx-xx-xxxx.
Wade, Thomas G., xxx-xx-xxxx.
Webb, Thomas J., xxx-xx-xxxx.

MEDICAL CORPS

To be captain

Howell, Frederick L., xxx-xx-xxxx.
Limmer, Bobby L., xxx-xx-xxxx.

VETERINARY CORPS

To be captain

Cirone, Salvatore M., xxx-xx-xxxx.

MEDICAL SERVICE CORPS

To be captain

Platte, Ronald J., xxx-xx-xxxx.
Porter, Steven J., xxx-xx-xxxx.
Sullivan, John E., Jr., xxx-xx-xxxx.

ARMY NURSE CORPS

To be captain

Kanusky, Joseph T., xxx-xx-xxxx.
Miles, Ann L., xxx-xx-xxxx.

The following-named officers for promotion in the Regular Army of the United States, under the provisions of title 10, United States Code, sections 3284 and 3298:

ARMY PROMOTION LIST

To be first lieutenant

Acock, John H., Jr., xxx-xx-xxxx.
Adams, Samuel B., xxx-xx-xxxx.
Aldridge, Marion J., xxx-xx-xxxx.
Allen, Clay W., III, xxx-xx-xxxx.
Anders, Howard G., xxx-xx-xxxx.
Arias, Louis A., xxx-xx-xxxx.
Armour, Wayne T., xxx-xx-xxxx.
Armstrong, Eugene G., xxx-xx-xxxx.
Autz, Remy E., xxx-xx-xxxx.
Baldenweck, Thomas, xxx-xx-xxxx.
Ball, Larry E., xxx-xx-xxxx.
Bancroft, Ronald K., xxx-xx-xxxx.
Banzhoff, Ernest L., xxx-xx-xxxx.
Barcellos, Terrance D., xxx-xx-xxxx.
Barefield, Robert L., xxx-xx-xxxx.
Barth, James M., xxx-xx-xxxx.
Baskin, Jerry S., xxx-xx-xxxx.
Baur, Richard, xxx-xx-xxxx.
Becker, Lawrence J., xxx-xx-xxxx.
Becker, Richard H., xxx-xx-xxxx.
Bennett, Harry S., xxx-xx-xxxx.
Berry, Phillip C., xxx-xx-xxxx.
Biliter, Patrick E., xxx-xx-xxxx.
Bischoff, John M., xxx-xx-xxxx.
Boatwright, Leroy, xxx-xx-xxxx.
Bongiorni, Dominic, xxx-xx-xxxx.
Booton, Paul M., Jr., xxx-xx-xxxx.
Bourne, Garrett D., xxx-xx-xxxx.
Bradley, David R., xxx-xx-xxxx.
Brethorst, William, xxx-xx-xxxx.
Bria, Carmen J., xxx-xx-xxxx.
Brock, Robert W., xxx-xx-xxxx.
Brooks, Charles R., xxx-xx-xxxx.
Brooks, Donald P., xxx-xx-xxxx.
Brooks, Mack M., xxx-xx-xxxx.
Browder, Dewey A., xxx-xx-xxxx.
Brown, Henry E., Jr., xxx-xx-xxxx.
Brown, Richard M., xxx-xx-xxxx.
Brown, Roger F., xxx-xx-xxxx.
Bryant, Scott A., xxx-xx-xxxx.
Bulloch, Bobby J., xxx-xx-xxxx.
Bullock, William F., xxx-xx-xxxx.
Caggiano, Arthur W., xxx-xx-xxxx.
Callen, Paul J., xxx-xx-xxxx.
Calocci, Thomas F., xxx-xx-xxxx.
Campbell, Francis J., xxx-xx-xxxx.
Campiglia, Michael, xxx-xx-xxxx.
Carbone, Joseph D., xxx-xx-xxxx.
Carey, Stephen W., xxx-xx-xxxx.
Carfagna, Don R., xxx-xx-xxxx.
Carpenter, William, xxx-xx-xxxx.
Casey, James T., xxx-xx-xxxx.
Cecere, Robert A., xxx-xx-xxxx.
Chambers, William W., xxx-xx-xxxx.
Chapin, Steven W., xxx-xx-xxxx.
Charlton, Donald G., xxx-xx-xxxx.
Chase, Michael S., xxx-xx-xxxx.
Childers, William M., xxx-xx-xxxx.
Chubb, James M., xxx-xx-xxxx.
Ciccolella, Charles, xxx-xx-xxxx.
Ciccolella, Richard, xxx-xx-xxxx.
Clark Jerry S., xxx-xx-xxxx.
Coleman, John R., xxx-xx-xxxx.
Collins, William P., xxx-xx-xxxx.
Collinsworth, Tim A., xxx-xx-xxxx.
Connor, Michael D., xxx-xx-xxxx.
Cooch, Robert L., Jr., xxx-xx-xxxx.
Cook, Craig A., xxx-xx-xxxx.
Cording, Lewis C., xxx-xx-xxxx.
Corrigan, Michael L., xxx-xx-xxxx.
Cosumano, Joseph M., xxx-xx-xxxx.
Cottrell, Walter T., xxx-xx-xxxx.
Craft, Troy L., Jr., xxx-xx-xxxx.
Craig, David B., xxx-xx-xxxx.
Crenshaw, Robert S., xxx-xx-xxxx.
Crites, Harold F., xxx-xx-xxxx.
Crosby, Lamar C., xxx-xx-xxxx.
Cross, James B., xxx-xx-xxxx.
Cruikshank, Kenneth A., xxx-xx-xxxx.
Culhane, Kevin V., xxx-xx-xxxx.
Daniels, Richard S., xxx-xx-xxxx.
Dasher, Steven A., xxx-xx-xxxx.
Dauphinee, Donald D., xxx-xx-xxxx.
Davis, Mark W., xxx-xx-xxxx.
Davis, Ralph J., xxx-xx-xxxx.
Deacon, Carrell V., xxx-xx-xxxx.
Deck, William R., xxx-xx-xxxx.
Deming, Dennis C., xxx-xx-xxxx.
Denler, Douglas P., xxx-xx-xxxx.
Dickens, Ralph K., Jr., xxx-xx-xxxx.
Dietz, Thomas A., xxx-xx-xxxx.
Dirlam, Richard R., xxx-xx-xxxx.
Dorazio, Gene S., xxx-xx-xxxx.
Doremus, Darrell D., xxx-xx-xxxx.
Duane, Daniel J., xxx-xx-xxxx.
Dunn, Michael W., xxx-xx-xxxx.
Duval, William G., xxx-xx-xxxx.
Duvall, Julius D., xxx-xx-xxxx.
Early, Michael J., xxx-xx-xxxx.
Ebert, Roger L., xxx-xx-xxxx.
Eggers, John L., xxx-xx-xxxx.
Elston, Kenneth D., xxx-xx-xxxx.
Erickson, Kenneth L., xxx-xx-xxxx.
Erickson, Marlin D., xxx-xx-xxxx.
Erion, John H., xxx-xx-xxxx.
Evenson, Michael K., xxx-xx-xxxx.
Evirs, Robert G., xxx-xx-xxxx.
Ezell, James J., xxx-xx-xxxx.
Fagan, James D., Jr., xxx-xx-xxxx.
Fellinger, Paul W., xxx-xx-xxxx.
Ferguson, William G., xxx-xx-xxxx.
Fisher, J. B., Jr., xxx-xx-xxxx.
Flagg, Albert C., Jr., xxx-xx-xxxx.
Foote, Robert D., xxx-xx-xxxx.
Foreman, James E., xxx-xx-xxxx.
Fritz, Paul H., xxx-xx-xxxx.
Galloway, James E., xxx-xx-xxxx.
Gandara, Guillermo, xxx-xx-xxxx.
Garlock, Warren D., xxx-xx-xxxx.
Garoutte, Michael D., xxx-xx-xxxx.
Geis, Craig E., xxx-xx-xxxx.
Gibbs, Allen D., xxx-xx-xxxx.
Gibbs, Charles, xxx-xx-xxxx.
Gidej, Jaroslaw, xxx-xx-xxxx.
Giger, John R., xxx-xx-xxxx.
Glendon, John W., xxx-xx-xxxx.
Gober, Donald F., xxx-xx-xxxx.
Goff, Forrest W., xxx-xx-xxxx.
Gogola, Gordon S., xxx-xx-xxxx.
Goldberg, Lewis J., xxx-xx-xxxx.
Goldsmith, Robert M., xxx-xx-xxxx.
Gramlich, Andrew F., xxx-xx-xxxx.
Gray, Louis G., xxx-xx-xxxx.
Green, Bernard W., xxx-xx-xxxx.
Greer, Dan B., Jr., xxx-xx-xxxx.
Grevert, Donald C., xxx-xx-xxxx.
Griffin, Derek L., xxx-xx-xxxx.
Griffin, Steven R., xxx-xx-xxxx.
Gustafson, Karl J., xxx-xx-xxxx.
Gustin, Jerry J., xxx-xx-xxxx.
Gustine, James E., xxx-xx-xxxx.
Hanretta, Kevin T., xxx-xx-xxxx.
Hardegree, Jimmy V., xxx-xx-xxxx.
Hardin, Steven L., xxx-xx-xxxx.
Harker, William L., xxx-xx-xxxx.
Harnagel, Harold W., xxx-xx-xxxx.
Harness, George W., xxx-xx-xxxx.
Harpold, Philip A., xxx-xx-xxxx.
Harris, Danny E., xxx-xx-xxxx.
Harris, James W., xxx-xx-xxxx.
Harrison, David G., xxx-xx-xxxx.
Hawk, Michael E., xxx-xx-xxxx.
Hawley, Richard F., xxx-xx-xxxx.
Hayden, Nolen M., xxx-xx-xxxx.
Hayes, Michael W., xxx-xx-xxxx.
Hesson, Philip A., xxx-xx-xxxx.
Hesters, Allan E., xxx-xx-xxxx.
Hier, James A., xxx-xx-xxxx.
Hildebrand, William, xxx-xx-xxxx.
Hill, William T., xxx-xx-xxxx.
Hilton, Corandrum I., xxx-xx-xxxx.
Hinkle, Lawrence G., xxx-xx-xxxx.
Hinson, Robert L., Jr., xxx-xx-xxxx.
Hirschman, Norman J., xxx-xx-xxxx.
Hitchcock, Barry W., xxx-xx-xxxx.
Hixon, Harry W., Jr., xxx-xx-xxxx.
Hoffmeister, Robert, xxx-xx-xxxx.
Hogan, Lawrence G., xxx-xx-xxxx.
Holloway, Perry B., xxx-xx-xxxx.
Hopkins, Johnny L., xxx-xx-xxxx.
Hopson, Lloyd D., xxx-xx-xxxx.
Horner Charles T., xxx-xx-xxxx.
Huff, Robert L., xxx-xx-xxxx.
Huffman, Walter B., xxx-xx-xxxx.
Huie, Clifford R., xxx-xx-xxxx.
Humphries, John M., xxx-xx-xxxx.
Hunter, Cardell S., xxx-xx-xxxx.
Huseman, Dana F., xxx-xx-xxxx.
Hutchings, Charles, xxx-xx-xxxx.
Hyatt, Scott W., xxx-xx-xxxx.
Iaconis, Christopher, xxx-xx-xxxx.
Jackson, Dennis K., xxx-xx-xxxx.
Jacobs, Kendall E., xxx-xx-xxxx.
Jacobs, Randall, III, xxx-xx-xxxx.
Jacqmein, William M., xxx-xx-xxxx.
Jallo, Michael E., xxx-xx-xxxx.
Jarvis, James A., Jr., xxx-xx-xxxx.
Jessup, Eric P., xxx-xx-xxxx.
Johnston, Allan G., Jr., xxx-xx-xxxx.
Jones, Lewis S., xxx-xx-xxxx.
Jones, Rudolph M., Jr., xxx-xx-xxxx.
Jones, Ulysses S., xxx-xx-xxxx.
Jones, William W., xxx-xx-xxxx.
Kagler, Allen T., xxx-xx-xxxx.
Keating, William J., xxx-xx-xxxx.
Keller, William P., xxx-xx-xxxx.
Kelly, Lester A., xxx-xx-xxxx.
Kennedy, Harvey M., xxx-xx-xxxx.
Kernan, William F., xxx-xx-xxxx.
Kevorkian, Harold H., xxx-xx-xxxx.
Kietzman, Howard W., xxx-xx-xxxx.
Killian, Michael J., xxx-xx-xxxx.
King, Marc A., xxx-xx-xxxx.
Kirby, Robert F., xxx-xx-xxxx.
Kirkpatrick, William M., xxx-xx-xxxx.

Knauer, Richard J., xxx-xx-xxxx
Koleszar, Thomas R., xxx-xx-xxxx
Koren, Philip F., xxx-xx-xxxx
Kovalchick, Richard, xxx-xx-xxxx
Kraft, Kenneth M., Jr., xxx-xx-xxxx
Krause, Gerald A., xxx-xx-xxxx
Kresge, Louis A., xxx-xx-xxxx
Kuhn, David L., xxx-xx-xxxx
Kyser, Perry L., xxx-xx-xxxx
LaComb, Augustus J., xxx-xx-xxxx
Lawrence, James W., xxx-xx-xxxx
Lenze, Paul E., xxx-xx-xxxx
Levaas, Larry N., xxx-xx-xxxx
Liddell, Robert J., xxx-xx-xxxx
Lieteau, James N., xxx-xx-xxxx
Lindley, Richard B., xxx-xx-xxxx
Lingle, William R., xxx-xx-xxxx
Link, James M., xxx-xx-xxxx
Linn, Charles M., xxx-xx-xxxx
Lopresti, Thomas T., xxx-xx-xxxx
Love, Geoffrey T., xxx-xx-xxxx
Luczynski, Thomas P., xxx-xx-xxxx
Luker, Thomas M., xxx-xx-xxxx
Lunghofer, Terrence, xxx-xx-xxxx
Lynch, Francis J., xxx-xx-xxxx
Lynd, Patrick A., xxx-xx-xxxx
MacCary, Robert F., xxx-xx-xxxx
MacCuish, Donald A., xxx-xx-xxxx
Mackey, John G., xxx-xx-xxxx
Mackler, Leonard, xxx-xx-xxxx
Maggiacomo, Peter J., xxx-xx-xxxx
Mahoney, Larry G., xxx-xx-xxxx
Maldonado, Leonard, xxx-xx-xxxx
Maloney, Peter R., xxx-xx-xxxx
Maloney, William J., xxx-xx-xxxx
Maris, Harold B., xxx-xx-xxxx
Marlar, Gary J., xxx-xx-xxxx
Martin, John A., xxx-xx-xxxx
Matsuno, Richard T., xxx-xx-xxxx
Mayo, Francis L., Jr., xxx-xx-xxxx
McAninch, William, xxx-xx-xxxx
McAuliffe, John F., xxx-xx-xxxx
McCabe, Laurence W., xxx-xx-xxxx
McCann, Robert C., xxx-xx-xxxx
McClanahan, Carl E., xxx-xx-xxxx
McClelland, Robert, xxx-xx-xxxx
McCormick, Thomas, xxx-xx-xxxx
McDade, John H., Jr., xxx-xx-xxxx
McFarlin, Michael, xxx-xx-xxxx
McGraw, Dennis F., xxx-xx-xxxx
McKelvey, William, xxx-xx-xxxx
McKenna, Milton F., xxx-xx-xxxx
McNeill, Dan K., xxx-xx-xxxx
Medina, Refugio O., xxx-xx-xxxx
Meeker, John R., xxx-xx-xxxx
Meinerth, Barry R., xxx-xx-xxxx
Melsek, Rodeny D., xxx-xx-xxxx
Meriweather, Thomas, xxx-xx-xxxx
Merkel, John, Jr., xxx-xx-xxxx
Meyers, William F., xxx-xx-xxxx
Miles, Bernard L., II, xxx-xx-xxxx
Millar, William K., xxx-xx-xxxx
Miller, Cassius O., xxx-xx-xxxx
Miller, George Z., xxx-xx-xxxx
Minney, Elton D., xxx-xx-xxxx
Miskimon, Gary E., xxx-xx-xxxx
Moberg, Harley, xxx-xx-xxxx
Monk, John T., xxx-xx-xxxx
Morton, Kenneth B., xxx-xx-xxxx
Moscatelli, Edward J., xxx-xx-xxxx
Mullendore, James M., xxx-xx-xxxx
Mumby, Roger L., xxx-xx-xxxx
Mumma, John H., xxx-xx-xxxx
Musick, Karl D., xxx-xx-xxxx
Myers, Robert G., xxx-xx-xxxx
Naaktgeboren, Martin, xxx-xx-xxxx
Nickel, William C., xxx-xx-xxxx
Norman, John F., xxx-xx-xxxx
Nuttall, Leonard W., xxx-xx-xxxx
Oenning, Lester C., xxx-xx-xxxx
Oharra, Michael B., xxx-xx-xxxx
Osmundsen, John R., xxx-xx-xxxx
Pacotti, James E., Jr., xxx-xx-xxxx
Palmer, Richard L., xxx-xx-xxxx
Palmer, Robert L., xxx-xx-xxxx
Palumbo, Lewis A., xxx-xx-xxxx
Parker, James O., III, xxx-xx-xxxx
Parrish, Maurice B., xxx-xx-xxxx
Parrott, George E., xxx-xx-xxxx
Parrott, Leon F., xxx-xx-xxxx
Patton, Robert S., xxx-xx-xxxx
Payant, Richard P., xxx-xx-xxxx
Petrucci, Michael J., xxx-xx-xxxx
Phelps, Dennis A., xxx-xx-xxxx
Phillips, David K., xxx-xx-xxxx
Picot, John W., xxx-xx-xxxx
Pierce, Kenneth R., xxx-xx-xxxx
Pinkett, Larry C., xxx-xx-xxxx
Pinson, Jerry W., xxx-xx-xxxx
Pitman, James M., xxx-xx-xxxx
Pitt, John M., xxx-xx-xxxx
Plum, Larry R., xxx-xx-xxxx
Polley, James D., IV, xxx-xx-xxxx
Pope, Arthur L., xxx-xx-xxxx
Poulton, Charles, xxx-xx-xxxx
Powanda, John R., xxx-xx-xxxx
Powell, Frank L., III, xxx-xx-xxxx
Powers, Arthur G., xxx-xx-xxxx
Pozas, Edward G., xxx-xx-xxxx
Prasuhn, David R., xxx-xx-xxxx
Pratt, James T., II, xxx-xx-xxxx
Pratt, John B., II, xxx-xx-xxxx
Price, Robert E., III, xxx-xx-xxxx
Price, Steven M., xxx-xx-xxxx
Puzey, Paul B., xxx-xx-xxxx
Ramos, Benjamin J., xxx-xx-xxxx
Rangel, Hector M., xxx-xx-xxxx
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Hicks, Gail S., xxx-xx-xxxx
Kugel, Elizabeth E., xxx-xx-xxxx
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ARMY NURSE CORPS

To be first lieutenant

Lawyer, Robert H., xxx-xx-xxxx
Ludlam, Thomas M., xxx-xx-xxxx
Todd, Tony W., xxx-xx-xxxx

IN THE ARMY

The following-named officers for promotion in the Reserve of the Army of the United States, under the provisions of title 10, section 3370:

To be colonel

Jackson, James M., xxx-xx-xxxx
Reitzell, Frank V., Jr., xxx-xx-xxxx
Wallace, William H., III, xxx-xx-xxxx
Wissman, Robert H., xxx-xx-xxxx

ARMY NURSE CORPS

To be colonel

Willow, Garnet I., xxx-xx-xxxx

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Abe, Alfred M., xxx-xx-xxxx
Adcock, Louie N., Jr., xxx-xx-xxxx
Adreon, Merton I., xxx-xx-xxxx
Aguiar, Antone S., Jr., xxx-xx-xxxx
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Wilkins, Ronald D., xxx-xx-xxxx.
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Williams, Stanley E., xxx-xx-xxxx.
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Woodruff, Charles J., xxx-xx-xxxx.
Woods, Glenn H. Jr., xxx-xx-xxxx.
Woodson, John S., xxx-xx-xxxx.
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Young, Arthur W., xxx-xx-xxxx.
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Ball, Kenneth B., xxx-xx-xxxx.
Buckner, Leland S., xxx-xx-xxxx.
Clark, Vance, N., xxx-xx-xxxx.
Cohen, Sol, xxx-xx-xxxx.
Cunningham, Roland, xxx-xx-xxxx.
Elliott, Frank A., xxx-xx-xxxx.
Emerson, Harold K., xxx-xx-xxxx.
Emery, William F., xxx-xx-xxxx.
Enniss, Pinckney C., xxx-xx-xxxx.
Epps, Thomas N., xxx-xx-xxxx.
Euler, Lee E., xxx-xx-xxxx.
Everett, Ezra, xxx-xx-xxxx.
Fritton, Walter A., xxx-xx-xxxx.
Fox, Carl A., xxx-xx-xxxx.
Frothingham, R., xxx-xx-xxxx.
Greene, Dewey H., xxx-xx-xxxx.
Gunsten, Stanley G., xxx-xx-xxxx.
Hargrave, Charlie W., xxx-xx-xxxx.
Hernandez, A. L., xxx-xx-xxxx.
Hickem, Billy G., xxx-xx-xxxx.
Hochstedler, R., xxx-xx-xxxx.
Hollaway, Luther E., xxx-xx-xxxx.
Jaggard, Cedric H., xxx-xx-xxxx.
Jensen, Merle B., xxx-xx-xxxx.
Josey, Wayne C., xxx-xx-xxxx.
Kennedy, James J., xxx-xx-xxxx.
Lambert, Guy E. Jr., xxx-xx-xxxx.
Lassett, George W., xxx-xx-xxxx.
Lee, Kenneth A., xxx-xx-xxxx.
Lewis, John T., xxx-xx-xxxx.
Ligget, Francis A., xxx-xx-xxxx.
Marler, David W., xxx-xx-xxxx.
Marzolf, Joseph A., xxx-xx-xxxx.
McNamara, Robert E., xxx-xx-xxxx.
McMahan, Kenneth E., xxx-xx-xxxx.
Meyer, Charles W., xxx-xx-xxxx.
Meyer, Erwin E., xxx-xx-xxxx.
Moffett, William G., xxx-xx-xxxx.
Money, Mark L., xxx-xx-xxxx.
Mueller, Lyle R., xxx-xx-xxxx.
Patterson, Donis D., xxx-xx-xxxx.
Peterson, Stephen E., xxx-xx-xxxx.
Pruehsner, Leslie C., xxx-xx-xxxx.
Salansky, Paul L., xxx-xx-xxxx.
Smith, Clyde E., xxx-xx-xxxx.
St. Germaine, C. A., xxx-xx-xxxx.
Stephens, Raymond, xxx-xx-xxxx.
Van De Walle, V. J., xxx-xx-xxxx.
Veidmark, Advid L., xxx-xx-xxxx.
Webb, Joe P., xxx-xx-xxxx.
Wilkerson, James E., xxx-xx-xxxx.
Wilson, Thomas G., xxx-xx-xxxx.
Wulfekuehler, E. G., xxx-xx-xxxx.

WOMEN'S ARMY CORPS

To be lieutenant colonel

Anderson, Florence, xxx-xx-xxxx.
Barry, Frances H., xxx-xx-xxxx.
Holtz, Catherine, xxx-xx-xxxx.
Ingersoll, Hazel M., xxx-xx-xxxx.
Nelson, Sarah W., xxx-xx-xxxx.
Nolan, Annette M., xxx-xx-xxxx.
Parker, Florence C., xxx-xx-xxxx.
Peterson, Helen L., xxx-xx-xxxx.
Rapier, Adah B., xxx-xx-xxxx.
Reinholdson, H. G., xxx-xx-xxxx.
Wepner, Charlotte M., xxx-xx-xxxx.

DENTAL CORPS

To be lieutenant colonel

Mozrall, John F., xxx-xx-xxxx.
Singer, Burton H., xxx-xx-xxxx.

MEDICAL SERVICE CORPS

To be lieutenant colonel

Menegat, Arduino A., xxx-xx-xxxx.

The following-named Army National Guard officers for promotion in the Reserve of the Army of the United States, under the provisions of title 10, sections 3370 and 3390:

To be colonel

Atkinson, Glenn W. Jr., xxx-xx-xxxx.
Bethel, Henry L. Jr., xxx-xx-xxxx.
Briggs, Ralph D. Jr., xxx-xx-xxxx.
Brite, John W., xxx-xx-xxxx.
Chupka, Bernard T., xxx-xx-xxxx.
Clinch, Homer S., xxx-xx-xxxx.
Dixon, Charles E., xxx-xx-xxxx.
Gannon, Robert D., Jr., xxx-xx-xxxx.
Gwatney, Harold I., xxx-xx-xxxx.
Hicks, Earl W., xxx-xx-xxxx.
Ito, Saburo, xxx-xx-xxxx.
James, Robert H., xxx-xx-xxxx.
Jennings, James L. S., xxx-xx-xxxx.
Lee, James B., xxx-xx-xxxx.
Martin, Roy E., xxx-xx-xxxx.
Metcalf, Ramsey N., xxx-xx-xxxx.
Schaefer, William R., xxx-xx-xxxx.
Smith, Horton P., xxx-xx-xxxx.
Stith, Archie L., xxx-xx-xxxx.
Suro, Jorge Jr., xxx-xx-xxxx.
Thomason, Richard M., xxx-xx-xxxx.
Tocco, Cajetan A., xxx-xx-xxxx.
Truax, Roger F., xxx-xx-xxxx.
Winner, Erman E., xxx-xx-xxxx.
Woolf, Eugene T., xxx-xx-xxxx.

MEDICAL CORPS

To be colonel

Barranco, Frank T., xxx-xx-xxxx.
Hagelstein, Arthur A., xxx-xx-xxxx.
Hayes, Robert H., xxx-xx-xxxx.
Redmond, John L., xxx-xx-xxxx.

The following-named Army National Guard officers for promotion in the Reserve of the Army of the United States, under the provisions of title 10, sections 3366, 3367 and 3390:

To be lieutenant colonel

Abeyta, Salomon, xxx-xx-xxxx.
Agostinelli, Nathan G., xxx-xx-xxxx.
Allgire, Charles M., xxx-xx-xxxx.
Anderson, Harold E., xxx-xx-xxxx.
Angelou, Peter P., xxx-xx-xxxx.
Anthony, Leslie H., xxx-xx-xxxx.
Arnold, Warren A., xxx-xx-xxxx.
Babb, Mercer R., xxx-xx-xxxx.
Baber, James A., xxx-xx-xxxx.
Bailey, Dale M., xxx-xx-xxxx.
Balke, Dale H., xxx-xx-xxxx.
Ballard, Jack H., xxx-xx-xxxx.
Balough, Bernard B., xxx-xx-xxxx.
Baltz, Robert A., xxx-xx-xxxx.
Barbee, Paul B., xxx-xx-xxxx.
Barnard, Joe G., xxx-xx-xxxx.
Barnette, Anderson L., xxx-xx-xxxx.
Barton, Harley J., xxx-xx-xxxx.
Bashor, Robert V., xxx-xx-xxxx.
Bauman, Richard J., xxx-xx-xxxx.
Benfield, John R., xxx-xx-xxxx.
Bissell, Allen H., xxx-xx-xxxx.
Blanc, Gerald G., xxx-xx-xxxx.
Blaney, Doyle C., xxx-xx-xxxx.
Booth, James D., xxx-xx-xxxx.
Borelli-Aponte, E., xxx-xx-xxxx.
Bourgeois, Charles, xxx-xx-xxxx.
Bourne, Darden J., xxx-xx-xxxx.
Bracken, Newell H., xxx-xx-xxxx.
Brewer, J. C., xxx-xx-xxxx.
Briggs, Roy E., Jr., xxx-xx-xxxx.
Broers, Delmar A., xxx-xx-xxxx.
Brott, Joseph W., xxx-xx-xxxx.
Buggy, James R., xxx-xx-xxxx.
Burrous, Reeford G., xxx-xx-xxxx.
Buyhre, Thomas, Jr., xxx-xx-xxxx.
Byington, Dallas M., xxx-xx-xxxx.
Camp, Leon R., xxx-xx-xxxx.
Cannon, Ralph D., xxx-xx-xxxx.
Carnathan, Edward E., xxx-xx-xxxx.
Champagne, Roy J., xxx-xx-xxxx.
Chaney, Kenneth D., xxx-xx-xxxx.
Clark, Robert E., xxx-xx-xxxx.
Clow, Robert R., xxx-xx-xxxx.
Cody, William P., xxx-xx-xxxx.
Coker, Bobby L., xxx-xx-xxxx.
Colclasure, Henry R., xxx-xx-xxxx.
Cole, Francis E., xxx-xx-xxxx.
Comar, Robert F., xxx-xx-xxxx.
Comeau, Richard J., xxx-xx-xxxx.
Comiskey, Terrence, xxx-xx-xxxx.
Conklin, Glenn H., xxx-xx-xxxx.
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Cook, James M., Jr., xxx-xx-xxxx.
Cooney, William R., xxx-xx-xxxx.
Corbell, Billy R., xxx-xx-xxxx.
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Couch, Elbert, xxx-xx-xxxx.
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Craig, Kenneth R., xxx-xx-xxxx.
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Norman, Harold E., xxx-xx-xxxx
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Pettie, Edward F., xxx-xx-xxxx
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Phillips, Duane M., xxx-xx-xxxx
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Pierceall, Bobby A., xxx-xx-xxxx
Piette, Norbert L., xxx-xx-xxxx
Planting, John A., xxx-xx-xxxx
Ponder, Charles L., xxx-xx-xxxx
Presley, Jack M., xxx-xx-xxxx
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Price, James B., xxx-xx-xxxx
Pugsley, Wallace E., xxx-xx-xxxx
Quass, Peter D., xxx-xx-xxxx
Quelly, Justin M., xxx-xx-xxxx
Quick, Buren, Jr., xxx-xx-xxxx
Quigley, Maurice, xxx-xx-xxxx
Rainer, John R., xxx-xx-xxxx
Randich, Philip G., xxx-xx-xxxx
Rau, Charles L., xxx-xx-xxxx
Redd, Rex M., xxx-xx-xxxx
Remick, Donald H., xxx-xx-xxxx
Rhodes, J. L., xxx-xx-xxxx
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Richburg, Lonnie C., xxx-xx-xxxx
Riggle, Jerry A., xxx-xx-xxxx
Ritchey, Benjamin E., xxx-xx-xxxx
Rockwell, Leo, xxx-xx-xxxx
Rodriguez, Angel J., xxx-xx-xxxx
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Sandlin, Littleton, xxx-xx-xxxx
Sawyer, Roy H. Jr., xxx-xx-xxxx
Schaedlich, Otto A., xxx-xx-xxxx
Schweigert, Harry W., xxx-xx-xxxx
Seiler, Roy H., xxx-xx-xxxx
Sharp, Thomas A., xxx-xx-xxxx
Sharpe, Thomas A., xxx-xx-xxxx
Simmons, Roy E., xxx-xx-xxxx
Sims, Robert E., xxx-xx-xxxx
Small, Donald R., xxx-xx-xxxx
Smith, Armour L., xxx-xx-xxxx
Smith, Duane R., xxx-xx-xxxx
Smith, Kerr H., xxx-xx-xxxx
Stanberry, Jim D., xxx-xx-xxxx
Stave, Nelson L., xxx-xx-xxxx
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Stone, Donald E., xxx-xx-xxxx
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Sullivan, James R., xxx-xx-xxxx
Summers, Donald L., xxx-xx-xxxx
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Teneick, Robert W., xxx-xx-xxxx
Thevenet, James P., xxx-xx-xxxx
Tignor, Forrest D., xxx-xx-xxxx
Tossas-Vega, Alberto M., xxx-xx-xxxx
Traylor, Robert C., xxx-xx-xxxx
Tripp, Frederick W., xxx-xx-xxxx
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Turner, Hammond C., xxx-xx-xxxx
Tyrrell, John D., xxx-xx-xxxx
Uhlenhake, James R., xxx-xx-xxxx
Vawter, Elton L., xxx-xx-xxxx
Vega, Gilberto, xxx-xx-xxxx
Vogel, August W., xxx-xx-xxxx
Vos, Francis W., xxx-xx-xxxx
Votolato, Dante A., xxx-xx-xxxx
Waguespack, Ken P. J., xxx-xx-xxxx
Walker, Robert D., xxx-xx-xxxx
Wallig, Thomas V., xxx-xx-xxxx
Walsh, Richard M., xxx-xx-xxxx
Warner, Alfred W., xxx-xx-xxxx
Warren, Roy B., xxx-xx-xxxx
Waterland, Hiram T., xxx-xx-xxxx
Weinberg, Richard G., xxx-xx-xxxx
Wersing, Paul R., xxx-xx-xxxx
West, James S., Jr., xxx-xx-xxxx
Whalen, David E., xxx-xx-xxxx
Wiegers, Edward F., xxx-xx-xxxx
Wilkerson, Richard W., xxx-xx-xxxx
Williams, Robert O., xxx-xx-xxxx
Williamson, Frank R., xxx-xx-xxxx
Winckler, Joseph H., xxx-xx-xxxx
Wing, Charles J., xxx-xx-xxxx
Woods, Donald E., xxx-xx-xxxx
Woolpert, Deane V., xxx-xx-xxxx
Workman, Wendell J., xxx-xx-xxxx
Young, Barry W., xxx-xx-xxxx
Young, Robert L., xxx-xx-xxxx
Yslas, Mucio, xxx-xx-xxxx
Zimmerman, Bob L., xxx-xx-xxxx

CHAPLAIN

To be lieutenant colonel

Bacon, John Y., xxx-xx-xxxx
Bomber, William J., xxx-xx-xxxx
Butler, Dallas W., xxx-xx-xxxx
Carty, John T., xxx-xx-xxxx
Crew, William R., xxx-xx-xxxx
Crouch, Charles M., xxx-xx-xxxx
Davis, Herman F., xxx-xx-xxxx
Devik, Rudolf, xxx-xx-xxxx
Donovan, Edward J., xxx-xx-xxxx
Flynn, Edward R., xxx-xx-xxxx
Gaskamp, Bruno F., xxx-xx-xxxx
Golden, Oscar N., xxx-xx-xxxx
Hardaway, James A., xxx-xx-xxxx
Hodge, Ray K. xxx-xx-xxxx
Lorber, Albert B., xxx-xx-xxxx
McCarty, Willis B., xxx-xx-xxxx
Norris, Eugene B., xxx-xx-xxxx
Parks, John R., xxx-xx-xxxx
Spraberry, Rufus B., xxx-xx-xxxx
Sullivan, Arthur T, xxx-xx-xxxx

MEDICAL CORPS

To be liteutenant colonel

Brown, Calvin R., xxx-xx-xxxx
Erdman, Ralph R., xxx-xx-xxxx

MEDICAL SERVICE CORPS

To be lieutenant colonel

Sherman, Philip, xxx-xx-xxxx
Whatley, Jack, xxx-xx-xxxx

IN THE ARMY

The following-named persons for appointment in the Regular Army of the United States, in the grades specified, under the provisions of title 10, United States Code, sections 3283 through 3294 and 3311:

To be major

Short, Joseph F., xxx-xx-xxxx

To be captain

Aldrich, Clifton H., xxx-xx-xxxx
Belson, Norman D., xxx-xx-xxxx

Brauer, Vaughn D., xxx-xx-xxxx
Burner, Richard A., xxx-xx-xxxx
Cheshire, Geore T., xxx-xx-xxxx
Cibula, George A., xxx-xx-xxxx
Cowart, James D., xxx-xx-xxxx
Cummins, Clayton C., xxx-xx-xxxx
Dalton, Joel P., xxx-xx-xxxx
Dayton, James R., xxx-xx-xxxx
Demarest, David B., xxx-xx-xxxx
Duncan, Michael B., xxx-xx-xxxx
Esquibel, Benjamin F., xxx-xx-xxxx
Evans, Robert E., xxx-xx-xxxx
Ferril, Wilburn E., xxx-xx-xxxx
Fitzgerald, Wilmer Y., xxx-xx-xxxx
Gersbach, Germain H., xxx-xx-xxxx
Graham, Clarence C., xxx-xx-xxxx
Heermans, Samuel H., xxx-xx-xxxx
Jones, Richard G., xxx-xx-xxxx
Larcomb, David J., xxx-xx-xxxx
McWilliams, James B., xxx-xx-xxxx
Parsons, John D., xxx-xx-xxxx
Perry, Walter L., xxx-xx-xxxx
Rodriguez, Enrique Pablo, xxx-xx-xxxx
Saul, James H., xxx-xx-xxxx
Scott, Augustus D., xxx-xx-xxxx
Scott, Eugene F., xxx-xx-xxxx
Taylor, Billy W., xxx-xx-xxxx
Teal, Donald R., xxx-xx-xxxx
Valen, William B., xxx-xx-xxxx
Van Sciver, Robert B., xxx-xx-xxxx
Warren, Dorman M., xxx-xx-xxxx
Watkins, Thomas G., xxx-xx-xxxx
Williamson, Walter L., xxx-xx-xxxx

To be first lieutenant

Abbey, George E., xxx-xx-xxxx
Aguirre, Gilbert, xxx-xx-xxxx
Anthony, Henry G., Jr., xxx-xx-xxxx
Beamer, Ralph D., xxx-xx-xxxx
Benninghoff, William N., xxx-xx-xxxx
Berg, Thomas R., xxx-xx-xxxx
Bessent, Elmo V., xxx-xx-xxxx
Blackburn, Norman G., xxx-xx-xxxx
Booterbaugh, Paul L., xxx-xx-xxxx
Bratcher, Arnold T., Jr., xxx-xx-xxxx
Braud, Gerald R., xxx-xx-xxxx
Brown, Albert D., xxx-xx-xxxx
Brundage, Lucien A., xxx-xx-xxxx
Caber, Lawrence W., xxx-xx-xxxx
Carter, William E., xxx-xx-xxxx
Conchado, Ramon, Jr., xxx-xx-xxxx
Currin, Joseph J., III, xxx-xx-xxxx
Davidson, Allan E., xxx-xx-xxxx
Dayton, Lorraine M., xxx-xx-xxxx
Diek, Barbara A., xxx-xx-xxxx
Dolenar, Daniel J., xxx-xx-xxxx
Dynneson, David J., xxx-xx-xxxx
Eckmann, Lawrence J., xxx-xx-xxxx
Falcon, John D., xxx-xx-xxxx
Everett, James W., xxx-xx-xxxx
Fields, Harold D., xxx-xx-xxxx
Forlaw, Loretta, xxx-xx-xxxx
Gerald, Stuart W., xxx-xx-xxxx
Gibson, James F., xxx-xx-xxxx
Gorton, Bruce A., xxx-xx-xxxx
Grassa, Alfred E., xxx-xx-xxxx
Green, Ronald A., xxx-xx-xxxx
Harrell, Gary W., xxx-xx-xxxx
Harris, Nick C., xxx-xx-xxxx
Henry, Charles W., Jr., xxx-xx-xxxx
Howerton, James A., xxx-xx-xxxx
Humbert, Philip G., xxx-xx-xxxx
Hunley, Alphonso, xxx-xx-xxxx
Hyland, Gilbert E., xxx-xx-xxxx
Ingram, Dorsey B., Jr., xxx-xx-xxxx
Johnson, Dennis R., xxx-xx-xxxx
Jackson, Jesse, Jr., xxx-xx-xxxx
Keating, Timothy B., xxx-xx-xxxx
Lange, David A., xxx-xx-xxxx
Leffel, Harold E., xxx-xx-xxxx
Macahilig, Maria, xxx-xx-xxxx
Mallory, Michael A., xxx-xx-xxxx
Mathews, Michael J., xxx-xx-xxxx
Mauldin, Bruce P., xxx-xx-xxxx
McCabe, William L., xxx-xx-xxxx
McWherter, Patrick J., xxx-xx-xxxx
Mears, John J., xxx-xx-xxxx
Miller, Frank L., Jr., xxx-xx-xxxx
Miller, Timothy A., xxx-xx-xxxx
Moore, Larry R., xxx-xx-xxxx
Murray, Patrick A., xxx-xx-xxxx
Myers, Richard S., xxx-xx-xxxx
Norton, William E., xxx-xx-xxxx
Patterson, Weldon C., xxx-xx-xxxx
Dhlsson, Leif E., xxx-xx-xxxx
Oliver, Randall L., xxx-xx-xxxx
Peaster, David M., xxx-xx-xxxx
Revel, James L., xxx-xx-xxxx
Semon, Richard, xxx-xx-xxxx
Skolochenko, Steven, xxx-xx-xxxx
Smith, Mary E., xxx-xx-xxxx
Smith, Thomas D., xxx-xx-xxxx
Stabingas, Sandra F., xxx-xx-xxxx
Stokes, Richard O., xxx-xx-xxxx
Stutts, Marvin E., xxx-xx-xxxx
Taylor, Larry A., xxx-xx-xxxx
Thomas, Edward R., II, xxx-xx-xxxx
Tobin, Thomas M., xxx-xx-xxxx
Vandel, Robert H., xxx-xx-xxxx
Waldran, Cook M., Jr., xxx-xx-xxxx
Weems, Neil M., xxx-xx-xxxx
Williams, Arnold B., Jr., xxx-xx-xxxx
Wilson, Edward L., xxx-xx-xxxx
Wright, Gerald W., xxx-xx-xxxx
Zawislak, Edward W., xxx-xx-xxxx
Zwirner, Adolf A., xxx-xx-xxxx

To be second lieutenant

Ahern, James P., xxx-xx-xxxx
Becker, Ronald D., xxx-xx-xxxx
Bridges, Gary J., xxx-xx-xxxx
Brighton, John C., xxx-xx-xxxx
Carleton, Bruce, xxx-xx-xxxx
Cartagena, Luis A., xxx-xx-xxxx
Chelette, Carl J., xxx-xx-xxxx
Cook, Dolores M., xxx-xx-xxxx
Cowen, Randolph C., xxx-xx-xxxx
Dale, Allen W., xxx-xx-xxxx
Davis, William A., xxx-xx-xxxx
Dixon, Tomas W., Jr., xxx-xx-xxxx
Draker, David L., xxx-xx-xxxx
Erwin, William D., xxx-xx-xxxx
Fiebiger, John F., xxx-xx-xxxx
Fleetham, Ralph E., xxx-xx-xxxx
Fleury, James J., xxx-xx-xxxx
Friedman, Michael J., xxx-xx-xxxx
Guy, Andrew C., Jr. xxx-xx-xxxx
Hanville, Michael R., xxx-xx-xxxx
Horrocks, Leon R., xxx-xx-xxxx
Hutcheson, John M., xxx-xx-xxxx
Jareo, Steven M., xxx-xx-xxxx
Jones, Frederick R. III, xxx-xx-xxxx
Kendrick, Daryl R., xxx-xx-xxxx
King, Malcolm B., Jr. xxx-xx-xxxx
Lehtinen, Dexter W., xxx-xx-xxxx
Luttrell, Gerald E., xxx-xx-xxxx
McGoey, Kevin, xxx-xx-xxxx
McGowan, Dennis L., xxx-xx-xxxx
Milerski, Siegfried, J., xxx-xx-xxxx
Moody, Robert L., xxx-xx-xxxx
Morgan, C. D., xxx-xx-xxxx
Mutter, Michael D., xxx-xx-xxxx
Rainey, James W., xxx-xx-xxxx
Reiva, Thomas J., xxx-xx-xxxx
Schaefer, Raymond L., xxx-xx-xxxx
Seibert, Gary D., xxx-xx-xxxx
Shaffer, Ronald C., xxx-xx-xxxx
Shuman, Kenneth Earl, xxx-xx-xxxx
Sims, Paul N., xxx-xx-xxxx
Skinner, William S., Jr., xxx-xx-xxxx
Sparacino, Ronald A., xxx-xx-xxxx
Starkey, Galen E., xxx-xx-xxxx
Uyesugi, Daniel F., xxx-xx-xxxx
Vargas, Kevin J., xxx-xx-xxxx
Weber, Philip A., xxx-xx-xxxx
Williams, Fred R., xxx-xx-xxxx
Wilson, Joseph K., Jr., xxx-xx-xxxx

The folowing-named distinguished military students for appointment in the Regular Army of the United States, in the grade of second lieutenant, under provisions of title 10, United States Code, sections 2106, 3283, 3284, 3286, 3287, 3288, and 3290:

Aasen, Robert K., xxx-xx-xxxx
Abbott, Richard L., xxx-xx-xxxx
Adams, Billy, xxx-xx-xxxx
Agee, Wendell S., xxx-xx-xxxx
Allen, Henry H., xxx-xx-xxxx
Amoroso, August J., Jr., xxx-xx-xxxx
Anderson, Brent W., xxx-xx-xxxx
Anderson, Clarence J., xxx-xx-xxxx
Anderson, James R., xxx-xx-xxxx
Armstrong, Michael T., xxx-xx-xxxx
Arnold, James G., xxx-xx-xxxx
Atlas, James M., xxx-xx-xxxx
Atves, Terry N., xxx-xx-xxxx
Bailey, Daniel D., xxx-xx-xxxx
Barazeale, James L., xxx-xx-xxxx
Barth, Paul R., xxx-xx-xxxx
Barwis, John H., xxx-xx-xxxx
Becker, Donald E., xxx-xx-xxxx
Bentley, Patrick B., xxx-xx-xxxx
Bernat, Charles A., Jr., xxx-xx-xxxx
Beutler, Melvin E., xxx-xx-xxxx
Bielefeld, William C., xxx-xx-xxxx
Bishop, George R., xxx-xx-xxxx
Black, Christopher A., xxx-xx-xxxx
Blankenbeckler, Paul N., xxx-xx-xxxx
Block, Robert N., xxx-xx-xxxx
Borgelt, Leland B., xxx-xx-xxxx
Bortner, Thomas D., xxx-xx-xxxx
Bowden, Thomas G., xxx-xx-xxxx
Bowers, William S., xxx-xx-xxxx
Bowman, Kenneth P., xxx-xx-xxxx
Boyd, Corbett W., xxx-xx-xxxx
Boyd, Timothy N., xxx-xx-xxxx
Bradley, Larry R., xxx-xx-xxxx
Brinkley, Phillip L., xxx-xx-xxxx
Brown, John W., xxx-xx-xxxx
Brown, Richard E., xxx-xx-xxxx
Bruner, Ralph M., xxx-xx-xxxx
Bryan, Joseph D., xxx-xx-xxxx
Buccellato, Edward A., xxx-xx-xxxx
Buchanan, Robert C., xxx-xx-xxxx
Buell, David C., xxx-xx-xxxx
Buell, Richard E., xxx-xx-xxxx
Calvin, Arthel, xxx-xx-xxxx
Camaglia, Elmer J., Jr., xxx-xx-xxxx
Campbell, Lloyd N., xxx-xx-xxxx
Carpenter, Arthur L., xxx-xx-xxxx
Carr, James R., xxx-xx-xxxx
Carr, Orba L., xxx-xx-xxxx
Catts, Randall G., xxx-xx-xxxx
Cheney, Craig C., xxx-xx-xxxx
Chin, Bobby, xxx-xx-xxxx
Cipra, William L., xxx-xx-xxxx
Clark, Randy N., xxx-xx-xxxx
Clayton, Michael A., xxx-xx-xxxx
Clemente, Jeffrey P., xxx-xx-xxxx
Clouse, Kenneth A., xxx-xx-xxxx
Coady, Alan W., xxx-xx-xxxx
Collins, Charles L., xxx-xx-xxxx
Combs, Stephen B., xxx-xx-xxxx
Cooksey, Kennon D., xxx-xx-xxxx
Crawford, Philip E., xxx-xx-xxxx
Crosson, Jay G., xxx-xx-xxxx
Cutchen, Walter S., xxx-xx-xxxx
Dalton, Perry J., Jr., xxx-xx-xxxx
Debusk, Michael L., xxx-xx-xxxx
Delcambre, Kenneth J., xxx-xx-xxxx
Denton, James B., xxx-xx-xxxx
Dolan, Paul E., III, xxx-xx-xxxx
Dolney, Duane R., xxx-xx-xxxx
Donaruma, Louis M., xxx-xx-xxxx
Dountz, Raymond D., xxx-xx-xxxx
Downing, David R., xxx-xx-xxxx
Draney, Randall G., xxx-xx-xxxx
Duehlmeier, Fred D., xxx-xx-xxxx
Dye, Don A., xxx-xx-xxxx
Dunn, William M., Jr., xxx-xx-xxxx
Ebright, Richard P., xxx-xx-xxxx
Edwards, Van C., xxx-xx-xxxx
Emison, Steven A., xxx-xx-xxxx
Engiles, Robert D., xxx-xx-xxxx
Ervin, Kenneth R., xxx-xx-xxxx
Evans, Eddie D., xxx-xx-xxxx
Evans, Robert D., xxx-xx-xxxx
Fabian, Michael D., xxx-xx-xxxx
Faurnya, Louis R., xxx-xx-xxxx
Filipkowski, Leonard P., xxx-xx-xxxx
Fitzgerald, Michael P., xxx-xx-xxxx
Fraley, James A., Jr., xxx-xx-xxxx
Freeman, Billie D., xxx-xx-xxxx
Gaalswyk, Dennis A., xxx-xx-xxxx
Gallucci, Joseph A., Jr., xxx-xx-xxxx
Garcia, Robert, xxx-xx-xxxx
Garner, Dennis W., xxx-xx-xxxx
Geary, Dennis O., xxx-xx-xxxx
Getz, Michael T., xxx-xx-xxxx
Gideon, Edward N., Jr., xxx-xx-xxxx
Gill, Bruce R., xxx-xx-xxxx
Ginter, Danny N., xxx-xx-xxxx
Glade, Thomas S., xxx-xx-xxxx
Graves, Eric E., xxx-xx-xxxx
Grayson, Rodney M., xxx-xx-xxxx
Greenhalgh, David L., xxx-xx-xxxx
Greenwell, Thomas M., xxx-xx-xxxx
Greer, David E., xxx-xx-xxxx
Gross, Alfred H., xxx-xx-xxxx

Hall, Gary L., xxx-xx-xxxx
Halvorsen, James M., xxx-xx-xxxx
Harju, Craig S., xxx-xx-xxxx
Harris, Joe E., Jr., xxx-xx-xxxx
Harris, Randall D., xxx-xx-xxxx
Hatten, Morgan F., xxx-xx-xxxx
Heaney, Leo J., xxx-xx-xxxx
Hearnsberger, Gordon S., xxx-xx-xxxx
Hechanova, Rodolfo P., xxx-xx-xxxx
Hernandez, Eduardo H., xxx-xx-xxxx
Herrod, Walter V., xxx-xx-xxxx
Hettich, Lamont R., xxx-xx-xxxx
Hill, Thomas E., xxx-xx-xxxx
Himmelrick, Kenneth J., xxx-xx-xxxx
Hindsley, Paul S., xxx-xx-xxxx
Hinkle, David A., xxx-xx-xxxx
Hirschi, Fenton D., xxx-xx-xxxx
Hobbs, Robert A., xxx-xx-xxxx
Holt, Charles T., xxx-xx-xxxx
Hopkins, Don R., xxx-xx-xxxx
Hoskins, Lynn W. III, xxx-xx-xxxx
Huber, Joseph E., xxx-xx-xxxx
Huff, Robert B., Jr., xxx-xx-xxxx
Hughes, Howard D., xxx-xx-xxxx
Hulsey, Ernest E., xxx-xx-xxxx
Ing, Melvin Hon Won, xxx-xx-xxxx
Inokuchi, Richard, xxx-xx-xxxx
Iturbe, Andres, xxx-xx-xxxx
Jackson, Robert T., Jr., xxx-xx-xxxx
January, Jerry J., xxx-xx-xxxx
Jarvis, Michael L., xxx-xx-xxxx
Jefcoats, David A., xxx-xx-xxxx
Joeckel, Richard L., xxx-xx-xxxx
Johnston, Richard A., xxx-xx-xxxx
Jons, Hugh R., xxx-xx-xxxx
Justis, Justa L., xxx-xx-xxxx
Kettleson, Ronald A., xxx-xx-xxxx
Kilgore, Walter F., xxx-xx-xxxx
King, James R., xxx-xx-xxxx
Kloubec, Martin A., xxx-xx-xxxx
Korolchuk, Daniel P., xxx-xx-xxxx
Kraemer, Donn B., xxx-xx-xxxx
Kravchonok, John R., xxx-xx-xxxx
Kuhl, Robert L., xxx-xx-xxxx
Laboon, Stephen W., xxx-xx-xxxx
Lakso, Charles D., xxx-xx-xxxx
Lambert, Glen R., xxx-xx-xxxx
Larsen, Brent H., xxx-xx-xxxx
Larsen, Stanley W., xxx-xx-xxxx
Lauderdale, Larry C., xxx-xx-xxxx
Lavergne, Linton P. J., xxx-xx-xxxx
Leach, Louis A., xxx-xx-xxxx
Leinan, John H., xxx-xx-xxxx
Lewis, Elister W., xxx-xx-xxxx
Lindbloom, Edwin O., Jr., xxx-xx-xxxx
Line, Thomas R., xxx-xx-xxxx
Litaker, William M., xxx-xx-xxxx
Lommel, Robert F., Jr., xxx-xx-xxxx
Lusk, Ralph A., xxx-xx-xxxx
Lyon, Stuart D., xxx-xx-xxxx
Mackin, Raymond W., xxx-xx-xxxx
Mallard, William E., Jr., xxx-xx-xxxx
Maltby, Stephen T., xxx-xx-xxxx
Mangan, Albert J., xxx-xx-xxxx
Maroulakos, Harry J., xxx-xx-xxxx
Martin, Julian H., Jr., xxx-xx-xxxx
Maynard, Thomas M., xxx-xx-xxxx
McNabb, Robert P., Jr., xxx-xx-xxxx
McNeill, John D., xxx-xx-xxxx
McPhail, Donald W., xxx-xx-xxxx
Meier, Gary A., xxx-xx-xxxx
Mein, David R., xxx-xx-xxxx
Mercado, Albert, xxx-xx-xxxx
Meyn, Michael, R., xxx-xx-xxxx
Miller, Lee S., xxx-xx-xxxx
Miller, Melvin A., xxx-xx-xxxx
Miller, Rudy W., xxx-xx-xxxx
Miller, Russell R., xxx-xx-xxxx
Molinaro, Robert E., xxx-xx-xxxx
Morphew, Davin K., xxx-xx-xxxx
Mullinex, Klaus M., xxx-xx-xxxx
Mullins, Kenneth W., xxx-xx-xxxx
Murdock, Edmund W., xxx-xx-xxxx
Murphy, Bruce T., xxx-xx-xxxx
Neeley, Wayne P., xxx-xx-xxxx
Neuenschwander, Roy P., xxx-xx-xxxx
Nolan, David L., xxx-xx-xxxx
Novak, Joseph J., xxx-xx-xxxx
O'Brien, Dennis M., xxx-xx-xxxx
O'Bryan, Donald E., xxx-xx-xxxx
Oishi, Irving M., xxx-xx-xxxx
O'Kelley, Thomas D., xxx-xx-xxxx
Oliver, Keith D., xxx-xx-xxxx
Ord, Steven R., xxx-xx-xxxx
Ott, David E., Jr., xxx-xx-xxxx
Ott, Fred M., xxx-xx-xxxx
Pearce, Dennis R., xxx-xx-xxxx
Peeck, William D., xxx-xx-xxxx
Pekar, David A., xxx-xx-xxxx
Perry, Gerald L., xxx-xx-xxxx
Phillips, Johnny G., xxx-xx-xxxx
Pickerel, Robert J., xxx-xx-xxxx
Pickett, Anthony J., xxx-xx-xxxx
Pittsford, Robert L., xxx-xx-xxxx
Powell, Ernest W., xxx-xx-xxxx
Premo, Gregory J., xxx-xx-xxxx
Pridgen, Timothy F., xxx-xx-xxxx
Prueitt, Ronald G., xxx-xx-xxxx
Pruss, Uwe Kurt Hermann, xxx-xx-xxxx
Puckett, Harry G., xxx-xx-xxxx
Quy, Richard B., xxx-xx-xxxx
Racheter, Donald P., xxx-xx-xxxx
Ragan, David A., xxx-xx-xxxx
Rathmell, John M., xxx-xx-xxxx
Reeves, Earl L., xxx-xx-xxxx
Reichert, Terry J., xxx-xx-xxxx
Richburg, Caesar R., xxx-xx-xxxx
Rickman, Dennis R., xxx-xx-xxxx
Rivera, George O., xxx-xx-xxxx
Roberts, David J., xxx-xx-xxxx
Rodell, Gordon J., xxx-xx-xxxx
Rodon, Raymond L., xxx-xx-xxxx
Roser, Gary A., xxx-xx-xxxx
Ross, Drue S., xxx-xx-xxxx
Rumore, Terrence L., xxx-xx-xxxx
Rutledge, William L., xxx-xx-xxxx
Sackett, Richard M., xxx-xx-xxxx
Saitta, Vinent J., Jr., xxx-xx-xxxx
Sandoval, Dave F., xxx-xx-xxxx
Seratt, Roger C., xxx-xx-xxxx
Serie, Dennis J., xxx-xx-xxxx
Shackleford, Michael M., xxx-xx-xxxx
Shaffer, Rodney L., xxx-xx-xxxx
Sheehan, Charles W. Jr., xxx-xx-xxxx
Sidebottom, James J., xxx-xx-xxxx
Simcox, William E., xxx-xx-xxxx
Skahan, Joseph B., xxx-xx-xxxx
Slovensky, Stephen A., xxx-xx-xxxx
Smith, Earl M., Jr., xxx-xx-xxxx
Snyder, James D., xxx-xx-xxxx
Sprague, Terry D., xxx-xx-xxxx
Steele, Robert L., xxx-xx-xxxx
Stein, Robert G., xxx-xx-xxxx
Stevens, Jerry L., xxx-xx-xxxx
Stone, Steven J., xxx-xx-xxxx
Strickland, Bruce W., xxx-xx-xxxx
Strickland, Herman L., III, xxx-xx-xxxx
Struble, Jacob A., xxx-xx-xxxx
Sullivan, Patrick J., xxx-xx-xxxx
Summers, Alfred L., Jr., xxx-xx-xxxx
Swafford, Keith B., xxx-xx-xxxx
Szopinski, Edward T., xxx-xx-xxxx
Tate, Lake E., III, xxx-xx-xxxx
Taylor, Robert A., Jr., xxx-xx-xxxx
Taylor, William R., xxx-xx-xxxx
Temple, Steven R., xxx-xx-xxxx
Tharpe, Johnnie H., xxx-xx-xxxx
Theodorakos, George D., xxx-xx-xxxx
Thieme, Robert B., III, xxx-xx-xxxx
Thomas, Ronald D., xxx-xx-xxxx
Thorpe, William J., Jr., xxx-xx-xxxx
Toenes, Kevin M., xxx-xx-xxxx
Torres, Adam L., xxx-xx-xxxx
Van Over, James L., xxx-xx-xxxx
Varner, Ernest E., Jr., xxx-xx-xxxx
Vest, Eric O., xxx-xx-xxxx
Warren, Michael D., xxx-xx-xxxx
Watson, Dale L., xxx-xx-xxxx
Watts, Charles A., xxx-xx-xxxx
Weatherly, Joseph J., Jr., xxx-xx-xxxx
Weir, Donald G., Jr., xxx-xx-xxxx
Werlein, Sheppard H., Jr., xxx-xx-xxxx
Whitfield, John E., xxx-xx-xxxx
Williams, Bennie E., xxx-xx-xxxx
Williams, William S. K., xxx-xx-xxxx
Wirick, David W., xxx-xx-xxxx
Woolfolk, Donald D., xxx-xx-xxxx
Wortham, Terry H., xxx-xx-xxxx
Wright, Dennis L., xxx-xx-xxxx
Yee, Victor, xxx-xx-xxxx
Zwahlen, Samuel S., xxx-xx-xxxx

The following-named scholarship students for appointment in the Regular Army of the United States in the grade of second lieutenant, under provisions of title 10, United States Code, sections 2107, 3283, 3284, 3286, 3287, 3288, and 3290.

Anderson, Robert E., III, xxx-xx-xxxx
Andrae, Richard M., xxx-xx-xxxx
Auermuller, Frederick, Jr., xxx-xx-xxxx
Barber, Jimmie R., xxx-xx-xxxx
Broadwater, Willard C., xxx-xx-xxxx
Brown, Roy C., xxx-xx-xxxx
Callahan, Leslie G. III, xxx-xx-xxxx
Cassidy, Calvin C., xxx-xx-xxxx
Conway, Paul L., xxx-xx-xxxx
Coomer, Larry J., xxx-xx-xxxx
Cox, Dennis J., xxx-xx-xxxx
Cragg, William A., xxx-xx-xxxx
Delamater, Benjamin F., IV, xxx-xx-xxxx
Dyce, Charles D., xxx-xx-xxxx
Flora, Dale B., xxx-xx-xxxx
Florence, John N., xxx-xx-xxxx
Florez, Richard E., xxx-xx-xxxx
Greszko, Timothy J., xxx-xx-xxxx
Grimes, Ercell A., Jr., xxx-xx-xxxx
Grzanka, Felix F., xxx-xx-xxxx
Hanson, Robert L., Jr., xxx-xx-xxxx
Hatcher, Neal T., xxx-xx-xxxx
Heekin, Robert A., xxx-xx-xxxx
Henshaw, James F., xxx-xx-xxxx
Hoerster, Francis J., xxx-xx-xxxx
Kijima, Steven H., xxx-xx-xxxx
Lamy, William E., xxx-xx-xxxx
Laplante, Kenneth A., xxx-xx-xxxx
Larouche, Claude E., xxx-xx-xxxx
Lewis, William F., xxx-xx-xxxx
McClain, David L., xxx-xx-xxxx
McDonald, Daniel W., xxx-xx-xxxx
McInerney, Ernest J., xxx-xx-xxxx
Nacci, Brian, xxx-xx-xxxx
Newcomer, Robert E., J., xxx-xx-xxxx
O'Malley, John E., xxx-xx-xxxx
Pentecost, Thomas L., xxx-xx-xxxx
Pierce, Bruce G., xxx-xx-xxxx
Pritchard, Charles L., xxx-xx-xxxx
Quinn, Michael S., xxx-xx-xxxx
Roberson, Thomas V., xxx-xx-xxxx
Rodriguez, Jose A., xxx-xx-xxxx
Leib, Jack R., xxx-xx-xxxx
Safford, Lawrence F., xxx-xx-xxxx
Soares, Michael A., xxx-xx-xxxx
Stephens, Paul A., Jr., xxx-xx-xxxx
Troll, Thomas M., xxx-xx-xxxx
Vanderbeek, Walter A., xxx-xx-xxxx
Vaughan, Dan E., xxx-xx-xxxx
Walker, William H., III, xxx-xx-xxxx
Weaver David T., xxx-xx-xxxx
Wilkerson, Timothy R., xxx-xx-xxxx
Wilson, Donald J., xxx-xx-xxxx

WITHDRAWAL

Nomination by the District of Columbia Government withdrawn from the Senate, March 13, 1972:

Commission of the District of Columbia

Willie L. Leftwich, Esq., for appointment as a member of the Board of Directors of the District of Columbia Redevelopment Land Agency for a term of 5 years, effective on and after March 4, 1972, pursuant to the provisions of section 4(a) of Public Law 592, 79th Congress, approved August 2, 1946, as amended, which nomination was sent to the Senate on January 28, 1972.

NOMINATION BY DISTRICT OF COLUMBIA GOVERNMENT

Nomination by the District of Columbia Government, referred March 13, 1972:

District of Columbia Redevelopment Land Agency

Willie L. Leftwich, Esq., for appointment as a member of the Board of Directors of the District of Columbia Redevelopment Land Agency for the unexpired portion of the 5 year term ending March 3, 1976, effective upon the date of his appointment, pursuant to the provisions of section 4(a) of Public Law 592, 79th Congress, approved August 2, 1946, as amended.