SENATE—*Friday, January 12, 1973*

The Senate met at 12 o'clock meridian and was called to order by Hon. JAMES ABOUREZK, a Senator from the State of South Dakota.

PRAYER

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

Eternal Father, as Thy Word teaches: "They that wait upon the Lord shall renew their strength; they shall mount up with wings as eagles; they shall run and not be weary; and they shall walk and not faint," so we open our hearts to Thy presence. Give us the quiet heart not of passiveness or indolence but of awareness and creativity which enables us to do our work according to Thy will.

In Thy holy name we pray. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., January 12, 1973.

To the Senate:

Being temporarily absent from the Senate on official duties, I appoint Hon. JAMES ABOUREZK, a Senator from the State of South Dakota, to perform the duties of the Chair during my absence.

JAMES O. EASTLAND,
President pro tempore.

Mr. ABOUREZK 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. Marks, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

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

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Thursday, January 11, 1973, 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.

THE SHENYANG ACROBATIC TROUPE FROM THE PEOPLE'S REPUBLIC OF CHINA

Mr. SCOTT of Pennsylvania. Mr. President, we note with pleasure the presence within the Capitol today of a group of very able and attractive citizens of the People's Republic of China who are here with the Shenyang Acrobatic Troupe and who, with their directors and staff and personnel and interpreters, will be giving us the pleasure and the opportunity to visit with them, which many of us had at the Kennedy Center.

We have admired their skill, their expertise, their humor, and their ability to convey the cultural scene from the People's Republic for the edification, entertainment, and education of the American people.

We welcome the fact that they are here. I would go further except that the rules of the Senate bar my making reference to their particular presence in any given place; but they are on Capitol Hill, and we do enjoy seeing them. We enjoy renewing acquaintance with one of the members of their staff in particular.

Senator MANSFIELD and I look forward to the opportunity of seeing them further. We are delighted that they are in America. We hope that some of our cultural representatives will soon be sharing the pleasure which was that of Senator MANSFIELD and myself on our recent visit to the People's Republic of China.

Mr. MANSFIELD. Mr. President, will the distinguished Republican leader yield?

Mr. SCOTT of Pennsylvania. I am happy to yield to the distinguished majority leader.

Mr. MANSFIELD. I wish to join in the comments made by the distinguished Republican leader. The Senator from Pennsylvania and I are having a buffet for this outstanding troupe of Chinese citizens and acrobats, known as the Shenyang Acrobatic Troupe.

We would like at this time to extend a personal invitation to all Members of the Senate to join us on this occasion which will mark, I believe, the last day of the troupe's stay in the United States, after which, I believe, they are undertaking a tour of various countries in Latin America.

The distinguished Republican leader and I are delighted to have this honor and this responsibility. We hope in some small way to be able to repay the people of China for the outstanding courtesy, understanding, and kindness they showed to us during our all too brief stay in the People's Republic of China.

SENATE RESOLUTION 16—MINORITY PARTY MEMBERSHIP ON STANDING COMMITTEES

Mr. SCOTT of Pennsylvania. Mr. President, I ask unanimous consent, notwithstanding any previous order, that I may submit a resolution at this time regarding the committee membership of the minority.

The ACTING PRESIDENT pro tempore. Without objection, the Senator from Pennsylvania may proceed.

Mr. SCOTT of Pennsylvania. Mr. President, I submit to the Senate a resolution on behalf of the Republican Conference the Republican Party's membership on the standing committees of the Senate for the 93d Congress and ask for its consideration at the conclusion of these remarks.

Under a recently adopted rule, the following Senators, as will be stated by the clerk, were elected ranking Republican members by the respective members of their committee. The members indicated their selection in writing and the record is available for public inspection.

The Republican Conference also ratified by vote those selections which are as follows:

Senator GOLDWATER as ranking member of the Committee on Aeronautical and Space Sciences.

Senator CURTIS as ranking member of the Committee on Agriculture and Forestry.

Senator THURMOND as ranking member of the Committee on Armed Services.

Senator FANNIN as ranking member of the Committee on Interior and Insular Affairs.

Senator BAKER as ranking member of the Committee on Public Works.

Senator HANSEN as ranking member of the Committee on Veterans' Affairs.

Mr. President, I ask unanimous consent to attach to my report the recently adopted revision of rule IV at the Republican conference, noting particularly,

In all elections pursuant to this rule, vote shall be by recorded written ballot and the result of any such ballot shall be announced to the Conference and shall be made available to the public.

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

MOTION OF SENATOR BAKER ADOPTED BY THE REPUBLICAN CONFERENCE, JANUARY 10, 1973

Add the following to Rule IV:

"Subsequent to the selection of committee members, the Republican members of each standing committee at the beginning of each Congress shall select from their number a chairman or ranking minority member, who need not be the member with the longest consecutive service on such committee, subject to confirmation by the Conference. But in any event the selection shall be by a majority of the Republican members of such committee.

"If the Republican Conference shall fail to approve a recommendation of any such

standing committee for the position of chairman or ranking minority member, the matter shall be recommitted to such committee with or without instructions.

"With the exception of chairman or ranking member, rank on each committee shall be determined by length of service on the committee.

"This rule shall not apply to any committee membership or chairman or ranking Minority position held prior to the 93d Congress.

"Except as otherwise provided by this rule, once selected and confirmed, no member of any committee shall be deprived of his assignment or his rank on a committee except by the Conference.

"In all elections pursuant to this rule, vote shall be by recorded written ballot and the result of any such ballot shall be announced to the Conference and shall be made openly available to the public."

Mr. SCOTT of Pennsylvania. Mr. President, I ask the clerk to report the resolution.

Mr. METCALF. Mr. President, I have some parliamentary inquiries.

The ACTING PRESIDENT pro tempore. The clerk will state the resolution first.

The assistant legislative clerk proceeded to read the resolution.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered, and the resolution will be printed in the RECORD.

The text of the resolution is as follows:

SENATE RESOLUTION 16

Resolved, That the following shall constitute the minority party's membership on the standing committees of the Senate for the Ninety-third Congress:

On Aeronautical and Space Sciences: Messrs. Goldwater, Curtis,* Weicker, Jr., Bartlett, Helms, Domenici.

On Agriculture and Forestry: Messrs. Curtis, Aiken, Young,* Dole,* Bellmon,* Helms.

On Appropriations: Messrs. Young,* Hruska,* Cotton,* Case,* Fong,* Brooke, Hatfield, Stevens, Mathias, Schweiker, Bellmon.

On Armed Services: Messrs. Thurmond,* Tower,* Dominick,* Goldwater,* Saxbe, Scott, Va.

On Banking, Housing and Urban Affairs: Messrs. Tower,* Bennett,* Brooke,* Packwood,* Brock, Taft, Weicker.

On Commerce: Messrs. Cotton,* Pearson,* Griffin,* Baker,* Cook,* Stevens, Beall, Jr.

On Finance: Messrs. Bennett,* Curtis,* Fannin,* Hansen,* Dole, Packwood, Roth.

On Foreign Relations: Messrs. Aiken,* Case,* Javits,* Scott, Pa. Pearson, Percy, Griffin.

On Government Operations: Messrs. Percy,* Javits,* Gurney,* Saxbe, Roth, Brock.

On Interior and Insular Affairs: Messrs. Fannin,* Hansen,* Hatfield,* Buckley, McClure, Bartlett.

On the Judiciary: Messrs. Hruska,* Fong,* Scott, Pa., Thurmond,* Cook,* Mathias,* Gurney.

On Labor and Public Welfare: Messrs. Javits,* Dominick,* Schweiker,* Taft, Beall, Jr., Stafford.

On Public Works: Messrs. Baker,* Buckley, Stafford, Scott, Va., McClure, Domenici.

On District of Columbia: Messrs. Mathias,* Bartlett, Domenici.

On Post Office and Civil Service: Messrs. Fong,* Stevens,* Bellmon,* Saxbe.

On Rules and Administration: Messrs. Cook, Scott, Pa.,* Griffin, Hatfield.

On Veterans' Affairs: Messrs. Hansen, Thurmond, Stafford, McClure.

*Grandfather rights January 3, 1971.

Mr. METCALF. Mr. President, all of the members of committees in the resolution are named in a series. Would it be in order to demand that each of the committees be voted on individually and that there would be severance——

The ACTING PRESIDENT pro tempore. The Chair is advised by the Parliamentarian that it would be in order to ask for a division of the question.

Mr. METCALF. So, by agreeing to the whole resolution in its entirety, it is merely a waiver of the opportunity to ask for a severance of each individual committee?

The ACTING PRESIDENT pro tempore. That is correct.

Mr. METCALF. Mr. President, is it in order to ask for an amendment so that we could offer from the Democratic side the name of a substitute for one of these members suggested by the Republican conference?

The ACTING PRESIDENT pro tempore. That is correct. Any amendment of that nature to the resolution will be in order.

Mr. METCALF. So that any Member of the Senate could be offered as an amendment for the resolution suggested by the Republican conference.

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

Mr. METCALF. I yield.

Mr. JAVITS. Before the Chair rules, would that not be subject to the Legislative Reorganization Act and the rules of the Senate?

The ACTING PRESIDENT pro tempore. The Senator is absolutely right. The Chair was just getting ready to make the statement.

Mr. METCALF. I was just trying to lead up to that, I say to the Senator from New York.

I ask unanimous consent to have rule XXIV printed at this point in the RECORD.

Mr. SCOTT of Pennsylvania. I have no objection.

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

RULE XXIV

APPOINTMENT OF COMMITTEES

1. In the appointment of the standing committees, the Senate, unless otherwise ordered, shall proceed by ballot to appoint severally the chairman of each committee, and then, by one ballot, the other members necessary to complete the same. A majority of the whole number of votes given shall be necessary to the choice of a chairman of a standing committee, but a plurality of votes shall elect the other members thereof. All other committees shall be appointed by ballot, unless otherwise ordered, and a plurality of votes shall appoint. [Jefferson's Manual, Sec. XI.]

2. When a chairman of a committee shall resign or cease to serve on a committee, and the Presiding Officer be authorized by the Senate to fill the vacancy in such committee, unless specially otherwise ordered, it shall be only to fill up the number of the committee.

Mr. METCALF. As I understand it, subject to rule XXV and the Legislative Reorganization Act and Senators who are on other committees, this resolution is open for amendment.

The ACTING PRESIDENT pro tempore. The ruling of the Chair is that they can be placed on any committee so long as they do not exceed the limitation of the number of committees a Senator can hold. That is under rule XXV.

Mr. METCALF. Which is in accord with the Legislative Reorganization Act.

The ACTING PRESIDENT pro tempore. That is correct.

Mr. METCALF. One final question. Is it debatable to offer an amendment and suggest the name of another person to replace a person who is named in the conference committee report?

The ACTING PRESIDENT pro tempore. It is open to unlimited debate.

Mr. METCALF. And the report, as I understand it, is especially permitted to come to the floor. It is a privileged report.

The ACTING PRESIDENT pro tempore. It is a privileged resolution.

Mr. METCALF. I thank the Senator.

Mr. SCOTT of Pennsylvania. I thank the Senator.

I should like to make the further point, and I hope the press will take note of this, that this disposes of the argument that seniority necessarily prevails on the Democratic or Republican side under all circumstances. Since the resolution is privileged and is open to amendment and debate, the opportunity to disregard the question of seniority exists within the Senate itself, as I understand it.

I will not press for a ruling, because I think the questions have cleared that.

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

Mr. SCOTT of Pennsylvania. I yield.

Mr. MANSFIELD. Mr. President, I wish to commend my distinguished colleague, the Senator from Montana, for raising a series of questions not only today but also last week, when the Democratic Members were placed on the committees to which the Democratic conference had agreed.

I am delighted that the distinguished Republican leader has indicated that seniority is not the sole criterion either in the Democratic caucus or the Republican caucus. In the Democratic caucus, we vote by secret ballot in the steering committee, and they can vote for anyone they choose to be a member of a committee or a chairman. The same procedure is followed in the Republican caucus, and any objection raised there will be heard; and as my distinguished colleague has brought out, any objection raised here could be heard.

So I do not know what more democratic system we could conceive, and I would hope that what the distinguished Senator from Montana and the joint leadership have had to say today will be taken to heart by all those who are interested in this matter.

Mr. SCOTT of Pennsylvania. Mr. President, I have nothing further to say, except to ask that the RECORD note that "democratic" there is spelled with a small "d."

The ACTING PRESIDENT pro tempore. The question is on agreeing to the resolution. [Putting the question.]

The resolution was 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, for not to exceed 30 minutes, with statements therein limited to 3 minutes.

The Chair recognizes the Senator from New York.

THE ATLANTIC PARTNERSHIP

Mr. JAVITS. Mr. President, I wish to report to the Senate on my visit as a member of the Foreign Relations Committee to the Federal Republic of Germany and England during the period of November to December 1972, and on the activities of the Committee of Nine of the North Atlantic Assembly of which I am chairman.

While the year 1972 may not be regarded by history in retrospect to be as momentous as 1973, there were a number of major developments in 1972 having great significance to Europe and its relationship with the United States. It is in the context of these events, and the portentousness of the 1973 agenda, that I report.

One of the greatest costs of the Vietnam war, in my judgment, has been the relative neglect for some years, at the highest U.S. policy levels, of the Atlantic partnership. Now, it is said finally that 1973 will be "the year of Europe." Whatever the distractions may be, United States-European relations will have to receive a major share of the attention of both the executive and legislative branches of our Government this year, since four major negotiations will be in progress during 1973. Collectively, these four negotiations will set the main course of history for the remainder of this century. The SALT II negotiations with the U.S.S.R., to control the nuclear arms race, have already commenced in Geneva. A preliminary meeting in Helsinki has prepared the way for the opening of the Conference on Security and Cooperation in Europe—CSCE. The related negotiations respecting mutual balanced force reductions—MBFR—are expected to commence as CSCE gets under way. Finally, it is expected that trade negotiations with the newly expanded European Economic Community—EEC—will start in the fall; and related preliminary negotiations respecting monetary reform are already in progress among the committee of experts established by the Group of Twenty under International Monetary Fund—IMP—auspices. The negotiating agenda for 1973 is more than full.

The principal purposes of my stay in Bonn from November 19–24 were: To participate as a member of the U.S. delegation in the annual meeting of the North Atlantic Assembly where I am Vice Chairman of the Political Committee; following my retirement after 5 years as Chairman; and to chair a meeting of the Committee of Nine, a committee of distinguished present or former members of parliament of the NATO countries, which has been established by recommendations on the future of the Atlantic Alliance.

As Chairman of the Committee of Nine, I presented the Committee's interim report to the plenary session of the North Atlantic Assembly. I ask unanimous consent that the interim report, together with my introductory statement, be printed in the RECORD at the conclusion of my remarks.

The Assembly was privileged to receive at its plenary session outstanding addresses by Chancellor Willy Brandt and NATO Secretary General Luns. I ask unanimous consent that the text of these addresses also be printed in the RECORD at the conclusion of my remarks.

On previous occasions I have reported to the Senate on earlier phases of the Committee of Nine's work, and a detailed summary is contained in the Committee's interim report, which I include in this RECORD. I wish to draw particular attention to part 3 of the interim report which records a "preliminary consensus" on four significant points as follows:

First. There is a need for an Atlantic security allowance and this need will continue throughout the decade of the seventies, which is the period under our consideration. It provides a firm basis for the lowering of tensions in the area and for examining all possibilities respecting detente. To weaken the Alliance would endanger security, disrupt the prospects for peace in Europe and jeopardize the political stability needed for a policy of detente between East and West.

The problems of more equitable burden sharing in the Alliance can be negotiated through existing institutions.

There should be an agreed and coordinated policy within the Alliance concerning negotiations on mutual and balanced force reductions in Europe—MBFR.

Second. Without urgent political attention at the highest political level in member nations, strains—caused by disagreement over trade, investment and monetary arrangements, as well as other political and military issues—may lead to a serious weakening of the Alliance itself and to the erosion of public support for it.

Third. NATO is essentially a security alliance, and its institutions are not suited for resolving these other kinds of problems.

Fourth. Economic institutions—such as the Organization for Economic Cooperation and Development—OECD—and the Group of Twenty—are essential for the purposes for which they were created—namely, economic analysis and consultation—and may prove useful for resolving some of the issues dividing members of the Alliance. New procedures and approaches may also be necessary—particularly for a permanent dialog between the two North American countries on the one hand and the enlarged European Community and other West European nonmember countries concerned on the other hand—and these should be organized to bridge now, and in the future, any differences based primarily on economic considerations.

The work of the Committee of Nine, and its Interim Report, were received with great satisfaction by the North Atlantic Assembly. After having considered the Interim Report, the Assembly adopted an order formally extending the mandate of the Committee of Nine for another year—until November 1973—to enable it to complete its work and submit its definitive recommendations. I ask unanimous consent that a copy of this order, entitled "On the Prolongation of the Mandate of the Committee of Nine," be printed in the RECORD at the conclusion of my remarks.

DRAFT ORDER ON THE PROLONGATION OF THE MANDATE OF THE COMMITTEE OF NINE

(Presented by the Standing Committee)

The Assembly,

Recalling its Order I adopted in September 1971;

Noting that the Committee of Nine was requested to report to the 1972 Plenary Session of the Assembly;

Considering the progress already made by the Committee of Nine during the course of 1972;

Noting the Interim Report submitted to it by the Committee of Nine during the course of 1972;

Recognizing that many aspects of the work of the Committee of Nine require further consideration;

Instructs the Committee of Nine to continue its work during the coming year and to report back to the 1973 Plenary Session of the Assembly.

I think it is especially significant that Chancellor Willy Brandt, addressing the North Atlantic Assembly in his first major statement following his great electoral triumph, took special note of the Committee of Nine in the following words:

> The Governments of the NATO countries are grateful to the North Atlantic Assembly for taking a valuable initiative . . . With your Committee of Nine you have set up a body of competent and distinguished personalities to study the possible development of the Alliance under numerous aspects. I am looking forward to the group's final report with great interest.

The Committee of Nine met in Bonn on November 24 at the conclusion of the North Atlantic Assembly to consider the comments of the Assembly's members on its Interim Report and to commence the second phase of its work. In launching the second phase of its work, which will culminate in its definitive recommendations respecting the future of the Atlantic Alliance, the Committee examined the "Overview Paper" prepared by the Brookings Institution for the Committee's use. This study, entitled "The Atlantic Relationship: Problems and Prospects," was written by Ambassador Philip H. Trezise of the United States, in collaboration with Prince Guido Colonna of Italy. This study, together with some 25 shorter papers on a range of specific topics written by scholars and experts in Europe and North America, constitute the main body of research in connection with the deliberations of the Committee of Nine. It is expected that a substantial portion of this expert research and

analysis will be published in connection with the committee's final report.

In making this report on the Committee of Nine it is my sad duty to take note of the death of one of its most illustrious members—Sir Lester Pearson of Canada. The death of "Mike" Pearson has been widely commented upon in the world press, which gave prominent attention to the milestones of one of the great careers of public service in this century. I wish I could add more—but it is impossible—honor and glory, beyond that already so fully bestowed, to the career of Lester Pearson, as Foreign Minister and Prime Minister of his nation, as winner of the Nobel Peace Prize, and as Chairman of the famous "Pearson Commission" on the problems of economic development.

However, I do wish to add a footnote to history respecting Lester Pearson's career, which is pertinent to the Committee of Nine. When the North Atlantic Assembly established the Committee of Nine at its meeting in Ottawa in September 1971, and asked me to be its chairman, the first person I approached to join the Committee was Lester Pearson. Having been in bad health and having partially retired from public life, Mr. Pearson was reluctant to take on new responsibilities. He informed me that he had resolved to make the Pearson Commission his last international responsibility, and to decline any future requests of a similar nature. But, he said that he decided to make an exception in the case of the Committee of Nine because he regarded its work as so important to the nations of the Atlantic Community. Of course, Lester Pearson made a unique contribution to the deliberations of the Committee of Nine and his great wisdom—and charm—will be sorely missed by the Committee as it undertakes the second phase of its work. The Committee will meet again next on February 8–9 in Paris.

Earlier in my remarks I noted that the meetings of the North Atlantic Assembly and the Committee of Nine in Bonn took place in the closely proximate context of the major electoral triumphs of President Nixon and Chancellor Brandt. In my judgment, both electoral results have major positive significance for the future of the Atlantic Alliance. The American and German elections demonstrated a confidence vote in the policy of peace initiatives, pursued from the base of a strong continuing Atlantic Alliance, which has been the characteristic of the diplomacy of succeeding American Presidents and of President Nixon, as marked particularly by the SALT I agreements and his visits to Moscow and Peking, and of Chancellor Brandt, whose Ostpolitik resulted in the treaties with the Soviet Union, Poland, and East Germany.

A third great event of the Atlantic Community in 1972 was the final agreement on the expansion of the European Economic Community from six to nine members. This historic watershed has now been accomplished with the formal accession on New Year's Day of Britain, Denmark, and Ireland.

As a consequence of these great events of 1972—the SALT I agreements and the Moscow visit of President Nixon; the completion of the Ostpolitik treaties with the U.S.S.R., Poland, and East Germany and the Four Power Agreement of Berlin; and the expansion of the EEC—the hopes for peace and stability were heightened. I am confident that the total effect of these events will be to strengthen the Atlantic Alliance, which is the essential bastion of freedom in the world.

However, 1973 will not be a year in which we can sit back and at leisure consolidate the achievements of 1972. Great strains are arising within the Atlantic Alliance, largely manifested in trade and monetary arrangements but having overriding political and security dimensions. These require urgent political attention at the highest levels of government. I do not believe that there is a single issue confronting the Atlantic Community which could not be satisfactorily resolved if the requisite political attention and political will is mobilized to do so. However, it is my profound anxiety that to pursue a course of drift and neglect would be to court disaster and threaten the disintegration of the Atlantic Alliance itself.

While I was in Bonn, I had an opportunity for a talk with Willy Brandt, who is a personal friend of many years standing. In addition, I had meetings with Egon Bahr, negotiator of the Ostpolitik treaties, with Foreign Minister Scheel, and with Ambassador Hillenbrand, as well as a number of other distinguished public and private persons knowledgeable about German and Atlantic affairs. These conversations reinforced my conviction that the Atlantic Alliance has truly reached a watershed period, in which we are faced with great opportunities, as well as challenged by grave potential dangers of disunity and disruption.

Following my visit to Bonn, on November 27, I addressed the European-Atlantic group in the Grand Committee Room of the House of Commons. I ask unanimous consent that the text of my address, entitled "New Links in the Atlantic Alliance," be printed in the RECORD at the conclusion of my remarks. While in London I had a number of private meetings with distinguished Britons. These discussions buttressed my conversations in Germany.

In closing, this report to the Senate on my trip to Bonn and London, and on my activities respecting the Committee of Nine, I wish to include a reference to an important conference held in Columbia, Md., on December 7–10, 1972, under the auspices of the Aspen Institute for Humanistic Studies and the International Association for Cultural Freedom. The theme of this major conference, in which I had the privilege of participating was "Europe and America." The discussion centered on a brilliant paper prepared for the conference by Prof. Karl Kaiser of Saarbruken University in the Federal Republic of Germany. The deliberations of this conference, including the paper of Professor Kaiser, will be published shortly and I commend it to all Members of the Senate and the public who are concerned over the preservation of freedom and cohesion among the democratic societies of the West.

One might wish that the agenda for 1973 were not so crowded, for the resources of government and diplomacy will be sorely strained. Whatever might otherwise be the political predilection on both sides of the Atlantic, the negotiating agenda for 1973 is staggering and guarantees that crucial decisions of the greatest political ramifications will have to be taken.

Mr. President, I ask unanimous consent to have printed in the RECORD the Interim Report of the Committee of Nine, relating to the future of NATO; "New Links in the Atlantic Alliance," an address delivered in the Great Hall of the House of Commons; an address by the Chancellor of Germany; and an address by the Secretary General of the North Atlantic Treaty Organization.

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

NORTH ATLANTIC ASSEMBLY—
THE COMMITTEE OF NINE

(Interim report adopted at the Third Meeting Held at Niagara-on-the-Lake, Ontario, Canada, Saturday and Sunday, 9 and 10 September 1972)

PART ONE

Pursuant to Order I adopted at the Seventeenth Annual Session of the North Atlantic Assembly held in Ottawa during September 1972, the Committee of Nine has been established "to conduct a thorough study of the future of the Atlantic Alliance, and of the most appropriate and desirable role to be played by the Assembly." Senator Jacob K. Javits (United States) is the Committee's Chairman, and its members are Senator Manlio Brosio (Italy), M. Michel Habib-Deloncle (France), Professor Walter Hallstein (Germany), Lord Harlech (United Kingdom), Congressman Wayne Hays (United States), Mr. Halfdan Hegtun (Norway), Mr. Lester Pearson (Canada) and Mr. Max van der Stoel (Netherlands). Senator Ihsan Sabri Caglayangil (Turkey). Dr. Karl Mommer (Germany) and Ambassador Alberto Franco Hogueira (Portugal) are advisors to the Committee and have status equivalent to members. Mr. Darnell Whitt (United States) and Mr. Anthony Hartley (United Kingdom) are Executive Directors of the Committee's work.

The Committee of Nine has held three meetings: the first at Bellagio, Lake Como, Italy, on April 8th and 9th, 1972; the second at London, on July 1st and 2nd, 1972; and the third at Niagara-on-the-Lake, Ontario, Canada, on September 9th and 10th, 1972. The President of the Assembly, Mr. C. Terrence Murphy (Canada), and its Secretary General, M. Philippie Deshormes (Belgium), have attended each Committee meeting.

In order to assist its members in forming opinions and proposals, the Committee has commissioned a number of experts to prepare written studies, concerning the political security, social, economic and interparliamentary relations between Western Europe and North America during the next ten years. These studies are being financed from funds made available to the Committee of Nine by a number of private institutions and individuals in Western Europe and North America.

PART TWO

The Committee has been asked in part to examine and make recommendations on "the most appropriate and desirable role to be played by the Assembly". To this end, it com-

missioned a study by Mr. Peter C. Dobell, Director of the Parliamentary Centre for Foreign Affairs and Foreign Trade, in Ottawa, Canada. This study entitled "Transatlantic Interparliamentary Links and the Future of the North Atlantic Assembly" is attached as an annex.

The Committee of Nine has reviewed this paper, which has been amended by its author in some particulars after hearing the opinions of members of the Committee.

The Committee gave special attention to the proposal that the Assembly should take a decision to direct its future efforts to provide an effective Atlantic parliamentary forum for the consideration of all problems—political, security, social and economic—having an Atlantic dimension. Accordingly, the Committee discussed in detail the suggestions made in Part II of the paper, that the Assembly cease its attempts to seek consultative status with NATO, and initiate a new effort to bring about statutory authority for the appointment of delegates to the Assembly on the part of each of the Alliance countries.

The Committee appreciates that such a decision might open up new and fruitful perspectives for the North Atlantic Assembly in a period in which the countries on both sides of the Atlantic are increasingly preoccupied with economic and political issues.

The Committee has not yet reached conclusions on some of the underlying assumptions on which this paper is based. We will do so in our final report. However, in view of the undoubted interest of the Assembly in having an opportunity to consider the comments and recommendations contained in the whole paper, we have decided to forward the Dobell research paper to the Assembly as part of our interim report. Moreover, we should like to take account of the Assembly's experience on this subject and of any reactions which it might develop during its Eighteenth Annual Session. Subject to these reservations, the Committee wishes to affirm that the findings and recommendations in the paper show the direction of the thinking of a substantial number of the members of the Committee.

PART THREE

During the course of its deliberations, the Committee has reached a preliminary consensus on the following four significant points:

First. There is a need for an Atlantic security alliance and this need will continue throughout the decade of the nineteen seventies, which is the period under our consideration. It provides a firm basis for the lowering of tensions in the area and for examining all possibilities respecting detente. To weaken the Alliance would endanger security, disrupt the prospects for peace in Europe and jeopardize the political stability needed for a policy of detente between East and West.

The problems of more equitable burden sharing in the Alliance can be negotiated through existing institutions.

There should be an agreed and co-ordinated policy within the Alliance concerning negotiations on mutual and balanced force reductions in Europe (MBFR).

Second. Without urgent political attention at the highest political level in member nations, strains—caused by disagreement over trade, investment and monetary arrangements, as well as other political and military issues—may lead to a serious weakening of the Alliance itself and to the erosion of public support for it.

Third. NATO is essentially a security Alliance, and its institutions are not suited for resolving these other kinds of problems.

Fourth. Economic institutions—such as the Organization for Economic Co-operation and Development (OECD) and the Group of Twenty—are essential for the purposes for which they were created (namely, economic analysis and consultation) and may prove useful for resolving some of the issues dividing members of the Alliance. New procedures and approaches may also be necessary—particularly for a permanent dialogue between the two North American countries on the one hand and the enlarged European Community and other West European non-member countries concerned on the other hand—and these should be oragnized to bridge now, and in the future, any differences based primarily on economic considerations.

In its next phase of work, the Committee of Nine will address these significant points in order to offer recommendations concerning the challenges and opportunities of the next decade.

PART FOUR

As part of a final report during 1973, the Committee will forward its findings and recommendations concerning the political security, social and economic relations between Western Europe and North America during the next ten years and "the future of the Atlantic Alliance.'

The Brooking Institution has been invited by the Committee to prepare a written study of the major issues in West European and North American relations. As part of this endeavour, Brookings has organized a research programme which draws upon a large number of experts in Western Europe and North America—in effect, an international consortium of scholars. The Committee has commissioned approximately twenty supporting papers of approximately four to six thousand words each by American and European experts, on various aspects of the subjects. A deliberate effort has been made to seek authors of widely differing points of view. On the basis of these materials, a basic overview paper of approximately ten to twelve thousand words will address the main questions that confront the Atlantic group of nations over the next ten years.

The Brookings basic paper will constitute a broad appraisal of the connection between North America and Western Europe in the 1970s. The paper will take as its point of departure the existing situation in which enlargement of the European Community is under way, economic interdependence between West Europe, Canada, the United States and Japan is growing, and negotiations between East and West of the central political and military issues continue and perhaps will be broadened. In light of political and economic trends in East and West, the study will suggest courses of action that appear to be pertinent and realistic for dealing with the principal issues facing the Atlantic Alliance.

The Brookings study will provide a basis for the Committee of Nine to consider in preparing its final report. Also, the Committee of Nine will feel free to commission other papers outside the Brookings study to ensure that the widest spectrum of views—including dissecting views—has been expressed through acknowledged experts in the field.

NEW LINKS IN THE ATLANTIC ALLIANCE

(Remarks prepared for delivery by Jacob K. Javits, United States Senator and Chairman of the Committee of Nine before the European Atlantic Group at 7 p.m. on November 27, 1972, at the Grand Committee Room, Westminster, London)

It is essential that members of the Atlantic Alliance now turn the focus of their attention to problems within the Atlantic Community, for the seeds of grave discord on economic and political issues are there which, if left unattended, could put the Atlantic Alliance itself in jeopardy.

President Nixon's great electorial triumph, which was based so importantly on his foreign policy successes, has cleared the way in the United States for just such a priority of attention to Europe and President Nixon intends to give first priority to Europe in the foreign policy of his second administration. Dr. Kissinger has been quoted in the press as saying "1973 will be the year of Europe."

Also, I have just been to Germany where the great electoral triumph of Willy Brandt and Walter Scheel in the Federal Republic seems, to a foreign observer, to be as substantially based on their successes in foreign policy as the victory of President Nixon. These two major electoral results could presage in a positive answer to the key question before the nations of the Atlantic Alliance: "which way is the Atlantic Alliance headed—toward polarization on the two sides of the Atlantic, or toward Atlantic unity and integration?"

In my judgment, the chances are excellent that the Alliance will act to repair the damage caused by the economic, political and military tensions of recent years and resume its momentum to Atlantic unity and integration—a result exactly contrary to what the U.S.S.R. might hope to see out of the conference on Security and Cooperation in Europe (CSCE). Indeed, a major test awaits the Alliance countries in the CSCE. Will the occasion be used to dispel the suspicion—or fear—that the U.S. and the U.S.S.R. in the new spirit of "detente" will make deals over Europe's head and will this be abetted by a Europe with 13 Alliance countries and Canada negotiating each on its own with separate voices or will Alliance policy be harmonized and the real benefit or prior consultation be fully realized?

A revitalized Atlantic Alliance could have the potential, in the remaining decades of the twentieth century, of securing a new era of peace, security and well-being for itself and the developing nations and on a higher plateau than mankind has ever witnessed before. The aggregate resources—economic, political and cultural—potentially at the command of a revived Atlantic Alliance could give a new economic base to security to freedom. We are being beckoned in this direction by a destiny worth rising to meet.

The USSR has now, it is said, authoritatively accepted the fact of the U.S. presence in Europe, including U.S. troops in Europe. The evidence of this is allegedly found in the Four Power Agreement on Berlin, the General Treaty between the Federal Republic and the GDR, the inclusion of the United States in the Conference on Security and Cooperation in Europe, and the parallel negotiations on Mutual and Balanced Force Reductions (MBFR).

The opening of these negotiations, along with the SALT II negotiations, represents an historic watershed for the Alliance. For, the outcome of these negotiations will set the pattern for security arrangements in Europe for the remainder of this century. Therefore the nations of the Atlantic Alliance must enter these negotiations with a sense of their high importance which requires a harmonization of their policy commensurate with the importance of what is at stake—their future.

The decade since the Cuba missile crisis has been a decade of diversion and distraction on both sides of the Atlantic. The United States allowed itself to become entrapped in the quagmire of Vietnam, while the energies of Western Europe have been largely devoted to the encompassing task of inching toward economic, and perhaps eventual political, integration. In most recent years, the most innovative developments in western diplomacy have been President Nixon's initiatives respecting Peking and Moscow, and Chancel-

lor Brandt's Ostopolitick. In addition, the European Economic Community has cleared the historic hurdle of expansion to include at least Great Britain, Denmark and Ireland.

Now is uniquely and historically the time for the Atlantic partners to look up from their preoccupations of the recent past, and to engage in a grand design partnership. For the time has come to redefine our partnership in conformity with the needs and realities of the present and of the rest of this century.

I believe that a major element of the needed redefinition of the grand design of Atlantic partnership—the movement of France toward reintegration in the NATO command situation—has begun. This is a trend of great significance and value, which will develop further in 1973 after France's elections and which has not been adequately understood and appreciated even yet by the peoples concerned, particularly in the United States.

The Atlantic Alliance nonetheless can no longer be taken for granted. For all its historic achievements, the Alliance is presently characterized by a number of tensions which, if exacerbated, could drive a wedge of formidable proportions between the Atlantic partners. These tensions derive primarily from economic questions—trade, monetary and investment arrangements—but the tensions also have significant political and security dimensions as well.

If there should be an unravelling of the Alliance in the years just ahead consequent on our failure to resolve the problems which have arisen, the decade of the 1970's could be the decade of Atlantic polarization. North America could find itself with diminished security and severely diminished economic prospects; and Western Europe could find itself isolated from its North American partners and with its very security and independence placed in jeopardy by the sheer weight of the USSR leaning on Western Europe in the Eurasian continent.

Ultimately, the task of repairing the Alliance is the responsibility of governments. But often governments need the council and aid of their citizens, and it is a unique strength of free nations that they are so organized to benefit materially in this regard. As Chairman of the Committee of Nine, commissioned by the North Atlantic Assembly to study and make recommendations concerning the future of the Atlantic Alliance (and the role in it of the North Atlantic Assembly), I have the honor and the responsibility to be importantly associated with just such an archetypal initiative in support of the Atlantic Alliance governments.

The other members of the Committee of Nine are: Senator Manlio Brosio (Italy), M. Michel Habib Deloncle (France), Professor Walter Hallstein (Germany), Lord Harlech (United Kingdom), Congressman Wayne Hays (United States), Halfdan Hegtun (Norway), Lester Peson (Canada) and Max van der Stoel (Netherlands). In addition, Senator Ihsan Sabri Caglayangil (former Foreign Minister of Turkey), Dr. Karl Mommer (former State Secretary of the Federal Republic of Germany) and Ambassador Alberto Franco Noguerra (former Foreign Minister of Portugal) are advisors to the Committee.

The Committee of Nine has held four meetings: the first at Bellagio, Lake Como, Italy, on April 8th and 9th, 1972; the second at London, on July 1st and 2nd, 1972; the third at Niagara-on-the-Lake, Ontario, Canada, on September 9th and 10th, 1972, and the fourth at Bonn on Thursday, November 23, 1972.

In order to assist its members in forming opinions and proposals, the Committee has commissioned a number of experts to prepare written studies concerning the political, security, social, economic, and interparliamentary relations between Western Europe and North America during the next ten years. These studies are being financed from funds made available to the Committee of Nine by a number of private foundations and individuals in Western Europe and North America.

During the course of its deliberations, the following four significant points have stood out in the work of the Committee of Nine:

First. There is a need for an Atlantic security alliance and this need will continue throughout the decade of the nineteen seventies, which is the period under our consideration. It provides a firm basis for the lowering of tensions in the area and for examining all possibilities respecting detente. To weaken the Alliance would endanger security, disrupt the prospects for peace in Europe and jeopardize the political stability needed for a policy of detente between East and West.

The problems of more equitable burden sharing in the Alliance can be negotiated through existing institutions.

There should be an agreed and co-ordinated policy within the Alliance concerning negotiations on mutual and balanced force reductions in Europe (MBFR).

Second. Without urgent political attention at the highest political level in member nations, strains—caused by disagreement over trade, investment and monetary arrangements, as well as other political and military issues—may lead to a serious weakening of the Alliance itself and to the erosion of public support for it.

Third. NATO is essentially a security Alliance, and its institutions are now suited for resolving economic and social problems notwithstanding Article II of the NATO Treaty, therefore leading to the next point.

Fourth. Economic institutions—such as the Organization for Economic Co-operation and Development (OECD) and the Group of Twenty—are essential for the purposes for which they were created (namely, economic analysis and consultation) and may prove useful for resolving some of the issues dividing members of the Alliance. But new procedures and approaches may also be necessary—particularly for a permanent dialogue between the two North American countries on the one hand and the enlarged European Community and other West European non-member countries concerned with the Alliance's economic and social problems on the other hand—and these should be organized to bridge now, and during the next decade, any differences based primarily on economic considerations.

The Committee of Nine is required to make its final report in November, 1973, to the 19th Plenary Session of the North Atlantic Assembly. In its next phase of work, the Committee of Nine will address the foregoing significant points in order to offer recommendations concerning the challenges and opportunities of the next decade to the Atlantic Alliance.

In my judgment, the time has certainly come for a summit meeting of the heads of governments of the NATO countries. I also wish to suggest the desirability of institutionalizing such meetings within the Alliance.

It is my own view that, looking at the Atlantic Alliance, we must look closely into these specific questions: a) Can Article II of the North Atlantic Treaty be made meaningful in terms relevant to current problems?; b) How can decisions be taken multilaterally within NATO to prevent trade and monetary policy decisions from gutting NATO and leaving a hollow shell; c) What consultations within NATO are necessary and possible respecting security considerations and the foreign policies of member nations dealing with matters outside the juridically defined geographical area of NATO; d) Can NATO be the forum for the establishment of an urgently needed common energy policy, and common policies regarding scientific and technical interchange as well as of environmental policy.

In concluding, I wish to reiterate the gravity of my concern respecting the tensions which have arisen within the Atlantic Alliance and the potential of those tensions, if left unresolved, to place our Alliance and thus our security in serious jeopardy. My concerns in this respect are fully shared in the Committee of Nine.

I also wish to reiterate my cautious sense of hopefulness and high expectancy regarding the destiny of the free peoples of our Alliance. The United States is now seasoned by twenty-five years of global responsibility and leadership. And fortunately, at this crucial juncture when the United States is catching its breath following its traumatic and harrowing experience in Vietnam, our European partners have rebuilt their economies and their democratic policy to such good effect that free Europe is ready to resume a global role, with global responsibilities. We can all take especial heart from the spectacle of the Federal Republic of Germany taking the lead in Europe at this crucial juncture in the reaffirmation of democratic viability, of innovative diplomacy for peace and an interim resolution of the "German question" through indissoluble integration of the Federal Republic into the EEC while providing more auspicious conditions for the future of people of satellite East Germany.

There is a special bond of language of traditions of individual freedom, of cultural, of credo, between the United States and Britain. It is therefore altogether fitting that I conclude my address here in a house of the 'Mother of Parliaments' with an affirmation of my own confidence that this special bond will survive and will find new expression in the benefit of all mankind in the transition and in the frank dialogue of partners which is ahead of us.

Eighteenth Annual Meeting of the North Atlantic Assembly

Mr. President, Mr. Secretary-General, ladies and gentlemen, in this same building the ministerial meeting of NATO took place at the end of May. On that occasion I was privileged to extend a warm welcome to the fifteen Foreign Ministers of the Alliance, together with Mr. Luns, the Secretary-General, who is also with us here today.

Today I am equally delighted to extend a cordial welcome to you, the delegates to the Eighteenth Annual Meeting of the North Atlantic Assembly. You are the guests of a country whose Government has been given a new mandate and which, on the basis of that mandate, will steadily pursue its well-known policy. It is a policy of security and détente as jointly developed within the Alliance and shaped by us in availing ourselves of the opportunities open to us.

This meeting here today gives me a welcome opportunity to confirm the continuity of our foreign and security policy before such a representative body as this.

The NATO ministerial meeting in May here in Bonn set the course for new developments. Today the representatives of nearly all the European States, as well as the United States and Canada, are meeting in Helsinki to commence the multilateral preparations for a Conference on Security and Co-operation in Europe.

I very much hope that these talks will bring us a step further along the way towards a "just and lasting peaceful order in Europe accompanied by appropriate security guarantees", which as long as five years ago

was described in the Harmel Report as the ultimate political purpose of the Alliance. With their constructive contribution to the problems pending in Helsinki, the members of the Alliance will demonstrate their genuine will to give peace in Europe a new quality.

It is now more than four years since we agreed at a NATO ministerial meeing on what became known as "the signal of Reykjavik". Insiders know, and the records prove that I, at that time as Foreign Minister, had some part in it. The first Soviet reaction showing a positive interest came in the autumn of 1970, shortly after the signing of our treaty with Moscow.

Now, together, we shall have to ensure that in terms of time the subject of balanced force reductions on both sides will be dealt with in step with the subject of European cooperation. As I see it, a central task in the years ahead, and a great opportunity for all of us, will be to create throughout the whole of Europe a situation in which peace will be secured for generations.

In pursuing this goal I do not expect our relationship with our American friends to be weakened but rather to be further and constructively developed. And I feel that the America we shall be dealing with will be paying more, not less, attention to European affairs.

In the past the Atlantic Alliance has proved that it is capable of developing abreast of the times and of coping with new tasks.

At the conference commemorating the twentieth anniversary of NATO held in Washington in 1969, President Nixon called upon the members of the Alliance to widen the scope of their activities to include regional and supraregional problems of the environment. Had we not known it before, we would have realized then that we are also partners in other spheres besides security policy. During the monetary crises of recent years, it was the general feeling that the Alliance could not perform its external tasks if it were seriously impeded internally, in this case in terms of monetary and hence economic policy. Today, more than ever before, it would be inadequate to regard the problems confronting NATO and the European Community in isolation from the development of economic relations among their members, and above all between the United States and Canada on the one hand and the European Community on the other.

The Governments of the NATO countries are grateful to the North Atlantic Assembly for taking a valuable initiative in this connexion. With your Committee of Nine you have set up a body of competent and distinguished personalities to study the possible development of the Alliance under numerous aspects.

I am looking forward to the group's final report with great interest, and I wish to make two comments on the present stage of their work.

When considering the sharing of burdens as between the North American and the West European members of the Alliance the efforts which the European partners are already making, both individually and in the EUROGROUP, should not be overlooked. In percentage terms, the European contribution to the conventional military defence effort is quite respectable. In the relevant sectors the Europeans already provide about 80 per cent of NATO's conventional forces in Europe.

We are bearing the load together—and yet at the same time I realize that the burden carried by the United States as a world power is not divisible, nor are its guarantees replaceable. We shall continue to make the contributions that are necessary in the interest of security, but if relief is possible as a result of the MBFR negotiations then this, too, will have to be shared within the Alliance.

As we know, the United States is in the process of altering the structure of its armed forces. This subject is also under consideration in the Federal Republic of Germany, as in other countries. In a few days' time, the Federal Government will be receiving the report of an independent commission appointed two years ago. The carefully computed models and proposals it will contain will not be binding on the Federal Government but will be a help to it in making its decisions. We shall take these decisions after thorough consultation within the Alliance. We can say even now—and our Defense Minister Georg Leber will in due course explain this in detail in the appropriate bodies—that the only kind of reorganization that can be considered is one that does not reduce the value of our military contribution to the Alliance.

The adaptation of North Atlantic partnership to the new relationships that are taking shape will involve the long-term solution of economic problems and an intensification of the tran-Atlantic dialogue. In this respect I see a gratifying task, but also one of great responsibility, falling to you, the members of the North Atlantic Assembly. I have in mind the task and the opportunity of a comprehensive Atlantic diologue.

President Nixon held out his hand for a more intensive diologue when, in his most recent foreign policy report, he placed side by side the role of his country in the Alliance, its relationships with the European institutions and the bilateral relations, with the several European countries, and when he announced the strengthening of trans-Atlantic bonds.

The Heads of State or Government of the enlarged European Community took up this subject at their Summit Conference in Paris on 20 October when they for their part underlined that they will remain "faithful to their traditional friendships and to the alliances of the member states." As will be recalled, they reaffirmed their determination to maintain a "constructive diologue" with the United States of America, Canada, and other partners, without prejudice to the ultimate political objectives of the construction of Europe. I very much hope that the dialogue at Government level will be favourably influenced by the results of your discussions as parliamentarians.

With this appeal I wish to couple a word of thanks to each one of you. Thanks for your constant efforts in Parliament to keep ever awake the consciousness of what we have in common, of the Alliance. And I would ask you to continue your efforts both in Parliament and in public to sharpen the awareness of what North Atlantic partnership means as the foundation of peace in Europe.

I wish your Annual Assembly every success.

SPEECH GIVEN BY JOSEPH M. A. H. LUNS, SECRETARY GENERAL OF NATO TO THE NORTH ATLANTIC ASSEMBLY, NOVEMBER 22, 1972

Mr. President, Your Excellencies, Honourable Members of the Atlantic Assembly, Ladies and Gentlemen:

It was with great pleasure that I received your invitation to follow in the footsteps of my distinguished predecessors and address the Annual Meeting of the North Atlantic Assembly. I regard this invitation as a unique opportunity to share my hopes and apprehensions with an enlightened audience, on whose understanding and support the Alliance continues to depend. No one is closer to the peoples served by the Alliance, than yourselves, the Honourable Members of this Assembly. You receive your mandate from the electorates; you embody their aspirations; and you transform their will into deeds. You control the policies of your governments; and you vote the budgets which enable Allied governments to fulfill their common task of ensuring detente and defence. Last but not least, your peoples look to you for guidance in the evaluation and interpretation of world events.

Today, preparatory talks for a Conference on Security and Co-operation in Europe have opened in Helsinki. Late in January exploratory talks will begin on MBFR, that is on the Allied proposal for Mutual and Balanced Force Reductions in Central Europe. We hope these initial talks will demonstrate sufficient progress so that the Conference itself, and the MBFR negotiations proper may start sometime soon. I think it most timely to dwell today on the significance for the Alliance of this programme of multilateral events.

Let me begin with three general observations: the first one is an obvious but cardinal point. It is the future of Europe with which a Security Conference and MBFR talks will be concerned; and therefore the trans-Atlantic members of the Alliance will fully and legitimately participate in these discussions. This appears self-evident for MBFR, which involves their forces. It has been less so for the Security Conference which, as originally envisaged by the Warsaw Pact was to deal with security for the Europeans and by the Europeans only. Not until the East had recognized the reality of our Atlantic partnership, and the right of the United States and Canada to speak in matters of European security, was the Alliance willing to consider preparation of a European Security Conference. We welcome any acceptance of realities by the East, but we take even greater satisfaction from the determination of the American and Canadian Governments to participate in a European Security Conference and from their will thus not merely to maintain but reinforce their engagement in Europe.

My second point is this: it is agreed that discussion of European security and co-operation as well as MBFR should not be conducted on a "bloc-to-bloc" basis; that is to say that the organizations of NATO and the Warsaw Pact as such would not confront each other at the Conference tables. So far, so good. But we should not try to suppress in our minds the undeniable fact that MBFR talks will exclusively involve members of the two military groupings in Europe, and that the participants in a Security Conference would include all fifteen members of the Atlantic Alliance and all seven Warsaw Pact countries. It may fall mainly on these governments to seek ways to overcome the division of Europe. I am not suggesting that the neutral and non-aligned states would be silent observers of an East-West dialogue. On the contrary: we expect them to play an active and original role at a conference. I do suggest, however, that we will be confronted at the multilateral preparatory talks in Helsinki and at a conference proper with collective proposals and co-ordinated tactics of the Warsaw Pact members. Allied governments therefore will want to enter these negotiations in full awareness of the high principles and deep convictions they hold in common and with a clear and coherent conception of their aims.

Thirdly, the multilateral events for which we are preparing ouselves cannot be seen in isolation. They form part of the intensified East-West dialogue and of the endeavors for a rapprochement pursued over the past few years. It is too early to know whether we have already entered a new era in East-West relations. But should future historians pass such a judgment, they might begin by noting the successes of bilateral diplomacy initiated by several Allies in the mid-sixties in establishing the basis for

businesslike discussions with the countries of Eastern Europe and the Soviet Union. They would recall that in 1967 Allied governments, in adopting a Report on the Future Tasks of the Alliance, resolved jointly to search for progress towards a more stable relationship in Europe in which the underlying political issues could be resolved. And they would put into perspective—I would expect—important events such as the conclusion of the German/Soviet and the German/Polish Treaties; the Four-Power Agreement on Berlin; the negotiations between the United States and the Soviet Union on Strategic Arms Limitations and on many other issues of common interest; President Nixon's visits to Peking and Moscow; the Basic Treaty concluded between the two states in Germany; and the accession of these states to the United Nations.

In evaluating these events, it is reasonable to assume that the Soviet Union has an interest in pursuing a general relaxation of tension vis-a-vis the West, and particularly in Europe, in order to avoid military confrontation and to free energies and resources for other aims—domestic as well as international. At the same time, it is prudent to bear in mind that the Soviet Union admittedly wishes to create favourable conditions for the development of socialism within, as well as beyond, its sphere of influence. I believe that the Soviet policy of consolidating the status quo in Europe is dynamic rather than static in its nature, as indeed the policy of a great power usually is. This statement implies neither that we should not negotiate with the East nor that such negotiations could not be fruitful. It only suggests that a sober assessment of one's opponents' interests and motives is the key to the success of any negotiations. And we certainly do hope that the multilateral negotiations, prepared thoroughly with much hard work within the Alliance over several years, will succeed fully. Allied governments are second to none in their desire to seek greater security in Europe and a reduction of the barriers that divide the Continent.

At the multilateral preparatory talks which open today in Helsinki, our basic aim is to ensure that our proposals for the enhancement of security and co-operation will be fully considered at a conference; and to establish that enough common ground exists among the participants to warrant reasonable expectation that a conference would produce satisfactory results. It is only in the light of developments at the preparatory talks that Allied governments can decide to attend the conference proper.

I should like to share with you some considerations on the proposals Allied governments intend to make. I shall not go into details of the possible Agenda which, in any event, would have to be agreed upon by all participants in the Helsinki talks, but will touch only on three general areas of discussion to which Allied governments attach value. They are:

First, questions of security including principles governing relations between states and certain military aspects of security. In this context, I shall add some remarks on MBFR with the clear understanding that this subject will not be dealt with by a Security Conference but in a separate forum.

Second, freer movement of people, information and ideas, and cultural relations.

And third, co-operation in economics, science and technology.

As a further point, I will discuss the *Soviet* suggestion to establish some permanent machinery, an international organ, to outlive the conference.

Some people may be inclined to think that there has already been elsewhere enough talk about principles governing relations between states and enough drafting of declarations and resolutions without our having to go into all this again. It may be asked, does not the United Nations Charter already lay down, in binding form, all the principles we need to ensure a peaceful world, if only the statement of principles alone were sufficient. I have seen reported very recently that in the General Assembly of the United Nations which is now going on in New York, the Head of the Chinese Delegation saw fit to draw attention to the fact that only a year after the invasion of Czechoslovakia by Soviet troops, the Soviet Union came forward in the United Nations with yet another general proposal and principles purporting to aim at reinforcing peace and international security.

There is much force in all this. It is deeds not words that count. Statements of principle, important though they may be, are not enough. Nor is acceptance of principles sufficient. It is observance that we want to see.

And at this point, I do not think that I can be accused of unfairness and partiality if I make the remark that on the Western side we have a very fair record of observance of international standards of conduct and behavior. Nor do I think it unfair to remark, as a general proposition of some truth, that it is in countries where there is no free press and no free public opinion that principles can be and are most easily flouted.

How then are we going to handle this matter at the Security Conference and what will our aims be?

For its part the Warsaw Pact has indicated the principles it has in mind in the Prague Declaration of last January. These, though as enticingly worded as ever, contain many of the usual traps and pitfalls, into which we have no intention of tumbling. We expect to reply in the first place by tabling our own ideas which, I may say, we have worked out in some considerable detail in our consultations in Brussels. I will not, I think, be revealing any secrets if I say that one thing our ideas will make plain will be that we are not prepared to subscribe to any principles which consecrate the Brezhnev Doctrine, that is, the Soviet attempt to apply a different set of principles to relations between Communist countries.

We must then see in the subsequent discussions whether the other side really is interested in achieving something which will have a practical effect in the sense of actually raising the standard of behavior (if I may so put it) between all states in Europe. And to return to what I said before that means achieving something which we are all prepared not only to accept, but to abide by, and implement.

This leads me on to talk of the military aspects of this question. Since if we could do something about the problems created by the continuing existence of vast military forces in Europe, I believe this might somewhat ease the danger of a tense situation developing into military confrontation.

We realise that a forum of some thirty countries, including neutral and non-aligned states, is not one which could effectively negotiate in detail on the levels and activities of armed forces in Europe. It could and should, however, consider in general terms the problem of military security and the existing disparity between military forces and postures in the East and West, thereby pointing out that the military issues are still not yet solved. In addition, all members of the conference will have a genuine interest in discussing and agreeing upon certain measures designed to increase confidence and promote stability. Such measures—and we are thinking of prior notification of major military movements as well as exchange of observers at manoeuvres—may not be of great military significance. But they would act as tests of political will.

The basic and very complex military issues must be addressed somewhere, however, that is to say in a separate forum and in parallel with the discussion on major political issues, because a truly stable and secure order in Europe is hardly conceivable without reduction of the military confrontation. How can we be assured that crises, such as those caused by the Soviet ultimatum on Berlin or the invasion of Czechoslovakia belong to the past, when the Warsaw Pact continues to maintain military capabilities more impressive than those of 1961 or 1967? Whatever progress may have been made in Europe towards détente, it has certainly had no visible effect on Soviet military posture. On the contrary: over the years the general pattern of force levels and armaments in Central Europe, not to speak of the European Flanks or of the North Atlantic and the Mediterranean, has shown a gradual but distinct shift in favour of the East. We will do well to probe the reasons behind this apparent contradiction—and serious discussion of our proposal for Mutual and Balanced Force Reductions in Central Europe will provide opportunity for such probing. In exploring possible avenues leading towards a military détente, we may learn whether political détente is to last. This is why Allied governments have insisted on parallelism between the discussion of the political and military aspects of security. Soviet acceptance of this parallelism has been a major success of Western diplomacy. Of course talks on Mutual and Balanced Force Reductions will be highly complex and will outlast, probably by years, any European Security Conference. I expect, however, that Allied governments will be able to gauge the intentions of the Warsaw Pact countries already in the exploratory phases of MBFR talks.

Last week, Belgium, Canada, the Federal Republic of Germany, Luxembourg, the Netherlands, the United Kingdom and the United States proposed to the GDR, Hungary, Poland, Czechoslovakia and the Soviet Union, to begin exploratory talks on MBFR on the 31st January, in a place still to be agreed through diplomatic channels. Denmark, Greece, Italy, Norway and Turkey have confirmed their intention to be represented in these talks.

Let me assure you that Allied governments proceed to MBFR explorations well prepared and with a clear understanding of the problems and the risks involved.

We realise that our defensive capabilities are today already near the minimum. We agree that MBFR must result in undiminished security and must maintain the credibility of NATO's strategic doctrine of forward defence and flexible response. We know that this aim cannot be attained by force reductions alone, but that these reductions must be accompanied by collateral measures designed to diminish the risk of misunderstanding and miscalculation; to enhance stability and mutual confidence; to increase warning time; to limit reinforcement capabilities; and to ensure compliance with the obligations of any MBFR agreement. We are equally aware that MBFR cannot be one big leap forward in arms control or disarmament in Central Europe; but rather that any withdrawal or reduction of forces should be approached step-by-step in a carefully controlled process maintaining undiminished security at each of these stages.

Since Allied governments are about to embark on the discussion of MBFR, common sense dictates that any unilateral withdrawal of forces or cuts in defence budgets should be avoided, since it would seriously weaken, if not completely destroy, their bargaining position.

I now return, from my excursion into MBFR, to the European Security Conference.

Important as questions of political and

military security are, Western governments—and I assume the governments of neutral and non-aligned countries also—would not want preoccupation with security to detract attention from another essential area of discussion, namely freer human contacts and the broader dissemination of information, which we have come to call "freer movement". The countries of the Alliance practice government by the people and for the people. We owe it to the common man in West and East that he should directly participate in, and benefit from, a process of rapprochement an co-operation in Europe. Unless the peoples of the states participating in a conference become fully and actively involved in this process, through an increase in human contacts across the frontiers and through new access to information and ideas, we would be holding a conference in an ivory tower. We look for constructive and non-polemical discussions of practical improvements in human co-existence which will benefit not only small minorities, such as bureaucrats, businessmen and scientists, but the ordinary man. Vague generalisations or declarations of principle having no direct effect for the people, would not be sufficient. Further, it would be wrong to single out educational, scientific and cultural purposes as a special field for relaxation of existing restrictions, because this would leave the wider problem unresolved. We also reject the imputation that Western proposals of freer movement are an attempt to interfere in the internal affairs of other countries. If Communist leaders in Eastern Europe do not consider the dissemination of their ideas in our countries as interference in our affairs, how can they oppose the free flow of ideas and information from West to East? We would wish to hear a convincing answer. And we would wish to see a peaceful competition of ideas to be carried out under agreed and common rules. I should think that these considerations will meet with particular understanding in this country. The Basic Treaty recently initialled by the Federal Government and the Government of the GDR is accompanied by certain obligations designed to ease human contacts within divided Germany. In living up to these obligations, the GDR could give an example of how East-West rapprochement may directly benefit the people.

Co-operation in the economic, scientific, technological and environmental fields will, of course, be a much less controversial item. In these areas, the countries of East and West already possess vast experience of dealing with each other and can be expected to take a positive attitude at a conference. For one thing, the East European states have a genuine and legitimate desire to gain increased access to Western science and technology, for fear of falling behind in this vital aspect of development. For another, both sides have a very strong interest in promoting trade in a wide variety of raw materials and products, for example, natural gas sales on the Soviet side as against wheat, feed grains or machinery on our side. The conference may help to promote advances in these areas, or at least to identify obstacles to increased exchanges, for example the differences in economic and social structures of East and West, so that they may be eventually overcome. So we shall be going into the conference ready to propose a sizable list of concrete measures in the economic, scientific, technological and environmental fields, which may lay the basis for conference resolutions to be implemented later by individual countries and the European Economic Community.

Turning now to a point raised by the Soviet Union and its Allies we are on notice that they may propose, at a Security Conference, the establishment of a permanent body of all states taking part. It is not yet exactly clear what the Warsaw Pact countries have in mind; nor can we yet know whether any of the results of a conference would justify the establishment of follow-up machinery. So we view the Soviet suggestion with skepticism and with a natural aversion to the creation of permanent international institutions whose purpose is only vaguely defined. And this attitude of reserve will be strengthened, should it turn out that the Soviet Union is trying to introduce thereby, through the back door, the concept of a pan-European collective security mechanism designed to undermine and eventually to destroy the Atlantic link.

In concluding, I would like to quote from a recent article in Pravda. "The NATO Bosses" Mr. Vladimir Yermakov wrote on 26th October, "have not ceased and apparently do not intend to cease the intrigues aimed at poisoning the international atmosphere. For how else can one evaluate, for example, the brazen and provocative list of concessions which NATO supposedly intends to secure from the socialist countries during the all-European talks. In point of fact it is a question of attempting to interfere in the internal affairs of the socialist countries and of presenting them with conditions for the talks which are more like their direct sabotage. Some people in NATO are reckoning in vain on the illusory possibility of talking with the Soviet Union and the other states of the socialist community from positions of strength." End of quotation.

I shall be straightforward in my comments. NATO, because it is defensive in military terms, can well afford to be on the political offensive.

We are not in the first place or fundamentally concerned with what is called international atmosphere. Nothing is more ephemeral than atmosphere and political climates change fast, when not brought about by concrete achievements. We are, however, deeply concerned with the solution of those political issues which are at the roots of tension and instability. If we can start to clear them up, we shall at the same time greatly improve the international atmosphere.

We go to a security conference and to MBFR talks seeking our goals, just as we expect other countries to seek theirs. Negotiations mean give and take. To ask for concessions is neither brazen nor provocative, but sensible and legitimate.

Of course, we intend to negotiate as far as possible from a position of strength which is the best bargaining position, as the Soviet Union knows so well, judging by its practices. Our strength is founded in Allied solidarity. It is in our interest to be united and to be seen to be united.

We firmly hope that a period of rapprochement and stability in Europe is ahead of us. But we may not know for many years whether our hopes are justified. In the meanwhile, we cannot base our security simply on expectations. To tamper with the proven balance of power between East and West would be reckless and irresponsible. It is this balance which has maintained, and continues to maintain, our security and provides the firm basis on which alone we can promote détente.

COMPILATION OF NARCOTIC DRUG TREATMENT LAWS IN THE 50 STATES AND FIVE TERRITORIES

Mr. JAVITS. Mr. President, the National Commission on Marihuana and Drug Abuse has undertaken a broad study of the many problems relating to drug abuse in the United States. Earlier this week I inserted into the RECORD a compilation of dangerous drug laws of over 120 foreign nations prepared by the Commission.

The Commission has also prepared and distributed a compilation of current drug dependent treatment and rehabilitation legislation in the 50 States and five territories. To the best of my knowledge, such a compilation has never before been put together. The Commission intends to devote considerable attention to the merits of these laws and their implementation in its final report to the President and to Congress on March 22, 1973. The Commission will seek to encourage efforts such as that of the National Conference of Commissioners on Uniform State Laws to reassess the appropriate role of the legal system in the treatment of drug dependent persons, to frame necessary procedures and to seek uniform legislation among the States.

The compilation consists of 10 individual charts. They total over 125 pages. While the material found in these charts is too voluminous for inclusion in the CONGRESSIONAL RECORD, I feel that a summary of the laws and a brief description of the scope of the compilation would be useful to our colleagues and to the general public. The complete compilation will be published in the appendix to the Commission's second report.

Mr. President, I ask unanimous consent that the text of the introduction, summary, and description of the compilation be printed at this point in the RECORD.

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

INTRODUCTION

The Harrison Narcotics Act in 1914 established a national policy of restricting availability of dependence-producing substances. Succeeding generations of lawmakers, at both the federal and state levels, have reaffirmed this policy, most recently in the Drug Abuse Prevention and Control Act of 1970, (P.L. 91–513) and the Uniform Controlled Substances Act. The Harrison Act sought to curtail distribution of opium, morphine and cocaine. Rigid controls were later extended in other legislation to heroin, marihuana, and other psychoactive drugs. For six decades a consistent pattern has been followed with but a single, albeit significant exception: alcohol.

This firm decision to restrict availability of dependence-producing substances contrasts with a continuing ambivalence about the appropriate public policy toward individuals who, despite society's efforts, have become dependent on prohibited or restricted substances. A similar ambivalence has also characterized the legal status of alcoholism; yet, acquisition and consumption of alcohol by an alcohol-dependent person is not a criminal offense, while similar behavior of a persons dependent on prohibited substances inevitably offends the criminal law. Therein lies the source of a dilemma which has remained unresolved for half a century.

Since passage of the Harrison Act, proponents of so-called "law enforcement" and "medical" approaches to drug-dependence have waged a continuing debate. In popular rhetoric, the "law enforcement" view is generally identified with an insistence that a person be held morally and legally accountable for his behavior, including drug-consumption, within the criminal justice system. The "medical" approach, on the other hand, is popularly associated with a skepti-

cism about the utility of criminal punishment and with the notion that drug dependence is an illness requiring treatment. Although the "law enforcement"-"medical" dichotomy has never been a satisfactory tool for understanding or dealing with the dependence problem, its persistence does reflect divergent perceptions about the moral and mental status of persons who consume prohibited substances and who become dependent on them. The polarity of these two approaches should not be allowed to obscure the fact that public policy has always reflected elements of both views, and the debate at any given time may not be over fundamental premises but over tactics.

By 1925, a combination of government pressure and professional default had minimized the formerly preeminent role of the private physician in the treatment of drug dependence; since that time, it has been assumed that the formulation of policy in this area is a matter for public, rather than private institutions. For four decades—between the decline of public clinics and ambulatory treatment in the 1920's, and their reemergence in the 1970's—public policy aimed entirely to assert formal control over drug-dependent persons through the legal process. If such control was through criminal prosecution, it was identified with the "law enforcement" approach; if it was through civil commitment, it was associated with the "medical" view.

Today, formal control remains the cornerstone of public policy regarding drug-dependent persons. The major purpose of this Interim Report is to compile and summarize the multitude of statutory mechanisms and procedures for securing and maintaining such control. At the same time the Commission has also noted a recent renaissance of interest in voluntary treatment. Although the number of drug dependent persons participating in voluntary programs remains relatively small, the Commission has observed a significant change in legislative attitude toward the necessity of formal legal control. Thus, another purpose of this document is to summarize these new statutory developments.

Although we intend to devote considerable attention to the merits of these laws and their implementation in our final Report in March 1973, the Commission takes this opportunity to encourage efforts such as that of the National Conference of Commissioners on Uniform State Laws to reassess the appropriate role of the legal system in the treatment of drug-dependent persons, to frame the necessary procedures and to seek uniform legislation among the states. In order to assist such efforts, the Commission is publishing this descriptive material in advance of our final Report and in time for consideration by new legislative sessions early next year.

HISTORICAL SUMMARY

With the demise of treatment by private physicians and of ambulatory maintenance services during the 1920's, every opiate-dependent person was subject to prosecution and punishment for possession and acquisition—the acts incident to consumption. In fact, "addiction" itself was made a crime in many states. Legislators, however, were not unaware that drug-dependent persons might be in need of treatment. In 1929, Congress passed an Act establishing two "narcotics farms" in Lexington, Kentucky, and Fort Worth, Texas, for the treatment of drug-dependent persons, including Federal offenders.[1] During the ensuing three decades, 34 states, analogizing drug addiction to mental illness,[2] gradually authorized civil detention of drug-dependent persons* under pre-existing compulsory commitment laws for the mentally ill or for "inebriates."[3]

Half of these states also made involuntary treatment an adjunct to criminal laws against addiction.[4] In addition, some states updated laws authorizing the appointment of legal guardians for drug-dependent persons in order to permit their indeterminate confinement for medical care.[5]

Whatever the label of the legal process and the location of confinement, control for most drug-dependent persons during this period (1925–1960) meant isolation, not treatment. Civil procedures were rarely employed and when they were, treatment was a promise, not a reality.

In 1962, the Supreme Court, concluding that drug addiction was an illness, held that a State could not make the status of addiction a crime.[6] In dictum, however, the court suggested that the Constitution would not be offended by civil commitment procedures for purposes of treating this illness. The Court thereby invited a new layer of legislation to be superimposed upon the old.

The old "lunacy and inebriety" laws had sometimes classified drug "addicts" with the mentally ill; and the new laws redefined mental illness to include addiction or established separate provisions for these persons under existing mental health and sobriety laws. Characteristically, the laws applied only to "narcotic addicts," and like their predecessors, permitted compulsory treatment through either involuntary civil commitment or emergency detention proceedings. However, in an important departure from the old laws, which had generally required a finding of "dangerousness" to sustain a mental illness commitment, the newest civil commitment laws required only a finding of addiction.

The laws of California (1961) and New York (1962 & 1966), provided the models for most of the other states' laws during the 1960's. Their emphasis was on removal from the community and long-term residential treatment. Segregation and confinement was at once a treatment method and an objective, a point reflected in the preamble to the California legislation which emphasizes that persons who either are uncooperative or fail to respond to treatment may be detained anyway "for purpose of control."[7]

Another significant technique of control used by the 1960's legislation was diversion from the criminal process. Although some of the older addiction statutes permitted diversion, the courts rarely availed themselves of this procedure. Now, however, diversion has become a full-fledged movement, at least in the criminal codes if not in practice. This trend is part of a much broader uneasiness with the criminal sanction as a means of dealing with drug users. As applied to drug-dependent persons, its popularity reflects disenchantment with the high cost and low success rate of long-term residential confinement, and parallels the reappearance of ambulatory modalities and current emphasis on community-based treatment.

The underlying theory of the diversion approach is that the criminal justice system is an ideal mechanism for detection of drug-dependent persons and for "persuading" them to enter and participate satisfactorily in a treatment program. The technique borrows the persuasive and coercive powers of the penal laws to encourage persons charged with or convicted of drug or drug-related offenses to see assistance. The typical diversion statute allows the prosecutor or court to strike a bargain with the defendant. At one stage or another of his case, it provides him with the option to seek treatment or to continue with the criminal proceedings. In some instances the opportunity to exercise this option is given prior to trial; in others it is deferred until after conviction. The actual difference in outcome between a treatment disposition and an ordinary sentence depends on the nature and availability of treatment facilities in the jurisdiction.

Civil commitment and diversion are the alternative procedures for providing treatment within a framework of formal control. However, recent legislation in some states has revived the informal approach which had lain dormant since the 1920's—permitting drug-dependent persons to enter treatment on a voluntary basis. Typically, such statutes provide a mechanism for public funding of private treatment services and protect the confidentiality of the treatment process.

In a related development, some states have sought to deliver emergency treatment services to drug dependent persons without involving the formal legal process. Although police officers may have inherent authority to transport drug users *in extremis* to medical facilities in lieu of arrest or arraignment, some legislatures have formally recognized such discretion.[8]

The patterns of recent state legislation have been encouraged by recent Federal enactments. Public law 91–513, 84 U.S. Stat 1236 (1970) required community mental health centers receiving Federal funds to extend their services to "persons with drug abuse and drug dependence problems" In 1972, P.L. 92–255, 86 U.S. Stat 76, further conditioned Federal grants to state community mental health programs on the actual development of treatment facilities designed to provide voluntary and emergency care to drug abusers.

SUMMARY OF CURRENT LAWS

This compilation of treatment legislation focuses on drug-dependent persons, mirroring the class of persons to whom application of the legislation is generally restricted. For example, although prison treatment programs may offer care to all users in need of medical assistance, the dependent user is generally given preference. Likewise, treatment in lieu of prosecution is normally restricted to drug-dependent persons. Even temporary emergency treatment may not necessarily be afforded to an incapacitated user who is not also drug dependent. It should be noted, however, that voluntary outpatient programs are generally available to all drug users and are limited only by the capacity of existing facilities and staff.

Depending on the statutory scheme in the various states, particularly the eligibility requirements, and upon the scope of the operating treatment program in a given jurisdiction, a drug-dependent person may enter treatment in any of the following ways:

Civil routes

Voluntary

(1) Voluntary informal treatment at a private, local, or state operated facility on a walk-in, walk-out basis.

(2) Voluntary formal commitment for treatment which may involve a hearing and consent to an enlistment period of at least one month and frequently much longer.

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*Until the late 1960's, the customary statutory label for drug dependence was "addiction", and the class of persons covered by treatment provisions was the "Narcotics Addict". Recent legislation, reflecting a consensus within the scientific and medical communities, has abandoned the notion of addiction and its companion term "habituation" and substitutes the concepts of physical and psychological dependence. For purposes of clarity in this Interim Report, the Commission will employ the terms drug dependence and drug-dependent persons even if the statute under discussion used other terms. See, *e.g.*, Sec. 202.360 *Mo. Stat. Ann.* (1962, repealed 1971).

Footnotes at end of article.

Involuntary

(1) Involuntary commitment for treatment, initiated by a third person and generally involving pre-hearing detention and resulting in protracted and sometimes indeterminate confinement.

(2) Treatment as an adjunct to incompetency, guardianship or conservatorship proceedings.

Emergency

Emergency apprehension not constituting an arrest and transportation to treatment by either a public official or a private individual.

Criminal routes

Preconviction

(1) Pre-arrest informal police diversion for purposes of detoxification or withdrawal.

(2) Post-arrest diversion to detoxification.

(3) Treatment as a condition of pre-trial release.

(4) Emergency treatment while awaiting trial to remove incompetency to stand trial or as a humane measure.

(5) Treatment in lieu of prosecution.

Post Conviction

(1) Treatment as a condition of

(a) the deferred entrance of an adjudication of guilt or conditional discharge *

(b) a suspended sentence

(c) probation

(2) Commitment for treatment in lieu of other sentence.

(3) Treatment while serving a sentence within a correctional facility.

(4) Treatment as a sentence for persons driving under the influence, charged with narcotics vagrancy or other breaches of the peace.

(5) Treatment as a condition of parole.

(6) Treatment following administrative transfer from a penal institution for reasons of addiction.

Treatment for drug-dependent persons is authorized by the laws of 48 states. Only Kansas and Wyoming have no treatment legislation whatsoever. At this writing 12 states permit entry into treatment in all four basic ways: voluntary, involuntary, emergency and criminal.[9] However, nine [10] states provide only one method of entry: four have only voluntary provisions;[11] two have only involuntary commitment provisions;[12] and three offer treatment only to those persons detected through the criminal justice system.[13]

Involuntary. Thirty-four states permit the compulsory treatment of drug-dependent persons outside the criminal justice system,[14] and the procedures governing commitment and treatment vary significantly from state to state. This variation is not surprising in light of the ambiguity of constitutional doctrine regarding the non-criminal involuntary entry process. It should be noted, however, that an emerging constitutional jurisprudence regarding commitment of the mentally ill will have a direct bearing on judicial appraisal of commitment of drug-dependent persons.

Criminal. Within the criminal process of 38 states, treatment is expressly made available to some proportion of drug-dependent persons who are arrested for criminal offenses.[15] An additional nine states authorize conditional discharge of possession offenders upon terms and conditions which are not specified by statute but which may in fact include treatment.[16] Altogether 30 states have conditional discharge provisions; but in 11 of these states, release is specifically conditioned upon acceptance of treatment,[17] and in ten, additional paths to treatment are available.[18]

Aside from conditional discharges, which are generally limited to first offense possessors, the most common procedure is to offer treatment to convicted drug-dependent persons in lieu of a regular penal sentence. In a few states, persons charged with drug violations may be allowed to elect treatment instead of being prosecuted for the offense with which they had been charged.[19] These diversion procedures are generally available only to drug-dependent persons charged with or convicted of drug offenses however a few states extend them as well to persons who have committed "drug-related" offenses or other specified types of non-drug crimes.[20]

Voluntary. Forty-one states appear to offer drug-dependent persons some form of state-approved or state-operated voluntary treatment services.[21] All but six of these states have enacted specific statutory procedures regarding admission and treatment, although the specified admission and control procedures in nine of these states are the same as those for involuntary commitment except that the patient applies in his own behalf.[22] The six states without statutory procedures regulate the voluntary services by agency promulgation; in some of these states, the program is operated by the same state agency that issues the regulations, and in the others the state agency administers a program operated by licensed private entities.[23]

Emergency. Sixteen states permit apprehension of drug-dependent persons for purposes of emergency treatment by either private individuals or law enforcement personnel.[24]

DESCRIPTION OF THE COMMISSION'S COMPILATION

General scope

The attached compilation is composed of ten charts describing legislation in the 50 states and five territories pertaining to treatment and rehabilitation of drug-dependent persons. Although the Commission has drawn its information from a wide range of legislative provisions, it has not included the treatment components of competency, conservatorship and guardianship laws or of motor vehicle, disorderly conduct, public intoxication and branch-of-the-peace laws.

It should be emphasized that this compilation only describes a statutory framework; it reflects only what appears in legislature codes, not what may be occurring—or not occurring—in hospital wards or in the streets. For example, treatment may be available in those states without any specific legislation through private organizations operating on a voluntary admission basis.[25] States may have non-statutory programs which are operated with state approval at the local level; [26] and the statutory programs of many states with large urban populations are generally supplemented by private or community programs functioning under their own regulations.[27]

The Commission notes that the availability of legal mechanisms for compelling or persuading drug-dependent persons to receive treatment does not necessarily mean that such procedures are actually invoked. For example, the decision makers of the criminal justice system in some jurisdictions may choose systematically not to divert offenders outside that system even if diversion is authorized by statute and treatment services are available. Further, the involuntary civil commitment procedures are rarely used since formal detection of drug use and dependence almost always occurs within a criminal justice framework.

Content of individual charts

Chart I—Criminal Entry: Overview

This chart details the various stages of the criminal justice system during which a drug-dependent defendant may enter and receive treatment. The first three columns refer to treatment offered as an alternative to completing the criminal process. The last five columns refer to treatment received in addition or or simultaneous with the ordinary processing of a criminal case.

"Treatment in lieu of prosecution" refers to the following: (1) situations in which the defendant elects to abandon the criminal proceedings and a civil commitment proceeding is substituted, and (2) situations where a defendant is referred to treatment and prosecution is only resumed if he fails to respond or he commits a second drug violation.

"Conditional discharge" refers to provisions which enable discharged drug offenders (DD) to avoid adjudications of guilt in return for satisfactory fulfillment of the conditions of their release. Such discharges are frequently explicitly conditioned on the acceptance of treatment; if the statute permits such discharges upon unspecified terms and conditions, an asterisk (*) follows the symbol in the appropriate column. Although conditional discharges are really the formalization of prosecutorial discretion at the plea bargaining stage, they may be granted after a judicial determination of guilt as well as after a plea of guilty.

"Treatment while awaiting trial" refers to the situation in which a defendant with drug problems is treated automatically prior to trial with no impact on the charges against him; it also covers situations in which the defendant is automatically remanded after such treatment to the court which then has discretion either to terminate or to resume the criminal proceedings.

Chart II—Civil Entry: Overview

This chart indicates which states have legislative provisions specifically concerning drug-dependent persons permitting or authorizing:

(1) Voluntary treatment (in which the person desiring treatment applies in his own behalf);

(2) Involuntary treatment (in which long-term treatment is secured by an interested third party); and

(3) Emergency treatment (in which treatment is secured by a third party and is immediate and summary).

Where no specific provision for drug dependent persons exists, the chart reflects whether the state has a mental illness statute enabling the confinement and treatment of the mentally ill.

An asterisk (*) indicates those state statutes which establish treatment programs but do not specify admissions or release procedures.

Chart III—Criminal Entry: Specific Provisions

This chart compares specific provisions regarding the treatment and rehabilitation of persons charged with or convicted of criminal offenses. The "eligibility" column indicates whether all drug-dependent defendants or only drug law offenders qualify for treatment. The "voluntariness" column indicates whether the court or the defendant is the final arbiter as to whether treatment will be received. The "Substituted Proceedings" column refers to whether a formal proceeding must be held after termination of the criminal process in order to divert the defendant to treatment. The "Does Diversion to Treatment Constitute Dismissal of Criminal Charges" column refers to whether the criminal charge is dismissed if the defendant successfully completes his treatment, continues treatment, or does not successfully complete treatment.

Chart IV—Involuntary Commitment Provisions

This chart compares specific procedures for compelling the treatment of drug-dependent persons in an involuntary, "civil" proceeding.

The following abbreviations have been used to indicate the legal grounds for involuntary commitment. (The same abbreviations are employed in Chart V to describe criteria for admission to voluntary treatment programs.)

Medical–MI refers to a purely medical finding of mental illness. Very few states use

*Conditional discharges may also be awarded after a plea of guilty.

Footnotes at end of article.

mental illness alone as a basis for involuntary commitment, without an additional finding of "dangerousness' or some other aggravating circumstance. Oklahoma is one exception.[28]

Medical–MI (includes Ad or DDP) refers to those provisions which classify drug dependence or addiction as a form of mental illness.[29] For example, Ohio defines a mentally ill person as "an individual having an illness which substantially impairs the capacity of the person to use self-control, judgment, and discretion in the conduct of his affairs and social relations, and includes . . . cases in which such lessening of capacity or control is caused by such addiction to alcohol or by such use of a drug of abuse that the individual is in danger of becoming a drug-dependent person so as to make it necessary for such person to be under treatment, care, supervising guidance or control."

Medical-[Ad or DDP] [30] refers to a purely medical finding or addiction or drug dependence.

Medical-Ad & Public Safety and/or Loss of Control refers to those provisions which go beyond a purely medical definition of "addiction" or "dependence" and describes the class of persons in terms of general public harm. For example, for purposes of compulsory treatment, a narcotic addict has been defined as: "any person who without *bona fide* medical need thereof habitually uses any habit-forming narcotic drug as defined in a given act so as to endanger the public morals, health, safety or welfare, or who is so far addicted as to have lost the power of self-control.[31]

DDP refers to "drug-dependent person." Criminal statutes which provide a treatment option often refer to "drug dependence" rather than "addiction" in conformity with recent federal law. For example, Pennsylvania describes a drug-dependent person as: "A person who is using a drug, controlled substance or alcohol and who is in a state of psychic or physical dependence, or both, arising from administration of that drug, controlled substance or alcohol on a continuing basis. Such dependency is characterized by behavioral and other responses which include a strong compulsion to take the drug, controlled substance or alcohol on a continuing basis in order to experience its psychic effects or to avoid the discomfort of its absence. This definition shall include those persons commonly known as 'drug addicts'." [32]

Incapacity, refers to the inability to make responsible decisions especially in regard to the need for treatment.[33]

Dangerousness refers to provisions tying control to the likelihood that a person will cause injury to himself or to others regardless of cause.[34]

Medical—[MI or Ad]+Dangerousness refers to those provisions which require a finding that a proposed patient, because of addiction or a mental health deficiency, is likely to injure himself or others if he is allowed to remain at liberty.[35]

Where none of these standards is in effect the chart spells out the standard actually used.

The "Nature of Commitment Proceeding" column in this chart contains five sections. The first indicates whether the proceeding is a judicial one. The remaining four sections describe the procedural safeguards provided: whether a proposed patient has a right to a jury; whether he has a right to counsel, including paid counsel if he is an indigent; whether he has a right to present and cross examine witnesses (and in some cases subpoena witnesses); and whether the patient himself and/or his representative (e.g., relative) have a right to notice of the pending commitment proceeding.

Chart V—Voluntary Treatment: Entry provisions

This chart summarizes the voluntary treatment procedures found in the 50 states and five jurisdictions. It also indicates which states have delineated their voluntary procedures by statute and which states have delegated rulemaking authority to a designated state agency.

Chart VI—Voluntary Treatment: Release Provisions

Chart VI compares the release provisions of statutes authorizing treatment facilities to accept voluntary patients.

Chart VII—Emergency Care Provisions

Chart VII surveys the situations in which private individuals or law enforcement officials have the authority under civil law to apprehend and detain drug users without formal judicial process.

Similar emergency provisions are sometimes also found in the penal laws of the states. Criminal detoxification provisions may allow police officers to secure immediate care for drug offenders. Where police diversion constitutes either a "stop" or an "arrest" it has been included in the criminal charts (Charts I and III). Where police diversion has no criminal function it has been classed among the emergency care provisions.

Chart VIII—Treatment Facilities Made Available by Statute

Chart VIII describes the types of treatment facilities available to drug-dependent persons who are either committed under civil law or diverted under criminal law. The chart also indicates the extent to which persons who have been referred to treatment may be detained in a correctional facility.

Chart IX—Agencies Established by Statute to License, Regulate, Evaluate or Disseminate Information on Drug Treatment Programs And/Or Facilities

Chart IX lists the state agency which has the principal statutory responsibility for the state drug rehabilitation program. This chart does not include agencies set up by Executive Order, nor does it necessarily include the state drug abuse program coordinator, unless the coordinator operates his state's rehabilitation program.

Chart X—Table of Citations

Chart X cites for each state the sections of the state law in which the voluntary, involuntary, emergency and criminal provisions are found. Citations to Acts or to State Session Laws in the individual charts have been converted to citations to the appropriate codes or state legislative reference wherever possible.

FOOTNOTES

[1] 45 Stat. 1085, as amended 21 USC Secs. 221, 222, 223–237.

[2] Lindman, F. and McIntire, D. The Mentally Disabled and the Law (1961), note 23, 82–86. See *e.g.,* Washington quarantine law of 1959 based on 1935 law. Ch. 69 *Wash. Rev. Code* (1971).

[3] See *e.g.,* 18.1131 *Mich. Stat. Ann.* (1970) enacted 1954 based on 1930 law.

[4] See *e.g.,* 18–1131 *Mich. Stat. Ann.* (1971 Rev.); 475–655 *Ore. Rev. Stat.* (1969).

[5] For example Sec. 35–1 *N.C. Gen. Stat.* (1964) provided that: "Any person who habitually, whether continuously or periodically, indulges in the use of intoxicating liquors, narcotics, or drugs to such an extent as to stupify his mind and to render him incompetent to transact ordinary business with safety to his estate, or who renders himself by reason of the use of intoxicating liquors, narcotics, or drugs, dangerous to person or property, or who by frequent use of liquor, narcotics or drugs, renders himself cruel and intolerable to his family, or fails from such cause to provide his family with the reasonable necessities of life, shall be deemed an inebriate: Provided, the habit of so indulging in such use is at the time of inquisition of at least one year's standing." Following a jury trial the ward could be referred for an indeterminate period of treatment. See also, Sec. 435 *Miss. Code Ann.* (1956).

[6] *Robinson v. California,* 370 U.S. 660 (1962).

[7] Sec. 3100 *et seq.* Welfare and Institutions, *Deering's Ca. Code* (1969); see also Washington.

[8] 11 Sec. 615 *Del. Code Ann.* (1971 Supp.).

[9] Arkansas, California, Connecticut, Georgia, Hawaii, Minnesota, Missouri, North Dakota, Ohio, Oregon, Pennsylvania, and Vermont.

[10] Alabama, Alaska, Colorado, Idaho, Kentucky, Nevada, New Mexico, South Dakota, and Utah.

[11] Alabama, New Mexico, Idaho, and Utah.

[12] Nevada and South Dakota.

[13] Alaska, Colorado and Kentucky.

[14] Arkansas, California, Connecticut, Georgia, Hawaii, Illinois, Indiana, Iowa, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia, and Wisconsin.

[15] Alaska, Arkansas, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, Washington, and Wisconsin.

[16] Idaho, Louisiana, Nevada, New Mexico, North Dakota, South Dakota, Utah, West Virginia, and Wyoming.

[17] Arkansas, Colorado, Georgia, Illinois, Kentucky, Maryland, Massachusetts, Missouri, New Jersey, Oklahoma, and South Carolina.

[18] Delaware, Hawaii, Iowa, Mississippi, Michigan, Minnesota, North Carolina, Pennsylvania, Virginia, and Wisconsin.

[19] Colorado, Connecticut, Illinois, Indiana, Iowa, Massachusetts, New Hampshire, New Jersey, New York, and Pennsylvania.

[20] California, Connecticut, Georgia, Illinois, Indiana, Maryland, Massachusetts, Minnesota, New Hampshire, New York, Ohio, Pennsylvania, and Rhode Island.

[21] Alabama, Arkansas, Arizona, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, and Wisconsin.

[22] Arkansas, California, Georgia, Hawaii, Illinois, Maryland, New York, Rhode Island, and Tennessee.

[23] Alaska, Arizona, Colorado, Kentucky, New Hampshire, Oklahoma. Of these, Arizona has authorized the establishment of state programs for voluntary care of DDPs, administered at the local level, but has not as yet determined statutory admission procedures. New Mexico also has a voluntary program, but it operates pursuant to regulation rather than statute.

[24] Arkansas, California, Connecticut, Delaware, Georgia, Hawaii, Maine, Massachusetts, Minnesota, Missouri, North Dakota, Ohio, Oregon, Pennsylvania, Utah, and West Virginia.

[25] See *e.g.,* Arizona, CODAC (Community Organization for Drug Abuse Control), New Mexico.

[26] Kansas.

[27] See *e.g.,* California, Synanon, County Short-Doyle programs.

[28] 43A3 *Okla. Stat. Ann.* (1971 Supp.); see also, *e.g.,* Mentally ill individual. An individual having a psychiatrist or other dis-

ease which substantially impairs his mental health. T. XLVII, Ch. 3, Sec. 49200 *Guam Govt. Code.*

[29] Sec. 5122 *Ohio Rev. Code Ann.* (1971).

[30] See, *e.g.*, "A person who is addicted to the use of narcotics or by reason of the repeated use of narcotics is in imminent danger of becoming addicted thereto." Secs. 3100–3111, California Welfare and Institutions Code (1969).

[31] See *e.g.*, Ch. 4, Mental Health Recodification Act 433, Sec. 2, *Arkansas Laws* (1971). Additional language adds little to the mere medical addiction standard. *Public Safety,* or words to the effect that certain acts must be harmful to the public health, welfare and morals of the community to be susceptible to state regulation is a basic police power provision. It does not set forth any issues in addition to addiction to be resolved at trial. In deciding to require treatment of addicts, the state has already decided that addiction is contrary to the public welfare. Likewise, *Loss of Control,* meaning loss of control in reference to addiction does little to contract the notion of addiction. Addiction by its terms is a loss of control. In most cases this standard therefore is offered only as a definition of addiction.

[32] Pennsylvania, HB #850 Sec. 3 (1972).

[33] See *e.g.*, Proposed patient who "lacks sufficient understanding or capacity to make responsible decisions with respect to his need for care and treatment" or "refuses to seek care or treatment." Sec. 59–2902, *Kan. Stat. Ann.* (1964).

[34] "Any person who, by reason of the commission of overt acts, is believed to be suddenly violent and dangerous to himself or others may be detained. . . ." Sec. 122–59 *N.C. Gen. Stat.* (1971 Supp.).

[35] 36–501 *Ariz. Rev. Stat.* (1956 & 1971 Supp.).

Glossary of Abbreviations

A—Administrative Procedure.
Ad—Addict.
A.G.—Attorney General.
Ch—Chapter.
D—Defendant.
DDD—Drug Dependent Defendant.
DDP—Drug Dependent Person.
Dept.—Department.
IP—Inpatient.
J—Judicial.
MI—Mental Illness.
N.A.—Not Applicable.
NLT—Not less than.
NMT—Not more than.
OP—Outpatient.
P—Patient.
PP—Proposed Patient.

RESOLUTION TO MAKE COMMITTEE ASSIGNMENTS TO THE SELECT COMMITTEE ON SMALL BUSINESS

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

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

The assistant legislative clerk read as follows:

S. RES. 17

Resolved, that the following Senators have membership on the Select Committee on Small Business for the 93d Congress:

Senator Jacob Javits,
Senator Peter Dominick,
Senator Robert Dole.
Senator Edward J. Gurney,
Senator J. Glenn Beall, Jr.,
Senator James L. Buckely,
Senator William L. Scott.

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

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

Mr. GRIFFIN. Mr. President, for the purpose of the RECORD, let me explain that when the distinguished Republican leader was here a few moments ago, I am sure he was under the impression that that resolution was adopted along with the other resolution appointing Republican members to standing committees, but it was not adopted. So this is merely carrying out what was his intention.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the resolution. [Putting the question.]

The resolution was agreed to.

ORDER OF RECOGNITION OF SENATOR McCLELLAN TODAY

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at the conclusion of Senate business today, the distinguished Senator from Arkansas (Mr. MCCLELLAN) be recognized for not to exceed 45 minutes, during which time he and Senator HRUSKA and Senator ERVIN will participate in a colloquy; and that at the conclusion of such period there be a resumption of routine morning business for not to exceed 15 minutes, with statements therein limited to 3 minutes.

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

IMPOUNDMENT AND SPENDING

Mr. HUMPHREY. Mr. President, in a recent letter to me, Office of Management and Budget Director Caspar Weinberger has denied that by impounding funds the administration is planning to ignore the intent of Congress as expressed in appropriations acts.

Mr. Weinberger apparently believes that the Humphrey amendment on impoundment—passed in October of 1972—implicitly gives the executive branch authority to impound money. Nothing could be further from the truth. And, nothing is further from the legislative intent and history of the amendment.

The Humphrey amendment is an informational amendment. For example, when the amendment was first introduced on September 29, 1971. I stated:

This legislation is not primarily directed to the issue of whether or not the President has the constitutional right to impound funds.

Instead, the impoundment amendment directed itself toward a secondary issue—"whether the President should be permitted not to spend funds appropriated by the Congress without the full and timely disclosure to the Congress and the public."

While my opposition to impoundment is clearly on record, neither of these statements makes a judgment on the propriety of impoundment. Certainly, neither gives any basis for the executive branch's assumption that the withholding of congressional appropriated funds is legitimate. The thrust is clearly informational—the public's right to know of a practice by the executive branch. No finding of fact or of law was made as the legality of impoundment in the legislative history of my amendment.

Again, on November 13, 1971, I stated my conviction that what Congress was asking in this amendment—without a finding of fact as to the legality of the practice—was merely the right to be informed of impoundment—to correct the serious imbalance of information between the executive and legislative branches.

Moreover, contrary to OMB's ridiculous assertions, I offered the opinion that "as to impounded funds, I think that from a budgetary point of view, the appropriated funds ought to be spent for the purposes for which they are appropriated. It was the direction of Congress that that be done." Furthermore, I stated that administration refusal to offer support for the information impoundment amendment seemed to be because "the President is able to impound billions of dollars in a semisecret fashion away from the eyes of Congress and the public."

On September 7, 1972, I noted further that "appropriated funds are now impounded in a semisecret fashion away from the eyes of the Congress and the American public. Few Members of Congress are aware that these impoundments are being carried out and the public has a right to know that its tax revenues are not being spent." On that date, I once more offered the impoundment amendment with the stated legislative history—again without finding of fact or law as to the constitutionality of the impoundment—that the amendment would "redress a serious imbalance between the two branches by making it more difficult for a President to impound funds or in fact to impose a type of line-item veto on congressional appropriations."

Finally, on October 13, during debate on the spending ceiling, and on the same day that my "impoundment amendment" was adopted by the Senate, I said that—

Already Presidents—not only this President, but others—have exercised the power of impounded funds appropriated by Congress. I do not think it is Constitutional. I have protested it and will continue to protest the impoundment of duly appropriated funds by the Congress of the United States.

THE "RESERVING" OF APPROPRIATED FUNDS

Mr. President, there is a second part of Mr. Weinberger's letter I consider both innacurate and of dubious merit—the notion that the administration is not violating the will and intent of Congress by selectively reserving funds. The fact is, Mr. President, that there is little basis in law or legislative history of law, for the present impoundment practice. Neither the Anti-Deficiency Acts of 1905 and 1906 or the 1950 Omnibus Appropriation Act—in either legislative language or history—provides the authority for the impoundment practices of the Nixon administration.

The Nixon administration has not impounded funds to effect savings, as those acts delineate savings. Impoundments are being made deliberately to thwart the authorization and appropriations priorities set by Congress in law.

I also do not find much accuracy in the often voiced administration claim that they have the right to impound

because the effects savings clause of the 1950 appropriations act also contains language that might be broadly interpreted to include inflationary pressures as a reason for executive funding reservations. As I said at the time of the debate on the spending ceiling, there are many ways to reduce inflation, and Government spending is just one of these ways. The other methods are not the priorities of the present administration.

INFLATION

Mr. Weinberger attempts to justify by restating the President's dubious commitment to "protect all the people from renewed inflation." I find this statement incredible. And, I find that Mr. Weinberger and the other administration economic experts simply do not know their statistics.

From 1964 to 1968, the wholesale price index rose 8.2 percent. In approximately 4 years of the Nixon administration, this index has risen about 17.3 percent, or more than double that of the Johnson administration. Wholesale industrial commodities prices rose 7.7 percent in the Democratic administration from 1964 to 1968. During the Nixon administration industrial commodity prices have risen 15.8 percent—again, more than double.

Under price controls, the figures are even more startling. In the period since phase II started in mid-November 1971, wholesale prices of all commodities have risen about 5.7 percent and industrial commodities have increased approximately 4 percent. In the last full year of the Democratic administration, all wholesale prices rose 3.2 percent with industrial commodities increasing 2.8 percent.

The fact is that the Nixon economic record has already cost this country about $175 billion in lost production, millions of man-years of forced unemployment, and some $50 billion of shrinkage in expected Federal, State, and local revenues.

PUBLIC OPINION AND SPENDING

Finally, on the entire question of impoundments, spending, and Federal taxing policy, the perception and beliefs of the American people seem to reflect a mixed approach—neither giving the President the carte blanche backing he seeks to cut spending or mandating excessive increases. On the specific question of whether or not Americans want to increase spending in various Federal Government expenditure areas, the people expressed a preference for increased spending to curb air and water pollution, Federal aid to education, and help for the poor. These areas are essentially the areas in which the Nixon administration has impounded the greatest number of funds and promised the severest budget cuts.

Furthermore, the Harris poll—from which these figures are taken—indicates that the public opposes increased spending to help State and local governments, to improve highways, for research and development for defense, for subsidies for farmers, and for people on welfare.

On the other hand, when the broad evaluative question is asked about spending cuts versus increased social spending, according to a recent Gallup poll, the public supports spending cuts by a figure of 59 to 39 percent.

The only conclusion that can logically be drawn from these seemingly conflicting polls is that neither the President nor the Congress has the backing of the people for one unilateral course of action.

In my judgment, the public opinion polls indicate that the American public wants its elected officials to work out spending and taxing problems on a partnership, not a conflictual basis.

Mr. President, I request unanimous consent that a copy of my letter to the Director of the Office of Management and Budget, a letter from the Director of the Office of Management and Budget to me, the Harris survey of January 8, 1973, and the Gallup poll of January 7, 1973, be printed in the RECORD. These polls show that the efforts the President is making do not have complete public support, and I hope Members of Congress will take cognizance of these expressions of public opinion.

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

OCTOBER 20, 1972.

The PRESIDENT,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: I am concerned to learn through Secretary of Treasury George P. Shultz's report to the press of your plans to ignore the intent of Congress and selectively impound Congressionally appropriated funds.

By its votes of the past week on the spending ceiling, the Congress indicated its firm resolve to preserve its prerogatives and authority over Federal spending and deny the Executive Branch an unconstiutional item veto over appropriations. If you proceed as Secretary Shultz indicates, your actions will be a direct violation of the will of the Congress and Constitutional intent. Let me also suggest that major impoundments imperil chances for economic recovery and further risk increasing an already unacceptable level of unemployment in this nation.

Your advisors seem to believe that one of the effects of the Congressional impoundment amendment to the debt ceiling bill is to legitimize the unconstitutional practice of impoundment. Nothing could be further from the truth.

A careful examination of the amendment's legislative history and my remarks on the Senate floor, as well as those of the Senate's leading Constitutional expert, Senator Sam J. Ervin, leaves little doubt as to the amendment's intent. And its reporting provisions, which require the President to supply the Congress with the amount of impoundment, the date of impoundment, the expected length of impoundment, the reasons for the impoundment action, the affected government departments, as well as the economic impact of the impoundment, in no way imply a grant of authority or a delegation of power to impound. To the contrary, the Congress passed this amendment in order to discourage Presidential impoundment of funds and to require Executive accountability.

I recognize that past Presidents have impounded funds. This, however, does not add to the legality of such action. Presidential impoundments are but a continuing extension of Executive encroachment upon the Constitutional authority of the Congress in matters of appropriation. Your proposed expansion of impoundment threatens the Constitutionally mandated relationship between the Execuitve and Legislative branches of government.

Even though Congress has adjourned, I can assure you that Presidential impoundments in such vitally needed areas as health care, job training, public assistance and child feeding programs will not go unnoticed by the public, nor by a newly reconvened 93rd Congress.

I respectfully urge you to accept the will of Congress and to comply with both the spirit and letter of the Constitution.

Respectfully yours,

HUBERT H. HUMPHREY.

OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., November 30, 1972.

Hon. HUBERT HUMPHREY,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HUMPHREY: This is in further response to your letter of October 20, 1972, to the President about the effect of recent legislative developments on the authority to apportion and reserve funds. You express concern that the President plans "to ignore the intent of Congress" by selectively impounding funds. Let me assure you that the President has no intention of ignoring the will of Congress. On the contrary, he has every intention of carrying out the intent of Congress as it appears from its enactments and the debates concerning them. In particular, he hopes to hold Government spending to the $250 billion range in FY 1973, in accordance with bills passed by both Houses and consistent with the enacted debt limit bill, and this Office will be reporting on all "impoundments," including those which have been made to achieve this goal, as required by the amendment to the bill which you sponsored.

As with all actions of the Congress, my staff and I have carefully studied the bills and decisions of the last months of the 92nd Congress. In doing so, I find a number of points that are at variance with the opinions expressed in your letter. For example, you state that the Congress passed the amendment requiring the reporting of impoundments "in order to discourage the Presidential impoundment of funds." Yet in introducing this requirement as an amendment to the General Revenue Sharing bill, you indicated that Congress simply needed a routine submission of information. You referred to it as "a little old report. That is all. Just a little report." Furthermore, you specifically stated that you were not challenging the President's authority as he chooses to exercise it:

"It does not try to compel the President and it does not try to take over his prerogative as he sees it."

We believed that the legislative requirement for such continuing reports was unnecessary and undesirable, particularly because we had developed and transmitted to the Congress detailed listings of budgetary reserves three times during the latter part of the fiscal year 1972. We provided more information on this subject more frequently than had ever been provided by any other Administration. Nonetheless, it is our intention, of course, to cooperate with the Congress as the new law requires, even as we did when there was no legal requirement.

Your letter also charges that the Administration is planning to ignore and violate the will and intent of Congress by selectively reserving funds. There were many individual opinions about reserving or "impounding" funds expressed by Members of Congress during the recent debates. They both supported and challenged the manner in which the various Chief Executives have executed their responsibilities. However, the Congress as a whole did not express its will clearly on either side of this argument.

On the other hand, in its consideration of the debt limit bill, the Congress did clearly

express its will and intent when both Houses approved a spending limitation for fiscal 1973 of $250 billion. We recognize that the Houses differed on the mechanism for achieving the $250 billion spending level, but the need for holding spending to that amount was recognized by a majority of each House. You, yourself, seemed to recognize this point when you said on October 16, 1972:

"I feel that the amendment [the Jordan amendment] did two things the Congress would want to do; No. 1, establish a spending ceiling. People are worried about government spending."

As you noted in your remark, both the Congress and the people desire spending for fiscal year 1973 to be held below the total that would flow from all the individual acts making funds available for obligation and expenditure. In fact, the debt limit of $465 billion through June 30, 1973, was proposed and enacted because it was consistent with $250 billion of outlays in 1973. On the basis of present law, therefore, the Government is not authorized to borrow the funds needed this fiscal year to fulfill the spending requirements under all enacted appropriations.

The President intends to use the tools he has, consistent with his constitutional and legislated responsibilities, to keep within the legal limitation on the public debt. Your amendment anticipates that you will receive reports of his withholding actions in this connection, and you will.

Both in your letter and in your comments on the floor of the Senate, you expressed concern over the amounts to be spent in certain "vitally needed areas." Yet the amount spent is not a measure of the effectiveness of a program, or the achievement of a desired result. Further, no program can be justified on the basis of its benefit to a particular State, group, or individual if it must be paid for by inflation. When excessive Government spending causes inflation, no Government program, no matter how worthy, is spared from its effects. Grants, cash transfer payments, and payments for direct services will all buy less and provide less.

The President stated last January and again in July that a spending limitation was needed to control inflation. Both of these statements occurred well before the "political season" for which you charged on the floor of the Senate he had waited. The President's commitment to protect all the people from renewed inflation is firm and well known. In fulfilling this commitment he will be discharging the will of the majority of the Congress as well as the majority of the people.

Sincerely,

CASPAR W. WEINBERGER,
Director.

THE HARRIS SURVEY: MORE DOMESTIC SPENDING IS BACKED

(By Louis Harris)

Despite President Nixon's pledge to put a lid on government spending during his second term, majorities of Americans believe federal outlays should be further increased for programs to curb air and water pollution, aid education and help the poor. Voters favor spending cutbacks, at the same time, on such things as highway construction, farm subsidies and welfare payments.

The public is becoming increasingly selective about its spending priorities in light of the conviction shared by 74 per cent in the nation that federal spending is the single greatest cause of continuing inflation. While the public might want federal spending held in check generally, however, broad, popular constituencies remain in support of specific programs slated to come before the 93d Congress.

Mr. Nixon himself has indicated that a major source of his problem in keeping spending in check has been a lack of cooperation from Congress, which, of course, will once again be under Democratic control for the next two years. For its part, the Congress has criticized the President and the Executive Branch for encroachment on its fiscal prerogatives. In the contest between the President and Congress over the former's veto and embargo of expenditures to control water pollution, the public backs Congress, 48 to 27 per cent.

A majority opposes any increase in federal spending for research and development of the nation's defense system by 55 to 34 per cent.

The public expressed the view that Congress was right last fall when it overrode a veto of the water pollution control bill by President Nixon and that Mr. Nixon was wrong in holding up part of those appropriations.

Emerging loud and clear from results of this survey is that while the public might want federal spending held in line generally, the heart of the problem is not so much spending as such but rather the priority of values governing where spending is to be trimmed or increased.

Between Dec. 17 and 21, a nationwide cross section of 1,501 households was asked:

If you had to choose, would you rather see increased spending (read list) or no further increase in this area by the federal government?

[In percent]

	Increase spending	Oppose increase	Not sure
To curb air and water pollution	66	27	7
On Federal aid to education	66	27	7
On helping the poor	62	31	7
To help State and local governments	41	51	7
To improve highways	37	50	8
For research and development for defense	34	55	11
For subsidies for farmers	22	69	9
For people on welfare	22	69	9

These results are highly revealing, for they indicate that the public draws a line between some of the sacred cows of congressional appropriations committees of the past—such as highways, defense and agriculture—and programs oriented toward the quality of the environment or social improvements.

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THE GALLUP POLL: MAJORITY BACKS PRESIDENT ON SPENDING CUTS

(By George Gallup)

PRINCETON, N.J.—Except for the issue of Vietnam, President Nixon faces his biggest battle with the Democratically controlled 93d Congress over the issue of federal spending on the domestic front.

A majority of U.S. citizens, however, side with President Nixon, at least at this early stage of the debate on spending. They vote 54 to 39 per cent in favor of holding down spending and taxes rather than increasing funds for social programs for lower income groups, the elderly, schools and the like.

Last July President Nixon asked for authority to trim federal spending to meet a $250 billion ceiling on fiscal 1973 spending. Without such power, Mr. Nixon warned that Congress would be to blame for a 1973 tax increase.

President Nixon's request was defeated in 1972 on the grounds that it would give away Congress' constitutional power of the purse and permit an item veto.

One of the most significant findings from the current survey is that President Nixon receives substantial support on holding down federal spending and taxes from so-called "middle America," a major segment of society comprising persons in middle-income brackets who supported Mr. Nixon solidly in the election Nov. 7.

A total of 1,445 adults, 18 and older, were interviewed in person in the survey conducted in more than 300 scientifically

selected localities across the nation during the period Dec. 8–11. The following question was asked of each person in the survey.

During the coming months, President Nixon says he will try to hold down government spending and taxes. Many congressmen, on the other hand, say Congress should pass social programs that would give more money to the poor, the aged and to schools and the like. Which position do you agree with more—holding down spending and taxes or spending more money for social programs?

[In percent]

	Holding down spending and taxes	More money programs	Undecided
National	54	39	7
Income:			
$15,000 and over	58	39	3
$10,000 to $9,999	59	35	6
$7,000 to $9,999	55	34	11
$5,000 to $6,999	49	41	10
$5,000 to $4,999	49	41	10
Under $3,000	44	49	7
Manual labor	54	39	7
Professions and business	56	36	8
Clerical and sales	47	47	6
Farmers	68	24	8
19 to 29 years	48	47	5
30 to 49 years	58	36	6
50 and older	55	35	10
College background	53	43	4
High school	56	36	8
Grade school	49	41	10

ORDER FOR RECOGNITION OF SENATOR RANDOLPH ON TUESDAY, JANUARY 16, 1973, AND FOR RESUMPTION OF PERIOD FOR THE TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on Tuesday next at the close of Senate business, and prior to adjournment of the Senate, the distinguished Senator from West Virginia (Mr. RANDOLPH) be recognized for not to exceed 1 hour, at the conclusion of which there be a resumption of morning business for a period of not to exceed 15 minutes, with statements limited therein to 3 minutes.

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

SENATE PROCEDURES

Mr. ROBERT C. BYRD. Mr. President, on Wednesday morning of this week—January 10, 1973—the majority and minority whips hosted a breakfast for new Senators, as they did for new Senators at the beginning of the 92d Congress in 1971.

At this week's breakfast, Senator GRIFFIN and I attempted to familiarize our new Members with some of the procedures, practices, regulations, and rules governing the everyday business of the Senate.

The procedures to which we alluded are not new, but were followed throughout the 92d Congress, and all Senators were most cooperative in their implementation. A memorandum has been prepared with reference to the items discussed at the breakfast, and, in view of the fact that it serves as a restatement of the regulations and practices followed during the 92d Congress, the distinguished assistant Republican leader and I believe it may be well for the staffs of all Senators to have an opportunity to review it.

Frequently, I have found that a staff member who is responsible for keeping his Senator informed with respect to the date and time scheduled for a floor speech, and so forth, is not himself properly familiar with the procedures that are being followed. As a consequence, the date and time scheduled for a floor when time under the order, which has been entered on his behalf, begins running. There are other instances in which a Senator's staff member will call to ask that his Senator be scheduled for a speech, for example, at 1 o'clock or 2 o'clock in the afternoon—which is ordinarily not practicable, as a reading of the memorandum will show—or that his Senator wishes to make a 20- or 30-minute speech prior to morning business—the maximum limit being 15 minutes—also, requests have frequently been received from staff members following adjournment of the Senate at the close of the day, requesting that their Senators be scheduled for a 15-minute speech the next morning—such orders have to be entered while the Senate is in session and prior to the date of execution.

Therefore, with the concurrence of my distinguished colleague and friend, the assistant Republican leader (Mr. GRIFFIN), I ask unanimous consent that the memorandum to which I have alluded be inserted in the RECORD at this point.

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

ITEMS DISCUSSED AT BREAKFAST HOSTED BY MAJORITY AND MINORITY WHIPS FOR NEW SENATORS, JANUARY 10, 1973

SENATE SPEECHES

1. During the first three hours after the unfinished business or pending business has first been laid before the Senate on any calendar day (except by unanimous consent to the contrary or on motion without debate) all debate shall be germane to the specific question then pending. Unless there is a unanimous consent agreement to the contrary, any Senator who obtains the Floor during such debate may speak at length and without limit as to time. After the aforementioned three hours have expired, any Senator may speak at length, without limit, and his speech need not be germane, although the leadership hopes the Senators will confine their remarks to the pending matter before the Senate until it is disposed of or until the close of business on that day.

2. Senators who wish to speak on any subject matter desired, and without respect to germaneness, have the following additional three options:

(a) At the very beginning of a day, and prior to morning business or other business, 15-minute speeches (also 5- and 10-minute speeches) are given if previously ordered. A Senator may secure such an order to speak on any matter for up to—but not to exceed—15 minutes, and it is recommended that such Senator or his staff contact his respective party Whip (or Whip's office) to arrange this. Such an order must be gotten on a day of Senate session prior to the date on which the order is to be executed. In other words, the order cannot be gotten on the day of intended use; it cannot be gotten on a day when the Senate is not in session; and it cannot be secured after the Senate has adjourned. The vacation of such orders once gotten, should be avoided if possible. It is also important that a Senator be on the Senate Floor promptly when the time for recognition under the order occurs; otherwise, the leadership will ask for a quorum, and the time consumed by the quorum will come out of the time ordered for the Senator. Moreover, a Senator must be on the Floor to personally control his time in the event he wishes to yield part of that time to another Senator who may wish to engage him in a colloquy. NOTE: At the expiration of the time under the order, Senators are urged not to ask for an extension of the time, as such a request will invariably be objected to.

(b) Colloquies. If two or more Senators wish to engage in a colloquy early in the day, which will require more than 15 minutes, both Senators (or three or four Senators—hopefully, no more than that) should submit a request for up to 15 minutes to be under the personal control of each, during which 15 minutes the individual Senator controlling such time may yield to another Senator. Such colloquy will occur—as do other special 15-minute orders—prior to morning business or other business.

(c) Three-minute speeches. Generally, there will be a period for the transaction of routine morning business daily. This period for the introduction of bills, resolutions, petitions, etc., will ensue immediately upon the conclusion of any 15-minute orders (as aforementioned). Usually, the period for routine morning business takes from 15 to 30 minutes, during which time any Senator can, without advance notice, take the Floor simply by getting recognition from the Chair (which is done by addressing the Chair: "Mr. President") and may proceed to speak for three minutes on any subject. Any unanimous consent to extend the time beyond three minutes will be objected to; however, upon the expiration of a Senator's three minutes, any other Senator, if recognized by the Chair, may yield his three minutes to the Senator speaking. (At the close of a Senator's three minutes, any remaining portion of his speech will be included in the Record as though it had been read.)

(d) Speeches and colloquies of unlimited duration may be conducted on any subject at the end of the day when the Senate has completed its business for the day and prior to adjournment. Senators who wish to make such speeches need not secure an order in advance, but it would be helpful to the leadership on both sides of the aisle to be informed during the day that such speeches or colloquies are going to occur. As indicated above, such a speech may be of any length, whether for five minutes, an hour, or more.

Note: The foregoing practices are not new, but were followed throughout the 92d Congress and contributed to orderly procedure. All Senators were most cooperative in their implementation.

3. Extraneous matter is inserted in the Record by unanimous consent.

4. The rules require that a Senator always address another Senator in the third person, to avoid ascerbity in debate—never addressing a colleague in the second person. Moreover, a Senator's question or remarks toward another Senator should be directed through the Chair; for example, "Mr. President, will the distinguished Senator from Nevada yield?" or "Mr. President, in response to the able Senator from Nevada, . . ."

5. A Senator, while occupying the Floor, should remain standing. Additionally, if a point of order is made, a Senator wishing to retain the Floor may yield to another Senator only for a question.

6. Senators are urged to use their microphones when speaking, so as to enable their colleagues, visitors in the galleries, and mem-

bers of the press to clearly hear and understand what is being said.

PROGRAM

1. Whip Notices from the offices of the Majority Whips are issued to members of their respective parties as often as is necessary to keep members informed as much as possible with respect to what the program is for the next day or as far in advance as can be predicted; also, to inform members if and when rollcall votes are expected to occur and on what questions.

2. The offices of the Majority and Minority Whips may be called by members or their staffs for information regarding the program; however, the respective Whip Notices will always be as fully comprehensive, as can be stated with assurance, with respect to the schedule. The two party cloakrooms can also be contacted for information as to what is occurring in the Senate.

3. The Majority Whip, at the close of each day when the Senate is in session, states the program for the next day of session. Senators and their staffs will find the statement of such program in the CONGRESSIONAL RECORD, Senate section, just prior to the motion to adjourn. Additionally, an overnight recording can be heard, following adjournment at the end of the day, by dialing extension 58541 (Democrats) and extension 58601 (Republicans).

4. Information concerning Chamber action, committee meetings, and the program can also be gotten from the Daily Digest, which is to be found in Section "D," at the very end of the daily CONGRESSIONAL RECORD.

5. A "hot line" goes to each office, with a phone call notifying members of impending rollcall votes and other urgent matters demanding immediate attention of Senators. This is an automatic contact of all Senators' offices simultaneously by the cloakroom.

QUORUMS

1. Two bells—and two signal lights on the clock—indicate the call for a quorum. A quorum call may be requested by any member securing recognition and at any time. Purposes for the calling of a quorum are sundry—to get other Senators to the Floor; to mark time while a matter is being privately discussed with another Senator or Senators; to alert other Senators who wish to speak that a speaking Senator has yielded the Floor, etc.

2. When the establishment of a quorum is desired, the Clerk will call the entire roll of Senators and the Chair will then announce, "A quorum is not present." At that point, the quorum becomes "live," three bells will ring (three signal lights on the clock), and no further business, except a motion to adjourn, is in order until a quorum of Senators has been established. Senators are urged to come to the Chamber quickly when a "live" quorum is in process.

VOTING

1. Votes occur by voice, by division, and by a call of the roll.

2. The maximum time allotted on a rollcall vote is 15 minutes after the bell sounds (a long, single bell—one light on the clock). A warning bell will sound (five rings—five lights on the clock) mid-way—i.e., the seven-and-a-half minute mark. Senate Rule XII prohibits any Senator from voting after the Chair has announced the decision (a Senator may, for sufficient reason, with unanimous consent, change or withdraw his vote after the Chair has announced the vote). CAVEAT: The 15-minute limitation on rollcall votes is sometimes reduced to ten minutes by unanimous consent, in which case Senators' offices are immediately notified via the "hot line."

3. Any Senator may request a rollcall vote on any question, and if the request is seconded by one-fifth of the Senators present, a rollcall vote will occur. Senators are urged to avoid requesting rollcall votes on matters of little consequence, matters where there is unanimity, etc. Again, however, even on such matters, a Senator has the right to request a rollcall. (With 531 rollcall votes occurring during the last session, it is obvious that a great deal of time was consumed, to say nothing of the time that was consumed on quorum calls.)

ORDER AND DECORUM

1. Senators, and especially the new ones, are asked to preside from time to time. Attention is called to paragraph 6 of Rule XIX, which states, in part, "it shall be the duty of the Chair to enforce order on his own intiative and without any point of order being made by a Senator."

2. Senators are asked to minimize the appearance of staff people on the Floor to the extent possible. A special gallery has been set aside for the use of staff people only, from which they can view the Senate and take notes. Senators are in full view of that gallery and can motion to a staff member to come to the Reception Room, the lobby, or the Floor.

3. Regulations provide for a Senator to have one staff member on the Floor to assist the Senator in handling an amendment or bill, delivering a speech, etc. A Senator may have an additional staff member at such times by asking unanimous consent for the staff member named. When a Senator is not engaged in delivering a speech, managing a bill or an amendment, one staff member is allowed under the regulation to come on the Floor for a brief time—say 15 minutes—to deliver messages, consult with his Senator or another Senator or committee staff person, etc.

A second member of a Senator's staff may visit the lobby (back of the Chair and just off the Senate Floor) for the purpose of taking dictation from the Senator or performing any other service desired by his Senator.

It is requested that a staff person not go on the Floor when his Senator is absent from the Floor except for only a few minutes—as indicated above—to deliver a message, etc. (Here again, the special gallery is available for monitoring procedures.)

4. Under the regulations, Floor privileges are allowed to four staff members of a committee having direct jurisdiction over the measure being debated at the time, these four members to be divided equally between the majority and the minority. While unanimous consent is not required for the presence of the four committee staff members, it is often desirable to secure such consent so as to designate by name the four committee people most wanted. Additional committee staff people can be accorded Floor privilege by unanimous consent, specifically named so as to assist the Sergeant at Arms.

5. Staff people accorded the privilege of the Floor under the foregoing regulations are urged to attend to their business with as little noise and disturbance as possible. Seats are provided in the rear corners of the Chamber for the comfort of such staff members whose attendance is required from time to time. Unnecessary conversation by staff people should be avoided; staff people should not walk in front of Senators who are speaking or go into the well or follow their Senators up and down the aisles; and the telephones in the lobby are for use of Senators only. Telephones for the use of staff are located just off the lobby and adjacent to the Senate Reception Room.

6. The leadership understands that any member is entitled to staff assistance on the Floor when such is needed. The foregoing is mentioned, knowing that all Senators and staffs will cooperate in the future as they did during the 92d Congress. Moreover, the leadership wants to be helpful to Senators and to staffs in any way possible in the fulfillment of their responsibilities and in accordance with the rules and regulations calculated to promote and preserve order and decorum.

7. Demonstrations of approval or disapproval are not permitted in the galleries, and, again, the Chair is urged to enforce order, whether in the galleries or in the Senate Floor, on his own initiative.

Note: The foregoing references to "order and decorum" constitute a restatement of the regulations and practices followed during the 92d Congress, and which contributed to improved order in the Senate.

Footnote: Telephone contacts for Majority and Minority Whip Offices are as follows:

Majority: Extension 52158; 52297 (after hours).

Minority: Extension 52708.

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at the conclusion of Senate business today, and just prior to the time entered under the previous order for a colloquy to be under the control of the distinguished Senator from Arkansas (Mr. MCCLELLAN), the distinguished Senator from Minnesota (Mr. HUMPHREY) be recognized for not to exceed 15 minutes.

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

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

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

REPORT ON SURPLUS, SALVAGE, AND SCRAP SALES

A letter from the Assistant Secretary of Defense, reporting, pursuant to law, on surplus, salvage and scrap sales and from the sale of lumber and timber products, for the fiscal year 1972; to the Committee on Appropriations.

REPORT ON CONSTRUCTION PROJECT PROPOSED FOR THE AIR FORCE RESERVE

A letter from the Deputy Assistant Secretary of Defense (Installations and Housing), reporting, pursuant to law, on a construction project proposed to be undertaken for the Air Force Reserve; to the Committee on Armed Services.

REPORT ON CONSTRUCTION PROJECTS FOR THE ARMY NATIONAL GUARD

A letter from the Deputy Assistant Secretary of Defense (Installations and Housing), reporting, pursuant to law, on thirteen additional construction projects proposed to be undertaken for the Army National Guard (with an accompanying paper); to the Committee on Armed Services.

REPORT ON DESIGN AND CONSTRUCTION SUPERVISION, INSPECTION, AND OVERHEAD COSTS FOR MILITARY CONSTRUCTION PROJECTS

A letter from the Deputy Assistant Secretary of Defense (Installations and Housing), transmitting, pursuant to law, a report on design and construction supervision, inspection, and overhead costs (SIOH) for military construction, fiscal year 1972 (with an accompanying paper); to the Committee on Armed Services.

PROPOSED LEGISLATION

A letter from the Assistant Secretary of the Air Force, Manpower and Reserve Affairs, transmitting a draft of proposed legislation to amend title 10, United States Code, to improve the opportunity of nurses and medical specialists for appointment and promotion in the Regular Army or Regular Air Force, and authorize their retention beyond

the mandatory retirement age (with an accompanying paper); to the Committee on Armed Services.

REPORT OF EXPORT-IMPORT BANK OF THE UNITED STATES

A letter from the Chairman, Export-Import Bank of the United States, transmitting, pursuant to law, a report of that Bank, for the quarter ended September 30, 1972 (with an accompanying report); to the Committee on Banking, Housing and Urban Affairs.

REPORT ON FINAL VALUATIONS OF PROPERTIES OF CERTAIN CARRIERS

A letter from the Chairman, Interstate Commerce Commission, transmitting, pursuant to law, a report on final valuations of properties of certain carriers (with accompanying papers); to the Committee on Commerce.

REPORT OF FEDERAL TRADE COMMISSION

A letter from the Chairman, Federal Trade Commission, transmitting, pursuant to law, a report of that Commission, for the fiscal year 1972 (with an accompanying report); to the Committee on Commerce.

REPORT OF THE RENEGOTIATION REPORT

A letter from the Chairman, The Renegotiation Board, transmitting, pursuant to law, a report of that Board, for the fiscal year ended June 30, 1972 (with an accompanying report); to the Committee on Finance.

REPORT ON EXTENT AND DISPOSITION OF U.S. CONTRIBUTIONS TO INTERNATIONAL ORGANIZATIONS

A letter from the Secretary of State, transmitting, pursuant to law, a report on the extent and disposition of United States contributions to international organizations, for the fiscal year 1971 (with an accompanying report); to the Committee on Foreign Relations.

LIST OF REPORTS OF GENERAL ACCOUNTING OFFICE

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a list of reports transmitted to the Congress, for the month of December, 1972 (with an accompanying report); to the Committee on Government Operations.

REPORTS OF COMPTROLLER GENERAL

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Audit of the Rural Telephone Bank, Department of Agriculture, for the Initial Period October 1, 1971, to June 30, 1972", dated January 8, 1973 (with an accompanying report); to the Committee on Government Operations.

A letter from the Comptroller General of the United States transmitting, pursuant to law, a report entitled "Opportunities to Improve Effectiveness and Reduce Costs of Rental Assistance Housing Program", Department of Housing and Urban Development, dated January 10, 1973 (with an accompanying report); to the Committee on Government Operations.

PROPOSED LEGISLATION BY THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

A letter from the Director, Administrative Office of the United States Courts, transmitting draft of two proposed bills (1) to authorize additional judgeships for the United States courts of appeals, and (2) to provide for the appointment of additional district judges, and for other purposes (with accompanying papers); to the Committee on the Judiciary.

A letter from the Director, Administrative Office of the United States Courts, transmitting a draft of proposed legislation to provide for the setting aside of convictions in certain cases and for other purposes (with an accompanying paper); to the Committee on the Judiciary.

A letter from the Director, Administrative Office of the United States Courts, transmitting a draft of proposed legislation to amend section 48 of the Bankruptcy Act (11 U.S.C. 76) to increase the maximum compensation allowable to receivers and trustees (with an accompanying paper); to the Committee on the Judiciary.

A letter from the Director, Administrative Office of the United States Courts, transmitting a draft of proposed legislation to amend section 40b of the Bankruptcy Act (11 U.S.C. 68 (b)) to remove the restriction on change of salary of full-time referees (with an accompanying paper); to the Committee on the Judiciary.

A letter from the Director, Administrative Office of the United States Courts, transmitting a draft of proposed legislation to amend the Bankruptcy Act to abolish the referees' salary and expense fund, to provide that fees and charges collected by the clerk of a court of bankruptcy in bankruptcy proceedings be paid in the general fund of the Treasury of the United States, to provide salaries and expenses of referees be paid from the general fund of the Treasury, and to eliminate the statutory criteria presently required to be considered by the Judicial Conference in fixing salaries of full-time referees (with an accompanying paper); to the Commttee on the Judiciary.

REPORT ON IDENTICAL BIDDING IN ADVERTISED PUBLIC PROCUREMENT

A letter from the Attorney General, transmitting, pursuant to Executive Order 10936, a report on identical bidding in advertised public procurement, for the calendar year 1971 (with an accompanying report); to the Committee on the Judiciary.

REPORT OF NATIONAL PARKS CENTENNIAL COMMISSION

A letter from the Chairman, National Parks Centennial Commission, transmitting, pursuant to law, a report of that Commission, for the year 1972 (with an accompanying report); to the Committee on the Judiciary.

REPORT OF NATIONAL COMMISSION ON MARIHUANA AND DRUG ABUSE

A letter from the Chairman, National Commission on Marihuana and Drug Abuse, transmitting, pursuant to law, a report of that Commission (with an accompanying report); to the Committee on the Judiciary.

REPORT OF THE FEDERAL METAL AND NONMETALLIC MINE SAFETY BOARD OF REVIEW

A letter from the Executive Secretary, Federal Metal and Nonmetallic Mine Safety Board of Review, transmitting, pursuant to law, a report of that Board, for the calendar year 1972 (with an accompanying report); to the Committee on Labor and Public Welfare.

REPORT ON URBAN AREA TRAFFIC OPERATIONS IMPROVEMENT PROGRAM

A letter from the Secretary of Transportation, transmitting, pursuant to law, a report on the Urban Area Traffic Operations Improvement (TOPICS) Program, from September 30, 1971, to the closeout date of August 31, 1972 (with an accompanying report); to the Committee on Public Works.

PETITIONS

Petitions were laid before the Senate and referred as indicated:

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

A joint resolution of the Legislature of the State of California; to the Committee on Agriculture and Forestry:

"ASSEMBLY JOINT RESOLUTION 37

"Relative to air pollution

"Resolved by the Assembly and the Senate of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the President and the Congress of the United States to make funds available for the continuation of research on the effects of air pollution on forest trees, which research is located on the campus of the University of California, Riverside, and conducted under the direction of the Pacific Southwest Forest and Range Experiment Station of the United States Forest Service; and be it further

"Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States."

A joint resolution of the Legislature of the State of California; to the Committee on Foreign Relations:

"ASSEMBLY JOINT RESOLUTION 32

"Relative to Genocide Convention of the United Nations

"Whereas, On December 9, 1948, the General Assembly of the United Nations unanimously approved the text of the Convention on the Prevention and Punishment of the Crime of Genocide; and

"Whereas, Seventy-five countries have now ratified the Genocide Convention; and

"Whereas, The United States is the most prominent member of the United Nations that has not ratified the convention; now, therefore, be it

"Resolved by the Assembly and the Senate of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the Senate of the United States to advise and consent to the ratification of the Genocide Convention; and be it further

"Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives and to each Senator and Representative from California in the Congress of the United States."

A joint resolution of the Legislature of the State of California; to the Committee on Interior and Insular Affairs:

"ASSEMBLY JOINT RESOLUTION 38

"Relative to through traffic at Yosemite National Park

"Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the President and the Congress of the United States to direct the National Park Service to develop a system whereby residents of the area adjacent to Yosemite National Park who, for business purposes, need to pass directly through Yosemite National Park over the extension of State Highway 120 to a destination outside of the park may be permitted to enter the park without payment of a fee; and be it further

"Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Director of the National Park Service, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States."

A joint resolution of the Legislature of the State of California; to the Committee on the Judiciary:

"ASSEMBLY JOINT RESOLUTION 43

"Relative to Veterans Day

"Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the President and the Congress of the United States to enact legislation restoring November 11th as Veterans Day, rather than the fourth Monday in October; and be it further

"Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House

of Representatives, and to each Senator and Representative from California in the Congress of the United States."

A joint resolution of the Legislature of the State of California; to the Committee on Labor and Public Welfare:

"ASSEMBLY JOINT RESOLUTION 41

"Relative to the skill centers operated by the Los Angeles Unified School District

"Whereas, The national unemployment figure in October of 1972 was 5.6 percent of the population, and over one-half of these unemployed are from minority, racial, or ethnic groups; and

"Whereas, Throughout the country skill centers are established and funded pursuant to the Federal Manpower Development and Training Act, and such centers are located in densely populated urban areas, easily accessible to the disadvantaged and minority groups; and

"Whereas, Skill centers make employable, and thereby up lift, the life style of people in that portion of our population which is largely unaffected by traditional educational institutions; and

"Whereas, In addition, skill centers give substance to the concepts of equal educational opportunities and fair employment practices, by providing specific and constructive approaches to special problems of unemployment within our multiethnic society, thereby replacing divisiveness and antagonism with creative community action which brings America closer to its full potential as a nation; and

"Whereas, It therefore is in the best interest of the people of California and of the United States to heartily endorse and support the continued funding of Manpower Development and Training Act skill center programs throughout the nation at a level commensurate to the reduction of unemployment and underemployment at a rate which will close the income gap between the poor and the average income groups; and

"Whereas, The skill centers operated by the Los Angeles Unified School District, which are located in the heart of the heaviest concentration of unemployed adults in Los Angeles County, are a prime example of Manpower Development and Training Act skill centers which fulfill the critical needs of job training in an underdeveloped area, and promotion of better education for minorities; and

"Whereas, Due to recent Federal Manpower Development and Training Act budget cuts, the skill centers operated by the Los Angeles Unified School District are now faced with a substantial corresponding reduction in employment services and training slots; now, therefore, be it

"Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the President and the Congress of the United States to take action to restore funding of the skill centers operated by the Los Angeles Unified School District at a minimum to their level prior to the latest reductions in federal funds; and be it further

"Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States."

Resolutions of the Massachusetts State Senate; to the Committee on Rules and Administration:

"RESOLUTIONS MEMORIALIZING CONGRESS TO AMEND THE SELECTION PROCESS FOR VICE-PRESIDENT OF THE UNITED STATES

"Whereas, At present the voters of the United States have no effective manner of choosing candidates for the office of Vice-President of the United States; and

"Whereas, Candidates for each major political party for the office of President of the United States, nominated at their respective national conventions, choose their running mate without regard to the preferences of those voters enrolled as members in that political party; and

"Whereas, The office of Vice-President of the United States is too important to leave the selection of the candidate to one man; now, therefore, be it

"Resolved, That the Massachusetts Senate hereby urges the Congress of the United States to take whatever steps are necessary to amend and reform the present selection process of political parties for candidates for the office of Vice-President of the United States; and be it further

"Resolved, That copies of these resolutions be transmitted forthwith by the Clerk of the Senate to the presiding officer of each branch of the Congress and to each member thereof from the Commonwealth of Massachusetts."

A joint resolution of the Legislature of the State of Wisconsin; to the Committee on the Judiciary:

"ASSEMBLY JOINT RESOLUTION 2

"Enrolled joint resolution ratifying an amendment to the U.S. Constitution relating to equal rights for women

"Whereas, both houses of the ninety-second Congress of the United States of America, at the second session, by a constitutional majority of two-thirds, made the following proposition to amend the Constitution of the United States of America in the following words:

"'H.J. RES. 208

"'*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein),* That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

"' "ARTICLE —

"' "SECTION 1. Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.

"' "SEC. 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

"' "SEC. 3. This amendment shall take effect 2 years after the date of ratification." '; and

"Whereas, the people of the sovereign state of Wisconsin, represented in senate and assembly, have studied said proposed addition to the constitution of the United States and have reached a consensus that the federal government be permitted thus to alter the Constitution of the United States; now, therefore, be it

"Resolved by the assembly, the senate concurring, That said proposed amendment to the Constitution of the United States of America is hereby ratified by the legislature of the State of Wisconsin; and, be it further

"Resolved, That copies of this joint resolution, certified by the Secretary of State, be forwarded by the Governor to the General Services Administration of the government of the United States, in Washington, D.C., and to the presiding officer of each house of the Congress of the United States."

A resolution adopted by the Board of Supervisors, County of Sacramento, Calif., relating to the emergency provisions of the Federal Aviation Regulations; to the Committee on Commerce.

Two resolutions adopted by the new York State Council, Junior Order United American Mechanics, Floral Park, N.Y., relating to the Vietnam war, and the United States, China and Russia; to the Committee on Foreign Relations.

A resolution adopted by the Centre County Democratic Committee, Bellefonte, Pa., relating to the cut-off of funds to prosecute the war in Southeast Asia; to the Committee on Foreign Relations.

EXECUTIVE REPORTS OF COMMITTEES

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

By Mr. LONG, from the Committee on Finance:

William E. Simon, of New Jersey, to be Deputy Secretary of the Treasury; and

Edward L. Morgan, of Arizona, to be an Assistant Secretary of the Treasury.

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. GRIFFIN:

S. 337. A bill for the relief of Richard S. Traylor;

S. 338. A bill for the relief of John S. Traylor; and

S. 339. A bill for the relief of Stefanie Miglierini. Referred to the Committee on the Judiciary.

By Mr. TOWER (for himself and Mr. PELL):

S. 340. A bill to establish a commission to study the usage, customs, and laws relating to the flag of the United States. Referred to the Committee on the Judiciary.

By Mr. DOLE:

S. 341. A bill to provide for the establishment of the National Information and Resource Center for the Handicapped. Referred to the Committee on Labor and Public Welfare.

By Mr. HRUSKA:

S. 342. A bill for the relief of Antonino Costanzo. Referred to the Committee on the Judiciary.

By Mr. ROBERT C. BYRD:

S. 343. A bill to designate the Tuesday next after the first Monday in October as the day for Federal elections. Referred to the Committee on Rules and Administration.

By Mr. FANNIN:

S. 344. A bill to require mandatory imposition of the death penalty for individuals convicted of certain crimes. Referred to the Committee on the Judiciary.

By Mr. McGEE:

S. 345. A bill for the relief of Nedja Budisavljvich;

S. 346. A bill for the relief of Miss Teruko Sasaki;

S. 347. A bill for the relief of Reva J. Cullen; and

S. 348. A bill for the relief of Lester L. Stiteler. Referred to the Committee on the Judiciary.

S. 349. A bill to amend chapter 89 of title 5, United States Code, to provide improved health benefits for Federal employees;

S. 350. A bill to amend title 5, United States Code, relating to the permissible activity of governmental employees in political elections, and for other purposes;

S. 351. A bill to provide for improved labor-management relations in the Federal service, and for other purposes; and

S. 352. A bill to amend title 13, United States Code, to establish within the Bureau of the Census a Voter Registration Administration for the purpose of administering

a voter registration program through the Postal Service. Referred to the Committee on Post Office and Civil Service.

By Mr. ROBERT C. BYRD (for Mr. HUGHES):

S. 353. A bill to amend titles 10 and 37, United States Code, to provide for equality of treatment for military personnel in the application of dependency criteria. Referred to the Committee on Armed Services.

By Mr. MAGNUSON (for himself, Mr. HART, Mr. Moss, Mr. STEVENS, and Mr. STEVENSON):

S. 354. A bill to establish a nationwide system of adequate and uniform motor vehicle accident reparation acts and to require no-fault motor vehicle insurance as a condition precedent to using a motor vehicle on public roadways in order to promote and regulate interstate commerce. Referred to the Committee on Commerce.

By Mr. MAGNUSON (for himself, Mr. MONDALE, and Mr. NELSON):

S. 355. A bill to amend the National Traffic and Motor Vehicle Safety Act of 1966 to provide for remedies of defects without charge, and for other purposes. Referred to the Committee on Commerce.

By Mr. MAGNUSON (for himself and Mr. Moss):

S. 356. A bill to provide disclosure standards for written consumer product warranties against defect or malfunction; to define Federal content standards for such warranties; to amend the Federal Trade Commission Act in order to improve its consumer protection activities; and for other purposes. Referred to the Committee on Commerce.

By Mr. MAGNUSON (for himself, Mr. BAKER, Mr. HART, Mr. HARTKE, Mr. HOLLINGS, Mr. JACKSON, Mr. Moss, and Mr. TUNNEY):

S. 357. A bill to promote commerce and amend the Federal Power Act to establish a Federal Power Research and Development program to increase efficiencies of electric energy production and utilization, reduce environmental impacts, develop new sources of clean energy and for other purposes. Referred to the Committee on Commerce.

By Mr. BIBLE:

S. 358. A bill for the relief of Jafar Shoja. Referred to the Committee on the Judiciary.

By Mr. McCLURE (for himself and Mr. HELMS):

S. 359. A bill to permit American citizens to hold gold. Referred to the Committee on Banking, Housing and Urban Affairs.

By Mr. SCOTT of Virginia:

S. 360. A bill to amend title 18, United States Code, to prohibit the mailing of obscene matter to minors, and for other purposes. Referred to the Committee on the Judiciary.

By Mr. McGOVERN (for himself, Mr. ABOUREZK, Mr. CLARK, Mr. GRAVEL, Mr. HATHAWAY, Mr. KENNEDY, Mr. Moss, and Mr. RANDOLPH):

S. 361. A bill to provide housing and community development for persons in rural areas of the United States on an emergency basis. Referred to the Committee on Banking, Housing and Urban Affairs.

By Mr. HARTKE:

S. 362. A bill to provide for the compensation of persons injured by criminal acts. Referred to the Committee on the Judiciary.

By Mr. CANNON (for himself and Mr. BIBLE):

S. 363. A bill to provide for the construction of a Veterans' Administration Hospital in the State of Nevada. Referred to the Committee on Veterans' Affairs.

By Mr. CANNON (for himself and Mr. BIBLE):

S. 364. A bill to provide for the establishment of a national cemetery in the State of Nevada. Referred to the Committee on Veterans' Affairs.

By Mr. NELSON:

S. 365. A bill to provide for a study and investigation to assess the extent of the damage done to the environment of South Vietnam, Laos, and Cambodia as the result of the operations of the Armed Forces of the United States in such countries. Referred to the Committee on Foreign Relations.

By Mr. CANNON:

S. 366. A bill to promote public confidence in the legislative, executive, and judicial branches of the Government of the United States. Referred to the Committee on Rules and Administration.

By Mr. TOWER:

S.J. Res. 17. A joint resolution to authorize and request the President of the United States to issue a proclamation designating October 14, 1973, as "German Day." Referred to the Committee on the Judiciary.

By Mr. JAVITS (for himself and Mr. RIBICOFF):

S.J. Res. 18. A joint resolution to authorize and request the President to proclaim April 29, 1973 as a day of observance of the 30th anniversary of the Warsaw Ghetto Uprising. Referred to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. TOWER (for himself and Mr. PELL):

S. 340. A bill to establish a commission to study the usage, customs, and laws relating to the flag of the United States. Referred to the Committee on the Judiciary.

Mr. TOWER. Mr. President, I am pleased to reintroduce a bill which my distinguished colleague from the State of Rhode Island (Mr. PELL) and I have consistently sponsored for a number of years. It is a measure which provides for the establishment of a commission to study the usage, customs, and laws relating to the flag of the United States.

As we approach our Nations' bicentennial celebration and make preparation for that great event, I feel this matter becomes increasingly important.

Over the years, confusion over the appropriate means of displaying our flag has reached a point of bewilderment. All branches of the armed services have developed their own codes which differ considerably from one another. Some codes prohibit display of the flag at night, while others allow this with special lighting arrangements. Some codes prohibit display of the Flag in inclement weather, while others provide for the use of special all-weather flags. There is even confusion over the appropriate place of honor for the flag when it is flown together with others.

The Senator from Rhode Island and I feel the time has come to establish a uniform code of flag conduct. Stated simply, our bill would provide for the establishment of a U.S. Flag Commission made up of representatives of the Congress, the executive branch, and certain lay members with particular expertise in this matter to be appointed by the President. This Commission would be authorized to review the entire matter of a U.S. flag code and to present to the Congress its report which would recommend more specific legislation designed to correct the confusion in this regard.

Mr. President, I urge my colleagues on the Judiciary Committee to act expeditiously on this measure so that we may proceed to develop a viable flag code for the United States.

Mr. President, I further request unanimous consent that the full text of this measure 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. 340

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there is hereby established a commission to be known as the United States Flag Commission (hereafter referred to as the "Commission"). The Commission shall make a complete study of the usage, customs, and laws relating to the use and display of the Flag of the United States.

SEC. 2. (a) The Commission shall be composed of ten members, appointed by the President, by and with the advice and consent of the Senate, as follows:

(1) two Members of the Senate from different political parties;

(2) two Members of the House of Representatives from different political parties;

(3) one member from the Department of Defense; and

(4) five members from private life who have a special interest in or knowledge of the flag of the United States.

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

(c) Any vacancy in the Commission shall not affect its powers, and six members of the Commission shall constitute a quorum.

(d) Each member of the Commission who is appointed from private life shall receive $125 for each day (including traveltime) during which he is engaged in the actual performance of his duties as a member of the Commission. A member of the Commission who is otherwise serving as an officer or employee of the Government shall serve without additional compensation. All members of the Commission shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of such duties.

SEC. 3. (a) The Commission is authorized to appoint and fix the compensation of such personnel as may be necessary to carry out the provisions of this Act. Such appointment shall be without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and such compensation shall be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(b) The Commission is authorized to obtain services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code.

SEC. 4. (a) In carrying out the provisions of this Act, the Commission is authorized and directed to consult and cooperate with, and seek advice and assistance from, appropriate departments and agencies of the United States Government, State and local public bodies, learned societies, and historical, patriotic, civic, philanthropic, and related organizations. Such departments and agencies are authorized and requested to cooperate with the Commission in providing facilities, services, supplies, advice, and information that the Commission determines to be necessary to carry out the provisions of this Act.

(b) The Commission is authorized to accept donations of money, property, or personal services.

SEC. 5. Within one year after the date of enactment of this Act the Commission shall submit a comprehensive report of its study and activities to the President and the Congress. The report shall include specific recommendations of the Commission regarding changes in existing usage, customs, and laws relating to the flag of the United States.

SEC. 6. The Commission shall cease to exist thirty days after submission of its report.

SEC. 7. There is hereby authorized to be appropriated such funds as may be necessary to carry out the purposes of this Act.

By Mr. DOLE:

S. 341. A bill to provide for the establishment of the National Information and Resource Center for the Handicapped. Referred to the Committee on Labor and Public Welfare.

THE NATIONAL INFORMATION AND RESOURCE CENTER FOR THE HANDICAPPED ACT

Mr. DOLE. Mr. President, for the past several years I have supported the establishment of a National Information and Resource Center for the Handicapped. I first proposed the establishment of such a Center in legislation introduced during the 91st Congress which passed the Senate but not the House. I introduced the same bill in the 92d Congress and the proposal was included in the Vocational Rehabilitation Act of 1972 which was ultimately vetoed. Yet, in spite of these past unsuccessful efforts, the need for a central office to coordinate all the efforts and accomplishments of the various agencies and organizations dealing with the handicapped is generally recognized. Strong support for a National Information and Resource Center has been expressed in testimony before the House and Senate committees by not only Members of Congress but also individuals and major organizations involved with the handicapped across the country. In view of this support, I am again today introducing the National Information and Resource Center for the Handicapped Act, and hope prompt action will be taken to authorize establishment of this Center which will provide numerous benefits to handicapped Americans.

On many occasions I have commented on the severe difficulties and unique problems confronted by this Nation's handicapped citizens. A significant and common problem of the handicapped is access to information on proven solutions to problems common to the disabled. There is an abundance of information which can help handicapped people; however, it is scattered among a vast number of groups and organizations who deal with these problems. If the information and knowledge of these various groups could be coordinated into a central source easily accessible to the handicapped, the knowledge and accomplishments of these various organizations could be applied across the country in dealing with the common problems of the disabled. The intent of the bill I am reintroducing is to insure the coordination of information needed to solve the problems of handicapped so that it is easily accessible to handicapped Americans across the country.

The handicapped comprise a large minority group in our Nation. Members of this group—men, women, and children who cannot achieve full physical, mental, and social potential because of disability, must face the daily challenge of accepting and working with his disability in order to become as useful, active, secure, independent, and as dignified as his ability allows. It is incumbent on us as Americans to assist them in meeting this challenge.

The handicapped need assistance to resolve their endless task of searching, calling, and waiting for information from vast numbers of sources. The information center I am proposing can help alleviate the frustrations and lack of progress previously recorded in this area. A central office which has a summation of all the innovations and developments which have proven effective in working with the disabled would be an invaluable tool for all handicapped and those working with them.

I would like to discuss in greater detail four specific problem areas of the handicapped and outline how the proposed information center could assist in these areas. These problem areas—employment, health care, rehabilitation, education, transportation, recreation, architecture, and housing are of fundamental importance because they are a concern of nearly every handicapped individual during every day of his life.

The inaccessability and high cost of transportation for the handicapped has disrupted what could have been a much more normal life for numerous handicapped individuals. To help solve this problem I have introduced legislation to provide cash reimbursements for disabled workers who incur extraordinary transportation cost in order to obtain employment. In addition, funds are currently available through various private and governmental channels to help cover inordinate transportation costs. The information center I propose would coordinate all of the successful experiments in providing transportation for the handicapped and allow all areas of the country to benefit from the successful experiments and programs currently existing in particular areas. The economic problems of being handicapped can often be prohibitive. The cost of prosthetic devices, medical care, and rehabilitation are often exorbitant. Every effort should be expended to insure that the additional cost of transportation does not force the individual into a life of dependency when a meaningful and productive existence through employment is within the realm of possibilities.

Medical research and technology have made great strides forward in the area of care and treatment for the handicapped. Certain institutes and facilities have established tremendous expertise in specialized areas. These institutions by coordinating and sharing their achievements could benefit greatly from each others accomplishments. In addition, a central source listing the areas of specialization of each institution would be extremely beneficial to those who are seeking treatment for special problems. Thus, the information center would provide a meaningful service by coordinating the various research efforts and informing those concerned of the institutions which are especially qualified to deal with their particular problem.

Due to advances in medical and rehabilitative treatment, fewer handicapped individuals are housebound. With this development has arisen an awareness of the numerous public and private architectural restrictions which confront the handicapped in the course of their daily lives. The lack of handrails, the absence of entrances to buildings which do not necessitate the negotiation of a flight of stairs, and the lack of or inappropriate size of elevators all present tremendous problems for the handicapped. The information center could help alleviate this problem by making available particular architectural designs or plans for buildings which have proven to be not only practical and efficient, but also accessable to the handicapped. In addition, the handicapped would be able to obtain a listing of schools and other institutions which have already designed their facilities and programs to meet the needs of the handicapped.

Employment of the handicapped would also be assisted by the establishment of an information center. Many private organizations have come to realize the tremendous resources available within the handicapped population. The handicapped have proven themselves to be industrious and dedicated to their work. Plans have been developed by private concerns where the skills and abilities of the handicapped can be effectively utilized in business. These plans and programs should be shared throughout industry so that the job market could be expanded. In addition, those handicapped who were capable of and interested in a particular type of employment could place their names in a pool available to potential employers of the handicapped. It is easy to see that the capabilities of the information center in dealing with the employment problems of the disabled are almost unlimited.

While our attention is focused on the establishment of programs for the handicapped we must insure that our efforts do not forego the established framework of available resources for our handicapped. It is the design of this bill to establish a framework under which all the knowledge and information regarding services for the handicapped can be readily available and easily dispensed. We know how to help restore the lives of many disabled. The challenge now is to make the best utilization of this knowledge.

The National Information and Resource Center for the Handicapped Act will provide a central point of contact not only for the handicapped themselves, but also for families of the handicapped, individual citizens, private and professional organizations, and city and State officials who desire information and direction.

The center will face a great void and will be an answer to a specific and well-defined need at a reasonable cost. A

small staff, the first of its kind, will be available to direct inquiries to specialized contacts—individuals, organizations, universities, and agencies which have special knowledge concerning any problem.

The handicapped Americans will benefit immediately from the center's services. However, the nonhandicapped will be the ultimate beneficiaries through increased contribution, personal fulfillment, and the well-being of the handicapped.

I urge my colleagues to support the establishment of this center which can do so much to promote meaningful and productive lives for the handicapped.

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

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

S. 341

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) there is hereby established, within the Department of Health, Education, and Welfare, a National Information and Resource Center for the Handicapped (hereinafter referred to as the "Center").

(b) The Center shall have a Director and such other personnel as may be necessary to enable the Center to carry out its duties and functions under this act.

SEC. 2. (a) It shall be the duty and function of the Center to collect, review, organize, publish, and disseminate (through publications, conferences, workshops, or technical consultation) information and data related to the particular problems caused by handicapping conditions, including information describing measures which are or may be employed for meeting or overcoming such problems, with a view to assisting individuals who are handicapped, and organizations and persons interested in the welfare of the handicapped, in meeting problems which are peculiar to, or are made more difficult for, individuals who are handicapped.

(b) The information and data with respect to which the Center shall carry out its duties and functions under subsection (a) shall include (but not be limited to) information and data with respect to the following—

(1) medical and rehabilitation facilities and services;

(2) day care and other programs for young children;

(3) education;

(4) vocational training;

(5) employment;

(6) transportation;

(7) architecture and housing (including household appliances and equipment);

(8) recreation; and

(9) public or private programs established for, or which may be used in, solving problems of the handicapped.

SEC. 3. (a) The Secretary of Health, Education, and Welfare shall make available to the Center all information and data, within the Department of Health, Education, and Welfare, which may be useful in carrying out the duties and functions of the Center.

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

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

SEC. 4. There are authorized to be appropriated $300,000 for this fiscal year ending June 30, 1973, and $300,000 for the fiscal year ending June 30, 1974.

By Mr. ROBERT C. BYRD:

S. 343. A bill to designate the Tuesday next after the first Monday in October as the day for Federal elections. Referred to the Committee on Rules and Administration.

ELECTIONS SHOULD BE MOVED FORWARD

Mr. ROBERT C. BYRD. Mr. President, I am today introducing a bill that would move the elections for Federal offices ahead by 1 month, to the first Tuesday after the first Monday in October.

I believe that the bill would reduce the lengthy campaign period, curtail the exorbitant costs of campaigning, provide a longer period after election day for resolving election disputes, and avoid, in some areas of the country, the severe winter weather that contributions to keeping citizens away from the polls.

The most recent election clearly showed that a bill of this nature is needed. Less than 55 percent of the eligible voters cast ballots, which represented the smallest turnout since the 1948 election.

I think the length of the campaign was largely responsible for this small turnout. By the time election day arrived, I believe that many citizens had already had their fill of politics, and their interest had waned to the point that millions of Americans simply stayed home.

And there is no doubt that longer campaigns demand more money. Some early estimates indicate that as much as $400 million was spent on the November elections; and authorities claim that it now takes $40 million to elect a President, more than $200,000 to elect a Senator, and about $100,000 to elect a Representative.

The 92d Congress took a giant step toward cutting campaign costs by passing the Federal Election Campaign Act of 1971, and I feel that my bill to move Federal elections ahead by 1 month would further help to roll back the tide of rising campaign costs.

The language of the United States Constitution—which is quoted below—clearly empowers Congress to prescribe the date for holding elections for President, Vice President, U.S. Senators, and Representatives and there are no restrictions set in the Constitution on the date which Congress, in its judgment, may set for national elections. There is therefore no constitutional reason why Congress may not legislate to change the date for holding national elections from November to October.

The language of the Constitution and Federal statutes with respect to the date on which elections for Federal offices are to be held is as follows:

UNITED STATES CONSTITUTIONAL PROVISIONS

President and Vice President

Article II, Section 1, Clause 4:

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

Senators and Representatives

Article I, Section 4, Clause 1:

The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Place of chusing Senators.

STATUTORY PROVISIONS

Pursuant to the constitutional authority quoted above, Congress has enacted legislation setting the day of election for Federal officials. The current provisions are as follows:

President and Vice President

3 United States Code, Section 1, Time of Appointing Electors

The Electors of the President and Vice President shall be appointed, in each State, on the Tuesday next after the first Monday in November, in every fourth year succeeding every election of a President and Vice President.

President and Vice President

3 United States Code, Section 7. Meeting and Vote of Electors

The electors of President and Vice President of each State shall meet and give their votes on the first Monday after the second Wednesday in December next following their appointment at such place in each State as the legislature of such State shall direct.

Senators

2 United States Code, Section 1. Time for Election of Senators

At the regular election held in any State next preceeding the expiration of the term for which any Senator was elected to represent such State in Congress, at which election a Representative to Congress is regularly by law to be chosen, a United States Senator from said State shall be elected by the people thereof for the term commencing on the 3d day of January next thereafter.

Representatives

2 United States Code, Section 7. Time of Election

The Tuesday after the 1st Monday in November, in every even numbered year, is established as the day for the election, in each of the States, of representatives to the Congress commencing on the 3d day of January next thereafter. This section shall not apply to any State that has not yet changed its day of election, and whose constitution must be amended in order to effect a change on the day of election of State officers in said State.

The historical reasons for picking November as the month in which to hold national elections are as follows:

Congress, by Act of March 1, 1972, 1 Stat. 239, provided that "electors shall be appointed in each state for the election of a President and Vice President of the United States, within thirty-four days preceding the first Wednesday in December, . . . in every fourth year succeeding the last election. . . ."

In the early days the legislatures of most of the States chose presidential electors and the exact date on which the electors of the States were chosen was not important. After the election of 1824, nearly all the States that had not already done so gave up the old method of choosing Presidential electors by the legislature. With few exceptions, the Presidential electors have since been chosen by popular vote in all States.

As explained by George Stimpson in "A Book About American Politics":

Before 1845 there was no national election day and each State fixed its own date for

"appointment" of Presidential electors within thirty-four days of the meeting of the electors. All the States chose their electors in November, but the States varied. New York held her election for electors on the first Tuesday after the first Monday; New Jersey, on the first Tuesday and the day following. In two States the second Monday was election day; in fourteen, the first Monday; in two, the second Tuesday, and in two, the Friday nearest the first of November.

This lack of uniformity led to abuses. The results in one State were used to influence those in other States. In contiguous States "repeating" was easy and common. By traveling from State to State one person could vote for Presidential electors several times. This practice led to what were known as the "pipe-laying scandles" of 1840 and 1844, when both the Democrats and Whigs were accused of sending gangs of voters across State lines. The frequency of such election frauds created a popular demand for a uniform national election day. (Pages 29–30). See also discussion, 28 Congress, 1st Session. 1844, Globe 350.

In 1845, Congress enacted the act of January 23, 1845, 5 Stat. 721 which established a uniform time for holding elections for electors by providing that such electors are to be appointed "in each State on the Tuesday next after the first Monday in the month of November of the year in which they are to be appointed."

The law, Act of June 25, 1948, 62 Stat. 673, 3 United States Code section 7, now requires the electors to meet on the first Monday after the second Wednesday in December. In fixing a uniform election day Congress has tried to make the election day approximately 30 days before the date the electors would meet to elect the President.

WHY WAS THE FIRST TUESDAY IN NOVEMBER CHOSEN AS ELECTION DAY?

Public sentiment was opposed to holding elections on a Sunday or traveling to the polls on that day. Therefore it was desirable to have at least 1 day intervening between Sunday and election day.

The first Tuesday was eliminated because it might fall on the first day of the month and inconvenience businessmen.

The second Tuesday of the month was eliminated because it might fall on the 14th which would leave only 22 days between election day and the meeting of the Presidential electors.

The first Tuesday after the first Monday in November would always place election day in November about 30 days before the meeting of electors—originally on the first Monday in December and now on the first Monday after the second Wednesday in December.

It is interesting to note in connection with the legislative history of the 1845 act, 5 Stat. 721, that the bill as first introduced by Mr. Duncan in 1844, 28th Congress, first session, contained a provision to set a uniform date not only for holding elections for presidential electors, but for Members of the House of Representatives as well—1844, Globe 167. However, the House Committee of Elections limited the bill to electors only—Globe 350. The bill passed the House May 18, 1844—Globe 602. In the second session of the 28th Congress, Mr. Duncan again introduced a bill which he said was identical to the one passed by the House in the first session, but others felt that the bill, although the same in substance, differed in details and should be referred to the Judiciary Committee, and there was debate whether the new bill should be referred to the Committee of the Whole or to the Judiciary Committee, 1845, Globe 9. A motion was carried to send it to the Committee of the Whole—15 Globe 10. There was debate on whether the uniform day should be the first Tuesday in November rather than the first Tuesday after the first Monday—15 Globe 14—and also on whether the uniform date should not be in October rather than in November—15 Globe 21. The latter proposal was objected to because it would necessitate an amendment to the existing law requiring the electoral colleges to meet within 34 days after the election since the practice in all the States was to have the electoral colleges meet within 34 days of early November—1945 Globe 21. A motion was also made to substitute the first Monday in December as the uniform date—Globe 28.

Among the objections to a December date was the fact that the weather was generally cold and inclement in December in most States and this would discourage voter participation—Globe 29; also, this places the time too close to the time the electors meet to vote—Globe 29. The bill was passed by the House on December 13, 1844—Globe 31. The bill then was referred to the Senate Judiciary Committee—Globe 38.

During the debate on the bill in the Senate a motion was made to set the uniform date as the first Tuesday in November as a convenience to the States which held their general assemblies in the latter part of October—Globe 143. The Senate committee had amended the bill to read the second Tuesday after the first Monday in November, but the Senate agreed on the "Tuesday next after the first Monday in November"—Globe 143. Since the Senate-passed bill slightly changed the language of the House-passed bill, to correct an error it went back to the House and was passed in the Senate-approved form on January 17, 1845—Globe 149.

Congress by act of February 2, 1872, 17 Stat. 28, Sec. 3 provided:

That the Tuesday next after the first Monday in November, in the year eighteen hundred and seventy-six, is hereby fixed and established as the day, in each of the States and Territories of the United States, for the election of Representatives and Delegates of the forty-fifth Congress; and the Tuesday next after the first Monday in November, in every second year thereafter, is hereby fixed and established as the day for the election, in each of the said States and Territories, of Representatives and Delegates to the Congress commencing on the fourth day of March next thereafter.

By act of March 3, 1875, ch 130, § 6, 18 Stat. 400, this provision was slightly modified to provide that the "time for holding elections for Representatives to Congress is hereby modified so as not to apply to any State that has not yet changed its day of election, and whose constitution must be amended in order to effect a change in the day of election of State officers in said State." In 1934, the provision was again slightly modified to substitute "3d day of January" for "fourth day of March". 48 Stat. 879.

On March 20, 1871, Mr. Cook introduced H.R. 243 to apportion the House of Representatives—1871 Globe 177. As originally introduced, the bill confined itself to reapportioning the House of Representatives. An amendment offered from the floor of the House by Mr. Butler provided that Representatives to Congress be elected on the first Tuesday after the first Monday in November each alternate year after the election of the President—1871 Globe 115. This was objected to as requiring the amendment of some State constitutions—1871 Globe 116–117. The amendment was adopted by the House on December 14, 1871—Globe p. 137—and the bill passed the House December 15—Globe p. 146.

The bill was passed by the Senate—Globe, p. 712—and the House concurred to the Senate version—Globe, pp. 713 and 777.

Thus, it was for practical considerations that November was selected as the month in which national elections were to be held and not for other reasons. And it is for practical reasons that I am offering my bill to move the election date ahead by 1 month.

The life style of the American people has changed, and so has the method of campaigning. There was a time when a candidate needed several months to make contact with the voters, but that time has passed. It passed with the advent of television.

In this day of instant communications, it is no longer necessary to visit every courthouse in every county seat; and, in this day of rising costs, it is no longer possible to run a financially sound campaign for several months.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD.

The ACTING PRESIDENT pro tempore. The bill will be received and appropriately referred; and, without objection, the bill will be printed in the RECORD.

The bill is as follows:

S. 343

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 25 of the Revised Statutes, as amended (2 U.S.C. 7), is amended to read as follows:

"SEC. 25. The Tuesday next after the first Monday in October of every even numbered year is established as the day for the election of Representatives to the Congress commencing on the third day of January next thereafter. This section shall not apply to any State that has not changed its day of election of State officers, and whose constitution must be amended in order to effect a change in the day of the election of State officers in that State.".

(b) The text of section 1 of title 3, United States Code, is amended to read as follows:

"The electors of the President and Vice President shall be appointed, in each State on the Tuesday next after the first Monday in October in every fourth year succeeding every election of a President and Vice President.".

By Mr. FANNIN:

S. 344. A bill to require mandatory imposition of the death penalty for individuals convicted of certain crimes. Referred to the Committee on the Judiciary.

Mr. FANNIN. Mr. President, today I am introducing a bill which would require justifiably severe punishment for persons who commit certain brutal crimes.

My bill would impose the death penalty on anyone convicted of:

First. Assassination of a President, Vice President or State Governor.

Second. Murder of a judge, policeman or fireman.

Third. Murder committed by a person already serving a life prison term.

Fourth. Aircraft piracy if loss of life occurs as a consequence.

Furthermore, the bill would make life imprisonment the mandatory minimum sentence for aircraft piracy.

This is essentially the same bill I introduced last August. After reviewing the statistics for 1972, I am more convinced than ever that we need legislation to make it clear that when these crimes are committed the punishment will be certain and the penalty severe.

Despite the many precautions instituted by airlines and law enforcement officials, there were 35 air hijackings during the past year.

In many instances these hijackings put the lives of tens or even hundreds of innocent persons in jeopardy.

In the first 11 months of 1972, a total of 96 police officers were killed in the line of duty.

And we all are painfully aware of the assassination attempt on Governor Wallace.

Now, with 1973 barely underway, we have experienced the tragedy in New Orleans.

It is not my contention that reinstitution of the death penalty will be a panacea. It would not put a certain end to assassination attempts, air piracy or assaults on police, judges, firemen or prison guards. I do believe, however, that the death penalty is a real deterrent, that it would cut down on the number of these crimes. The death penalty can be a deterrent.

I was most pleased to learn last week that the administration expects to ask Congress to reinstate the death penalty for certain brutal and premeditated crimes, including assassination, hijacking an airplane or killing a prison guard.

Attorney General Kleindienst was reported as saying:

> I do think there are some areas of possible criminal activity where the death penalty can be a deterrent—that is usually the kind of criminal activity that is of such a cold-blooded, premeditated, thought-out type—a kidnapping, an assassination, a bombing of a public building, a skyjacking, the killing of a prison guard.

My bill does not include kidnapping or the bombing of public buildings, but these are heinous crimes which might well be considered for mandatory capital punishment.

The Supreme Court, in its decision virtually eliminating the death penalty in the United States, indicated that it was unconstitutional, because capital punishment has been unevenly administered. My bill should satisfy the Court, because it provides for even administration of justice.

Mr. President, I send this bill to the desk and ask that it be referred to the appropriate committee.

By Mr. ROBERT C. BYRD (for Mr. HUGHES):

S. 353. A bill to amend titles 10 and 37, United States Code, to provide for equality of treatment for military personnel in the application of dependency criteria. Referred to the Committee on Armed Services.

Mr. ROBERT C. BYRD. Mr. President, on behalf of the distinguished senior Senator from Iowa (Mr. HUGHES), I introduce a bill, and I ask unanimous consent that a statement prepared by him in connection with the bill be printed at this point in the RECORD.

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

STATEMENT BY SENATOR HUGHES

Today, I am introducing legislation which will end one of the inequities for American women who serve their country in the military services.

Specifically, the bill will allow women in military service to claim their husbands as dependents under the same conditions which now apply to our men in uniform.

Current law and Department of Defense regulations require women members of the military to prove greater actual dependency of their husbands before the maximum financial benefits are available—a requirement which is grossly discriminatory toward women.

This legislation would provide the husband of a woman in military service the same rights, benefits and privileges which are now available to the wife of any man in the service.

Equal pay for housing is included. This provision will make it easier for married women in service to live off base with their husbands.

Inequities in medical and dental benefits would be ended. These benefits are available today to the wives and children of servicemen but, under the existing law, most husbands of women military personnel do not qualify.

Present budget requirements of the Department of Defense would not be increased since, in numbers, women constitute a very small part of our total military personnel.

I do not see how we can hope to achieve equality of opportunity for women if official policy of the federal government continues to deny equal benefits to women in the military. Their dedication is equal and their benefits should be equal to those of our men in uniform. It is not acceptable that we welcome women into military service along with men, and then impose on the women different—and lesser—standards for payment of benefits.

Women are able, competent members of of the nation's armed forces. They come into military life with every kind of background in education and for many of them it is an opportunity for further education and a career.

I understand that among the married members, many of their husbands are servicemen, who will become veterans and attend college or a university. The benefits for dependents which are available to the wives of servicemen should be equally available to the husbands of servicewomen.

This legislation is identical to a bill which was approved by the Senate during the closing days of the 92nd Congress. I am hopeful it will receive the early attention of the Senate.

By Mr. MAGNUSON (for himself, Mr. HART, Mr. MOSS, Mr. STEVENS, and Mr. STEVENSON):

S. 354. A bill to establish a nationwide system of adequate and uniform motor vehicle accident reparation acts and to require no-fault motor vehicle insurance as a condition precedent to using a motor vehicle on public roadways in order to promote and regulate interstate commerce. Referred to the Committee on Commerce.

NATIONAL NO-FAULT MOTOR VEHICLE INSURANCE ACT

Mr. MAGNUSON. Mr. President, on behalf of myself and Mr. HART, Mr. MOSS, Mr. STEVENS, and Mr. STEVENSON, I introduce for appropriate reference the National No-Fault Motor Vehicle Insurance Act, a bill to establish a nationwide system of adequate and uniform motor vehicle accident reparation acts and to require no-fault motor vehicle insurance as a condition precedent to using a motor vehicle on public roadways in order to promote and regulate interstate commerce. I ask unanimous consent that the text of the bill be printed in the RECORD following the introductory remarks.

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

(See exhibit 1.)

DESCRIPTION OF BILL

Mr. MAGNUSON. Mr. President, the content of the new bill for the most part resembles the National No-Fault Motor Vehicle Insurance Act (S. 945) as reported by the Committee on Commerce in the 92d Congress. Several amendments which had been prepared for introduction and consideration by the full Senate have also been incorporated in the new bill. While the new bill resembles S. 945 in content, the language is substantially different. The new bill has incorporated the terminology and many of the provisions of the Uniform Motor Vehicle Accident Reparations Act—UMVARA—which was promulgated by the National Conference of Commissioners on Uniform State Laws in August 1972. This approach was adopted to effect technical improvements in the bill and to achieve uniformity in terminology between the Federal bill and yet-to-be-enacted State no-fault programs.

The bill would create an automobile insurance system which would pay the basic economic loss of persons injured in automobile accidents whether or not they were "at fault." While extending this right to recover to all persons, the bill would simultaneously restrict the right to sue in tort.

The bill would create this new system of automobile insurance by requiring each State to enact a no-fault motor vehicle insurance plan meeting certain specified national requirements; other details of the plan would be left for State determination. At a minimum, a State meeting national standards would have to enact a no-fault plan which required the payment of basic benefits up to at least the following levels:

First, all reasonable medical and rehabilitative expenses;

Second, reimbursement for work loss at an approximate monthly rate of $1,000

up to a total limit of $50,000—unless for cost reasons the State insurance commissioner adjusted that ceiling downward but not below $25,000; and

Third, all replacement services loss, survivor's loss, and survivor's replacement services loss subject to reasonable limits established by the State.

Lawsuits to recover economic loss would not be permitted unless the economic loss exceeded total basic benefit limits. Lawsuits for noneconomic detriment—pain and suffering—would not be permitted unless a person died or sustained serious permanent disfigurement, significant permanent injury, or more than 6 months of total disability—that is, inability to work.

In order for a State plan to meet national standards, it must incorporate provisions making the basic compulsory insurance available to all persons who own motor vehicles. Severe limitations on cancellation and notice protection for nonrenewal must be provided.

If a State does not enact a plan which meets or exceeds the requirements in the bill, an alternative no-fault plan takes effect in the State until it adopts a plan meeting those requirements. The alternative plan places no limitations on the total benefits receivable. Work loss benefits would be paid at a rate of approximately $1,000 per month until the injured person was able to return to work; benefits for replacement services, survivor's loss, and survivor's replacement services loss would be paid for as long as the loss occurs, subject only to a $200 per week ceiling. The right to sue in the hope of recovering damage for economic or noneconomic detriment in most situations would be eliminated. Compensation for economic detriment would be provided by the basic insurance. Compensation for noneconomic detriment could be realized through the purchase of insurance rather than through the lawsuit mechanism.

Who determines whether a State enacting a no-fault motor vehicle insurance plan "meets or exceeds" certain minimum requirements? If a State acted, the Secretary of Transportation would administratively determine whether or not its plan met or exceeded the minimum requirements.

The bill, while establishing a nationwide and basically uniform system of no-fault automobile insurance, does not place the State in a no-fault straitjacket. The bill specifically directs States to continue to regulate insurance and establish rates; and States are given latitude in determining benefit levels and other provisions affecting costs by establishing optional or mandatory deductibles, exclusions, or waiting periods.

REASONS FOR THE BILL

The time has come to straighten out the mess that confronts the 100 million Americans who are consumers of automobile insurance. The time has come to replace the present inefficient, inadequate, and inhumane automobile insurance system. We need a system that is fair, humane, nondiscriminatory, life-preserving and life-restoring, moderately priced and efficient. We need a good no-fault plan.

Let us face it. The present system, which is based on proof of negligence and hopefully payment from liability insurance proceeds is an utter failure as an insurance system. It has failed to compensate victims of automobile accidents adequately. It has failed to compensate victims fast enough. It has often failed to compensate victims fairly. It has failed to expend enough of the dollars collected in premiums on compensation of victims—too many of them go into administrative costs like lawyers' fees. It has failed to give victims the economic incentive and means to rehabilitate themselves and continue to pursue new careers and opportunities. It has failed to make any contribution toward highway safety, vehicle safety, loss-avoidance or reduction.

I am not alone in condemning the present auto insurance system. After a 2-year study authorized by Congress, the Nixon administration concluded that—

Existing system ill serves the accident victim, the insuring public and society. It is inefficient, overly costly, incomplete and slow. It allocates benefits poorly, discourages rehabilitation and overburdens the courts and the legal system.

An authority on law and economics puts it more simply. The present system, said Prof. Guido Calabresi, is "lousy." Each year we pay more than $16 billion in premiums and receive in benefits for injury and loss only $8 billion. The rest goes to the people who administer the "injury industry."

The nationwide no-fault motor vehicle system will pay the losses of all automobile accident victims whereas the present system only pays the losses of victims who prove that another fully insured driver was "negligent" and that they were not negligent. And these losses will be paid with the money saved from the excessive costs of the present system which does many unnecessary, impossible and expensive things like trying to decide "fault" and trying to put a dollar value on human "pain and suffering."

What about cost? The no-fault nationwide system should not cost the American people any more in automobile insurance premiums than they are now paying. In fact, it should cost them less. The president of Aetna Life & Casualty Co., notified me by letter last year that his company would not raise rates in any State if the Senate bill passed. That result is now guaranteed thanks to an amendment offered by the Senator from New Hampshire (Mr. COTTON), and incorporated in this bill, which allows a State to adjust the benefit levels to assure that average premiums do not rise.

The proposed system will not establish yet another Federal bureaucracy in Washington, D.C. On the contrary, the business of administering and regulating motor vehicles and motor vehicle insurance will remain where it is now—with the States. Although the bill is entitled the "National No-Fault Motor Vehicle Insurance Act," it might more precisely be called the "nationwide" or "minimum State standards" no-fault act. Each State is free to go beyond the minimum standards in terms of protecting its citizens from lawsuits and in compensating the seriously injured and the families of the fatally injured. But these are decisions for each State to make subject to its own procedures. If a State does not enact an acceptable no-fault auto insurance plan within a reasonable period of time, an alternative no-fault plan which is set forth in title III of the bill will automatically go into effect in that State. But even then, the government of that State, not the Federal Government, will operate the alternative plan—and only until the State enacts its own.

The proposed no-fault system will pay auto accident victims insurance benefits as they suffer loss. For example, if you are unable to work for the entire month of February you will receive a check for your wage loss at the end of the month or within 30 days. If you still cannot work during all of March, you will receive wage loss compensation for that month the following month. Under the present system, you may have to wait a year or more to get paid and by then you may have had to go into debt or sell prized possessions or settle with a grasping insurance adjustor for an amount less than what is due you. The present system pays benefits with the speed of a snail. Few claims are settled in less than a year and the person who is not willing to settle for less than his loss may have to wait years for a trial in court.

Under the bill, if the company will not pay your claim within 30 days of submission of proof of loss, that insurance company must pay 18 percent annual interest on top of the amount of the claim if it is valid and they must also pay the fees of the claimant's attorney.

The no-fault system will pay all of a victim's medical and hospital bills and all of his costs for rehabilitation programs. In addition, the minimum standard is such that the auto accident victim who is disabled from working would be compensated for his wage loss up to $1,000 a month up to a total wage loss of approximately $50,000—subject to formula variation. There would also be compensation for the cost of hiring someone else to do personal services that the victim would normally perform; that is, the housewife who must hire a cook and a maid. In the case of death, the survivors of the deceased auto accident victims would receive benefits equal to their economic loss.

The Department of Transportation, in its monumental study of the present system, found that the total economic losses suffered each year by seriously and fatally injured auto victims is $5.1 billion, but that as a group these people receive only $813 million—15.9 percent—of that loss from the present auto insurance setup. Today, the average settlement of an employed person who is seriously injured is $4,380—38 percent of loss—and the average settlement for the family of an employed person who is killed is $2,008—5 percent of loss.

This is outrageous.

The system of a compensation for victims of automobile accidents must in fact compensate the seriously injured.

The proposal introduced today would.

The national no-fault bill further guarantees that each and every person will be able to buy auto insurance and

it prohibits cancellation of policies or nonrenewal without providing another insurance source. Under the present system, cancellation and nonrenewal of auto insurance in some States unfairly punishes the elderly, the young, and minority group members.

It has been heartening to me personally to discover how much support there is for no-fault auto insurance from wide and diverse segments of the community. The business community, in particular, has shown a great deal of interest in the idea. That this should be so is not surprising. There is something so appalling in the inefficiency of the present auto accident claims system, something so wasteful in a system that uses up 17 percent of the time of all the judges in our overburdered State courts, that you can easily imagine a business manager asking: "Isn't there a better way?"

No-fault is a better way, a much better way.

It is said that no-fault insurance will lead to more highway accidents, because bad drivers and careless drivers will no longer be deterred by the fear of having to pay a tort judgment to the innocent victim of their negligence. This is an argument based upon the myth that under today's system the careless driver, the bad driver, the drunken driver pay anybody anything. It is their liability insurance company that pays the damages—not the bad driver.

It will be up to the States to administer and regulate premium rates under national no-fault, but I predict that the bad driver is going to have to pay so much high insurance premiums under the new system that he will either stop driving, become more careful, or at least pay more of his own way.

To repeat, the sweetest part of this so-much-better-product is that it should not cost the consumer any more money than he is paying now. This is possible, because the present system wastes so much time deciding who is at fault and how much his pain is worth that it ends up giving more premium dollars to people who work for the "injury industry" than to victims. The biggest beneficiaries of the automobile liability insurance policies today are not Mr. and Mrs. American Consumer, who pay the premium bills, but the trial lawyers who represent plaintiffs and defendants in automobile negligence lawsuits. Each year more than $1.1 billion goes to the plaintiff's lawyers and $300 million to the defendants' lawyers. That will not happen under nationwide no-fault.

Why, I am asked, is not this system already law? Well, it is, to a limited extent in Massachusetts and Florida and starting this January 1 in Connecticut and New Jersey. A more complete law, similar in compensation benefits and adequacy to the Senate bill, goes into effect October 1, in Michigan. But no-fault has not made much headway in the overwhelming majority of the State legislatures and there is no uniformity of approach in these States which have taken action. And of the States which have acted, all but one have ignored the plight of the seriously injured and the deceased auto victims by placing pathetically inadequate ceilings on compensation benefits.

Much of the debate in the Senate last year over S. 945 centered not on the question of no-fault against the negligence liability system, but on the question of nationwide no-fault against State-by-State no-fault. There are two basic arguments for nationwide no-fault. To oversimplify both, the positions are:

First. All 50 State legislatures will not enact no-fault legislation or, to the extent they do, the plans will be inadequate, phony, too-long delayed, or incompatible. An example of a "phony" no-fault proposal is the so-called overlay plan in which first-party medical and wage-loss benefits are grafted onto the existing liability policy without any limitations at all on lawsuits for pain and suffering and general damages. The biggest failure in such a plan, as an editorial in the Journal of Commerce pointed out:

> Lies in the fact that it does not eliminate the fault concept. (Victims) could still file their so-called "pain and suffering" lawsuits, tie up the courts, and add to the legal expenses of the underwriters.

Second. The number of Americans who each year drive or ride in one or more States other than their own is enormous. Each such motorist should be entitled and able to receive fast, adequate compensation if he is injured in an auto accident anywhere in the United States, regardless of which State it is where he has the accident. If the 50 State legislatures are unable or unwilling to shift to no-fault motor vehicle insurance within a reasonable time, then it is the duty of the Congress to see that the shift is made. In my judgment a reasonable time has already elapsed and only 10 percent of the States have passed true no-fault laws and only 2 percent have passed laws that meet the guidelines of the Department of Transportation study. Two years have elapsed since the submission of the final report of the DOT to Congress and President; more than 3 years have elapsed since the first American jurisdiction, Puerto Rico, enacted a no-fault plan; more than 25 years have elapsed since a neighboring jurisdiction, Saskatchewan, Canada, enacted no-fault; and more than 50 years have elapsed since the idea was first seriously proposed in the legal literature. See Rollins, "A Proposal To Extend the Compensation Principle to Accidents in the Streets," 4 Mass. L.W. 392—1919; Carman, "Is a Motor Vehicle Accident Advisable?" 4 Minn. L. Rev. 1—1919.

Under the Constitution, Congress is responsible for the regulation of commerce among the States and the promotion of the general welfare. Where the prospects are that the no-fault laws of the States will differ significantly from one another and add up to a confusing hodgepodge of differing systems, benefit levels, and tort exemptions, it is the duty of the Congress to act to promote a uniform and compatible system in all the States.

On April 17, 1972, Secretary of Transportation John A. Volpe, in a letter addressed to me accompanying his Department's responses to a series of questions on State no-fault activity, declared:

> In all candor, those of us who would like to see the States do this job themselves can hardly be heartened by their actions to date this year.

Prospects in 1973 in the 45 States without any no-fault legislation are not good.

State development to date has not been uniform. Each of the five State no-fault statutes is different from all of the other four. Uniformity to promote businesses operating in interstate commerce or to facilitate commuting to and from work is needed. As the following table indicates, there are 31 metropolitan areas in the United States which include more than one State. In 1970, more than 41 million Americans lived in those areas. These 41 million people need uniformity of automobile compensation systems and laws between the several States in their own metropolitan area.

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

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

U.S. metropolitan areas encompassing two or more States in 1972*

	Population
New York City metropolitan	11,528,649
Chicago, Ill.—Gary, Hammond, East Chicago, Ind	7,612,314
Philadelphia, Pa.-Camden, N.J.	4,817,914
St. Louis, Mo.-East St. Louis, Ill.	2,363,017
Cincinnati, Ohio-Covington, Newport, Ky.-Ind	1,384,911
Kansas City, Mo.-Kansas City, Kans.	1,256,649
Portland, Ore.-Wash	1,009,129
Providence, Pawtucket, Warwick, R.I.-Mass.	914,110
Louisville, Ky.-Ind	826,553
Memphis, Tenn.-Ark	770,120
Toledo, Ohio-Mich	692,571
Allentown, Bethlehem, Easton, Pa.-N.J.	543,551
Omaha, Nebr.-Council Bluffs, Iowa	541,453
Wilmington, Del-N.J.-Md	499,493
Davenport, Iowa-Rockland, Moline, Ill	362,638
Chattanooga, Tenn.-Ga	304,927
Duluth, Minn.-Superior, Wis	265,350
Huntington, W. Va.-Ashland, Ky.-Ohio	253,743
Augusta, Ga.-S. Car	253,460
Columbus, Ga.-Ala	238,584
Evansville, Ind.-Ky	232,775
Lawrence, Haverhill, Mass.-N.H.	232,415
Wheeling, W. Va.-Ohio	182,712
Steubenville, Ohio-Weirton, W. Va	165,627
Fort Smith, Ark.-Okla	160,421
Fall River, Mass.-R.I	149,976
Fargo, N.D.-Moorhead, Minn	120,238
Sioux City, Iowa-Sioux City, S. Dak	116,189
Texarkana, Tex.-Ark	101,198
Dubuque, Iowa-Ill.-Wis	90,609
Total	40,852,419

*With 55,900 or more of population.

Source: U.S. Senate Antitrust and Monopoly Subcommittee.

Derived from: Bureau of Census, U.S. Dept. of Commerce, 243 Standard Metropolitan Statistical Areas, *U.S. Dept. of Commerce News*, March 23, CB 71-46.

Mr. MAGNUSON. Mr. President, the Federal Government has a special responsibility to see that an adequate compensation system is created because most of the people injured in automobile accidents and most of the people killed in motor vehicle accidents are injured and killed while traveling on highways built substantially—50 percent—or almost completely—90 percent—with Federal funds. In 1970, of 53,816 fatal motor vehicle accidents, 38,079—70.7 percent—oc-

curred on Federal-aid highways. In the same year, 1,387,000 nonfatal injuries out of a total of 2,700,000 occurred in automobile accidents on Federal-aid highways—51.3 percent. Department of Transportation, Federal Highway Administration, Fatality and Injury Accident Rates on Federal Aid and Other Highways Systems—1970.

The Federal Government paid $60 billion of the $83.7 billion which it cost to construct these Federal-aid highways. Quarterly Report on the Federal-Aid Highway Program, June 30, 1972, reported in Department of Transportation, News, Federal Highway Administration, September 26, 1972.

Those Federal funds were raised by taxes paid by the citizens of all the States on gasoline, tires and tubes, parts and accessories, lubricating oil and trucks. Thus, the welfare of the users of federally financed highways is a legitimate and necessary concern of the Federal as well as the State governments. Partnership between State and Federal Governments built our great highway system; a similar partnership is now needed to take care of victims via an efficient, fair, and humane compensation system.

It has been argued that in changing from a liability insurance system to a no-fault insurance system, the State-by-State approach is preferable because it permits needed experimentation to discover the best features of the new no-fault system.

That argument makes some sense. But if it is scrutinized carefully, the experimentation argument does not hold. The argument is predicated on the assumption that no-fault insurance is a "new form" of insurance. That assumption is false. No-fault insurance is an established form, indeed the most prevalent form of insurance today. Its efficiencies are established fact. Life insurance, disability insurance, workmen's compensation insurance, health insurance, fire insurance, theft insurance, marine insurance, casualty-loss insurance are all no-fault forms of insurance. The insurer pays whether or not the insured's death was caused prematurely by his negligence in smoking cigarettes, whether or not the total loss by fire was caused by the insurer's negligence in failing to maintain a fire extinguisher, and so forth.

Where experimentation is needed is in those plans that attempt to combine automobile liability insurance and automobile no-fault—or first-party benefits—insurance. This combination is largely untested and creates novel problems. However, a complete and nationwide no-fault system would eliminate most if not all of these problems because the insurance principles themselves have been tried in other areas—for example, health insurance, disability income insurance, and workman's compensation insurance.

There are two additional problems with the experimentation argument.

First, a State experimenting with no-fault insurance may not set up its no-fault plan in such a way as to permit the retrieval of information concerning the performance of the no-fault experiment. On the other hand, the State may not have good information concerning the operation of its previous system from which it can make reasoned comparisons.

Second, the improvements in the automobile compensation system resulting from a no-fault experiment in one State may not be reproduced in another State. For example, the Massachusetts plan may have been beneficial for Massachusetts residents who had previously operated under a compulsory liability insurance plan which had supported a large amount of the property damage costs. But transfer of the Massachusetts plan to South Carolina might not produce the same results.

By establishing a nationwide no-fault plan which prescribes basic economic loss protection for all persons injured in automobile accidents while at the same time permitting the States to experiment with deductibles, exclusions, limitations on survivor's and work benefits' requirements for intangible loss protection and other variations, a situation can be established whereby all Americans obtain quickly the proven efficiencies and benefits of no-fault coverage while permitting State experimentation where it would be helpful in developing further refinements of the basic no-fault scheme.

As the following discussion and explanations of the content of the bill makes clear, its passage would mean little or no encroachment on any existing State no-fault plan which meets the basic guidelines set down in the final report in the Department of Transportation.

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

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

DETAILED EXPLANATION

(1) GLOSSARY OF TERMS

Basic reparation insurance is insurance by which the insurer, self-insurer, or governmental unit pays the insured, on a no-fault basis, basic reparation benefits for injury arising out of the maintenance or use of a motor vehicle.

Security covering a motor vehicle is basic reparation insurance and required tort liability insurance.

Basic reparation benefits are benefits required to be paid to an injured person for his net loss arising out of the maintenance or use of a motor vehicle.

Loss consists of five distinct elements:

(a) *Allowable expense* (medical and hospital expense, rehabilitation services expense, funeral expense);

(b) *Work loss* (wages and earnings from personal effort);

(c) *Replacement services loss* (cost of substitute services);

(d) *Survivors economic loss* (future earnings loss to survivors caused by death of a wage earner); and

(e) *Survivors replacement services loss* (cost of substitute services in case of death).

Added reparation benefits are the benefits and compensation paid to a person who purchases optional insurance coverages (including collision and comprehensive).

Noneconomic detriment is intangible damage including pain and suffering.

Reparation obligor is an insurance company or self-insurer, including a governmental unit, that provides basic or added reparation benefits.

(2) EXPLANATION

There are various stages at which the new automobile insurance system impacts the consumer of auto insurance.

Stage 1—Acquisition: The consumer is involved in the purchase of desired insurance coverage.

Stage 2—Claim and Payment: The consumer or other beneficiary sustain a loss covered by the insurance. The insurer is obligated to pay for the loss under the terms and conditions of the insurance contract.

Stage 3—Conflict Resolution: If the consumer and the insurer disagree as to the existence or amount of loss or the applicability of the insurance coverage, the consumer is thrown into another stage of the insurance process.

The following explanation describes how a person would proceed through the various stages of insurance purchase, claim and payment, and dispute resolution under the proposed National No-Fault Motor Vehicle Insurance Act.

(a) *Stage 1—Acquisition*

Every owner of a motor vehicle registered, required to be registered, or operating into State is required to purchase security covering the motor vehicle. Security covering the motor vehicle includes basic reparation insurance and minimum tort liability insurance. That security may be provided by contracting with an insurer or by qualifying as a self-insurer.

The availability of this compulsory insurance is assured. If an individual is unable to obtain the required insurance in the voluntary market, he may obtain the insurance from a plan which the Commissioner of Insurance establishes and implements or approves and supervises.

The purchaser of compulsory liability and basic reparation insurance makes certain decisions about the coverage he desires. Should he elect deductibles, exclusions, or waiting periods permitted by the State insurance commissioner? Should he select tort liability limits higher than the minimum $25,000 per person per accident?

The purchaser also has to decide which, if any, added reparation benefits he should purchase. His insurance company is required to offer him collision insurance (subject to a deductible of $100) or coverage (inverse liability coverage discussed below) which pays for all collision and upset damage to the extent that the insured has a valid claim in tort against another identified person or would have had such a valid claim but for the abolition of tort liability for damages for harm to motor vehicles in use. In addition to purchasing collision or inverse liability insurance, the owner of a motor vehicle may want to purchase added reparation benefits compensating for losses excluded by limits on work loss, replacement services loss, survivors economic loss, and survivors replacement services loss. He may wish to purchase insurance also to cover noneconomic detriment. The availability of these and other coverages is assured through the same plan that guarantees the availability of basic reparation insurance.

If a person is fortunate, his only involvement with the automobile insurance system will be at the acquisition stage. If, however, the owner of a motor vehicle or a member of his family is injured in an automobile accident, that person will enter into the claim and payment stage of the new automobile insurance system.

(b) *Stage 2—Claim and payment*

Person making claims for the payment of benefits to compensate for detriment sustained by them during the maintenance or

use of a motor vehicle can be divided into three distinct categories: (1) basic reparation insureds; (2) persons not owning motor vehicles; and (3) uninsured motorists. Each category of persons is entitled to basic benefits but from different sources and to varying degrees.

i. The Basic Reparation Insured

A basic reparation insured is the owner of a motor vehicle or any member of his household. When a basic reparation insured sustains injury arising out of the operation or use of a motor vehicle, he claims basic reparation benefits from his own insurer. Traditionally, automobile insurance coverage has followed the vehicle rather than the family; this was true in S. 945. Under the proposed bill, as in UMVARA, basic reparation coverage follows the family unit. The basic reparation insured is entitled to basic reparation benefits provided for in a contract of basic reparation insurance. (See below for a detailed discussion of benefits.)

ii. A Person Not Owning a Car

A person not owning a motor vehicle and not a member of a household which owns a motor vehicle is entitled to basic reparation benefits if he sustains injury arising out of the maintenance or use of a motor vehicle. Such a person makes a claim against the reparation obligor providing security covering the motor vehicle in which he was riding when injured. If the person is a pedestrian, he may make a claim against any reparation obligor providing security covering any involved motor vehicle.

iii. The Uninsured Person

An uninsured person is an owner of a motor vehicle who has failed to provide the required security covering his motor vehicle. This person is entitled to basic reparation benefits from the assigned claims plan in the State, but these benefits must be reduced in the amount of $500 for each year that the owner of a motor vehicle has failed to provide the required security. In addition, any mandatory exclusion, deductibles, or waiting periods are subtracted from the net loss sustained by the uninsured motorist.

The assigned claims plan is also available to: (1) the basic reparation insured whose own insurance company is financially unable to pay or (2) to a person who is not a basic reparation insured (and not required to be) if a reparation obligor is (a) not able to meet its financial obligations or (b) not identifiable (e.g., hit-and-run accident).

iv. Submission and Payment of Claim

A person claiming basic reparation benefits must submit to the reparation obligor reasonable proof of the loss sustained on account of the injury arising out of the maintenance or use of a motor vehicle. Having received reasonable proof of the loss the reparation obligor is obligated to pay the loss within 15 days.

v. Basic Reparation Benefits

Basic reparation benefits are benefits providing reimbursement for net loss suffered through injury arising out of the maintenance or use of a motor vehicle. Under the terms of the bill "loss" means accrued economic detriment from injury arising out of the maintenance or use of a motor vehicle consisting of, and limited to allowable expense, work loss, replacement services loss, and if injury causes death, survivor's economic loss, and survivor's replacement services loss. (See glossary of terms.)

In determining the basic reparation benefits to which a person is entitled, the basic elements of loss must be determined. These elements of loss must then be reduced by benefits from social security (except Medicaid benefits), workman's compensation, State-required income disability or other Federal benefits available to the basic reparation insured because of the injury arising out of the maintenance or use of a motor vehicle. This net loss is subject to further reduction depending upon the exclusions, deductibles, monthly limitations and total benefit ceilings provided for within the contract of basic reparation insurance. The monthly limitations and total benefit ceilings in the basic reparation insurance will be determined by the State, but the bill requires a State to meet certain basic minimums as follows.

Benefits for medical and rehabilitation expenses may not be limited by monthly limitations or total benefit ceilings. They are not without limitation, however. For example, only *reasonable* medical and rehabilitation expenses constitute loss compensable by basic benefits.

Monthly and total limitations on work loss are permitted. A State may provide that payment for monthly work loss not exceed the quantity $1,000 times a fraction whose numerator is the average per capita income in the State and whose denominator is the average per capita income in the United States, according to the latest available United States Department of Commerce figures. A total benefit ceiling of $50,000 is permitted without a showing of special circumstance. If the commissioner of insurance, in accordance with State law, determines by regulation on the basis of a preponderance of actuarial information that cost under no-fault will exceed the costs of full coverage under the present insurance system, then he is authorized to reduce the $50,000, but in no event below a $25,000 ceiling.

Other elements of loss, namely replacement services loss, survivor's economic loss, and survivor's replacement services loss, may be subject under a State plan to reasonable exclusions or monthly or total limitations. Thus, the extent of benefits a person is entitled to receive under a contract of basic reparation insurance depends upon the particular provisions imposed by the State. Of course, a person can add to, or subtract, from, those benefits by purchasing added reparation coverage or electing certain optional deductibles and exclusions.

If a person owns or operates a vehicle in a State that has not adopted a plan which meets or exceeds the national standards, then the benefit levels in the basic reparation insurance are not subject to as many exclusions or benefit ceiling limitations. Under the alternative no-fault plan, basic reparation insurance would reimburse a person for his allowable expense, for his work loss subject to a monthly limitation of $1,000 times a fraction referred to above, and all his replacement services loss, survivor's loss, and survivor's replacement services loss up to $200 per week together.

vi. Tort claims

In addition to claims for basic and added reparation benefits, a person sustaining injury in a motor vehicle accident has a right to claim in tort against certain persons for the recovery of certain benefits. Although in general the tort claim is restricted, a person can claim recovery of benefits from the following negligent persons: (1) the owner of a motor vehicle not providing required security; (2) a person in the business of designing, manufacturing, repairing, servicing, or otherwise maintaining motor vehicles arising from a defect in a motor vehicle caused or not corrected by an act or omission in designing, manufacturing, repairing, servicing, or otherwise maintaining a motor vehicle in the course of business; (3) a person who intentionally causes injury to persons or harm to property; (4) a person who causes harm to property other than a motor vehicle in use and its contents; or (5) a person in the business of parking or storing motor vehicles if the liability arises in the course of that business for harm to a motor vehicle and its contents.

A person injured in an automobile accident has a claim in tort against any tort feasor for damages not covered by basic reparation insurance and not accruing as loss during the period for which basic reparation insurance is providing benefits for loss. In other words, if the State has established a benefit ceiling limitation on work loss of $50,000, detriment in excess of $50,000 can be sought in tort.

A certain category of injured persons may sue in tort for noneconomic detriment (in excess of $5,000) under the State plan but not the alternative plan. Those eligible are: (1) the survivors of persons who die after sustaining injury arising out of the maintenance or use of a motor vehicle; (2) injured persons sustaining significant permanent injury; (3) those persons sustaining serious permanent disfigurement; or (4) those persons completely unable to work for more than 6 months.

vii. Property Damage Claims

Detriment caused by damage to property can be recovered in several ways. If the property is not a motor vehicle in use, a person may claim recovery of benefits from a negligent person who caused the harm to the property. A "motor vehicle in use" is a motor vehicle in operation on a public roadway, including a motor vehicle moving, being driven, or standing on a public roadway.

Alternatively, compensation for harm to property may be provided for by purchasing added reparation coverage for that property. In other words, a person may submit a claim to his own insurance company to compensate him for harm to property, be it the contents of a motor vehicle or the motor vehicle itself. If a person has purchased such collision and comprehensive coverage, benefits are payable on a no-fault basis.

A person also has the further option to elect an alternative added reparation coverage (inverse liability coverage) to provide protection for harm to property on a fault basis. He can receive compensation from his own insurance company for damage to his motor vehicle or its contents if he can demonstrate that the damage was caused as the result of the negligence of another person. This insurance protection allows the individual to protect himself against harm to property in the same way he would have been protecting himself had liability for damage to motor vehicles in use not been restricted. This coverage would be available at a cost comparable to the cost today of property damage liability insurance. This coverage will be particularly attractive to owners of older motor vehicles.

During the claim and payment stage of the insurance process, conflict may develop between the insured and the insurer or the claimant and the alleged tort feasor. In that situation, a person enters the conflict resolution stage of the insurance process.

(c) *Stage 3—Conflict resolution*

i. Resolution of Conflicts Involving Claims for Basic and Added Reparation Benefits

A person making a claim for basic or added reparation benefits will face a settlement environment much different than that which he often faces today in making a liability claim. Rather than dealing with someone else's insurance company, he will be dealing with his own insurance company. If his insurance company refuses to pay the claim, and later pays it, the overdue payment bears interest at the rate of 18 percent per annum.

By the terms of the bill, a person has the opportunity to retain an attorney to pursue his claim against any reparation obligor who has refused to pay basic or added reparation benefits. If those benefits are finally paid, either voluntarily or by order of the court, the individual has a right to recover the costs of litigation and reasonable attorneys fees occasioned by the need to pursue his claim. If a claim is finally litigated, the individual has a right to obtain from the insurance company the cost of his attorney's fees so long as the claim was not fraudulent

or so excessive as to have no reasonable foundation.

ii. Disputes in Tort

Conflict resolution in those areas where claims in tort are still permitted are to be governed by the applicable law in the State in which a lawsuit is brought.

iii. Conflicts Between Insurance Companies

Conflicts between insurance companies are substantially reduced by the provision in the bill prohibiting insurance companies from seeking reimbursement from one another for no-fault benefits they pay their policyholders for harm caused by the negligence of the other company's policyholder. By eliminating conflicts between insurance companies, the bill assures the consumer of insurance that he will not be brought into the middle of such conflicts.

EXHIBIT 1

S. 354

A bill to establish a nationwide system of adequate and uniform motor vehicle accident reparation acts and to require no-fault motor vehicle insurance as a condition precedent to using a motor vehicle on public roadways in order to promote and regulate interstate commerce

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National No-Fault Motor Vehicle Insurance Act."

TITLE I—GENERAL PROVISIONS

DEFINITIONS

SEC. 101. As used in this Act—

(1) "Added reparation benefits" mean benefits provided by optional added reparation insurance in accordance with section 213 or 304 of this Act.

(2) "Allowable expense" means reasonable charges incurred for reasonably needed products, services, and recommendations, or the reasonable value of such products, services, and accommodations if no charges are incurred, including those for medical care, emergency medical transportation services, rehabilitation, rehabilitative occupational training, and other reasonable direct remedial treatment and care. The term includes a total charge not in excess of $500 for expenses in any way related to funeral, cremation, and burial. It does not include that portion of a charge for a room in a hospital, clinic, convalescent or nursing home, or any other institution engaged in providing nursing care and related services, in excess of a reasonable and customary charge for semi-private accommodations, unless intensive care is medically required. "Allowable expense" does not include any amount includable in work loss, replacement services loss, survivor's economic loss, or survivor's replacement services loss.

(3) "Basic reparation benefits" means benefits required by this Act providing reimbursement for net loss suffered through injury arising out of the maintenance or use of a motor vehicle, subject, where applicable, to the limits, deductibles, exclusions, disqualifications, and other conditions provided or authorized in this Act.

(4) "Basic reparation insurance" includes a contract, self-insurance, or other legal means under which the obligation to pay basic reparation benefits arises.

(5) "Basic reparation insured" means:

(i) a person identified by name as an insured in a contract of basic reparation insurance complying with this Act; and

(ii) a spouse or other relative of a named insured, a minor in the custody of a named insured, and a minor in the custody of a relative of a named insured if—

(A) not identified by name as an insured in any other contract of basic no-fault insurance complying with this Act; and

(B) in residence in the same household with a named insured. A person is in residence in the same household if he usually makes his home in the same family unit, even though he temporarily lives elsewhere.

(6) "Commissioner" means the commissioner of insurance or the head of the department, commission, board, or other agency of a State which is charged by the law of that State with the supervision and regulation of the business of insurance.

(7) "Department of motor vehicles" means the department of motor vehicles or the department, commission, board, or other agency of a State which is charged by the law of that State with the administration of laws and regulations regarding registration of motor vehicles.

(8) "Government" means the Government of the United States, or of any State or of any political subdivision of a State, or any agency, subdivision, or department of any government, including any corporation or other association organized by a government for the execution of a government program and subject to control by a government or any corporation or agency established under an interstate compact or international treaty.

(9) "Injury" and "injury to person" mean accidentally sustained bodily harm to a person and that person's sickness, disease, or death resulting therefrom.

(10) "Loss" means accrued economic detriment resulting from injury arising out of the maintenance or use of a motor vehicle consisting of, and limited to, allowable expense (subsection (2)), work loss (subsection (31)), replacement services loss (subsection (21)), and, if injury causes death, survivor's economic loss (subsection (28)) and survivor's replacement services loss (subsection (29)).

(11) "Loss of income" means income actually lost by a person or that would have been lost but for any income continuation plan providing income to him reduced by any income from substitute work actually performed, income which he would have earned in available substitute work he was capable of performing but unreasonably failed to undertake, or income which he would have earned by hiring an available substitute to perform self-employment services but unreasonably failed to do.

(12) "Maintenance or use of a motor vehicle" means maintenance or use of a motor vehicle as a vehicle, including, incident to its maintenance or use as a vehicle, occupying, entering into and alighting from it. Maintenance or use of a motor vehicle does not include (i) conduct within the course of a business of repairing, servicing, or otherwise maintaining motor vehicles unless the conduct occurs off the business premises, or (ii) conduct in the course of loading and unloading the vehicle unless the conduct occurs while occupying, entering into, or alighting from it.

(13) "Motor vehicle" means a vehicle required to be registered under the laws of the State relating to motor vehicles.

(14) "Motor vehicle in use," means a motor vehicle in operation on a public roadway, including a motor vehicle moving, being driven, or standing on a public roadway. Motor vehicle in use does not include a motor vehicle parked in an authorized area on a public roadway.

(15) "Net loss" means loss less benefits or advantages, from sources other than basic and added reparation insurance, required to be subtracted from loss in calculating net loss pursuant to section 209 of this Act.

(16) "Noneconomic detriment" means pain, suffering, inconvenience, physical impairment, and other nonpecuniary damage recoverable under the tort law applicable to injury arising out of the ownership, maintenance, or use of a motor vehicle. The term does not include punitive or exemplary damages.

(17) "Owner" means a person, a government, an organization, or any entity considered as such in law, including a corporation, company, association, firm, partnership, joint stock company, foundation, institution, society, union, club, church, or any other group of persons organized for any purpose, other than a lienholder or secured party, that owns or has title to a motor vehicle or is entitled to the use and possession of a motor vehicle subject to a security interest held by another person. The term includes a lessee of a motor vehicle having the right to possession under a lease with option to purchase.

(18) "Probable annual income" means in the absence of proof that it is or would be some other amount:

(1) the average annual income from work received by the injured person during the years, not to exceed three, preceding the year in which the accident causing the injury occurs; or

(2) if the person has not previously earned income, the average annual income, for the year preceding the accident, of a production or non-supervisory worker on a private non-agricultural payroll in the State.

(19) "Public roadway" means a way open to the use of the public for purposes of automobile travel.

(20) "Reparation obligor" means an insurer, self-insurer, obligated government, or assigned claims bureau providing basic or added reparation benefits in accordance with this Act.

(21) "Replacement services loss" means expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the injured person would have performed, not for income but for the benefit of himself or his family, if he had not been injured.

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

(23) "Secured vehicle" means the motor vehicle for which insurance or other security is provided in accordance with section 102 of this Act.

(24) "Security covering a motor vehicle" and "security covering the vehicle" is insurance or other security so provided pursuant to this Act.

(25) "Self-insurer" means an owner or any person providing security pursuant to subsections (b) and (c) of section 102 of this Act.

(26) "State" means a State and the District of Columbia.

(27) "Survivor" means a person identified in the statute of the State of domicile of the decedent concerning liability for wrongful death as one entitled to receive benefits by reason of the death of another person.

(28) "Survivor's economic loss" means: (i) loss of income of a decedent following death resulting from injury arising out of the maintenance or use of a motor vehicle which the decedent would have contributed to a survivor or survivors if he had not suffered the injury, (ii) less expenses of the survivor or survivors avoided by reason of decedent's death.

(29) "Survivor's replacement services loss" means expenses reasonably incurred by survivors after decedent's death in obtaining ordinary and necessary services in lieu of those the decedent would have performed for their benefit if he had not suffered the fatal injury, less expenses of the survivors avoided by reason of the decedent's death and not subtracted in calculating survivor's economic loss.

(30) "Without regard to fault" means irrespective of fault as a cause of injury or death, and without application of any principle of liability based on negligence.

(31) "Work loss" means: (i) loss of income resulting from the inability by reason of an injury arising out of the maintenance or use of a motor vehicle to perform work which an injured person would have performed if he had not been injured, and (ii) reasonable expenses for hiring a sub-

stitute to perform self-employment services, thereby mitigating loss of income.

NECESSARY NO-FAULT INSURANCE

SEC. 102. (a) SECURITY COVERING A MOTOR VEHICLE.—Every owner of a motor vehicle in the State shall continuously provide in accordance with this Act with respect to that motor vehicle, while it is either present or registered in the State, security for the payment of basic reparation benefits and security for the payment of tort liabilities arising from maintenance or use of the motor vehicle. Security may be provided by a contract of insurance or by qualifying as a self-insurer. Any person other than the owner may provide such security with respect to any motor vehicle.

(b) SELF-INSURANCE.—Self-insurance, subject to approval of the commissioner, is effected by filing with the department of motor vehicles in satisfactory form—

(1) a continuing undertaking by the owner or other appropriate person to pay tort liabilities in amounts not less than those required in section 208 of this Act and basic reparation benefits, to perform all other obligations imposed in accordance with this Act, and to elect to pay such added reparation benefits as are specified in the undertaking.

(2) evidence that appropriate provision exists for prompt and efficient administration of all claims, benefits, and obligations provided in accordance with this Act; and

(3) evidence that reliable financial arrangements, deposits, resources, or commitments exist providing assurance substantially equivalent to that afforded by a policy of insurance complying with this Act for payment of tort liabilities, basic reparation benefits, and all other obligations imposed in accordance with this Act.

(c) OBLIGATED GOVERNMENT.—A government may provide security by lawfully obligating itself to pay basic reparation benefits in accordance with this Act.

(d) OBLIGATIONS UPON TERMINATION OF SECURITY.—An owner of a motor vehicle who ceases to maintain security shall immediately surrender the registration certificate and license plates for the vehicle to the department and may not operate or permit operation of the vehicle in any State until security has again been furnished as required in accordance with this Act. An insurer who has issued a contract of insurance and knows or has reason to believe the contract is for the purpose of providing security shall immediately give notice to the department of the termination of the insurance. If the commissioner withdraws approval of security provided by a self-insurer or knows that the conditions for self-insurance have ceased to exist, he shall immediately give notice thereof to the department. These requirements may be modified or waived by the department of motor vehicles.

(e) PENALTY.—Any owner who knowingly violates the provisions of subsection (a) may be punished by such fine or otherwise as a State determines to impose.

AVAILABILITY OF INSURANCE

SEC. 103. (a) PLAN.—(1) The Commissioner shall establish and implement or approve and supervise a plan assuring that liability insurance and basic and added reparation insurance for motor vehicles will be conveniently and expeditiously available, subject only to payment or provision for payment of the premium, to each applicant for insurance who holds a valid driver's license and who is required pursuant to this Act to provide security for payment of tort liabilities and basic reparation benefits and who cannot conveniently obtain insurance through ordinary methods at rates not in excess of those applicable to applicants under the plan. The plan may be by assignment of applicants among insurers, pooling, other joint insuring or reinsuring arrangement, or any other method that will reasonably accomplish the purposes of this section, including any arrangement or undertaking by insurers that results in all applicants being conveniently afforded the insurance coverages on reasonable and not unfairly discriminatory terms through ordinary markets.

(2) The plan shall make available optional added reparation and tort liability coverages and other contract provisions the commissioner determines are reasonably needed by applicants and are commonly afforded in voluntary markets. The plan shall provide for the availability of financing or installment payment of premiums on reasonable and customary terms and conditions.

(3) All insurers authorized in a State to write motor vehicle liability, basic reparation, or optional added reparation coverages which the commissioner requires to be offered under paragraph (2) shall participate in the plan. The plan shall provide for equitable apportionment, among all participating insurers writing any insurance coverage required under the plan, of the financial burdens of insurance provided to applicants under the plan and costs of operation of the plan.

(4) Subject to the supervision and approval of the commissioner, insurers may consult and agree with each other and with other appropriate persons as to the organization, administration, and operation of the plan and as to rates and rate modifications for insurance coverages provided under the plan. Rates and rate modifications adopted or charged for insurance coverages provided under the plan shall be first adopted or approved by the commissioner, be reasonable and not unfairly discriminatory among applicants for insurance under regulations established by the commissioner, and not be so great as to deny economically disadvantaged persons, as a class, access to insurance, thereby effectively depriving them of the opportunity of legally operating motor vehicles.

(5) To carry out the objectives of this subsection, the commissioner may adopt rules, make orders, enter into agreements with other governmental and private entities and persons, and form and operate or authorize the formation and operation of bureaus and other legal entities.

(b) CANCELLATION, REFUSAL TO RENEW, OR OTHER TERMINATION OF INSURANCE.—(1) This subsection applies only to contracts of insurance providing security in accordance with this Act for a motor vehicle which is registered in a State and is not one of five or more motor vehicles under common ownership insured under a single insuring agreement.

(2) Any termination of insurance by an insurer, including any failure or refusal by the insurer to renew the insurance at the expiration of its term and any modification by the insurer of the terms and conditions of the insurance unfavorable to the insured, is ineffective, unless—

(A) written notice of intention to modify, not to renew, or otherwise to terminate the insurance has been mailed or delivered to the person identified by name as an insured in the contract of insurance providing security at least twenty days before the effective date of the modification, expiration, or other termination of the insurance;

(B) the insurer has expressly stipulated in the insuring agreement that the insurance is for a stated term of at least one year after the inception of coverage and may not be modified or terminated during the term; and

(C) in the case of termination by failure or refusal to renew, the insurer has offered to arrange for equivalent coverage with the plan, informs the insured about the price of such coverage, and arranges for the coverage if instructed to do so by the person identified by name as an insured in the contract of insurance providing security.

(3) A contract of insurance for basic or added reparation benefits may not be terminated by cancellation during the policy period unless:

(A) the requirements on termination in paragraph (2) of this subsection are complied with, and

(B) one of the following conditions pertains:

(i) the notice of cancellation is mailed or delivered at any time within seventy-five days after the original inception of coverage;

(ii) the premium or any installment thereof has not been paid when due after reasonable demand therefor; or

(iii) the driver's license of the person identified by none as an insured in the contract of insurance providing security is revoked.

(4) An insurer who has canceled, refused to renew, or otherwise terminated insurance shall mail or deliver to the insured, within ten days after receipt of a written request, a statement of the reasons for the cancellation, refusal to renew, or other termination of the insurance coverage.

(5) For purposes of this subsection a cancellation or refusal to renew by or at the direction of any person acting pursuant to any power or authority under any premium finance plan, agreement, or arrangement, whether or not with power of attorney or assignment from the insured, constitutes a cancellation or refusal to renew by the insurer.

(6) This subsection does not limit or apply to any termination, modification, or cancellation of the insurance, or to any suspension of insurance coverage, by or at the request of the insured.

(7) This subsection does not affect any right an insurer has under other law to rescind or otherwise terminate insurance because of fraud or other willful misconduct of the insured at the inception of the insuring transaction or the right of either party to reform the contract on the basis of mutual mistake of fact.

(8) An insurer, his authorized agents and employees, and any person furnishing information upon which he has relied, are not liable in any action or proceeding brought because of any statement made in good faith pursuant to paragraph (4).

PAYMENT OF BENEFITS, CONDITIONS, AND LIMITATIONS

SEC. 104. (a) REPARATION OBLIGOR'S DUTY TO RESPOND TO CLAIMS.—(1) Basic and added reparation benefits are payable monthly as loss accrues. Loss accrues not when injury occurs, but as work loss, replacement services loss, survivor's economic loss, survivor's replacement services loss, or allowable expense is incurred. Benefits are overdue if not paid within thirty days after the reparation obligor receives reasonable proof of the fact and amount of loss realized, unless the reparation obligor elects to accumulate claims for periods not exceeding thirty-one days and pays them within fifteen days after the period of accumulation. If reasonable proof is supplied as to only part of a claim, and the part totals $100 or more, the part is overdue if not paid within the time provided by this section. Obligations to pay allowable expense benefits may be discharged by the reparation obligor by directly paying persons supplying products, services, or accommodations to the claimant.

(2) Overdue payments bear interest at the rate of 18 per centum per annum.

(3) A claim for basic or added reparation benefits shall be paid without deduction for the benefits which are to be subtracted pursuant to the provisions on calculation of net loss (section 209), if these benefits have not been paid to the claimant before the reparation benefits are overdue or the claim is paid. The reparation obligor is entitled to reimbursement from the person obligated to make

the payments or from the claimant who actually receives the payments.

(4) A reparation obligor may bring an action to recover benefits which are not payable, but are in fact paid, because of an intentional misrepresentation of a material fact, upon which the reparation obligor relies, by the insured or by a person providing an item of allowable expense. The action may be brought only against the person providing the item of allowable expense, unless the insured has intentionally misrepresented the facts or knew of the misrepresentation. An insurer may offset amounts he is entitled to recover from the insured under this paragraph against any basic or added reparation benefits otherwise due.

(5) A reparation obligor who rejects a claim for basic reparation benefits shall give to the claimant prompt written notice of the rejection, specifying the reason and informing the claimant of the terms and conditions of his right to obtain an attorney pursuant to this Act. If a claim is rejected for a reason other than that the person is not entitled to the basic reparation benefits claimed, the written notice shall inform the claimant that he may file his claim with the assigned claims bureau and shall give the name and address of the bureau.

(b) SETTLEMENT OF CLAIM FOR BENEFITS.—(1) A claim for basic or added reparation benefits may be discharged by a settlement agreement for an agreed amount payable in installments or in a lump sum, if the reasonably anticipated net loss does not exceed $2,500. If the reasonably anticipated net loss exceeds $2,500, such a claim may be discharged by a settlement where authorized by the law of the State and upon a finding by a court of competent jurisdiction that the settlement is in the best interest of the claimant and any beneficiaries of the settlement. Upon approval of the settlement, the court may make appropriate orders concerning the safeguarding and disposing of the proceeds of the settlement. A settlement agreement may also provide that the reparation obligor shall pay the reasonable cost of appropriate medical treatment or procedures, with reference to a specified condition, to be performed in the future.

(2) A settlement agreement for an amount payable in installments may be modified as to amounts to be paid in the future, if it is shown that a material and substantial change of circumstances has occurred or that there is newly-discovered evidence concerning the claimant's physical condition, loss, or rehabilitation, which could not have been known previously or discovered in the exercise of reasonable diligence.

(3) A settlement agreement may be set aside if it is procured by fraud or if its terms are unconscionable.

(c) LIMITATION OF ACTIONS.—(1) If no basic or added reparation benefits have been paid for loss arising otherwise than from death, an action therefor may be commenced not later than two years after the injured person suffers the loss and either knows, or in the exercise of reasonable diligence should know, that the loss was caused by the accident, or not later than four years after the accident, whichever is earlier. If basic or added reparation benefits have been paid for loss arising otherwise than from death, an action for further benefits, other than survivor's benefits, by either the same or another claimant, may be commenced not later than two years after the last payment of benefits.

(2) If no basic or added reparation benefits have been paid to the decedent or his survivors, an action for survivor's benefits may be commenced not later than one year after the death or four years after the accident from which death results, whichever is earlier. If survivor's benefits have been paid to any survivor, an action for further survivor's benefits by either the same or another claimant may be commenced not later than two years after the last payment of benefits. If basic or added reparation benefits have been paid for loss suffered by an injured person before his death resulting from the injury, an action for survivor's benefits may be commenced not later than one year after the death or four years after the last payment of benefits, whichever is earlier.

(3) If timely action for basic reparation benefits is commenced against a reparation obligor and benefits are denied because of a determination that the reparation obligor's coverage is not applicable to the claimant under the provisions on priority of applicability of basic reparation security, an action against the applicable reparation obligor to whom a claim is assigned under an assigned claims plan may be commenced not later than sixty days after the determination becomes final or the last date on which the action could otherwise have been commenced, whichever is later.

(4) Except as paragraph (1), (2), or (3) prescribe a longer period, an action by a claimant on an assigned claim which has been timely presented (section 106(c)) may be connected not later than sixty days after the claimant receives written notice of rejection of the claim by the reparation obligor to which it was assigned.

(5) A calendar month during which a person does not suffer loss for which he is entitled to basic or added reparation benefits is not a part of the time limited for commencing an action, except that the months excluded for this reason may not exceed one hundred and twenty.

(6) If a person entitled to basic or added reparation benefits is under a legal disability when the right to bring an action for the benefits first accrues, the period of his disability is not a part of the time limited for commencement of the action.

(d) ASSIGNMENT OF BENEFITS.—An assignment of or agreement to assign any right in accordance with this Act for loss accruing in the future is unenforceable except as to benefits for—

(1) work loss to secure payment of alimony, maintenance, or child support; or

(2) allowable expense to the extent the benefits are for the cost of products, services, or accommodations provided or to be provided by the assignee.

(e) DEDUCTION AND SETOFF.—Except as otherwise provided in this Act; basic reparation benefits shall be paid without deduction or setoff.

(f) EXEMPTION OF BENEFITS.—(1) Basic or added reparation benefits for allowable expense are exempt from garnishment, attachment, execution, and any other process or claim, except upon a claim of a creditor who has provided products, services, or accommodations to the extent benefits are for allowable expense for those products, services, or accommodations.

(2) Basic reparation benefits other than those for allowable expense are exempt from garnishment, attachment, execution, and any other process or claim to the extent that wages or earnings are exempt under any applicable law exempting wages or earnings from process or claims.

ATTORNEYS' FEES AND COSTS

SEC. 105. (a) FEES OF CLAIMANT'S ATTORNEY.—(1) If overdue benefits are paid by the reparation obligor after receipt of notice of representation of a claimant by an attorney or if an action is maintained (unless the court determines that the claim or any significant part thereof is fraudulent or so excessive as to have no reasonable foundation), a reasonable attorney's fee (based upon actual time expended) shall be paid by the reparation obligor to the attorney. No part of basic or added reparation benefits paid by the reparation obligor shall be applied in any manner as attorney's fees for advising and representing a claimant on a claim or in an action for basic or added reparation benefits.

(2) In any action brought against the insured by the reparation obligor, the court may award the insured's attorney a reasonable attorney's fee for defending the action.

(b) FEES OF REPARATION OBLIGOR'S ATTORNEY.—A reparation obligor shall be allowed a reasonable attorney's fee for defending a claim for benefits that is fraudulent or so excessive as to have no reasonable foundation. The fee may be treated as an offset against any benefits due or to become due to the person making such claim.

ASSIGNED CLAIMS

SEC. 106. (a) GENERAL.—(1) A person entitled to basic reparation benefits because of injury covered by this Act may obtain them through the assigned claims plan established in his State of domicile pursuant to subsection (b)(1), but if there is no such plan in the state of domicile he may obtain them through the assigned claims plan (if any) in the State where the injury occurred if—

(A) basic reparation insurance is not applicable to the injury for a reason other than those specified in the provisions on converted vehicles and intentional injuries (section 214);

(B) basic reparation insurance is not applicable to the injury because the injured person converted a motor vehicle while he was under fifteen years of age;

(C) basic reparation insurance applicable to the injury cannot be identified;

(D) basic reparation insurance applicable to the injury is inadequate to provide the contracted-for benefits because of financial inability of a reparation obligor to fulfill its obligation; or

(E) a claim for basic reparation benefits is rejected by a reparation obligor for a reason other than that the person is not entitled in accordance with this Act to the basic reparation benefits claimed.

(2) If a claim qualifies for assignment under paragraph (1)(C), (1)(D), or (1)(E), the assigned claims bureau or any reparation obligor to whom the claim is assigned is subrogated to all rights of the claimant against any reparation obligor, its successor in interest or substitute, legally obligated to provide basic reparation benefits to the claimant, for basic reparation benefits provided by the assignee.

(3) Except in case of a claim assigned under paragraph (1)(D), if a person receives basic reparation benefits through the assigned claims plan, all benefits or advantages he receives or is entitled to receive as a result of the injury, other than by way of succession at death, death benefits from life insurance, or in discharge of familial obligations of support, are subtracted in calculating net loss.

(4) An assigned claim of a person who does not comply with the requirement of providing security for the payment of basic reparation benefits, or of a person as to whom the security is invalidated because of his fraud or willful misconduct, is subject to (1) all the maximum optional deductibles and exclusions required to be offered, and (2) a deduction in the amount of $500 for each year or part thereof of the period of his continuous failure to provide security, applicable to any benefits otherwise payable.

(b) ASSIGNED CLAIMS PLAN.—(1) Reparation obligors providing basic reparation insurance in a State may organize and maintain, subject to approval and regulation by the commissioner an assigned claims bureau and an assigned claims plan and adopt rules for their operation and for assessment of costs on a fair and equitable basis consistent with this Act. If they do not organize and continuously maintain an assigned claims plan in a manner considered by the

commissioner to be consistent with this Act, he shall organize and maintain an assigned claims bureau and an assigned claims plan. Each reparation obligor providing basic reparation insurance in a State shall participate in the assigned claims bureau and the assigned claims plan. Costs incurred shall be allocated fairly and equitably among the reparation obligors.

(2) The assigned claims bureau shall promptly assign each claim and notify the claimant of the identity and address of the assignee of the claim. Claims shall be assigned so as to minimize inconvenience to claimants. The assignee thereafter has rights and obligations as if he had issued a policy of basic reparation insurance complying with this Act applicable to the injury or, in case of financial inability of a reparation obligor to perform its obligations, as if the assignee had written the applicable basic reparation insurance, undertaken the self-insurance, or lawfully obligated itself to pay reparation benefits.

(c) TIME FOR PRESENTING CLAIMS UNDER ASSIGNED CLAIMS PLAN.—(1) Except as provided in paragraph (2), a person authorized to obtain basic reparation benefits through the assigned claims plan shall notify the bureau of his claim within the time that would have been allowed for commencing an action for those benefits if there had been identifiable coverage in effect and applicable to the claim.

(2) If timely action for basic reparation benefits is commenced against a reparation obligor who is unable to fulfill his obligations because of financial inability, a person authorized to obtain basic reparation benefits through the assigned claims plan shall notify the bureau of his claim within six months after his discovery of the financial inability.

STATE REGULATION AND CONSUMER INFORMATION

SEC. 107. (a) STATE REGULATION.—The commissioner, in accordance with applicable State law, shall regulate reparation obligors. The rates charged for liability insurance and basic and added reparation coverages shall be established, determined, and modified in each State in accordance with the provisions of applicable State rating laws.

(b) CONSUMER INFORMATION.—The commissioner shall provide the means to inform consumers about rates being charged by reparation obligors for basic and aided reparation benefits in a manner adequate to permit consumers to compare prices.

MOTOR VEHICLES IN INTERSTATE TRAVEL

SEC. 108. A contract of insurance providing security covering a motor vehicle for the payment of basic reparation benefits shall be deemed to contain inverse liability coverage not to exceed $50,000 to protect against any detriment that is not covered by a contract of insurance providing basic or added reparation benefits for which the basic reparation insured would have a right to bring suit to recover in the State of registration but for which he has no right to bring suit to recover in the State in which he is operating, or responsible for the operation of, a motor vehicle.

REIMBURSEMENT, SUBROGATION, AND INDEMNITY

SEC. 109. (a) GENERAL.—A reparation obligor does not have and may not directly or indirectly contract for a right of reimbursement from or subrogation to the proceeds of a claim for relief or cause of action for noneconomic detriment of a recipient of basic or added reparation benefits. A reparation obligor may not directly or indirectly contract for, or be granted by a State, any right of reimbursement from any other reparation obligor not acting as a reinsurer for basic or added reparation benefits which it has paid or is obligated to pay.

(b) SUBROGATION.—Whenever a person who receives or is entitled to receive basic or added reparation benefits for an injury has a claim or cause of action against any other person for breach of an obligation or duty causing the injury or for breach of a contractual understating, the reparation obligor is subrogated to the rights of the claimant, and has a claim for relief or cause of action, separate from that of the claimant, to the extent that:

(1) elements of damage compensated for by basic or added reparation insurance are recoverable; and

(2) the reparation obligor has paid or become obligated to pay accrued or future basic or added reparation benefits.

(c) INDEMNITY.—A reparation obligor has a right of indemnity against a person who has converted a motor vehicle involved in an accident, or a person who has intentionally caused injury to person or harm to property, for basic and added reparation benefits paid to other persons for the injury or harm caused by the conduct of that person, for the cost processing claims for those benefits, and for reasonable attorney's fees and other expenses of enforcing the right of indemnity. For purposes of this subsection, a person is not a converter if he uses the motor vehicle in the good faith belief that he is legally entitled to do so.

(d) Nothing in the section shall preclude a health care provider from contracting or otherwise providing for a right of reimbursement to basic reparation benefits received by a person as compensation for the reasonable value of needed products, services, and accommodations for which no charges were incurred.

JURISDICTION

SEC. 110. (a) FEDERAL.—No district court of the United States may entertain an action for breach of any contractual or other obligation of a reparation obligor for the payment of liability, basic or added reparation benefits unless the United States is a party to the action or the person bringing the action meets the jurisdictional requirements of section 1332 of title 28 of the United States Code. In any direct action against the reparation obligor, whether incorporated or unincorporated, such reparation obligor shall be deemed a citizen of the State of which the basic reparation insured is a citizen, as well as of any State by which the reparation obligor has been incorporated and of the State where it has its principal place of business.

(b) STATE.—Any person may bring suit for breach of any contractual or other obligation of a reparation obligor for the payment of liability, basic or added reparation benefits in a State court of competent jurisdiction.

SEVERABILITY

SEC. 111. (a) Except as provided in subsection (b), if any provision of this Act or application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the involved provision or application, and to this end the provisions of this Act are severable.

(b) If any restriction on the retained tort liability in paragraph (7) of section 206(a) or 304, or application thereof to any person or circumstance, is held invalid, this Act shall be interpreted as if the paragraph containing the invalid restriction had not been enacted.

FEDERAL MOTOR VEHICLE

SEC. 112. (a) Notwithstanding any other provision of law, a claim against the United States as a reparation obligor for injury arising out of the maintenance or use of a Federal motor vehicle shall be governed by this Act. The level of basic reparation benefits which the United States pays shall be controlled by the no-fault plan applicable in the State in which the injury arising out of the maintenance or use of a Federal motor vehicle occurs.

(b) A Federal agency is authorized to obligate the United States to provide added reparation benefits for injury or harm arising out of the maintenance or use of a motor vehicle in the custody or control of such agency, upon publication in the Federal Register of notice of obligation and a description of the benefits to be provided.

(c) A Federal motor vehicle is a secured vehicle when operated in a territorial area not less than the United States, its territories and possessions, Canada, and Mexico.

(d) The Secretary shall by regulation establish procedures for claims against the United States for basic or added reparation benefits arising out of the maintenance or use of a Federal motor vehicle.

(e) As used in this section—

(1) "Federal agency" includes the executive departments, independent establishments of the United States, and corporations primarily acting as instrumentalities or agencies of the United States.

(2) "Federal motor vehicle" means a motor vehicle owned by a Federal agency and operated with its permission.

TITLE II—NATIONAL STANDARDS FOR STATE NO-FAULT MOTOR VEHICLE INSURANCE

SEC. 201. (a) STATE ACTION.—By the completion of the first regular legislative session which commences after the enactment of this Act, a State may establish a plan for no-fault motor vehicle insurance designed to meet or exceed the requirements established by this title.

(b) Within ninety days after the enactment of any plan the Secretary shall determine, after affording the State and other interested parties a reasonable opportunity to present oral and written submission, whether that State has established a plan for no-fault motor vehicle insurance that meets or exceeds the requirements established by this title. Unless it is determined that a State plan does not meet the requirements of this title, the State plan shall go into effect on the date designated in the plan. The date in no event shall be less than nine months and no more than twelve months from the date of enactment of the plan.

(c) The Secretary shall periodically review the laws and regulations of each State pertaining to no-fault motor vehicle insurance to determine whether or not they meet or exceed the requirements established by this title, and shall report thereon annually to the Congress.

(d) If at any time the Secretary determines that a State, following the completion of the first general legislative session following enactment of this Act, has not established or does not have in effect a plan for no-fault motor vehicle insurance that meets the requirements of this title, title III of this Act shall become applicable in that State on a date designated by the Secretary. The date in no event shall be less than six months and no more than nine months from the date of the Secretary's determination. If the Secretary finds, after title III is in effect, that a State has established a plan for no-fault motor vehicle insurance that meets or exceeds the requirements established by this title, the State plan shall go into effect and title III shall cease to be applicable on a date designated by the Secretary. The date in no event shall be less than six months and no more than nine months from the date of the enactment of the plan.

(e) The Secretary shall notify in writing the Governor of the affected State of any determinations made under this section and

shall publish these determinations in the Federal Register.

(f) Any determinations by the Secretary under this section shall be subject to judicial review in accordance with chapter V of title 5 of the United States Code exclusively in the United States court of appeals for the circuit in which the State whose plan is subject to the Secretarys determination is located or in the United States Court of Appeals for the District of Columbia Circuit, and any such review must be instituted within sixty days from the date that the Secretarys determination is published in the Federal Register.

STATE IMPLEMENTATION OF FEDERAL LAW

SEC. 202. A law establishing a no-fault plan for motor vehicle insurance in accordance with this title, and approved by the Secretary pursuant to section 201, shall be deemed to implement and effectuate the laws and policies of the United States. Such a law, established by a State in accordance with this Act, shall have the full force and effect of the laws of the United States under article VI, clause 2 of the Constitution of the United States, in connection with any judicial challenge to such law under a State constitution or State law.

COORDINATION OF NATIONAL REQUIREMENTS

SEC. 203. A State establishing a no-fault plan for motor vehicle insurance shall enact a law which incorporates, at a minimum, the provisions of title I, except sections 110, 111, and 112, and title II, except sections 201, 202, and 203.

RIGHT TO BASIC REPARATION BENEFITS AND OBLIGATION TO PAY THEM

SEC. 204. (a)(1) If the accident causing injury occurs in the State, every person suffering loss from injury arising out of maintenance or use of a motor vehicle has a right to basic reparation benefits in accordance with this Act.

(2) If the accident causing injury occurs outside the State, but in a territorial area not less than the United States, its territories and possessions, Canada, and Mexico, the following persons and their survivors suffering loss from injury arising out of maintenance or use of a motor vehicle have a right to basic reparation benefits in accordance with this Act:

(A) basic reparation insureds; and

(B) the driver and other occupants of a secured vehicle, other than a vehicle which is regularly used in the course of the business of transporting persons or property and which is one of five or more vehicles under common ownership.

(b)(1) Basic reparation benefits shall be paid without regard to fault.

(2) Basic reparation obligors and the assigned claims plan shall pay basic reparation benefits, under the terms and conditions stated in this Act, for loss from injury arising out of maintenance or use of a motor vehicle. This obligation exists without regard to immunity from liability or suit which might otherwise be applicable.

PRIORITY OF APPLICABILITY OF SECURITY FOR PAYMENT OF BASIC REPARATION BENEFITS

SEC. 205. (a) In case of injury to the driver or other occupant of a motor vehicle, if the accident causing the injury occurs while the vehicle is being used in the business of transporting persons or property, the security for payment of basic reparation benefits is the security covering the vehicle or, if none, the security under which the injured person is a basic reparation insured.

(b) In case of injury to an employee, or to his spouse or other relative residing in the same household, if the accident causing the injury occurs while the injured person is driving or occupying a motor vehicle furnished by the employer, the security for payment of basic reparation benefits is the security covering the vehicle or, if none, the security under which the injured person is a basic reparation insured.

(c) In all other cases, the following priorities apply—

(1) The security for payment of basic reparation benefits applicable to injury to a basic reparation insured is the security under which the injured person is a basic reparation insured.

(2) The security for payment of basic reparation benefits applicable to injury to the driver or other occupant of an involved motor vehicle who is not a basic reparation insured is the security covering that vehicle.

(3) The security for payment of basic reparation benefits applicable to injury to a person not otherwise covered who is not the driver or other occupant of an involved motor vehicle is the security covering any involved motor vehicle. An unoccupied parked vehicle is not an involved motor vehicle unless it was parked so as to cause unreasonable risk of injury.

(d) If two or more obligations to pay basic reparation benefits are applicable to an injury under the priorities set out in this section, benefits are payable only once and the reparation obligor against whom a claim is asserted shall process and pay the claim as if wholly responsible, but he is thereafter entitled to recover contribution pro rata for the basic reparation benefits paid and the costs of processing the claim. Where contribution is sought among reparation obligors responsible under paragraph (3) of subsection (c) proration shall be based on the number of involved motor vehicles.

PARTIAL ABOLITION OF TORT LIABILITY

SEC. 206. (a) Tort liability with respect to accidents occurring in the State and arising from the ownership, maintenance, or use of a motor vehicle is abolished except as to—

(1) liability of the owner of a motor vehicle involved in an accident if security covering the vehicle was not provided at the time of the accident;

(2) liability of a person in the business of designing, manufacturing, repairing, servicing, or otherwise maintaining motor vehicles arising from a defect in a motor vehicle caused or not corrected by an act or omission in designing, manufacturing, repair, servicing, or other maintenance of a vehicle in the course of his business;

(3) liability of a person for intentionally caused injury to person or harm to property;

(4) liability of a person for harm to property other than a motor vehicle in use and its contents;

(5) liability of a person in the business of parking or storing motor vehicles arising in the course of that business for harm to a motor vehicle and its contents; and

(6) damages for economic detriment not covered by basic reparation insurance and not accruing as loss during the period that basic reparation insurance is providing benefits for loss pursuant to this Act;

(7) damages for noneconomic detriment in excess of $5,000, but only if the accident causes death, significant permanent injury, serious permanent disfigurement, or more than six months of complete inability of the injured person to work in an occupation. "Complete inability of an injured person to work in an occupation" means inability to perform, on even a part-time basis, even some of the duties required by his occupation or, if unemployed at the time of injury, by any occupation for which the injured person was qualified.

(b) For purposes of this section and the provisions on reparation obligor's rights of reimbursement, subrogation, and indemnity, a person does not intentionally cause harm merely because his act or failure to act is intentional or done with his realization that it creates a grave risk of harm.

(c) Nothing in this section shall be construed to immunize any person from liability to pay a civil penalty or fine on the basis of fault in a civil or criminal proceeding based upon any act or omission rising out of the maintenance or use of a motor vehicle: *Provided*, That such civil penalty or fine may not be paid or reimbursed by an insurer or reparation obligor.

INCLUDED COVERAGES

SEC. 207. (a) An insurance contract which purports to provide coverage for basic reparation benefits or is sold with representation that it provides security covering a motor vehicle has the legal effect of including all coverages required by this Act.

(b) Every contract of insurance covering liability arising out of the ownership, maintenance, or use of a motor vehicle registered in the State includes basic reparation benefit coverages and required minimum security for tort liabilities required by this Act, and qualifies as security covering a motor vehicle. This subsection does not apply to a contract of insurance which provides coverage in excess of required minimum tort liability coverages or a contract which the commissioner determines by regulation provides motor vehicle liability coverages only as incidental to some other basic coverage.

MINIMUM TORT LIABILITY INSURANCE AND TERRITORIAL COVERAGE

SEC. 208. (a) The requirement of security for payment of tort liabilities may be fulfilled by providing:

(1) liability coverage of not less than $25,000 for all damages arising out of injury sustained by any one person as a result of any one accident applicable to each person sustaining injury caused by accident arising out of ownership, maintenance, use, loading, or unloading, of the secured vehicle;

(2) liability coverage of not less than $10,000 for all damages arising out of injury to or destruction of property, including the loss of use thereof, as a result of any one accident arising out of ownership, maintenance, use, loading, or unloading, of the secured vehicle; and

(3) that the liability coverages apply to accidents during the contract period in a territorial area not less than the United States of America, its territories and possessions, and Canada.

(b) The requirement of security for payment of tort liabilities may be met by payment to a State unsatisfied judgment fund or to any other program established to provide security for the payment of tort liabilities by the State of domicile of the owner of a motor vehicle.

(c) Subject to the approval of terms and forms, the requirement of security for payment of tort liabilities may be met by a contract of insurance the coverage of which is secondary or excess to other applicable valid and collectable liability insurance coverage. To the extent the secondary or excess coverage applies to liability within the minimum security required by this Act, it must be subject to added conditions consistent with the system of compulsory liability insurance.

(d) Tort liability coverages required by this Act need not include the tort liability of a converter.

CALCULATION OF LOSS

SEC. 209. WORK LOSS.—(a)(1) The work loss of a person whose income is realized in regular increments shall be calculated by:

(A) determining his per diem income by dividing his annual income by 260, and

(B) multiplying that quantity by the number of days the person sustains loss of income during the accrual period.

(2) The work loss of a person whose income is realized in irregular increments shall be calculated by:

(A) determining his probable per diem income by dividing his probable annual income by 260;

(B) multiplying that quantity by the number of days the person was unable to perform work during the accrual period; and

(C) subtracting from that product any amount by which the person's actual income prior to the injury for the calendar year in which the loss of income occurs exceeds the product resulting from multiplying the per diem income by the number of working days from the beginning of the calendar year to the date of injury.

(3) The work loss of an unemployed person is calculated by determining his probable per diem income by dividing his probable annual income by 260 and multiplying that quantity by the number of days (if any) the person would reasonably have been expected to realize income during the accrual period.

(4) Sums for work loss shall be periodically increased in a manner corresponding to annual compensation increases that would predictably have resulted but for the injury.

(5) Whenever a dollar figure limits work loss, that figure shall be multiplied beginning in 1978, and at five year intervals thereafter, by a number whose numerator is the Index of Real Wages for that year and whose denominator is the Index of Real Wages for the base year 1973, according to the latest available United States Department of Labor figures.

(b) NET LOSS.—(1) All benefits or advantages (less reasonably incurred collection costs) a person receives or is entitled to receive, because of the injury arising out of the maintenance or use of a motor vehicle, from social security (except those benefits provided under title XIX of the Social Security Act), workmen's compensation, any State-required temporary, nonoccupational disability insurance, and all other benefits (except the proceeds of life insurance) received because of the injury from the Government of the United States and its public agencies or a State or any of its political subdivisions or an instrumentality of two or more States, unless the law authorizing or providing for the benefits makes them excess or secondary to the benefits payable under this Act, are subtracted from loss in calculating net loss.

(2) If a benefit or advantage received to compensate for loss of income because of injury, whether from basic reparation benefits or from any source of benefits or advantages subtracted under subsection (a), is not taxable income, the income tax saving that is attributable to his loss of income because of injury is subtracted in calculating net loss. Subtraction may not exceed 15 per centum of the loss of income and shall be in such lesser amount as the insurer reasonably determines is appropriate based on a lower value of the income tax advantage.

BASIC REPARATION BENEFIT LIMITATIONS AND EXCLUSIONS

SEC. 210. A State may—

(a) provide for a limitation on work loss in the calculation of basic reparation benefits for all work loss sustained in excess of:

(1) a monthly amount equal to $1,000 a fraction whose numerator is the average per capita income in the State and whose denominator is the average per capita income in the United States, according to the latest available United States Department of Commerce figures:

(2) a total amount of $50,000 unless the commissioner, in accordance with State law, determines by regulation on the basis of a preponderance of actuarial information a lesser sum, but in no event a sum less than $25,000, should be established in order that the average premium costs for the average person in the State for basic reparation benefits, minimum tort liability insurance, optional added reparation coverages for physical damage to motor vehicles, and comprehensive coverage are not greater than the average premium costs for the average person in the State prior to the establishment of the State no-fault plan for an automobile insurance policy which included coverage for bodily injury liability, uninsured motorist protection, property damage liability, medical pay, collision, and comprehensive coverage, subject to reasonable limitations; and

(b) provide for reasonable exclusions or monthly or total limitations on replacement services loss, survivor's economic loss, and survivor's replacement services loss in the calculation of basic reparation benefits.

DEDUCTIBLES AND EXCLUSIONS

SEC. 211. A State establishing a no-fault plan may provide that any contract for basic or added reparation benefits may contain additional coverages and benefits with respect to any detriment resulting from a motor vehicle accident and such terms, conditions, deductible clauses, and waiting periods consistent with this Act as are approved by the commissioner, in accordance with State law. The commissioner shall only approve terms, conditions, deductible clauses, and waiting periods: (a) which are fair and equitable, and (b) which limit the variety of coverage available so as to give buyers of insurance reasonable opportunity to compare the cost of insuring with various reparation obligors.

PROPERTY DAMAGE EXCLUSION

SEC. 212. Basic reparation benefits do not include benefits for harm to property.

BENEFITS PROVIDED BY OPTIONAL ADDED REPARATION INSURANCE

SEC. 213. (a) Basic reparation insurers may offer optional added reparation coverages providing other benefits as compensation for injury or harm arising from ownership, maintenance, or use of a motor vehicle, including loss excluded by limits on hospital charges and funeral, cremation, and burial expenses, loss excluded by limits on work loss, replacement services loss, survivor's economic loss, and survivor's replacement services loss, benefits for harm to property, loss of use of motor vehicles, and noneconomic detriment. The commissioner may adopt rules requiring that specified optional added reparation coverages be offered by insurers writing basic reparation insurance.

(b) Basic reparation insurers shall offer the following optional added reparation coverages for physical damage to motor vehicles:

(1) a coverage for all collision and upset damage, subject to a deductible of $100; and

(2) a coverage for all collision and upset damage to the extent that the insured has a valid claim in tort against another identified person or would have had such a valid claim but for the abolition of tort liability for damages for harm to motor vehicles in use (section 206(a)(4)).

(c) Subject to the approval of terms and forms by the commissioner, basic reparation insurers may offer other optional added reparation coverages for harm to motor vehicles or their contents, or both, or other like coverages subject to different deductibles or without deductibles.

(d) An insurer of the insured's choice may write separately coverages for harm to motor vehicles.

(e) all added reparation coverages offered apply to injuries or harm arising out of accidents and occurrences during the contract period in a territorial area not less than the United States, its territories and possessions, and Canada.

CONVERTED MOTOR VEHICLES AND INTENTIONAL INJURIES

SEC. 214. (a) Except as provided for assigned claims, a person who converts a motor vehicle is disqualified from basic or added reparation benefits, including benefits otherwise due him as a survivor, from any source other than an insurance contract under which, the converter is a basic or added reparation insured, for injuries arising from maintenance or use of the converted vehicle. If the converter dies from the injuries, his survivors are not entitled to basic or added reparation benefits from any source other than an insurance contract under which the converter is a basic reparation insured. For the purpose of this section, a person is not a converter if he uses the motor vehicle in the good faith belief that he is legally entitled to do so.

(b) A person intentionally causing or attempting to cause injury to himself or another person is disqualified from basic or added reparation benefits for injury arising from his acts, including benefits otherwise due him as a survivor. If a person dies as a result of intentionally causing or attempting to cause injury to himself or another person, his survivors are not entitled to basic or added reparation benefits for loss arising from his death. A person intentionally causes or attempts to cause injury if he acts or fails to act for the purpose of causing injury or with knowledge that injury is substantially certain to follow. A person does not intentionally cause or attempt to cause injury (1) merely because his act or failure to act is intentional or done with his realization that it creates a grave risk of causing injury or (2) if the act or omission causing the injury is for the purpose of averting bodily harm to himself or another person.

TITLE III—ALTERNATIVE NO-FAULT MOTOR VEHICLE INSURANCE PLAN

REQUIREMENTS

SEC. 301. (a) Title I, except sections 110, 111, and 112, and the following provisions of title II shall be incorporated in an alternative no-fault insurance plan applicable in those States not enacting a State plan of no-fault insurance pursuant to section 201—

(a) section 204 (right to basic reparation benefits and obligation to pay them);

(b) section 205 (priority of applicability of security for payment of basic reparation benefits);

(c) section 207 (included coverages);

(d) section 208 (required minimum tort liability insurance and territorial coverage);

(e) section 209 (calculation of net loss);

(f) section 211 (deductibles and exclusion); and

(g) section 212 (property damage exclusion); and

(h) section 214 (converted motor vehicles and intentional injuries).

(b) The provisions in subsection (a) of this section, together with sections 302 through 304 of this title shall constitute the alternative no-fault plan. A State may establish additional requirements that are not inconsistent with the alternative no-fault plan.

STANDARD WEEKLY LIMIT ON BENEFITS FOR CERTAIN LOSSES

SEC. 302. Basic reparation benefits payable for work loss may not exceed $1,000 per month, and survivor's economic loss, replacement services loss, and survivor's replacement services loss arising from injury to one person and attributable to the calendar week during which the accident causing injury occurs and to each calendar week thereafter may not exceed $200.

PARTIAL ABOLITION OF TORT LIABILITY

SEC. 303. (a) Tort liability with respect to accidents occurring in the State and arising from the ownership, maintenance, or use of a motor vehicle is abolished except as to—

(1) liability of the owner of a motor vehicle involved in an accident in a State if security covering the vehicle was not provided at the time of the accident;

(2) liability of a person in the business of designing, manufacturing, repairing, servicing, or otherwise maintaining motor vehicles arising from a defect in a motor vehicle caused or not corrected by an act or omission in designing, manufacturing, repairing, serv-

icing, or other maintenance of a vehicle in the course of his business;

(3) liability of a person for intentionally caused injury to person or harm to property;

(4) liability of a person for harm to property other than a motor vehicle and its contents;

(5) liability of a person in the business of parking or storing motor vehicles arising in the course of that business for harm to a motor vehicle and its contents.

(b) Nothing in this section shall be construed to immunize any person from liability to pay a civil penalty or fine on the basis of fault in a civil or ciriminal proceeding based upon any act or omission arising out of the maintenance or use of a motor vehicle: *Provided,* That such civil penalty or fine may not be paid or reimbursed by an insurer or reparation obligor.

BENEFITS PROVIDED BY OPTIONAL ADDED REPARATION INSURANCE

SEC. 304. (a) Basic reparation insurers may offer optional added reparation coverages providing other benefits as compensation for injury or harm arising from ownership, maintenance, or use of a motor vehicle, including loss excluded by limits on hospital charges and funeral, cremation, and burial expenses, loss excluded by limits on work loss, replacement services loss, survivor's economic loss, and survivor's replacement services loss, benefits for harm to property, and loss of use of motor vehicles. The commissioner may adopt rules requiring specified optional added reparation coverages be offered by insurers writing basic reparation insurance.

(b) Basic reparation insurers shall offer optional added reparation coverages providing coverage, in such amounts and upon such conditions as offered by the insurer at the direction of the commissioner and as selected by the basic reparations insured, for noneconomic detriment caused by injury arising from the maintenance or use of a motor vehicle.

(c) Basic reparation insurers shall offer the following optional added reparation coverages for physical damage to motor vehicles—

(1) a coverage for all collision and upset damage, subject to a deductible o $100; and

(2) a coverage for all collision and upset damage to the extent that the insured has a valid claim in tort against another identified person or would have had such a valid claim but for the abolition of tort liability for damages for harm to motor vehicles; and

(d) Subject to the approval of terms and forms by the commissioner, basic reparation insurers may offer other optional added reparation coverages for harm to motor vehicles or their contents, or both, or other like coverages subject to different deductibles or without deductibles.

(e) An insurer of the insured's choice may write separately coverages for harm to motor vehicles.

NO-FAULT AND THE AVERAGE AMERICAN FAMILY

Mr. HART. Mr. President, one argument most vigorously made against a national no-fault auto insurance program last year was that it would raise premiums for the average family. Tied in with that accusation was one that the working class family would be victimized with undercompensation.

The amazing thing about both arguments was that they had any credibility. For the present system is the one that is unfairly taxing the average American family—and the poor—to an even greater extent. And, as for compensating for loss, the groups in the middle and lower income levels would do far better under the proposed plan than under the present system.

There is a grain of truth to the "anti" argument which I want to deal with. Indeed today 20 percent of American drivers do not have auto insurance. Under the national no-fault plan they would be required to purchase insurance. But indications are that this situation will develop whether no-fault becomes law or not.

The majority of the States over the years have had "financial responsibility laws" which contained "clubs" that in effect did require most families—certainly the bulk of those we are discussing—to carry auto insurance. The laws supposedly became operational "after the fact"—that is, a driver involved in an accident who did not have insurance or could not make his victims financially whole—faced the censures of the law.

As a result, most families with low or few assets bought insurance to protect against such potential censures. However, in two opinions in 1971, the Supreme Court voided as unconstitutional key provisions of the financial responsibility laws. In effect, the Court disarmed these laws of their censures. In response, the National Committee on Uniform Traffic Laws and Ordinances, which prepared the "Uniform Vehicle Code and Model Traffic Ordinance" for the States, voted in November 1971, to amend the uniform code to require compulsory insurance. The number of States doing just that has increased markedly since.

Since all drivers likely soon will be required to carry insurance, let us see what they will be buying with their premium—and judge whether that premium will be fair.

On both counts, I feel, the bill being introduced today treats the average—or poor—American family far more fairly than the present system.

As a citizen of Louisiana put it very well in a letter to me:

> We who have to drive, who cannot do without care, are burdened with outrageous insurance bills, plus capricious cancellations of our insurance for no cause, plus the prospect of having to pay huge lawyer's fees if we are involved in any accident, either to recover our own damages or to attempt to get them from the others involved. This business of suing, of having to prove "blame", of crowding already over-crowded court calendars, digging up witnesses, losing time from work, paying out enormous lawyer's fees, has simply reached the point of intolerable burdensomeness. We are begging Congress for relief—we the common people of America.

Under the present system, the "common people" do pay more than their fair share for insurance, do recover less and do have more trouble getting insurance.

The Department of Transportation study showed that poor and moderate-income families, particularly those with teenage drivers in the family, and living in metropolitan areas, pay the most for auto liability insurance and receive the least.

Here's how they scored on recovery of losses: Families with incomes under $10,000 recovered from all sources only 45 percent of their medical, wage and property damage losses. But families with incomes over $10,000 recovered 61 percent.

Those in average or lower income brackets pay too much for insurance because under the present system, premiums are not allocated in proportion to the probable benefits to be received.

For example, assume the average claimant is a $10,000-a-year wage earner. If the insured is a $5,000-a-year wage earner, he will pay annual premiums reflecting that the company would have to compensate the $10,000-a-year man.

And if the insured is a $15,000-a-year man, he also pays a premium to provide compensation for the $10,000-a-year man.

Thus, the $5,000 wage earner is overpaying and the $15,000 man is underpaying.

And, when it comes to collecting, the man with no or little savings again gets the short end of the stick.

One of the most frequently observed phenomena about the present automobile tort system is its slow pace of operation. Just compare this system with workmen's compensation. The Division of Industrial Accidents for California reported that from July through December, 1970, 77.9 percent of workmen's compensation cases were paid their first benefits within 14 days of the disability. The rest received their first check within 29 days. The Department of Transportation, on the other hand, reported that within 30 days after auto accident injuries, only 21 percent of paid claims had been settled and these represented only 3.5 percent of the total payments made on all paid claims. And the more serious the injuries, the longer the victim must wait.

Now, who does that delay hurt the most, Mr. President? You and I—or the two-thirds of American families whose annual income is less than $15,000?

This group—the bulk of the population—cannot wait finally to get to court—nor can they afford to finance their own rehabilitation expenses. So—they settle for minimum compensation without a trial and too often forgo full rehabilitation treatment as either too expensive or too late.

The bill Senator MAGNUSON and I introduce today meets this problem by requiring virtually immediate payment to injured victims without regard to fault. If benefits are not paid within 30 days, the insurer is bound to pay interest at the annual rate of 18 percent. In addition, if a claimant retains an attorney to secure payment the insurer must pay reasonable fees unless the claim is fraudulent or so excessive as to have no reasonable foundation.

A major problem which has vitiated workmen's compensation is also avoided with this bill—the problem of inflation. Most State workmen's compensation laws specify the exact dollar amount of benefits to which each claimant is entitled. There is no recognition of the inflation factor. This bill prescribes an "inflation-adjustment formula" to keep benefit levels consistent in terms of real wages. As we have learned, inflation bites most heavily people whose financial resources are the most limited.

Mr. President, the bill being introduced today also substantially eliminates a "test" of insurability which has kept so many Americans from getting stand-

ard rate insurance. Under the present system, an applicant is judged indeed in part on his driving record, but as the Antitrust and Monopoly Subcommittee learned, a good part of the decision to write or not to write is based on what kind of an appearance the applicant would make in court.

This criteria seemed to show that the driver most likely to get the regular rate auto insurance—easily—was the better educated, the better dressed, and the better employed. Those with accents, poorer paying jobs, handicaps or who were even "average citizens" had more problems.

The bill being introduced today eliminates most of this. For generally the insurer will know that payments will be made directly to the insured—with little need to be concerned about the applicant's impact on a jury.

As far as ability to recover, this bill is a boon to the injured person who cannot prove that his injury was caused by another's negligence. This would indeed include the single car accident and the injured person who was himself negligent.

We have heard and received so many polemics about the "negligent driver" that it is easy to forget that negligence in civil law may be a very minor deviation from due care. And, Mr. President, each of us—if he is being honest with himself—must admit that we have many times been negligent in our driving. One study showed that the driver must make 200 observations and 20 decisions each mile he drives. The potential is so great that it would be natural for even the most careful of drivers to make errors in judgment. In fact, the same study estimated that the average driver does make errors—one per each 2 miles driven.

I have been asked—while explaining no-fault—why the "good guy" drivers should be forced to pay premiums so the "bad guy" can receive just as much in benefits. I ask in return, why is this "good guy-bad guy" analysis suddenly being applied to automobile personal injury insurance when we have had no-fault for years and years as to auto property damage collision insurance? Or why, for that matter, should the "good guy" homeowner who maintains several fire extinguishers in working order and keeps matches away from his children be forced to pay the same fire insurance premiums when the "bad guy" homeowner will receive just as much benefit in case of fire?

Mr. President, the traditional role of insurance is to protect the buyer from substantial loss. It should not be used—in lieu of criminal laws—to reward the innocent and punish the guilty. In no-fault—as in all insurances—I envision that the applicant who presents the greater risk, in this case with a poor driving record, will be assigned a higher premium.

Mr. President, there are several other advantages of this bill which I would like to point out as they are not often discussed:

One is the advantage it offers to alleviate the problem of cancellation, refusal to renew or other termination of auto insurance. This bill instructs the State insurance commissioner to assure that liability and basic and added reparation insurance will be available to all applicants. The bill also provides that rates "shall be reasonable and not unfairly discriminatory—and not be so great as to deny economically disadvantaged persons as a class access to insurance thereby effectively depriving them of the opportunity of legally operating motor vehicles."

Under the bill, there would be no "redlining," no summary injustice to the less advantaged, the elderly, the young.

Another point of concern to everyone should be how the bill compensates an auto accident victim who happens to be unemployed or underemployed on the date of the accident. Section 209(a) sets forth a series of rules for the calculation of "work loss," which is defined in part as "loss of income resulting from the inability by reason of an injury arising out of the maintenance or use of a motor vehicle to perform work which an injured person would have performed if he had not been injured."

The rules make it clear that the important measure is the injured person's "probable" daily income and multiplying that figure by the number of days he "would reasonably have been expected to realize income" during the period of disability resulting from the accident.

It is my judgment that out of the establishment of nationwide meaningful no-fault auto insurance, we are going to see important and beneficial side effects that will benefit everyone. One of these relates to rehabilitation services. Under the present system the injured auto victim cannot just go to a rehabilitation center or clinic for help and then send the bills to his insurance company or the insurance company for the other driver. He must expend his own money, and if he ultimately and eventually recovers and collects on a tort judgment against the other driver the rehabilitation costs will be included. Obviously, it is more difficult for the average person to do this than for a wealthy person. Under this bill, the injured auto victim's own insurance company must pay all "reasonable charges incurred for reasonably needed products, services, and accommodations—including those for—rehabilitation, rehabilitative occupational training, and other remedial treatment and care." (Section 101 (2).) Middle Americans will now have just as good a chance to be successfully rehabilitated following an auto accident as the rich.

I hope that those whose fees and self-interest are jeopardized by this bill will not again attempt to enlist the support of the economically disadvantaged by telling them that no-fault is bad for them. The assertion is untrue.

I do not want to create the impression that all no-fault auto insurance laws and bills, or that all laws and bills which are called no-fault are fair and advantageous to the average driver. Quite the contrary. The so-called add-on bills which require the motorist to purchase first-party benefits coverages in addition to liability insurance put an extra-heavy premium burden on those least able to pay. The add-on bills do not relieve consumers of any of the costs of the inefficient tort liability insurance system. They simply add another layer to the cake and that layer costs money in the form of premiums. It is not the consumers of automobile insurance who eat most of the cake under the present system but the people who are employed directly or indirectly in the processing, litigating, and other activities which the tort system necessitates by its very essence. Only 44 cents out of every $1 paid as premiums under the tort system ends up as benefits in the hands of claimants.

It is in fact my reservations about the adequacy and fairness of so many of the no-fault plans that have been both proposed and adopted that lead me to sponsor this national bill with minimum standards. To date, 45 of the States have not acted at all to enact true no-fault, but of the five which have acted only one has passed a bill which meets the guidelines for good no-fault insurance legislation set down in the final report of the Department of Transportation's study.

Mr. President, I ask unanimous consent that there be included at the conclusion of my remarks an article from Business Insurance entitled "Lawmakers' Maneuvers Kill Pennsylvania No-Fault."

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

(See exhibit 1.)

Mr. HART. Mr. President, I am happy to be able to report that it is the State of Michigan which has enacted adequate no-fault insurance compensation under a recent law to become effective October 1. The Michigan law provides adequate benefits for the seriously injured and for the survivors of persons killed in auto accidents. The law provides unlimited compensation for medical expenses and rehabilitation expenses, reimbursement for loss of earned income up to $1,000 a month for up to 3 years, and compensation for the cost of services the victim would have performed for himself but for the injury up to $20 a day for up to 3 years. It is of particular importance to poor people and working people that accident compensation benefit levels be adequate. As I have said before, workingmen and women and families with incomes below the poverty line do not have a financial cushion to fall back upon when they are disabled. No-fault plane with inadequate benefit levels, phony no-fault plans without restrictions on tort lawsuits, or garden-variety tort liability insurance plans are all bad for the common people of America.

The bill we introduce today I think is good for the common people of America, the people for whom my Louisiana correspondent spoke.

EXHIBIT 1

[From Business Insurance, Jan. 1, 1973]

LAWMAKERS' MANUEVERS KILL PENNSYLVANIA NO-FAULT

(By William Ecenbarger)

HARRISBURG, PA.—The 1972 Pennsylvania general assembly closed out its session on Nov. 30 without passing the measure Gov. Milton J. Shapp wanted most—a no-fault automobile insurance program.

The proposal, which was written in its original form by Hebert Denenberg, state insurance commissioner, died from multiple

causes—partisan politics, the power of the legal profession within the legislature and the sheer weight of its own complexity.

A drastically compromised version of the Denenberg plan came close to winning approval, but the legislature left even that to die one hour before the session closed.

The most amazing thing about the no-fault battle in Pennsylvania was this: The senate passed a no-fault bill by the overwhelming vote of 45–4; the house passed a no-fault bill by the overwhelming vote of 192–1. But they were different bills, and that is the reason there is no law on the books today.

Many state legislatures considered no-fault this year, but only a handful adopted it. The long debate in Pennsylvania is fairly typical of the problems—past and future—faced by no-fault proponents in getting state laws enacted.

To understand what happened to no-fault here, you must begin by analyzing the legislature. There are 50 members of the state senate, and 18 of them are active attorneys. The house numbers 203, and 52 of them have law practices. Many of the legislative leaders are members of the Pennsylvania Trial Lawyers Assn., which mounted an intensive and successful drive to defeat the bill.

The original Shapp-Denenberg proposal was offered in May, 1971, but it languished in the senate insurance committee for more than a year. This studied neglect was chiefly the work of Sen. Freeman Hankins, a Philadelphia Democrat and committee chairman, who later accepted heavy campaign contributions from trial lawyers to help him win re-election.

The original proposal was considerably diluted by the Shapp administration in an effort to get it through the legislature. It called for first-party no-fault benefits of up to $70,000 and a $2,500 "threshold" on pain and suffering lawsuits. The final version of the bill provided first-party benefits of $100,000 and a $750 threshold.

Chiefly through the efforts of Mr. Denenberg, widespread popular support was generated for the no-fault concept in Pennsylvania. But this advantage was offset by no-fault's great weakness—its own complexity. In and out of the legislature, the people who best understood no-fault were its chief opponents, the lawyers.

The legislative foes of no-fault, sensing the appeal of the issue to their constituents, sought to avoid an unpopular vote on their records by sweetening the proposal until it was indigestible. They failed in the senate, but not by much. The lopsided vote in favor of no-fault on the final roll call merely reflects opponents jumping on the bandwagon after the race had been decided.

But the sweetening tactic succeeded in the house. The senate-passed measure was amended 11 times, and when the confectioners had completed their work all but one of the 193 legislators present could vote for it. (The proponents did so because it was still called no-fault, the opponents because they knew it was doomed.) Indeed, the next week the senate rejected the house version and threw it into a conference committee to iron out the differences between the two chambers.

The Shapp administration, which had staked a big chunk of its political future on the no-fault issue, entered the battle with sound strategy but indecisive tactics. The strategy was in the timing: Bring no-fault to a boil just as most legislators were launching their re-election campaigns.

But tactically the administration faltered. Characteristically, Mr. Denenberg wanted a direct frontal attack on any legislator who opposed no-fault. But Gov. Shapp's inner office favored the more traditional approach of guiding the measure through the legislative obstacle course by making deals whenever necessary.

The administration never quite decided on either path.

The offensive was launched in September with an attempt to attach the no-fault proposal to a house-passed bill that was then before the senate. The rider strategy, the administration reasoned, would avoid Sen. Hankins' insurance committee.

The move failed twice, chiefly because some Democrats were angry with Gov. Shapp for failing to advise them in advance of the maneuver. The third time it worked, with the help of some modifications of the program by the governor. After a long and bitter debate, the bill passed the senate and went to the house, where the administration quickly committed a serious blunder.

Gov. Shapp began telling house Democrats, who controlled the chamber, that passage of a no-fault bill would give them something to crow about in their re-election campaigns. This ended any hope of substantial help for no-fault from minority Republicans in the house.

House Speaker Herbert Fineman, a trial lawyer, controlled the rostrum in the house—and he was fighting no-fault every step of the way. There were enough Democrats who went along with Mr. Fineman to mean that Republican assistance was needed on no-fault.

But, politically, house Republicans faced two perils. To oppose no-fault risked retribution at the polls while unqualified support meant giving Gov. Shapp and the Democrats a hammer to use on Republican legislative candidates in the election campaign, which already had begun.

Minority Leader Kenneth B. Lee chose a middle course: Support a no-fault bill—but not the governor's proposal.

Before the debate even began, Mr. Fineman dealt no-fault a crippling blow with a simple ruling from the rostrum. Tradition dictated that when the house gets an amended version of its own bill from the senate, the only question is whether or not to agree to that amendment. No other amendments are permited to be offered from the floor.

In the case of the administration's bill, the senate "amendment" was in fact the no-fault program attached as a rider. But Mr. Fineman ruled that the house could further amend the measure, basing his decision on a 1971 rules precedent that he himself had written.

Had the election-conscious house members been forced to vote on the senate-passed bill as it came to them, there is little doubt that it would have passed and no-fault would be on the books in Pennsylvania today.

But Mr. Fineman's ruling opened the door to a flood of amendments, and about eight hours of debate began. By default the task of defending the administration bill fell to a legislator whose private vocation is teaching school. The administration's advocate is an able legislator—but he did not have the expertise in law and insurance to counterattack the slick forensics of the opposition, most of whom were experienced courtroom lawyers.

When the barrage had lifted, the administration proposal was riddled with 11 amendments. And when the revised measure came up for a final roll call, no-fault's most vociferous opponents, including Mr. Fineman, could vote in favor of it.

Some of the amendments were relatively harmless, but the opponents scored a direct hit when they amended the bill to provide that if the threshold section were declared unconstitutional, the rest of the proposal would remain on the lawbooks.

This amendment made the bill totally unacceptable to Gov. Shapp, who feared that if the program were allowed to stand without the threshold, auto insurance premiums in Pennsylvania would go up rather than down.

The dispute over the crucial amendment underscored a flaw in the governor's position. Gov. Shapp and Mr. Denenberg continually rejected the argument of no-fault opponents that the bill was an unconstitutional violation of the guarantee to sue for damages. The administration's insistence that the no-fault bill rise and fall as a unit showed it really wasn't so sure the program could pass constitutional muster.

The following day the house version was rejected by the senate, and no-fault limped into an inter-chamber conference committee for compromise.

The six-member committee met on Oct. 11. Nearby sat Mr. Denenberg and his top aides, pads and pencils poised, to offer assistance. By Oct. 12 the conferees had a tentative agreement, but Gov. Shapp wanted one provision removed that would allow suits for mechanical defects in automobiles. They were never able to work that out of the bill. Oct. 13 the committee submitted its final version to Mr. Denenberg, who promptly telephoned Gov. Shapp at a political rally. The commissioner told the governor the bill was unacceptable and he reckoned that it would increase premiums for bodily injury and personal liability by 20%.

Four of the six members of the conference committee agreed to the compromise, and they held a press conference Oct. 13 to announce it. Mr. Denenberg took over the press conference after about one hour and denounced the committee compromise as a "sell-out to the trial lawyers." He said Gov. Shapp would veto the proposal if it came to his desk.

Whether or not the aborted compromise would have resulted in a 20% rate increase will never be know. Mr. Denenberg has actuarial figures to back him up, the legislators have none to refute him. But, if his projections are accepted, the decision to veto the compromise comes into sharp focus.

The proposal provided that when no-fault took effect next July 1, rates would automatically drop by 15%. The insurance department was empowered to waive the rate cut for struggling insurance companies, but only after they had realized the underwriting losses to justify such action.

That meant that in 1974, Mr. Denenberg reasoned, he might have to raise premiums by as much as 35%—15% to bring them back to 1972 levels, 20% to pay for the no-fault compromise. That was too close to political suicide, in that Gov. Shapp is up for reelection in 1974.

The last point important to understanding the veto threat is that there hasn't been a major auto insurance rate increase approved in Pennsylvania for more than three years. Most insurers have requested rate hikes, and Mr. Denenberg concedes that "the lid is about to blow off."

Industry statistics place Pennsylvania nineteenth in the nation in average auto premiums, lower than any other industrial state.

There was one final act to the no-fault drama. It occurred at 8 p.m. on Nov. 30, just four hours before the 1972 legislative session expired. The conference committee, which had met the day before in one last effort to come up with an acceptable compromise, succeeded.

But a last-minute attempt to ram the proposal through the legislature failed when no-fault opponents succeeded in preventing it from ever coming to a final vote in the house.

The compromise, which was quickly endorsed by Gov. Shapp and Mr. Denenberg, diluted the provision permitting lawsuits for mechanical defects. It was signed and de-

livered to the house about 9 p.m. The opponents went to work.

One lawyer-legislator refused to allow the house to waive the rule requiring bills to be in print before they can be voted on (such a waiver is almost routine on other issues).

The printed version of the compromise mysteriously disappeared, and was later located in an obscure niche of the speaker's rostrum. After it was distributed to member's desks, house Republicans threatened to go to caucus if it were brought to a vote. At this point there were less than two hours left in the session—and such a caucus doubtless would have lasted until midnight.

Then there began extensive questions from the floor on a relatively minor bill requiring actuarial studies of municipal pension systems. All of the interrogators were trial lawyers. One legislator, who favored no-fault, interrupted long enough to denounce the spectacle as a "well-orchestrated filibuster."

Finally, Gov. Shapp threw in the towel at 11 p.m.—fearing that the delaying tactics would doom other important bills which had to be passed in the final hours of the session.

THE CONSUMER AND AUTOMOBILE INSURANCE

Mr. MOSS. Mr. President, I am proud to join the distinguished Senator from Washington (Mr. MAGNUSON) as a sponsor of the National No-Fault Motor Vehicle Insurance Act.

This bill is needed in order to benefit the millions of American consumers who purchase automobile insurance and think they are protecting themselves when they have an auto accident.

The bill is needed for the very basic reason that the automobile insurance available today in most States does not in fact protect the purchaser for his loss in case of accident. The consumer buys liability insurance—insurance against the risk that a court will order him to pay the costs of someone else's auto accident injury—not sufficient personal and family protection insurance. And if the purchaser is himself injured in an accident, there is less than a 50/50 chance that he will be able to recover his losses from the liability insurance carried by someone else. In the first place, as many as 20 percent of drivers in some places carry no insurance whatever and have no attachable assets. Second, the present system prohibits a premium-paying consumer of auto insurance from receiving any benefits at all after an auto accident injury unless he can prove that the injury was caused by the negligence of another person and that he himself was free from negligence. Third, the person might be injured in a single car accident and it does no good to sue the tree.

The frustrating irony of it all is that the consumer is paying a heavy price for this abysmally inadequate product.

I should like to outline what the American consumer needs in a system of automobile injury compensation, and then summarize how this bill meets that need:

OUTLINE

First. Reduction of the economic waste in the present system.

According to the DOT study, the present insurance system "would appear to possess the highly dubious distinction of having probably the highest cost-benefit ratio of any major compensation system currently in operation in this country." Final Report, page 95. The present system returns only about 44 cents in benefits to auto accident victims for each dollar paid in premiums to insurance companies. For the most part, this inefficiency is not the fault of either trial lawyers or insurance companies—it is the "fault" of the system. Just as it costs more money to run a steam locomotive than to run a diesel locomotive, a fault insurance system that pays benefits on the basis of loss after a showing of fault is more expensive than that one which pays on the basis of loss only.

There is another kind of waste in the negligence—liability insurance system—it produces overpayment of claims. A study has disclosed that a person with $250 worth of loss, who claims benefits of $1,000 from the other driver and his insurer, may be paid $1,000 because the cost of a $250 claim plus the cost of defending the claim may exceed $1,000.

SUMMARY

The proposed National No-Fault Motor Vehicle Insurance Act makes unnecessary the extra layers of costs that are embedded in the present system which must allocate blame and shift losses from the insurer of the driver found at fault to the insured of another company who is found not at fault and injured. Since benefits are paid according to actual economic losses, there would be no extortion leverage available to the limited-injury claimant who threatens litigation.

Under the plans established by the States to meet the minimum standards for no-fault insurance, a far greater percentage of the dollars paid in premiums to insurance companies would be returned to victims. Under existing forms of no-fault insurance, percentages of benefit returns range from 70 percent of each premium dollar to more than 90 percent. Precious consumer dollars paid as premiums could be diverted under this bill from expenses for administering the automobile insurance system to benefits for the injured.

OUTLINE

Second. Improvement in the scope of coverage and adequacy of compensation of the automobile insurance system.

People who pay insurance premiums may receive no insurance benefits from the present system. As stated in the committee report which accompanied the Senate Commerce Committee's recommendation of enactment of the Magnuson-Hart bill—No. 92-891 at p. 16:

The most obvious group are those innocent or faultless victims of automobile accidents where the potential defendant is also innocent or faultless. A second group not compensated are those who are found to be at fault or contributorily negligent.

Even in States such as Mississippi which operate under comparative negligence principles, an at-fault victim is not eligible for compensation for his full loss. Then, too, persons who sustain injury in an accident involving only one car will receive no benefits from liability insurance because there is no one to sue in order to collect. Statistically speaking, 45 percent of all those killed or seriously injured in auto accidents benefit in no way from the negligence liability insurance system. Final Report, p. 35.

An equally serious deficiency of the present system is its gross undercompensation of the seriously injured. According to the DOT, the most seriously injured auto accident victims and the families of the fatally injured are the ones who must cope with the greatest amount of uncompensated loss. Seriously injured victims with medical expenses of $5,000 or more recovered only 55 percent from tort insurance, but victims with medical expenses of less than $5,000 recovered 90 percent. Economic Consequences, vol. I, p. 281. The other grossly undercompensated - in - relation-to-loss group are people who work. The average loss, for exmple, for the working man or woman who dies in an auto accident was found to be $40,000, including lost future wages. The average settlement that his bereaved family received from all recovery resources, including liability insurance, was just $2,080 or 5 percent. The larger the loss, the less the contribution to compensation made by the tort insurance system and the greater the reliance on wage replacement programs such as sick leave, workmen's compensation where available, and social security: Final Report, p. 37.

Undercompensation of the innocent and seriously injured victim is a general phenomenon, a fact, which belies and cuts through the rhetoric about right to damages for pain and suffering. "[W]hile tort theory says that qualified—innocent—victims are entitled to compensation for all their losses, both tangible and intangible, even successful tort claimants with serious injuries, who presumably also suffered serious intangible losses, do not on the average recover even their economic loss." Economic Consequences study, vol. I, p. 149.

SUMMARY

The proposed National No-Fault Motor Vehicle Insurance Act substantially improves the coverage and adequacy of compensation under the automobile insurance system. Every person injured in a car accident—except those who fail to purchase the required insurance, converters, or those who injure themselves intentionally—receives compensation for his loss. Any person injured by an uninsured motorist is provided the same insurance protection as a person injured by an insured motorist, under the assigned claims plan which is a mandatory standard for State plans. Compare the benefits required as national standards—unlimited medical expenses, unlimited rehabilitation expenses, wage loss up to $50,000—with the findings of the Department of Transportation as to benefit recovery under the present system—55 percent of the deceased and seriously injured received nothing from the tort system; the remaining 45 percent recovered on the average only one-third of their economic loss.

OUTLINE

Third. Creation of incentives to reduce the terrible waste of human resources resulting from automobile accidents.

Under the present system there are few incentives to improve emergency health care and transportation systems and no incentives for victims to participate in rehabilitation programs. The re-

sult: People die who need not die; people remain crippled who need not remain crippled.

Today, 58 percent of all auto accident victims treated through emergency medical services never recover in a tort law suit because they are unable to prove fault or freedom from contributory negligence or because the defendant was insolvent or only one car was involved.

President Nixon put it this way in his 1972 State of the Union Address:

[T]he loss to our economy from accidents last year is estimated at over $28 billion [and traffic accidents accounted for some 60 percent]. These are sad and staggering figures—especially since this toll could be greatly reduced by upgrading our emergency medical services.—CONGRESSIONAL RECORD, vol. 118, pt. 1, p. 503.

The providers of such emergency medical services may, under the present system, never get paid either because the victim treated is never able to prove that another person was at fault et cetera, or to the extent they do get paid they may have to wait months or years until the case is settled or litigated. Many experts believe that a good emergency health services system in America—one as good as the program that was developed in Vietnam—would significantly reduce the highway death rate. Such a system will cost a great deal of money. At the very minimum, such a system is impossible unless the class—highway accident victims—which uses more emergency medical and transportation services than any other pays the cost of the services received fully and promptly.

The present system also provides no incentives aimed at rehabilitating the traffic victim and restoring him to a useful and productive life:

The traditional settlement environment for third party auto bodily injury claims offers nothing to encourage and much to preclude the early introduction of rehabilitation. . . . [C]onsiderable time, energy, and expense must be devoted to controversy just when rehabilitation measures might most benefit the victim.—DOT, Rehabilitation of Auto Accident Victims, p. 13.

Another Department of Transportation study found that no rehabilitation program at all was suggested to 88.6 percent of seriously injured victims.

A third way to reduce loss is to provide new incentives to automobile manufacturers to produce and consumers to buy vehicles in which occupants are packaged in such a way that less serious injuries will result in case of accident. The negligence liability insurance system provides no such incentives.

SUMMARY

Under the bill filed today all victims of automobile accidents would have the financial resources to pay for emergency medical and transportation services. This means that private hospitals and ambulance services would be able to receive timely payment from all accident victims, not just those who are free from fault and able to recover under the tort liability system. A recent study estimated that 23 percent of all fatalities in this country result when people who sustain survivable injuries receive improper or insufficient emergency medical transportation or health care services. The bill also makes it possible for all victims of auto accidents to enter and remain in rehabilitation programs. Victims, rather than wallowing in the slough of despondency and idleness waiting for their case to come to trial, will be restored so far as possible to rewarding and productive lives.

Because the bill requires insurers to pay all losses resulting from automobile accidents, there would be more incentive than at present for insurers to encourage better highway design so as to prevent accidents or minimize losses resulting from such accidents.

The bill also provides important incentives toward the design and construction of safer vehicles. Under the bill the insurance policy which a person purchases covers a particular motor vehicle. The safety characteristics of that vehicle would be very relevant in determining premium costs. A person owning a safe vehicle would pay less for his insurance than a person owning a relatively unsafe vehicle. Under the present tort liability insurance system, on the other hand, there is no particular economic advantage for a person to purchase a safe vehicle. The cost of his insurance is based upon the safety characteristics not of his own vehicle but of the average vehicle with which he might collide. It is probable, then, that under national no-fault an individual purchasing a vehicle would become more safety conscious because he would have the potential of reducing his automobile insurance premiums. Such safety consciousness could stimulate more safety competition within the automobile manufacturing community and thereby considerably advance the state of the art. Advanced technology now being developed in experimental safety vehicles might be incorporated in production models prior to a time when the Federal Government might set such standards. Thus, the bill could provide incentives for auto makers to make the safest possible vehicles sooner than they would without the incentives built into the no-fault insurance system mandated in this bill.

OUTLINE

Fourth. Reduction of the excessive workload which the present system imposes on judges and courts of each of the States and the Federal Government.

Although most claims under the negligence liability insurance system are settled rather than litigated, the absolute number of automobile tort cases filed and the number tried is staggering. At a time when both State and Federal courts have difficulty meeting the sixth amendment requirement of speedy trial for criminal cases, much less civil cases, the automobile insurance system uses an enormous percentage of the resources of the State and the Federal courts.

The Chief Justice of the United States, Warren E. Burger, spoke eloquently to these concerns at the 1971 National Conference on the Judiciary:

We are rapidly approaching the point where this segment of Americans will totally lose patience with the cumbersome system that makes people wait two, three, four or more years to dispose of an ordinary civil claim. . . . Very, very good arguments can be and have been made for taking automobile and other personal injury cases out of the courts entirely, out of all courts, and disposing of them by other means. (New York Times, July 4, 1971, p. 24)

SUMMARY

No-fault will drastically decrease the amount of court and judge time required by automobile accident litigation in both Federal and State courts. I am not so naive as to suggest that litigation will be eliminated. There will be many controversies regarding the fact and scope of injury and amount of losses but these basically contract actions will be far less time consuming for the courts.

OUTLINE

Fifth. Improvement of the present automobile accident compensation system without increasing the cost of the product to the consumer.

Some if not all of these objectives could in fact be met by sticking with the negligence-liability insurance system but first making liability insurance compulsory; second, requiring each insured to carry $125,000/$250,000 in liability insurance coverage; third, requiring each motorist to purchase first-party medical payments, income replacement, and loss of services coverage for himself and his family, subject to deduction of such first-party benefits from allowable tort suit recoveries. The system with these modifications would continue to allocate benefits unfairly, but there would be adequate and timely benefits.

Unfortunately for those who would retain the present system, these modifications would prove too cumbersome and too expensive.

"[F]urther attempts to modernize the fault insurance system by tinkering with it, while leaving its essentials intact, are sure to be expensive and self-defeating. The operators of the present system would just be buying themselves time with other peoples' money." New York State Insurance Department, Automobile Insurance. For Whose Benefit? p. 55.

The present annual national expenditure for automobile insurance—1971—$16 billion—is great enough. A reformed compensation system should stabilize if not reduce present premium costs.

The conclusion of the Department of Transportation on this matter was that "adequacy and equity of a better compensation system should not yield to costs in our list of priorities." Final Report, p. 139. Nevertheless, we must hold the line on costs.

SUMMARY

I am confident that the investigations and comparison studies between the average premium cost under the present system and under the National No-Fault Motor Vehicle Insurance Act will establish that at a minimum the price to the consuming public will not increase. The National Association of Insurance Commissioners is developing a costing model which should bring light to the cost controversy and eliminate the confusion which was created by certain opponents of the bill in the last Congress.

CREATIVE FEDERALISM

Mr. STEVENS. Mr. President, I am pleased to join in sponsoring the National No-Fault Motor Vehicle Insurance Act.

This bill represents a careful and creative effort to meet the long overdue need for reform and total overhaul of the automobile accident compensation system. The proposed act sets forth a means to accomplish this reform and overhaul within the context of a federal system. Although the bill is entitled the "National act, it might be more precise to term it the "Nationwide No-Fault Vehicle Insurance System Act." Responsibility is consciously allocated between the National Government and the governments of the 50 States in such a way that the Federal Government limits exercise of its constitutional authority to the basics. The Federal involvement assures the American consumer that meaningful auto insurance will not remain a distant and probably illusory dream.

The bill recognizes that we have a national responsibility to see that all accident victims are adequately treated and compensated, and to that end sets national standards for State no-fault motor vehicle insurance—title II. But having set the standards as a basic floor, the Federal Government goes no further. The bill leaves each State free to develop its no-fault plan beyond the minimum standards and free to administer, operate, tax, and regulate no-fault and the automobile casualty insurance business within its borders without any interference from any Federal agency—with the exception of a determination under section 201 by the Secretary of Transportation that the State plan in fact meets the minimum standards. Even if the particular State does not enact a plan which meets the national standards, in which case the title III plan goes into effect, that State will itself operate and supervise the title III plan and will exclusively regulate the insurance companies and agencies that do business under it.

The minimum standards do not impose a straitjacket on the States—far from it. Each State will be making a very large number of decisions about extremely important aspects of its new auto accident victims' compensation act. The following list is illustrative of the options open to each State, but it is by no means exhaustive:

First. System for regulation of rates, rating practices, and operations of each insurance company selling no-fault—basic and added reparation benefits—policies—sec. 107(a);

Second. Amount of maximum monthly and total work loss benefits available under necessary no-fault insurance—basic reparation insurance—sec. 210(a);

Third. Determine the limitations on survivors loss and replacement services loss benefits;

Fourth. Whether to limit tort lawsuits for pain and suffering damages beyond the mandatory standard—sec. 2069 (a)(7);

Fifth. Whether to permit tort lawsuits for harm to property other than a motor vehicle in use and its contents—sec. 206 (a)(4);

Sixth. Exclusions, if any, and amount of maximum monthly and total benefits available under necessary no-fault insurance for substitute services—replacement services loss—and death benefits—survivor's economic loss, survivor's replacement services—sec. 210(b);

Seventh. Whether to authorize deductibles under basic reparation insurance and, if so, in what amounts—sec. 211;

Eighth. Whether to authorize or require waiting periods before benefit payments commence and, if so, what period or periods—sec. 211;

Ninth. Whether to require insurers to offer optional added reparation coverages for noneconomic detriment—pain and suffering—caused by a motor vehicle accident—sec. 213;

Tenth. Whether to require insurers to offer optional added reparation coverages for benefits in excess of those provided under basic reparation benefits insurance—that is loss excluded by limits on work loss, replacement services loss, survivor's losses—or those excluded from basic no-fault insurance; that is, property loss—sec. 213;

Eleventh. Whether to set higher interest penalties on overdue payments of compensation benefits—sec. 104(a)(2);

Twelfth. Whether to impose more onerous limitations on lump-sum settlements which undercut the principle of compensation as loss accrues—sec. 104 (c);

Thirteenth. Standards for qualifying as a self-insurer—sec. 102(b);

Fourteenth. Penalties—criminal, civil, or administrative; levels and duration of fines and imprisonment, if authorized—for failure to comply with the obligation to provide security covering each motor vehicle—sec. 102(d);

Fifteenth. Mechanisms for enforcement of the necessary no-fault insurance requirement—sec. 102;

Sixteenth. Details of the plan which makes no-fault insurance available to persons who cannot obtain it through ordinary methods at rates not in excess of those applicable to applicants under the plan—sec. 103(a);

Seventeeth. Decision whether to restrict an insurance company's right to cancel or fail to renew policies beyond the minimum standard—sec. 103(b);

Eighteenth. Mechanism for the assigned claims bureau and assigned claims plan—sec. 106(b);

Nineteenth. Determination of the means by which to provide automobile insurance consumers with meaningful price information so they can make rational decisions between competing insurers—sec. 107;

Twentieth. Whether to provide a system of noninsurable civil penalties or fines for negligent maintenance or use of a motor vehicle, and if so the mechanism—civil lawsuit, administrative proceeding, and so forth—sec. 206(c);

Twenty-first. Whether to provide higher limits for required tort liability insurance—sec. 208(a):

In addition to establishing a legislative working partnership between Congress and the State legislatures as to the ingredients of American no-fault auto insurance plans, the bill pays a degree of respect to the expertise of officials of State government which I for one find heartening. The bill calls upon the Congress and the President for the first time to accept the best thinking of the best qualified State government authorities rather than the best thinking of Washington officials. The proposed national standards for State no-fault motor vehicle insurance plans were not written by employees of one or another branch of the Federal Government. On the contrary, they were prepared under the direction of and promulgated by one of the most distinguished and underutilized instruments of State government in America—the National Conference of Commissioners of Uniform State Laws. In August of 1972 the commissioners voted final approval of what they call the Uniform Motor Vehicle Accident Reparations Act—UMVARA. It is UMVARA standards that are the backbone of this bill.

The National Conference of Commissioners on Uniform State Laws is little known to the general public but it has been for more than 80 years, since its founding in 1890, one of the most creative and useful organs of State government. The conference is composed today of 250 commissioners and associate members, each of whom has been appointed for a term of years by the Governor of his State pursuant to the laws of that State. Each of the 50 States has its own statutes governing the creation of a State Commission on Uniform State Laws and the selection of commissioners. The National Conference, which has its headquarters in Chicago, is the national organization of the State commissions. Over the years, it has promulgated more than 200 uniform acts, among the most widely accepted of which have been the uniform commercial code—49 States—the Reciprocal Enforcement of Support Act—50, the Anatomical Gift Act—50, and the Simultaneous Death Act—50.

In recent years, all of us have heard and probably used in our speeches the phrases "creative federalism" and "the new federalism." Too often, however, they are nothing more than phrases, rhetoric to express an ideal rather than a working goal. Aside from the general Revenue Sharing Act in the last Congress, there are few examples of new and creative inter-relationships between State and Federal authorities and governments.

This bill is a bold example of such a new and creative interrelationship.

I hope that the respect for the capability of organs of State government which is the hallmark of this bill is the first, but not the last, instance in which we in the House of Congress turn to State government for advice. A "creative" relationship between two levels of government, like a creative relationship between two people, is one that involves mutual respect, acceptance, and if you will, plagiarism.

Mr. STEVENSON. Mr. President, it is my great pleasure, as my first act as a new Member of the Senate Commerce Committee, to join with Chairman MAGNUSON and three other members of the committee in cosponsoring the new National No-Fault Motor Vehicle Insurance Act.

My interest in basic reform of the auto

accident reparations system is not new. I have been interested in and concerned about the problems of auto insurance since I have been in the Senate.

During the last session of Congress, the Commerce Committee worked diligently to develop the best and most workable solution to the intolerable inequities that presently exist under the fault system.

Although variations of this new no-fault proposal have worked successfully in the jurisdictions where they have been adopted, the overwhelming majority of States have failed to achieve meaningful reform.

It took 40 years to achieve nationwide workmen's compensation reform through a State-by-State approach. We will be lucky if we can reform the auto accident reparations system in 40 years on a State-by-State basis. While it is true that the present system is so bad that sooner or later, public pressure will force even the most recalcitrant legislature to enact some reforms, how long must we continue to victimize the American motorist and all who must appear in our overburdened courts? I submit that we have no excuse for perpetuating the excesses and rank injustices of the existing system. If we want full reform of the system in this century, we must enact a national standards bill now.

Fifteen months ago, I testified before the Senate Commerce Committee and suggested a strong national standards bill under which the States would be given a reasonable amount of time to enact a State no-fault system, allowing them flexibility in designing a plan tailored to individual State conditions but also conforming with overall national standards of performance.

I further suggested that if State legislatures failed to adopt such a system within the given period of time, that Federal law would prescribe that the national system would automatically go into effect and continue until such time that the State saw fit to accepts its responsibilities. I still favor this approach, because there are a number of important aspects of a no-fault system on which there is a legitimate difference of opinion about how best to proceed.

I am pleased that the no-fault bill reported by the committee last year took that approach. It is regrettable that the Senate was denied the opportunity for an up-or-down vote in the 92d Congress. But now we have a new Congress, and a new opportunity to accept our responsibility to the motoring public which has long been frustrated, confused, and victimized by the existing system.

Under the fault system, the motorist's premium dollars buy spotty and inadequate benefits. If a motorist is involved in a minor accident, he may be lucky, and with the help of an obliging attorney, he may collect up to four times his economic loss if, on the other hand, he is the unfortunate victim of a serious accident with economic loss exceeding $25,000, he can expect to receive only 30 cents on the dollar. Even more shocking, is the staggering number of victims of automobile accidents throughout the country who receive absolutely nothing under the fault system, and all too frequently suffer physical, emotional, and economic disaster of the most tragic sort.

The administration has continued to avoid coming to grips with the need for national reform. Its spokesmen say "Give the States time to act on their own." We have given them time, more than enough time, and they have either avoided the issue completely, fallen victims to lobbying pressures or passed grossly inadequate bills.

Passage of this new bill which I join in introducing today will still give the States time to act. But it will put them on notice that the time has come for reform. Only by acting quickly and responsibly can we let the public know that, indeed, they can look forward to an end to skyrocketing insurance rates, an end to interminable delays in receiving compensation for medical bills and other reasonable economic loss, an end to irrational cancellations, of insurance and guaranteed availability of adequate coverage for all.

We have before us now a well conceived bill. I look forward to cooperating fully with Chairman MAGNUSON and my colleagues on the committee to bring about prompt and favorable action on this bill.

By Mr. MAGNUSON (for himself, Mr. MONDALE, and Mr. NELSON):

S. 355. A bill to amend the National Traffic and Motor Vehicle Safety Act of 1966 to provide for remedies of defects without charge, and for other purposes. Referred to the Committee on Commerce.

THE AUTO SAFETY REPAIR AT NO COST AMENDMENT

Mr. MAGNUSON. Mr. President, since the enactment of the National Traffic and Motor Vehicle Safety Act of 1966, over 36 million motor vehicles have been recalled due to the presence of a safety related defect—including failures to comply with auto safety standards. The Motor Vehicle Safety Act empowers the Secretary of Transportation to declare that a safety related defect exists and to require that a notification be sent to the owners of the defective vehicles. But it stops short from requiring the manufacturer to remedy that defect at no cost to the consumer.

The purpose of the legislation that I am introducing today, along with my distinguished colleagues, Senator NELSON and Senator MONDALE, is to make automakers responsible for their work. This legislation will complete the job that we set out to do in 1966: When a motor vehicle or item of motor vehicle equipment is determined to contain a safety related defect, the manufacturer would also be required to remedy that defect at no cost to the consumer.

As the auto safety program matures more and more vehicles are being recalled. Thus, in 1972, 11,750,735 cars were recalled—more than in any other single year. In fact, more vehicles were recalled last year than were built. Now that we have finally developed the capability of discovering defects in motor vehicles. we must do all in our power to insure that those defects are remedied; all of our efforts to locate safety related defects and warn consumers of their existence are wasted if the vehicle is not ultimately repaired. We must make it as attractive and convenient as possible for the consumer to invest the energy and the effort to get his vehicle fixed.

Our experience over the past 6 years has clearly demonstrated that owners of defective vehicles have a greater propensity to have that defect remedied if the manufacturer absorbs the repair cost. Statistics compiled by the National Highway Traffic Safety Administration indicate that in recall situations where the manufacturer has absorbed remedy costs, normally about 75 percent of those owners who received notification have had the vehicle inspected, and repaired where necessary. On the other hand, in the Corvair heater recall, where the manufacturer refused to repair the vehicle at his own cost, only 7.6 percent responded to the warning.

It is clear, therefore, that consumers are extremely sensitive to the matter of who bears the burden of paying for the repair of defective products. One consumer who recently wrote to an auto manufacturer when notified of a safety-related defect which he would have to repair at his own expense expressed his outrage this way:

> You have the audacity to suggest we pay for negligence during assembling and installation? I'm appalled at your incapability of taking responsibility for your workmanship, whether an automobile was built 23 years ago or 4 years ago.

Repair at no-cost legislation is not new to the Senate. In the 1969, the Senate adopted a proposal similar to that which I am introducing today. In conference committee with the House, however, that provision was deleted in exchange for an industry assurance that all defects would be remedied at the manufacturers' expense whether or not it was mandated by legislation.

Over the course of the last 14 months, that promise has been breached by two major automobile manufacturers. In November 1971, the NHTSA declared that the heater on all 1960–63 Chevrolet Corvairs contained a safety related defect in that it leaked poisonous fumes into the passenger compartment. The 680,000 owners of those cars were each asked to bear the cost of repair—$150–$200 per vehicle.

One year later, in November 1972 the second breach occurred, this time by a foreign manufacturer—Volkswagen of America. Approximately 3.7 million vehicles were involved. The windshield wiper system on all 1949–69 Volkswagens were found to be defective in that a set screw loosened without warning, causing failure of the wiper system. Though Volkswagen sent notification letters to all known owners—the company only had the names of 220,000 of the 3.7 million owners—the manufacturer refused to absorb the remedy cost.

There have been at least two other instances where manufacturers have not absorbed repair costs of safety related defects. Alfa Romeo marketed 4,720 vehicles with defective brake fluid reser-

voirs and offered to replace the part free of charge but placed the labor cost on the owner. Similarly, Kayot Forester offered free replacement wheels for its 91 defective vehicles for a period of only 30 days and also required the owner to pay labor costs.

This legislation is designed to insure that the consumer never again will be forced to pay for the repair of safety related defects. It provides that if any motor vehicle or item of motor vehicle equipment contains a safety related defect or fails to comply with a Federal motor vehicle safety standard, then the cost to remedy such defect or failure to comply shall be absorbed by the manufacturer. In the case of tires, the consumer has up to 60 days to have the tire replaced free of charge. This latter provision will end the practice adopted by tire manufacturers of prorating tire wear and will, at the same time, serve as an impetus to consumers to have the tire replaced quickly.

Under the legislation, a manufacturer is required to declare in his defect notification letter the date when replacement parts will first be available to effectuate the repair. This date must be within 60 days—which time may be extended by the Secretary for cause—of the date when the defect is declared to exist. The purpose of this provision is to insure the least degree of inconvenience to the consumer when he presents his vehicle for repair. Finally, the legislation provides that the civil penalty sanctions of section 109 are applicable for failure to comply with the repair at no cost provisions contained in this amendment.

Mr. President, the statistics speak for themselves. The trend is toward an even greater number of recalled motor vehicles in the future. Consumers, for the most part, refuse to expend their own money to repair defects which are the fault of the manufacturer. This legislation codifies the right of the American consumer to have an automobile, containing a safety related defect made a safe automobile by the manufacturer free of charge.

I ask unanimous consent that the text of the bill as introduced 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. 355

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) paragraph (4) of subsection (a) of section 108 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1397) is amended to read as follows:

"(4) fail to comply with the provisions of section 113."

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

"(c) The notification required by subsection (a) of this section with respect to any defect or the notification required by subsection (e) of this section with respect to failure to comply with any applicable Federal motor vehicle safety standard or defect which relates to motor vehicle safety shall contain, in addition to such other matters as the Secretary may prescribe, a clear description of such failure to comply with any applicable motor vehicle safety standard or such defect, an evaluation of the risk to traffic safety reasonably related to such defect, a statement of the measures to be taken to repair such defect or failure to comply, to be the commitment of such manufacturer to cause such defect or failure to comply to be remedied without charge, the date when such commitment to remedy such defect or failure to comply will initially be honored, and a description of the procedure that a consumer must follow to inform the Secretary of a manufacturer's failure to honor such commitment."

(d) Section 113 of such Act is further amended by redesignating subsection "(g)" and all references thereto as subsection "(h)" and inserting immediately after subsection (f) the following new subsection:

"(g) If—

"(1) any motor vehicle (including any item of original motor vehicle equipment) or tire is determined by its manufacturer under subsection (a) to contain a defect which relates to motor vehicle safety; or

"(2) any motor vehicle or item of motor vehicle equipment is determined by the Secretary under subsection (e) to contain a failure to comply with any applicable motor vehicle safety standard prescribed under this title or a defect which relates to motor vehicle safety; and the notification specified in subsection (c) is required to be furnished on account of such defect or failure to comply then—

"(A) the manufacturer of each such motor vehicle presented for remedy pursuant to such notice shall cause such defect or failure to comply in such motor vehicle (including any item of original motor vehicle equipment) to be remedied without charge; or

"(B) the manufacturer of each such item of motor vehicle equipment presented for remedy pursuant to such notice shall cause such defect or failure to comply in such item of motor vehicle equipment to be remedied without charge;

"(C) the manufacturer of each such tire presented for remedy pursuant to such notice shall replace such tire without charge for a period up to 60 days following the receipt of notification required by subsection (a) or (e) of this section or the availability of replacement tires, whichever is later.

If following a determination under paragraph (1) of subsection (g) of this section, a manufacturer can establish to the satisfaction of the Secretary at a hearing structured to proceed as expeditiously as practicable, that a failure to comply with an applicable motor vehicle safety standard is of such inconsequential nature that the purposes of this title and the public interest would not be served by requiring the applicable manufacturer to remedy such defect or failure to comply without charge, the Secretary may, upon publication of his reasons for such findings, exempt such manufacturer from the requirements of this subsection with respect to such failure."

(e) Section 113 of such Act is further amended by adding subsection "(i)" to read as follows:

"(i) In determining the date when such commitment to remedy a defect or failure to comply will initially be honored, as required by subsection (c) of this section, the Secretary shall establish after consultation with the manufacturer of such motor vehicle or motor vehicle equipment, the earliest practicable date when such remedy can be effectuated, except such period shall not exceed 60 days from the date a defect is declared unless the Secretary extends such period by a notice published in the Federal Register showing good cause for that extension."

By Mr. MAGNUSON (for himself and Mr. Moss):

S. 356. A bill to provide disclosure standards for written consumer product warranties against defect or malfunction; to define Federal content standards for such warranties; to amend the Federal Trade Commission Act in order to improve its consumer protection activities; and for other purposes. Referred to the Committee on Commerce.

CONSUMER PRODUCT WARRANTIES AND FEDERAL TRADE COMMISSION IMPROVEMENTS ACT

Mr. MAGNUSON. Mr. President, on behalf of myself and Senator Moss I am hereby introducing a much needed bill which provides minimum disclosure standards for written consumer product warranties against defect or malfunction; defines minimum Federal content standards for such warranties; amends the Federal Trade Commission Act in order to improve its consumer protection activities; and for other purposes.

This bill has two principle objectives: First, to bring fairness, rationality, and minimum standards to warranty practices; and second, to sharpen the tools of the Federal Trade Commission so that it can better referee warranty and other business practices which have profound affects upon consumers in the United States.

Title I of the bill sets forth badly needed minimum consumer product warranty disclosure standards, defines minimum content standards for warranties, and provides meaningful remedies for consumers in the event of a breach of a warranty or service contract obligation.

Title II of this bill is designed to improve the ability of the Federal Trade Commission to deal with unfair consumer acts and practices "affecting" interstate commerce by authorizing the Commission to seek preliminary injunctions, to order specific consumer redress, and to secure civil penalties for initial knowing violations of the Federal Trade Commission Act or violations of Commission orders.

Title III of this bill as passed by the Senate last year authorized a study by the National Institute of Consumer Justice to determine ways of improving consumer grievance solving mechanisms and legal remedies. I am advised that the staff reports of the Institute have already been completed and that the final report will be forthcoming in March of this year. Since the purposes for which title III was originally included in the bill will soon be realized, no similar provision appears in this bill.

Mr. President, this legislation is not new to the Senate. The Senate Commerce Committee, which I chair, has for a number of years now been exploring the consumer headaches associated with warranty practices. The committee continues to receive a seemingly never ending flood of complaints from consumers throughout the United States—complaints on automobiles, televisions, washers, dryers, and other basic consumer products warranties. In the 91st Congress the committee held extensive hearings and formulated a comprehensive Consumer Products Warranty Act designed to deal with the problems stemming from consumer product warranties. Although that badly needed bill passed the Senate almost 3 years ago, today we still have no comprehensive Federal warranty legislation. In the 92d Congress,

substantially similar warranty provisions were incorporated into the Consumer Product Warranties and Federal Trade Commission Improvements Act of 1971. This bill passed the Senate in the 92d Congress by a vote of 72 to 2. The problems surrounding warranties that led to the passage of the warranty reform provisions of this bill in the Senate during the 91st and 92d Congress are still with us; the need for reform is now greater than ever.

Consumer understanding of what a warranty on a particular product means frequently does not coincide with the legal meaning of a warranty; as a result, warranties have for many years confused, mislead, and frequently angered American consumers. A warranty is a complicated legal document whose full essence lies buried in centuries of legal decisions and complicated State codes of commercial law. Consumer anger is expected when purchasers of consumer products discover that their warranty may cover a 25-cent part but not the $100 labor charge or that there is full coverage on a piano so long as it is shipped at the purchaser's expense to the factory.

There are four basic reasons for consumer unrest concerning warranties, and title I of this bill is designed to deal with all of them. In the first place, the bill is designed to promote consumer understanding. Far too frequently, there is a paucity of information supplied to the consumer about what in fact is offered him in that piece of paper proudly labeled "warranty." Many of the most important questions concerning the warranty are usually unanswered when there is some sort of product failure. Who should the consumer notify if his product stops working during the warranty period? What are his responsibilities after notification? How soon can he expect a fair replacement? Will repair or replacement cost him anything? There is a growing need to generate consumer understanding by clearly and conspicuously disclosing the terms and conditions of the warranty and by telling the consumer what to do if his guaranteed product becomes defective or malfunctions. Presently the consumer only learns of the extent of his warranty coverage when his guaranteed product becomes defective or malfunctions and he is told that the guarantee in question does not cover the part that has failed, or that the retailer does not handle the manufacturer's repair work, or that the guarantee does not cover labor costs, and so forth.

Second, there is a great need to insure certain basic protection for consumers purchasing consumer products which have written warranties. Normally when goods are sold, the law provides that certain warranties attach by implication. For example, the law implies a warranty of fitness for ordinary use or, where the seller knows that the goods are to be used by the buyer for a particular purpose, the law implies a warranty of fitness for a particular purpose. The law allows the seller to disclaim his implied warranties only by using such words as "without fault" or "as is" or by expressly disclaiming the implied warranties when issuing an express warranty. While these rules may do no injustice to commercial buyers who are sophisticated in the ways of the marketplace and can judge the import of the express warranty and the implication of the disclaimer of the implied warranty, the ordinary purchaser of consumer products has no such expertise.

When he receives an express warranty it is not likely that he will know the meaning of words which state, for example, "this warranty is in lieu of any other express warranties or the implied warranties of merchantibility or fitness." In fact such a warranty may be limiting the consumers' rights rather than expanding them; the issuance of an express warranty while simultaneously disclaiming the implied warranties is an increasingly common practice which results in many cases in a document which could be more accurately described as a limitation on liability rather than a warranty. Therefore there is a great need to prohibit the disclaimer of implied warranties when the supplier of consumer products guarantees his products in writing.

The third major problem concerning warranties confronting consumers today relates to warranty enforcement. Even when the consumer understands the warranty, and there have been no disclaimers of implied warranties, consumers frequently are in no better position because the warrantor does not live up to the promises he has made. Because enforcement of a warranty through the courts is prohibitively expensive, there exists no currently available remedy for consumers to enforce warranty performance. If warrantors who did not perform their promises suffered direct economic detriment, they would have strong incentives to perform. Therefore there is a need to insure warrantor performance by monetarily penalizing the warrantor for nonperformance—and awarding that penalty to the consumer as compensation for his loss. One way to effectively meet this need is by providing for reasonable attorneys' fees and court costs to successful consumer litigants, thus making consumer resort to the courts feasible.

In the final analysis many warranty problems could be cured if products were made well enough to last the length of the warranty period and hopefully even beyond. The need to stimulate the production of more reliable products goes even beyond the warranty area.

Title I of the bill introduced today contains specific provisions designed to meet each of the needs delineated above. Disclosure and labeling requirements are carefully spelled out. There is a prohibition against the disclaimer of implied warranties. There is a simplified system to enable the consumer to determine which products have full warranties and therefore, by economic necessity, have been reliably designed. And there are provisions providing realistic remedies for consumers when suppliers fail to live up to their warranty or service contract obligations.

Title II of this bill improves the Federal Trade Commission's ability to serve as a viable consumer protection agency. As early as 1938, a minority of the House committee reporting the Wheeler-Lea Act criticized the inadequacy of the limited enforcement powers of the Federal Trade Commission. The recent awakening of the agency to its consumer protection responsibilities has made this lack of adequate regulatory tools even more apparent. This bill would give the Commission the tools it needs.

First, the bill provides the Commission with the power to seek a preliminary injunction so that the whistle can be blown at the moment a violation of the Federal Trade Commission Act is detected. By allowing the FTC to immediately stop an alleged unfair act or practice, it can do a much better job of protecting consumers.

The bill also enables the Commission to levy realistic penalties against those suppliers of consumer goods who commit unfair or deceptive practices. The Commission's own attorneys could seek civil penalties against those who knowingly violated the Federal Trade Commission Act, and these penalties will provide a more realistic deterrent, with a $10,000 maximum per violation.

Title II of this bill also expressly confirms the existing authority of the Federal Trade Commission to promulgate trade regulation rules defining specific unfair deceptive practices, thus enabling the businessman to understand better what is expected of him.

Finally, the bill would grant the Commission authority to provide specific remedial relief to consumers injured by suppliers who committed unfair deceptive acts or practices. Thus, this bill would allow the Commission to order specific redress for injured consumers; no longer would it have to rely merely upon a slap of the violator's wrist to maintain fair play in the marketplace.

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

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

S. 356

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 "Magnuson-Moss Act".

TITLE I—CONSUMER PRODUCT WARRANTIES

DEFINITIONS

SEC. 101. For the purpose of this Act—

(1) "Commission" means the Federal Trade Commission.

(2) The term "consumer product" means any tangible personal property, normally used for personal, family, or household purposes, including any such property intended to be attached to or installed in any real property without regard to whether it is so attached or installed. However, the provisions affecting consumer products in sections 102 and 103 of this title shall apply only to consumer products actually costing the purchaser more than $5 each.

(3) "Purchaser" or "consumer" means any person who is in possession of any consumer product which is subject to a warranty in writing, other express warranty, implied warranty, or service contract in writing, [which is offered or given to enforce against the supplier the obligations of the warranty or service contract.]

(4) "Reasonable and necessary maintenance" consists of those operations which the purchaser reasonably can be expected to perform or have performed to keep a consumer product operating in a predetermined manner and performing its intended function.

(5) The term "repair" may at the option of the warrantor include replacement with a new, identical or equivalent consumer product or component(s) thereof.

(6) The term "replacement" or "to replace" as used in section 104 of this title, in addition to furnishing of a new, identical or equivalent consumer product (or component(s) thereof), shall include the refunding of the actual purchase price of the consumer product (1) if repair is not commercially practicable or (2) if the purchaser is willing to accept such refund in lieu of repair or replacement. In the event there is replacement of a consumer product, the replaced consumer product (free and clear of liens and encumbrances) shall be made available to the supplier.

(7) "Supplier" means any person (including any partnership, corporation, or association) engaged in the business of making a consumer product or service contract available to consumers, either directly or indirectly. Occasional sales of consumer products by persons not regularly engaged in the business of making such products available shall not make such persons "suppliers" within the meaning of this title.

(8) "Warrantor" means any supplier or other party who gives a warranty in writing.

(9) The term "warranty" includes guaranty, and to warrant is to guarantee.

(10) "Warranty in writing" or "written warranty" means a warranty in writing against defect or malfunction of a consumer product.

(a) "Full warranty" means a warranty in writing against defect or malfunction of a consumer product which incorporates the uniform Federal standards for warranty set forth in section 104 of this title.

(b) "Limited warranty" means any warranty in writing against defect or malfunction of a consumer product subject to the provisions of this title which does not incorporate at a minimum the uniform Federal standards for warranty set forth in section 104 of this title.

(11) A "warranty in writing against defect or malfunction of a consumer product" means:

(i) any written affirmation of fact or written promise made at the time of sale by a supplier to a purchaser which relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is defect-free or will meet a specified level of performance over a specified period of time, or

(ii) any undertaking in writing to refund, repair, replace, or take other remedial action with respect to the sale of a consumer product in the event that the product fails to meet the specifications set forth in the undertaking,

which written affirmation, promise, or undertaking becomes part of the basis of the bargain between the supplier and the purchaser.

(12) The term "without charge" means that the warrantor(s) cannot assess the purchaser for any costs the warrantor or his representatives incur in connection with the required repair or replacement of a consumer product warranted in writing. The term does not mean that the warrantor must necessarily compensate the purchaser for incidental expenses. However, if any incidental expenses are incurred because the repair or replacement is not made within a reasonable time or because the warrantor imposed an unreasonable duty upon the purchaser as a condition of securing repair or replacement, then the purchaser shall be entitled to recover such reasonable incidental expenses in any action against the warrantor for breach of warranty under section 110(b) of this title.

DISCLOSURE REQUIREMENTS

SEC. 102. (a) In order to improve the adequacy of information available to consumers, prevent deception, and improve competition in the marketing of consumer products, the Commission is authorized to issue rules, in accordance with section 109 of this title which may (1) prescribe the manner and form in which information with respect to any written warranty shall be clearly and conspicuously presented or displayed when such information is contained in advertising, labeling, point-of-sale material, or other representations in writing; and

(2) require the incluson in any written warranty, in simple and readily understood language, fully and conspicuously disclosed, which items of information may include, among others:

(A) The clear identification of the name and address of the warrantor.

(B) Identity of the class or classes of persons to whom the warranty is extended.

(C) The products or parts covered.

(D) A statement of what the warrantor will do in the event of a defect or malfunction—at whose expense—and for what period of time.

(E) A statement of what the purchaser must do and expenses he must bear.

(F) Exceptions and exclusions from the terms of the warranty.

(G) The step-by-step procedure which the purchaser should take in order to obtain performance of any obligation under the warranty, including the identification of any class of persons authorized to perform the obligations set forth in the warranty.

(H) On what days and during what hours the warrantor will perform his obligations.

(I) The period of time within which, after notice of malfunction or defect, the warrantor will under normal circumstances repair, replace, or otherwise perform any obligations under the warranty.

(J) The availability of any informal dispute settlement procedure offered by the warrantor and a recital that the purchaser must resort to such procedure before pursuing any legal remedies in the courts.

(K) A recital that any purchaser who successfully pursues his legal remedies in court may recover the reasonable costs incurred, including reasonable attorneys' fees.

Nothing in this title shall be deemed to authorize the Commission to prescribe the duration of warranties given or to require that a product or any of its components be warranted, except that the Commission may prescribe rules pursuant to section 553 of title 5, United States Code, that the term of a warranty or service contract shall be extended to correspond with any period in excess of a reasonable period (not less than ten days) during which the purchaser is deprived of the use of a product by reason of a defect or malfunction. Further, except as provided in section 104, nothing in this title shall be deemed to authorize the Commission to prescribe the scope or substance of written warranties.

DESIGNATION OF WARRANTIES

SEC. 103. (a) Any supplier warranting in writing a consumer product shall clearly and conspicuously designate such warranty as provided herein unless exempted from doing so by the Commission pursuant to section 109 of this title:

(1) If the written warranty incorporates the uniform Federal standards for warranty set forth in section 104 of this title and does not limit the liability of the warrantor, then it shall be conspicuously designated as "full (statement of duration)" warranty, guaranty, or word of similar meaning. If the written warranty incorporates the uniform Federal standards for warranty set forth in section 104 of this title and limits the liability of the warrantor as permitted by this Act and applicable State law, then it shall be conspicuously designated as "full (statement of duration)" warranty, guaranty or word of similar import "but with limitations on liability." "Statement of duration" means the disclosure of the warranty period measured either by time or by some relevant measure of usage, such as "mileage." A warrantor issuing a written warranty in compliance with Federal standards shall also attempt in good faith to cause the disclosure of the duration of the warranty period to the purchaser prior to the time of purchase through advertising, by providing point-of-sale materials, or by other reasonable means.

(2) If the written warranty does not incorporate the Federal standards for warranty set forth in section 104 of this title, then it shall be designated in such manner so as to indicate clearly and conspicuously the limited scope of the coverage afforded.

(b) Written statements or representations such as expressions of general policy concerning customer satisfaction which are not subject to any specific limitations shall not be deemed to be warranties in writing for purposes of sections 102, 103, and 104 of this title but shall remain subject to the provisions of the Federal Trade Commission Act and section 110 of this title.

FEDERAL STANDARDS FOR WARRANTY

SEC. 104. (a) Any supplier warranting in writing a consumer product must undertake at a minimum the following duties in order to be deemed to have incorporated the uniform Federal standards for warranty:

(1) to repair or replace any malfunctioning or defective warranted consumer product;

(2) within a reasonable time; and

(3) without charge.

In fulfilling the above duties the warrantor shall not impose any duty other than notification upon any purchaser as a condition of securing repair or replacement of any malfunctioning or defective consumer product unless the warrantor can demonstrate that such a duty is reasonable. In a determination by a court or the Commission of whether or not any such additional duty or duties are reasonable, the magnitude of the economic burden necessarily imposed upon the warrantor (including costs passed on to the purchaser) shall be weighed against the magnitude of the burdens of inconvenience and expense necessarily imposed upon the purchaser.

(b) The above duties extend from the warrantor to the consumer.

(c) The performance of the duties enumerated in subsection (a) of this section shall not be required of the warrantor if he can show that damage while in the possession of the purchaser or unreasonable use (including failure to provide reasonable and necessary maintenance) caused any warranted consumer product to malfunction or become defective.

(d) If repair is necessitated an unreasonable number of times during the warranty period the purchaser shall be entitled to demand and receive replacement of the consumer product.

FULL AND LIMITED WARRANTING OF A CONSUMER PRODUCT

SEC. 105. Nothing in this title shall prohibit the selling of a consumer product which has both full and limited warranties if such warranties are clearly and conspicuously differentiated.

SERVICE CONTRACTS

SEC. 106. Nothing in this title shall be construed to prevent a supplier from selling a sevice contract to the purchaser in addition to or in lieu of a warranty in writing if such contract fully and conspicuously

discloses in simple and readily understood language the terms and conditions. The Commission is authorized to determine in accordance with section 109 of this title the manner and form in which the terms and conditions of service contracts shall be clearly and conspicuously disclosed.

DESIGNATION OF REPRESENTATIVES

SEC. 107. Nothing in this title shall be construed to prevent any warrantor from making any reasonable and equitable arrangements for representatives to perform duties under a written warranty: *Provided*, That no such arrangements shall relieve the warrantor of his direct responsibilities to the purchaser or necessarily make the representative a cowarrantor.

LIMITATION ON DISCLAIMER OF IMPLIED WARRANTIES

SEC. 108. (a) There shall be no express disclaimer of implied warranties to a purchaser if any warranty in writing or service contract in writing of a consumer product is made by a supplier to a purchaser.

(b) For purposes of this title, implied warranties may not be limited as to duration expressly or impliedly through a designated warranty in writing or other express warranty.

FEDERAL TRADE COMMISSION

SEC. 109. The Commission is authorized to establish rules pursuant to section 553, title 5, United States Code, upon a public record after an opportunity for an agency hearing structured so as to proceed as expeditiously as practicable, to prescribe the manner and form in which information with respect to any written warranty shall be disclosed and the items of information to be included in any written warranty as provided in section 102; to prescribe the manner and form in which terms and conditions of service contracts shall be disclosed as provided in section 106; to determine when a warranty in writing does not have to be designated in accordance with section 103 of this title; to define in detail the disclosure requirements in paragraph (2) of subsection (a) of section 103; and to define in detail the duties set forth in subsection (a) and (d) of section 104 of this title and their applicability to warrantors of different categories of consumer products with "full" warranties.

PRIVATE REMEDIES

SEC. 110. (a) Congress hereby declares it to be its policy to encourage suppliers to establish procedures whereby consumer disputes are fairly and expeditiously settled through informal dispute settlement mechanisms. Such informal dispute settlement procedures should be created by suppliers in cooperation with independent and governmental entities pursuant to guidelines established by the Commission. If a supplier incorporates any such informal dispute settlement procedure in any written warranty or service contract, such dispute procedure shall initially be used by any consumer to resolve any complaint arising under such warranty or service contract. The bona fide operation of any such dispute procedure shall be subject to review by the Commission on its own initiative or upon written complaint filed by any injured party.

(b) Any purchaser damaged by the failure of a supplier to comply with any obligations assumed under a written warranty or service contract in writing subject to this title may bring suit for breach of such warranty or service contract in an appropriate district court of the United States subject to the jurisdictional requirements of section 1331, title 28, United States Code, and any purchaser damaged by the failure of a supplier to comply with any obligations assumed under an express or implied warranty or service contract subject to this title may bring suit in any State or District of Columbia court of competent jurisdiction: *Provided*, That prior to commencing any legal proceeding for breach of warranty or service contract, any purchaser must have afforded the supplier a reasonable opportunity to cure the breach including the utilization of any informal dispute settlement mechanisms established pursuant to subsection (a) of this section. Nothing in this subsection shall be construed to change in any way the jurisdictional prerequisites or venue requirements of any State.

(c) Any purchaser who shall finally prevail in any suit or proceeding for breach of an express or implied warranty or service contract obligation brought under section (b) of this section shall be allowed by the court of competent jurisdiction to recover as part of the judgment a sum equal to the aggregate amount of cost and expenses (including attorneys' fees based on actual time expended) determined by the court to have been reasonably incurred by such purchaser for or in connection with the institution and prosecution of such suit or proceeding unless the court in its discretion shall determine that such an award of attorneys' fees would be inappropriate.

(d)(1) For the purposes of this section, an "express warranty" is created as follows:

(A) Any affirmation of fact or promise made by a supplier to the purchaser which relates to a consumer product or service and becomes part of the basis of the bargain creates an express warranty that the consumer product or service shall conform to the affirmation or promise.

(B) Any description of a consumer product which is made part of the bargain creates an express warranty that the consumer product shall conform to the description.

(C) Any sample or model which is made part of the basis of the bargain creates an express warranty that the consumer product shall conform to the sample or model.

It is not necessary to the creation of an express warranty that the supplier use formal words such as "warranty" or "guaranty" or that he have a specific intention to make a warranty, but an affirmation merely of the value of the consumer product or service or a statement purporting to be merely the supplier's opinion or commendation of the consumer product or service does not create a warranty.

(2) Only the supplier actually making an affirmation of fact or promise, a description, or providing a sample or model shall be deemed to have created an express warranty under this section and any rights arising thereunder may only be enforced against such supplier and no other supplier.

GOVERNMENT ENFORCEMENT

SEC. 111. (a) It shall be unlawful and a violation of section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 56(a)(1)) for any person (including any partnership, corporation, or association) subject to the provisions of this title to fail to comply with any requirement imposed on such person by or pursuant to this title or to violate any prohibition contained in this title.

(b)(1) The district courts of the United States shall have jurisdiction to restrain violations of this title in an action by the Attorney General or by the Commission by any of its attorneys designated by it for such purpose. Upon a proper showing, and after notice to the defendant, a temporary restraining order or preliminary injunction may be granted without bond under the same conditions and principles as injunctive relief against conduct or threatened conduct that will cause loss or damage is granted by courts of equity: *Provided, however*, That if a complaint is not filed within such period as may be specified by the court after the issuance of the restraining order or preliminary injunction, the order or injunction may, upon motion, be dissolved. Whenever it appears to the court that the ends of justice require that other persons should be parties in the action, the court may cause them to be summoned whether or not they reside in the district in which the court is held, and to that end process may be served in any district.

(2) Civil Investigative Demands.

(i) Whenever the Attorney General has reason to believe that any person under investigation may be in possession, custody, or control of any documentary material, relevant to any violation of this title, he may, prior to the institution of a proceeding under this section cause to be served upon such person, a civil investigative demand requiring such person to produce the documentary material for examination.

(ii) Each such demand shall—

(1) state the nature of the conduct alleged to constitute the violation of this title which is under investigation;

(2) describe the class or classes of documentary material to be produced thereunder with such definiteness and certainty as to permit such material to be fairly identified;

(3) prescribe a return date which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying or reproduction; and

(4) identify the custodian to whom such material shall be furnished.

(iii) No demand shall—

(1) contain any requirement which would be held unreasonable if contained in a subpena duces tecum issued by a court of the United States in a proceeding brought under this section; or

(2) requires the production of any documentary evidence, which would be privileged from disclosure if demanded by a subpena duce tecum issued by a court of the United States in any proceeding under this section.

(iv) Any such demand may be served at any place within the territorial jurisdiction of any court of the United States.

(v) Service of any such demand or of any petition filed under subparagraph (vii) of this section may be made upon a person, partnership, corporation, association, or other legal entity by—

(1) delivering a duly executed copy thereof to such person or to any partner, executive officer, managing agent, or general agent thereof, or to any agent thereof authorized by appointment or by law to receive service of process on behalf of such person, partnership, corporation, association, or entity;

(2) delivering a duly executed copy thereof to the principal office or place of business of the person, partnership, corporation, association or entity to be served; or

(3) depositing such copy in the United States mails, by registered or certified mail duly addressed to such person, partnership, corporation, association, or entity at its principal office or place of business.

(vi) A verified return by the individual serving any such demand or petition setting forth the manner of such service shall be proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

(vii) The provisions of sections 4 and 5 of the Antitrust Civil Process Act (15 U.S.C. 1313, 1314) shall apply to custodians of material produced pursuant to any demand and to judicial proceedings for the enforcement of any such demand made pursuant to this section: *Provided, however*, That documents and other information obtained pursuant to any civil investigative demand issued hereunder and in the possession of the Department of Justice may be made available to duly authorized representatives of the Commission for the purpose of investigations and proceedings under this title and under the Federal

Trade Commission Act subject to the limitations upon use and disclosure contained in section 4 of the Antitrust Civil Process Act (15 U.S.C. 1313).

SAVING PROVISION

SEC. 112. Nothing contained in this title shall be construed to repeal, invalidate, or supersede the Federal Trade Commission Act (15 U.S.C. 41 et seq.) or any statute defined therein as an Antitrust Act.

SCOPE

SEC. 113. (a) The provisions of this title and the powers granted hereunder to the Commission and Attorney General shall extend to all sales of consumer products and service contracts affecting interstate commerce.

(b) Labeling, disclosure, or other requirements of a State with respect to written warranties and performance thereunder, inconsistent with those set forth in section 102, 103, or 104 of this title or with rules and regulations of the Commission issued in accordance with the procedures set forth in section 109 of this title, or with guidelines of the Commission shall not be applicable to warranties complying therewith. However, if, upon application of an appropriate State agency, the Commission determines (pursuant to rules issued in accordance with the Federal Trade Commission Act, as amended) that any requirement of such State (other than a labeling or disclosure requirement) covering any transaction to which this title applies (1) affords protection to consumers greater than the requirements of this title and (2) does not unduly burden interstate commerce, then transactions complying with any such State requirement shall be exempt from the provisions of this title to the extent specified in such determination for as long as the State continues to administer and enforce effectively any such greater requirement.

(c) Nothing in this title shall be construed to supersede any provision of State law regarding consequential damages for injury to the person or any State law restricting the ability of a warrantor to limit his liability.

EFFECTIVE DATE

SEC. 114. (a) Except for the limitations in subsection (b) of this section, this title shall take effect six months after the date of its enactment but shall not apply to consumer products manufactured prior to such effective date.

(b) Those requirements in this title which cannot be reasonably met without the promulgation of rules by the Commission shall take effect six months after the final publication of such rules: *Provided*, That the Commission, for good cause shown, may provide designated classes of suppliers up to an additional six months to bring their written warranties into compliance with rules promulgated pursuant to this title.

(c) The Commission shall promulgate initial rules for initial implementation of this title including guidelines for establishment of informal dispute settlement procedures pursuant to section 110(a) as soon as possible after enactment but in no event later than one year after the date of enactment.

TITLE II—FEDERAL TRADE COMMISSION IMPROVEMENTS

SEC. 201. Section 5 of the Federal Trade Commission Act (15 U.S.C. 45) is amended by striking out the words "in commerce" wherever they appear and inserting in lieu thereof "affecting commerce".

SEC. 202. Section 5(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)) is amended by inserting after paragraph (6) thereof the following new paragraph:

"(7) The Commission may initiate civil actions in the district courts of the United States against persons, partnerships, or corporations engaged in any act or practice which is unfair or deceptive to a consumer and is prohibited by subsection (a)(1) of this section with actual knowledge or knowledge fairly implied on the basis of objective circumstances that such act is unfair and deceptive and is prohibited by subsection (a)(1) of this section, to obtain a civil penalty of not more than $10,000 for each such violation. The Commission may compromise, mitigate, or settle any action for a civil penalty if such settlement is accompanied by a public statement of its reasons and approved by the court."

SEC. 203. Section 5(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)) is amended by inserting after paragraph (7) as added by section 202 of this Act the following new paragraph:

"(8) After an order of the Commission to cease and desist from engaging in acts or practices which are unfair or deceptive to consumers and proscribed by section 5(a)(1) of this Act has become final as provided in subsection (g) of this section, the Commission, by any of its attorneys designated by it for such purpose, may institute civil actions in the district courts of the United States to obtain such relief as the court shall find necessary to redress injury to consumers caused by the acts or practices which were the subject of the cease and desist order, including but not limited to, recision or reformation of contracts, the refund of money or return of property, public notification of the violation, and the payment of damages; except that nothing in this section is intended to authorize the imposition of any exemplary or punitive damages. The court shall cause notice to be given reasonably calculated, under all the circumstances, to appraise all consumers allegedly injured by the defendant's acts of the pendency of the action. No action may be brought by the Commission under this subsection more than two years after an order of the Commission upon which such action is based has become final. Any action initiated by the Commission under this section may be consolidated as the court deems appropriate with any other action requesting the same or substantially the same relief upon motion of either party.

SEC. 204. Section 5(l) of the Federal Trade Commission Act (15 U.S.C. 4(l)) is amended by striking subsection (l) and inserting in lieu thereof the following new paragraph:

"(l) Any person, partnership, or corporation who violates an order of the Commission after it has become final, and while such order is in effect, shall forfeit and pay to the United States a civil penalty of not more than $10,000 for each violation, which shall accrue to the United States and may be recovered in a civil action brought by the United States or the Commission in its own name by any of its attorneys designated by it for such purpose. Each separate violation of such an order shall be a separate offense, except that in the case of a violation through continuing failure or neglect to obey a final order of the Commission each day of continuance of such failure or neglect shall be deemed a separate offense. In such actions, the United States district courts are empowered to grant mandatory injunctions and such other and further equitable relief as they deem appropriate in the enforcement of such final orders of the Commission."

SEC. 205. Section 6 of the Federal Trade Commission Act (15 U.S.C. 46) is amended by striking out the words "in commerce" wherever they appear and inserting in lieu thereof "in or whose business affects commerce".

SEC. 206. Section 6(g) of the Federal Trade Commission Act (15 U.S.C. 46(g)) is amended by striking subsection (g) and inserting in lieu thereof the following:

"(g) From time to time to classify corporations and to make rules and regulations for the purposes of carrying out the provisions of this Act. Such rules and regulations as are specifically provided for hereinafter shall be promulgated in the following manner and shall have the stated substantive force and effect:

"(1) The Commission is authorized to issue procedural rules to carry out the provisions of this Act. Any such rule shall be promulgated in accordance with section 553 of title 5 of the United States Code and without regard to the exemption in subsection (b) thereof for rules of agency procedure or practice.

"(2) The Commission is hereby authorized to issue legislative rules defining with specificity acts or practices which are unfair or deceptive to consumers and which section 5(a)(1) of this Act proscribes.

"(i) When issuing legislative rules the Commission shall (a) issue an order of proposed rulemaking stating with particularity the reason for the rule; (b) allow interested persons at least thirty days to comment on the proposed rule in writing or at an agency hearing and make all such comments publicly available; (c) provide the Commission staff and other persons an opportunity to respond within a designated period of time to comments initially received and make such responses publicly available; (d) if on the facts upon which the proposed rule is based, provide for an agency hearing in accordance is a disparity of views concerning material facts upon which the proposed rule is based, provide for an agency hearing in accordance with sections 556 and 557 of title 5 of the United States Code at which the Commission may permit cross-examination (limited as to scope or subject matter) by on or more parties as representatives of all parties having similar interests; (e) promulgate a final rule based on the record compiled in accordance with subparagraphs (b), (c), and, if applicable, subparagraph (d) of this paragraph.

"(ii) Following the final promulgation by the Commission of any legislative rule that rule and a brief in its support based upon the Commission proceedings shall be referred to the House of Representatives and the Senate. If within sixty calendar days (which sixty days, however, shall not include days on which either the House of Representatives or the Senate is not in session because of an adjournment of more than thirty calendar days to a day certain) from the date of referral the Senate or the House of Representatives by resolution do not disapprove the rule, it shall become effective.

"(iii) Following the final promulgation by the Commission of any legislative rule, any interested person may, at any time prior to the tenth day after the expiration of the period for review as provided in subparagraph (ii) of this paragraph, file a petition for a judicial review of such determination. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Chairman of the Commission or the officer designated by him for that purpose. The Commission shall file in the court the record of the proceedings on which the Commission based its rule, as provided in section 2112 of title 28 of the United States Code.

"(iv) If the petitioner applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there was no opportunity to adduce such evidence in the proceeding before the Commission, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Commission in a hearing or in such other manner, and upon such terms and conditions, as to the court may seem proper. The Commission may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file any such modified or new findings, and its recommendation, if any, for the modification or setting aside of its original determination, with the return of such additional evidence. Upon the filing of the petition, the court shall have

jurisdiction to review the determination of the Commission in accordance with chapter 7 of title 5 of the United States Code, including that provision requiring the rule to be supported by substantial evidence on the basis of the entire record before the court (including any additional evidence adduced).

"(v) Any legislative rule which has become final shall have prospective application only.

"(vi) Nothing in this Act shall be deemed to foreclose judicial review of a legislative rule when the Commission issues a final order based upon such rule.

"(vii) Whenever the Commission determines in a rulemaking proceeding pursuant to paragraph (g)(2) that uniformity in the engagement of any act or practice in compliance with a rule issued pursuant to paragraph (g)(2) is in the public interest and necessary to carry out the intent of this Act, the Commission shall include in such rule a description of the extent to which such rule will preempt state and local requirements relating to the same acts or practices affected by the Commission's rule. The reasons for preemption, or lack thereof, including the extent of consideration given to the need for uniformity, shall be set forth in the rule with specificity.

Upon petition by any State, or political subdivision thereof, the Commission may, by rule, after notice and opportunity for presentation of views, exempt from the provisions of this subsection, under conditions as it may impose, any state or local requirement that (1) affords protection to consumers greater than that provided in the applicable Commission rule, (2) is required by compelling local conditions, and (3) does not unduly burden interstate commerce. The Commission shall maintain continuing jurisdiction over those states or localities specifically exempted under this subsection, and may withdraw the exemption granted whenever it is determined that the state or locality is not efficiently enforcing its requirements or that such exemption is no longer in the public interest.

"(3) Any person seeking judicial review of a rule may obtain such review in the United States Court of Appeals for the District of Columbia Circuit, or any circuit where such person resides or has his principal place of business."

SEC. 207. Section 9 of the Federal Trade Commission Act (15 U.S.C. 49) is amended by—

(a) deleting the word "corporation" in the first sentence of the first unnumbered paragraph and inserting in lieu thereof the word "party".

(b) inserting after the word "Commission" in the second sentence of the second unnumbered paragraph the phrase "acting through any of its attorneys designated by it for such purpose";

(c) deleting the fourth unnumbered paragraph and inserting in lieu thereof the following:

"Upon application of the Attorney General of the United States or the Commission, acting through any of its attorneys designated by it for such purpose, the district courts of the United States shall have jurisdiction to issue writs of mandamus commanding any person or corporation to comply with the provisions of this Act or any order of the Commission made in pursuance thereof."

SEC. 208. Section 10 of the Federal Trade Commission Act (15 U.S.C. 50) is amended by deleting the third unnumbered paragraph and inserting in lieu thereof the following:

"If any corporation required by this Act to file any annual or special report shall fail to do so within the time fixed by the Commission for filing the same, and such failure shall continue for thirty days after notice of such default, the corporation shall forfeit to the United States the sum of $100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States and shall be recoverable in a civil suit brought by the United States or by the Commission, acting through any of its attorneys designated by it for such purpose, in the district where the corporation has its principal office or in any district in which it shall do business."

SEC. 209. Section 12 of the Federal Trade Commission Act (15 U.S.C. 52) is amended by striking out the words "in commerce" wherever they appear and inserting in lieu thereof "in or having an effect upon commerce."

SEC. 210. Section 13 of the Federal Trade Commission Act (15 U.S.C. 53) is amended by redesignating "(b)" as "(c)" and inserting the following new subsection:

"(b) Whenever the Commission has reason to believe—

"(1) that any person, partnership, or corporation is engaged in, or is about to engage in, any act or practice which is unfair or deceptive to a consumer, and is prohibited by section 5, and

"(2) that the enjoining thereof pending the issuance of a complaint by the Commission under section 5, and until such complaint is dismissed by the Commission or set aside by the court on review, or the order of the Commission made thereon has become final within the meaning of section 5, would be to the interest of the public—

the Commission by any of its attorneys designated by it for such purpose may bring suit in a district court of the United States to enjoin any such act or practice. Upon a proper showing, and after notice to the defendant, a temporary restraining order or a preliminary injunction may be granted without bond under the same conditions and principles as injunctive relief against conduct or threatened conduct that will cause loss or damage is granted by courts of equity: *Provided, however,* That if a complaint under section 5 is not filed within such period as may be specified by the court after the issuance of the temporary restraining order or preliminary injunction, the order or injunction shall be dissolved by the court and be of no further force and effect. Any such suit shall be brought in the district in which such person, partnership, or corporation resides or transacts business."

SEC. 211. Nothing in this title shall be construed to give the Commission authority over the Federal National Mortgage Association, the National Corporation for Housing Partnerships or any financial institution which is subject to regulation by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, the National Credit Union Administration, or the Federal Home Loan Bank Board against acts or practices unfair or deceptive to consumers.

Mr. MOSS. Mr. President, I wish to join the distinguished chairman of the Senate Commerce Committee in introducing the warranty-FTC bill. This bill will truly improve the position of the American consumer, both by removing the abuse and ignorance surrounding warranties, and by providing the Federal Trade Commission with the tools it badly needs to do an effective job.

Title I of this bill deals with warranties, and warranties are the source of many consumer complaints. The need for warranty reform has become apparent ever since the midsixties, when the Federal Trade Commission and the Senate Commerce Committee began investigating consumer product warranties. The basic warranty legislation contained in this bill has been passed by the Senate twice already, and the need has never been greater than it is now.

One of the most important effects of this bill will be its ability to relieve consumer frustration by promoting understanding and providing meaningful remedies. This bill should also foster intelligent consumer decisions by making warranties understandable. At the same time, warranty competition should be fostered since consumers would be able to judge accurately the content and differences between warranties and competing consumer products.

Title I of this bill also provides greater assurance of warranty performance, by doing two important things. First, the bill provides the consumer with an economically, feasible private right of action so that when a warrantor breaches his warranty or service contract obligations, the consumer can have effective redress. Reasonable attorneys fees and expenses are provided for the successful consumer litigant, and the bill is further refined so as to place a minimum extra burden on the courts by requiring as a prerequisite to suit that the purchaser give the supplier reasonable opportunity to settle the dispute out of court, including the use of a fair and formal dispute settlement mechanism which the bill encourages suppliers to set up under the general supervision of the Federal Trade Commission. A greater likelihood of warrantor performance is also assured through prohibition of express disclaimers of implied warranties.

Perhaps one of the potentially most important and long range effects of this bill resides in its attempt to assure better product reliability. The bill does not mandate any particular life span or reliability quotient for consumer products, but instead attempts to organize the rules of the warranty game in such a fashion as to stimulate manufacturers, for competitive reasons, to produce more reliable products. This is accomplished using the rules of the marketplace by giving the consumer enough information and understanding about warranties so as to enable him to look to the warranty duration of a guaranteed product as an indicator of product reliability.

Today when a consumer purchases a major product such as an automobile, he receives a warranty which he naturally assumes gives him the right to have the car repaired if it breaks down or proves defective during the warranty period. He is usually in for a rude shock when he discovers that in fact the warranty he has received could more accurately be described as a limitation on liability rather than a warranty; he discovers his rights have been diminished rather than increased by receipt of this document. The warranty may cover a defective transmission seal costing $1 but not a $150 installation charge, or he may discover that factory approval is required and he will have to wait for repair of his automobile for a lengthy period while that is accomplished. Another common occurrence is that the warranty will not cover many defects; it will be strictly limited in its coverage in such way as to exclude the most common items of breakage and shoddy manufacture. With the possible exception of American Motors' buyer protection plan, the usual American car warranty does not cover

the majority of defects consumers typically discover in their new cars. Furthermore, the purchaser will soon discover that the implied warranties which would have come by operation of law with the purchase of this automobile may have been waived by acceptance of the express warranty. If the implied warranties were not so waived, all the "unmerchantable" aspects of the product, or those defects in it which make it unfit for its ordinary intended purposes, would be covered by the implied warranties.

This sad state of affairs I have just portrayed will be significantly changed by passage of this bill. The same purchaser I have been discussing, upon receipt of his warranty with the purchase of an automobile would be in a far different situation. First of all, the warranty would be designated on its face as being either a "full" warranty, covering all parts and labor for the designated period, or a "partial" warranty, which does not require repair or replacement without charge. All warranties which are not "full" would have to indicate their limitations at the top in bold print. For example, a warranty providing free parts for 1 year might be designated "1-year parts-only warranty."

Currently, the only warranty offering full protection during the warranty period for the consumer of American automobiles is American Motors Corp.'s buyer protection plan. This bill would encourage more manufacturers to issue "full" warranties and would also prohibit the disclaimer of implied warranties when a written warranty or service contract in writing is made. Thus, when a consumer buys a product with a "full" warranty, he can expect all defects coming to light within the warranty period to be fixed without charge. Furthermore, the bill will enable consumers to differentiate between products on the basis of reliability, using the warranty duration as an index of the durability. If a warrantor fails to live up to his obligations, fair settlement procedures and economically feasible private rights of action are provided for.

In the 1960's the Federal Trade Commission concluded that warranty reform was needed. In the 91st Congress, basic warranty reform passed the Senate. In the 92d Congress warranty reform again passed the Senate, by an overwhelming margin. This reform is needed more than ever now, and I, therefore, urge early passage of this bill which represents a further refinement of the legislation which passed the Senate last Congress.

Most changes reflect technical improvements or clarifications, but some substantive improvements have also been made. For example, the definition of "purchaser" has been changed to include the recipient of an implied warranty and is not limited in scope to that class of persons designated in the warranty. In addition, the warranty designation requirements have been adjusted to permit the consumer to differentiate between a "full" warranty with limitation of liability and a "full" warranty without limitation of liability; and there is an express statement in the bill that a State can restrict the ability of a warrantor to limit his liability—for example, by amending section 2-719 of the Uniform Commercial Code.

Section 203, dealing with the power of the Federal Trade Commission to institute civil actions to redress injury to consumers resulting from unfair or deceptive acts or practices, has been modified to clarify the procedures that the Federal Trade Commission and court would follow in granting consumers redress. Finally, section 206, which confirms the Federal Trade Commission's power to promulgate legislative rules, has been amended to correspond to its form when reported by the Senate Commerce Committee in the fall of 1971, thereby assuring fairness to all parties concerned without dragging out the proceedings so that the Commission is effectively strangled.

By Mr. MAGNUSON (for himself, Mr. BAKER, Mr. HART, Mr. HARTKE, Mr. HOLLINGS, Mr. JACKSON, Mr. MOSS, and Mr. TUNNEY):

S. 357. A bill to promote commerce and amend the Federal Power Act to establish a Federal Power Research and Development program to increase efficiencies of electric energy production and utilization, reduce environmental impacts, develop new sources of clean energy, and for other purposes. Referred to the Committee on Commerce.

FEDERAL POWER RESEARCH AND DEVELOPMENT ACT

Mr. MAGNUSON. Mr. President, I believe it essential that a comprehensive, balanced Federal energy research and development program be undertaken. There is little doubt that a significant number of promising technical options exist for alleviating the Nation's shortage of clean energy. Many of them would provide relief from the energy-environment crisis we face. New priorities should be established to balance our needs for energy, environmental quality, consumer protection and our capability to control developing technologies.

Uncertainties of fuel supply and unforeseen difficulties or social costs associated with new developments mandate that a U.S. energy research and development program be broad-based and flexible. No single technology should dominate our efforts lest we become irrevocably committed to technologies which may one day be judged sociably unacceptable.

A major R. & D. program is needed because power demands are rapidly increasing. Although electricity is the cleanest form of energy at the point of consumption, its generation and transmission raise serious environmental and resource problems. These problems will worsen as consumption grows unless new technologies and new sources of energy are developed.

Coal, our most abundant fossil fuel, is currently used to generate about half of our electric energy and even with the growth of nuclear power, coal continues to be a major source. Unfortunately, its production and use raise serious problems. Coal mining scours the landscape through heedless strip mining and subjects thousands of miners to both sudden and cumulative disaster through tragic accidents and the long-term ravages of black lung. Its use in generating electric power produces vast quantities of debilitating air pollutants—sulfur oxides, nitrogen oxides, particulates and other pollutants such as traces of mercury—as well as mountains of solid waste.

Oil used to generate electric power also generates air pollutants, although in lesser quantities. However, there is a tightness in its supply, particularly in low-sulfur sources. A key problem is that natural gas, our cleanest energy source, is inappropriate for use in electric power generation so long as other higher priority uses are not satisfied.

Nuclear power, the result of large R. & D. expenditures by the Federal Government over the past 25 years, eliminates many air pollution problems, but it raises serious difficulties of its own. There is always a risk, however small, that a serious accident will result in the exposure of a large segment of the public to significant amounts of radioactivity. In addition, the day-to-day releases of low-level radioactive wastes, as well as the transportation and perpetual management of high-level radioactive wastes, will pose increasing problems as more reactors are built and operated.

Waste heat is another unhappy by-product of both fossil fuel and nuclear generating processes using the steam cycle. To protect our lakes, riyers, and estuaries, many new powerplants must employ cooling towers and ponds. These consume more water and cause environmental problems of their own.

In short, unless we develop new technology for energy generation we are faced with a variety of environmental problems regardless of whether we use nuclear power or fossil fuels.

In addition, our energy systems are extremely inefficient. By one widely accepted estimate, five-sixths of the energy used in transportation, two-thirds of the fuel consumed to generate electricity and nearly one-third of all the remaining energy—averaging to more than half of all the energy consumed in the United States—is discarded as waste heat. I believe significant improvements are feasible. We can wait no longer to develop them.

A number of new and existing technologies offer the promise of controlling harmful pollutants, increasing the efficiency of generation and consumption of electric power and tapping new clear sources of energy. The blueprint for survival is not obscure:

First, the application of more efficient technologies, ranging from better insulation in houses to more efficient furnaces in the industry, and policies that reduce rather than promote the demand for energy could play a key role in the last two decades of this century. The Nation should end wasteful uses of energy and develop a conservation ethic. Such programs would help improve the Nation's true quality of life.

Second, solar energy, which is the only real "income" energy available on the spaceship earth, could supply many important energy needs. This process appears especially attractive since it can be used directly for heating and cooling and

in the production of electricity without consuming natural resources nor producing pollution.

Third, magnetohydrodynamics or MHD could be used as a "topping cycle" for present-day technologies and increase thermal efficiencies as much as 50 percent.

Fourth, fusion machines, using various processes, theoretically could provide an abundant supply of clean energy for hundreds of thousands of years. There are researchers who feel that we are very close today to a demonstration of feasibility.

Fifth, geothermal energy, which is being used economically in several areas of the world today, requires more R. & D. to facilitate better energy extraction techniques from the thermal sources in our planet. Some scientists have estimated that geothermal energy could potentially supply the Nation's demand for new electric energy through the year 2000.

Sixth, fuel cells which could cleanly burn natural gas and/or hydrogen to produce electricity, have the particular advantage of efficiency in small units. This process could facilitate the decentralization of American society and at the same time eliminate high environmental and economic transmission costs.

Seventh, extra high voltage transmission lines and underground cryogenic transmission systems all need serious effort to reduce the present 10 to 15 percent loss of energy in the transmission process.

Eighth, there exist many possibilities to make the use of coal environmentally acceptable and there are still other untapped potential sources of energy to meet at least part of our energy requirements. Among them: Tidal, wind, ocean current, and ocean thermal gradients. Each could be a potential source of a small but significant portion of a clean energy supply.

Yet these opportunities remain largely unexplored. The record of electric utility, industry in research and development is hardly impressive—at the present level it is about one quarter of 1 percent of utility gross revenues. Moreover, since 1945, 87 percent of our national investment in energy R. & D.—both government and private—has been narrowly focused on the development of a nuclear fission process.

The electric utility industry is to be commended for undertaking a program of joint R. & D. But these voluntary efforts are not enough. Expert witnesses at extensive Commerce Committee hearings on this subject last session argued that proposed research and development expenditures by the industry are inadequate: Less than one-tenth of the needs recognized by the industry itself will be met by even a fully successful voluntary program. But it will be difficult to meet goals because individual utilities will attempt to minimize their contributions because research results are to be available on reasonable terms to noncontributing members. Proposals to permit utilities to satisfy a substantial proportion of their contribution obligations by undertaking their own research program will further erode the financial base of the Electric Power Research Institute program.

Some contended that the industry program is not balanced. There is no provision for representation of consumer, environmental, and non-power-producing Government agencies. There is no mechanism to insure public access to all information nor is there any attempt to encourage public participation in the decisionmaking process. There is no provision for a public audit.

The proposed industry program would be controlled by investor-owned utilities. It would face a major difficulty associated with all joint industry research projects: there is a possibility that the introduction of new technology will be slowed to suit the pace of the most backward member, that collusion will prevent the vigorous pursuit of certain ideas and that the horizons of the program would be restricted to narrow limits. Testimony indicated that a private R. & D. program is likely to turn toward those projects that promise immediate profits—a climate that nurtures only the most minor innovations. Whenever it is necessary to stimulate innovation and develop entirely new technologies, a Government program is more suitable because it alone can marshall the talent and resources needed where there is no certainty of short-term economic return.

But most importantly it was pointed out that voluntary industry effort lacks public accountability. As to the rate payer the "voluntary" approach is in reality a tax, but without the safeguards associated with the expenditures of public funds. As far as the electric consumer is concerned, the expenditures are not voluntary and he has no input into the direction or scope of the program.

Finally, an energy R. & D. program has a profound effect on national policies and such important decisions can not be left solely to the boardrooms of private corporations. Therefore, while the voluntary industry effort should be encouraged, I believe it does not alleviate the need for a major Government research and development program. Mr. President, I urge prompt enactment of the Federal Power Research and Development Act so that the Nation can begin developing the hardware needed to produce clean energy without harming the environment.

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

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

DESCRIPTION OF FEDERAL POWER RESEARCH AND DEVELOPMENT ACT

PURPOSE

The purpose of the Federal Power Research and Development Act is to authorize a program of research and development for the improved means of production, transmission, distribution, and utilization of electric energy with minimum impact on the environment.

CREATION OF A FEDERAL POWER RESEARCH AND DEVELOPMENT BOARD

The bill would establish a five member Federal Power Research and Development Board appointed by the President to staggered five year terms with the advice and consent of the Senate.

The research activities of the Board would be financed by a one percent surcharge on electricity consumption. This fee would be paid by electricity consumers. In addition any person generating more than one million kilowatt-hours per year of electric energy for his own consumption is required to pay a fee equal to one percent of the fair market value of the electric energy he generates. The funds collected by the surcharge would be deposited in a Federal power research and development trust fund. This procedure is designed to guarantee a reliable, consistent source of funds that will be equally and uniformly paid by all electricity users. Although in the short run the fee will increase electric rates, over the longer term the benefits of a coordinated, comprehensive research program are expected to increase efficiencies to more than offset the cost of the program.

The authority granted under this Act expires ten years after enactment. The ten year limit on the life of the Board will insure a thorough review of the program at the end of a decade, thus guarding against the creation of a self-perpetuating, and unresponsive bureaucracy.

RESEARCH PROGRAM AUTHORIZED

The bill would authorize a comprehensive program of research and development to improve efficiencies and reduce environmental impacts of electric energy generation, transmission and distribution systems. The Board would seek to achieve basic innovations and develop clean, reliable new sources of energy. In addition research is authorized to improve the energy utilization of appliances, equipment and processes. The Board is to encourage the implementation of energy conservation practices. Consequently, the Board has broad authority to conduct research toward solving America's energy problems by increasing the range of options available to meet energy needs, improving the energy supply picture and enhancing the utilization of available energy sources.

The bill provides that at least five percent of the funds expended by the Board shall be used to search for adverse social, environmental or economic effects of proposed or present technologies. This provision would establish a program of technology assessment to identify and avoid adverse and unwanted side effects of emerging technologies.

BROAD PUBLIC PARTICIPATION

The Board is to develop an overall program after annual hearings. It is anticipated that this process will enable the Board to benefit from the counsel and advice from environmentalists, consumers, public interest advocates, members of the scientific and technical community and the affected industries. Also required is a detailed annual report which is to include a description and appraisal of research and development activities funded during the preceding year, an evaluation of future funding needs and an assessment of the impact of emerging technologies on the demand for electricity, the economy and the environment.

A newsletter is to be published at least twice a month to provide basic and continuing information on the Board's activities to the scientific community, Congress, industry and the general public The funds collected, while limited to use by the Board, will be subject to the appropriation process so that the Congress will be able to assure that the funds allocated to the Board serve the objectives of the Act. All of these provisions are designed to make the Board highly visible and guarantee that its activities are in the public interest.

SUMMARY

The Federal Power Research and Development Act is designed to establish an innovative R&D program with adequate public

accountability, with maximum public participation and coordination with other government programs. This program would place priority on developing more efficient, less polluting means of generating energy. Such a program would reduce adverse environmental impacts while helping to avoid chronic power shortages and the threat of blackouts.

There appears to be universal agreement on the need for a greatly expanded energy research and development program. This is one of the few issues on which the electric power industry, the government, environmentalists and concerned citizens all agree. The bill provides the structure to fill the gap between research needs and current efforts.

S. 357

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Federal Power Act is amended by adding at the end thereof the following new title:

"TITLE IV—FEDERAL POWER RESEARCH AND DEVELOPMENT PROGRAM

"BOARD ESTABLISHED

"SEC. 401. (a) There is hereby established the Federal Power Research and Development Board (hereinafter referred to as the 'Board'). The Board shall consist of five members appointed by the President, by and with the advice and consent of the Senate, one of whom shall be so appointed as Chairman of the Board. The members first appointed under this section, as amended, shall continue in office for terms of one, two, three, four, and five years, respectively, from the date this section, as amended, takes effect, the term of each to be designated by the President at the time of nomination. Their successors shall be appointed each for a term of five years from the date of the expiration of the term for which his predecessor was appointed and until his successor is appointed and has qualified, except that he shall not so continue to serve beyond the expiration of the next session of Congress subsequent to the expiration of said fixed term of office, and except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the unexpired term. Not more than three of the members shall be appointed from the same political party. No person in the employ of or holding any official relation to any licensee or to any person, firm, association, or corporation engaged in the generation, transmission, distribution, or sale of power, or owning stock or bonds thereof, or who is in any manner pecuniarily interested therein, shall enter upon the duties of or hold the office of member. Said member shall not engage in any other business, vocation, or employment. No vacancy in the Board shall impair the right of the remaining members to exercise all the powers of the Board. Three members of the Board shall constitute a quorum for the transaction of business, and the Board shall have an official seal of which judicial notice shall be taken. The Board shall annually elect a Vice Chairman to act in case of the absence or disability of the Chairman or in case of a vacancy in the office of Chairman. The members shall be appointed from among those persons with experience and competence in the following areas: the environment and its protection; electric power reliability; and scientific and technical research and development. The Chairman shall be compensated at the rate provided for by level III of the Executive Salary Schedule under section 5314 of title 5, United States Code. The remaining members shall be compensated at the rate provided for by level IV of the Executive Salary Schedule under section 5315 of such title.

"(b) The authority under this title shall terminate ten years from the date of enactment of this Act.

"FEE ASSESSED

"SEC. 402. Ninety days after enactment of this title, every person purchasing electric energy for consumption, and every person generating more than one million kilowatt hours per year of electric energy for his own consumption shall pay a fee equal to one percent of his total charge for electric energy for all such electric energy purchased and consumed, or one percent of the fair market value, as determined by the Federal Power Commission, of the electric energy produced where the electric energy is generated by any person for his own consumption.

"All persons (as defined in section 551 of title 5 of the United States Code) distributing electric energy affecting interstate commerce, including private companies, cooperatives, and agencies of local, State and the Federal government shall include as part of the normal bill or invoice issued to any person purchasing electric energy for consumption an additional amount equal to one percent of total charge for electric energy. Such persons distributing electric power affecting interstate commerce are required to collect the fee imposed by this section and to pay an amount equal to all such fees collected to the Federal Power Commission.

"Any person generating more than one million kilowatt hours per year of electric energy for his own consumption affecting interstate commerce is hereby required to pay a fee equal to one percent of the fair market value, as determined by the Federal Power Commission, of the electric energy he generates to the Federal Power Commission.

"The fees imposed by this section shall be paid by the person purchasing and consuming electric energy.

"The fees imposed by this section shall not apply to sales of electric energy for resale.

"TRUST FUND ESTABLISHED

"SEC. 403. Revenues collected by the Commission from such fees and interest on such revenues shall be deposited in a trust fund, to be known as the Federal Power Research and Development Trust Fund (hereinafter referred to as the 'fund') which is in the Treasury of the United States to be available through the appropriation process only to the Board for use in carrying out all the provisions including administrative expenses of section 404 and other provisions of this title. Separate appropriations requests shall be submitted by the Board to the President for transmittal to Congress.

"RESEARCH PROGRAM AUTHORIZED

"SEC. 404. (a) The Board is authorized to conduct directly and by way of contract, grant, or other arrangement, a program of research and development for the improved means of production, transmission, distribution, and utilization of electric energy with minimum impact on the environment. Payments under this section shall not exceed the amount of the fees collected pursuant to this Act. Such program shall be coordinated with and shall supplement research and development programs conducted or assisted by other Federal agencies, universities, electric power companies or other companies or individuals. Funds appropriated pursuant to this Act shall be allocated on the basis of their contribution to the attainment of the following goals—

"(1) increasing the efficiencies of energy generation, transmission, distribution, processes;

"(2) improving the energy utilization efficiency of appliances, equipment and processes, and encouraging the implementation of energy conservation practices;

"(3) decreasing the adverse environmental impact of present and future energy generation, transmission, and distribution processes;

"(4) achieving basic innovations for new means of reliably generating energy while protecting the environment;

"(5) making increased efficiencies and improved technology directly available to all interested persons on a nondiscriminatory basis;

"(6) other areas which the Board deems to be within the broad objectives of this title; and

"(7) in allocating the sums of the Fund under this title, the Board shall reserve not less than 5 per centum of such sums for projects which make a deliberate effort to search for adverse social, environmental, or economic effects of proposed or present technologies. Reports on such projects by the principal investigators shall be compiled and furnished to the Congress and the public annually.

"ADMINISTRATIVE PROVISIONS

"SEC. 405. (a) In carrying out its functions under this title, the Board is authorized to—

"(1) prescribe such regulations as it deems necessary governing the manner in which such functions shall be carried out;

"(2) appoint such officers and employees as may be necessary, and supervise and direct their activities;

"(3) utilize from time to time, as appropriate, experts and consultants, including panels of experts, who may be employed as authorized by section 3109 of title V of the United States Code;

"(4) accept and utilize the services of voluntary and uncompensated personnel and reimburse them for travel expenses, including per diem, as authorized by law for persons in the Government service employed without compensation.

"(5) rent office space; and

"(6) make other necessary expenditures.

"(b) If, in carrying out its functions under this section, the Board from time to time should require the services of personnel engaged in the generation, transmission, and distribution of electric energy, it should seek such personnel from all segments of the electric power industry including investor owned, State and local public agencies, cooperatives, and Federal agencies.

"(c) Each recipient of sums from the Fund under this title shall keep such records as the Board shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such sums, the total cost of the project or undertaking in connection with which such sums were given or used, the amount and nature of that portion of the cost of the project or undertaking supplied by other sources and such other records as will facilitate an effective audit.

"(d) The Board and the Comptroller General of the United States or any of their duly authorized representatives shall have access, for the purpose of audit or examination, to any records of the recipient that are pertinent to any sums from the Fund received under this title.

"REPORT

"SEC. 406. The Board shall prepare and submit to the President for transmittal to the Congress not more than six months after the passage of this Act and on the same day annually after that, a comprehensive report on the administration of this title for the preceding calendar year. Whenever possible, judgments contained in the report shall include a clear statement of the assumptions and data used. Such report shall include—

"(1) a thorough analysis and evaluation of research and development activities funded under this title;

"(2) a comprehensive evaluation of the areas most in need of research and development funding in the future;

"(3) an analysis of the possible and probable impact of emerging technologies on the present and future aspects of the following:

"(A) both the supply of and the demand for energy;

"(B) the economy; and

"(C) the environment; and

"(4) the extent of cooperation with other Federal agencies and public and private institutions, indicating the difficulties and the Board's plans for improvement;

"(5) Recommendations for legislation, if needed, to revise national energy policies, encourage conservation of energy, improve cooperation between interested agencies and persons, propose additional authority as needed to carry out this title or for other purposes within the broad objectives of this title.

"NEWSLETTER

"SEC. 407. (a) Not less than twice each month, the Board shall publish a newsletter (hereinafter referred to as the 'Newsletter'), which shall be made available to all interested persons and include—

"(1) abstracts of all approved grants, including a statement on the general nature of the work;

"(2) announcements of hearings;

"(3) summaries of promising developments; and

"(4) the information required elsewhere in this title.

"(b) The Board shall give notice by publication in the Federal Register and in the Newsletter at least ninety days before approval of any grant of $5,000,000 or more and shall provide an opportunity for any interested party to comment on any such grant prior to approval. No grants may be approved until thirty days after completion of the time allowed for the comment of interested persons.

"PROCEDURE

"SEC. 408. At least once each year the Board shall conduct a hearing on its proposed budget for the following fiscal year. Notice shall be given by publication in the Federal Register and in the Newsletter at least sixty days prior to its occurrence, the scheduled date, time, and place of said hearing. In addition, at least forty-five days before the hearing date, the Board shall publish in the Newsletter a complete statement of proposed programs in the next fiscal year. All interested parties should be granted an opportunity to testify or submit written statements. A record shall be made of all hearings, and said record shall be available for public inspection. All reasonable and germane inquiries made at the hearing of the Board, or of the principal investigators where possible, must be fairly responded to on the record. The Board shall wait at least thirty days after the completion of the hearings to allow for the comment of interested parties before submitting its budget to the President.

"PATENTS

"SEC. 409. Each contract, grant, or other arrangement for any research or development activity supported by this title shall contain provisions effective to insure that all information, uses, processes, patents, and other developments resulting from that activity will be made freely and fully available to the general public. Nothing herein shall be construed to deprive the owner of any background patent of any right which he may have thereunder.

"CIVIL PENALTY

"SEC. 410. Any person who violates any regulation established pursuant to this title shall be subject to a civil penalty of not more than $10,000 for each violation or for each day of a continuing violation. The penalty shall be recoverable in a civil suit brought by the Attorney General on behalf of the United States in the United States district court for the district in which the defendant is located or for the District of Columbia."

By Mr. McGOVERN (for himself, Mr. ABOUREZK, Mr. CLARK, Mr. GRAVEL, Mr. HATHAWAY, Mr. KENNEDY, Mr. MOSS, and Mr. RANDOLPH):

S. 361. A bill to provide housing and community development for persons in rural areas of the United States on an emergency basis. Referred to the Committee on Banking, Housing and Urban Affairs.

EMERGENCY RURAL COMMUNITY DEVELOPMENT ACT OF 1973

Mr. McGOVERN. Mr. President, I am once again introducing a bill designed to establish an Emergency Rural Housing Administration to help low-income Americans in rural areas and small towns get decent and sanitary housing. I introduced the bill in 1971 as a consequence of hearings held by the Select Committee on Nutrition and Human Needs, of which I am the chairman.

In light of recent actions taken by the administration with regard to the Nation's subsidized housing programs, this bill is much more vital than it was when I first introduced it in the 92d Congress. As you are probably aware, Mr. Nixon has declared a moratorium on virtually all of the federally subsidized housing programs designed to serve families with modest incomes. In effect, the President has said "The present housing programs are a mess and so I will kill them even though I do not have an alternative. Besides, for cosmetic reasons, I need to give the appearance of balancing the budget."

But the President will not choose the most obvious way of cutting expenditures. He will not stop the costly war in Vietnam. Rather, with callous indifference, he is disregarding the deplorable housing conditions that countless Americans must now tolerate. Mr. Nixon does not flinch at the staggering cost of the B–52's we have lost over Vietnam in the bombings. But he turns his back on the legitimate expenditure for Federal assistance in housing.

I would like at this time to outline some of the thinking that went into drafting this bill. The Select Committee on Nutrition and Human Needs decided to hold hearings on rural housing because we began to question the possibility of instituting good nutrition programs for families who were forced to prepare food in rat-infested kitchens with dirt floors and contaminated drinking water.

The committee heard testimony indicating that as a family's income drops, so does the condition of its housing. As the housing conditions decline, incidences of stillbirths, infant mortality, juvenile delinquency, failure in school and mental and emotional disturbance increase.

Bad housing is an ideal breeding ground for infectious disease. Housing which invites the cold and damp also invites tuberculosis. This list goes on. The correlation is obvious. Everybody knows that bad housing means bad health.

This relationship between one's immediate environment and one's physical well-being was demonstrated by a program conducted on the Rosebud Indian Reservation in my home State. There, some 375 very modest houses were constructed, and we had studies and reports of all kinds on their worth to the Indian residents. But to me, the most important thing about the whole project was that after those few hundred families moved into dry, warm, sturdy, and safe housing, hospital admissions on the reservation soon fell by 30 percent and the daily patient census fell by 40 percent.

What is being done for the general rural population in this regard? After 30 years on the books, public housing has served less than 3 percent of the target population in rural areas and small towns.

HUD programs are virtually unworkable in rural areas and small towns. The overwhelming bulk of these programs go to big cities. The overworked, underfunded Farmers Home Administration serves the rural areas, but not the poor. And now even these inadequate programs do not exist.

Testimony taken by the select committee documents the whys and wherefores of the program failure in detail.

Suffice it to say that the rural poor get left out of the scheme of Federal things for basically two reasons. They are rural and they are poor.

An emergency truly does exist in rural areas and small communities. Over 60 percent of the Nation's substandard occupied units are there. Along with the bad housing are the attendant problems of polluted and unpiped water, lack of sanitary facilities, and overcrowding. There are fewer doctors and decent medical facilities than would be needed even to begin to treat the symptoms of the problem. Add to this the fact that over half the poor in the United States live in these areas where only one-third of the population is and one begins to see the enormity of the problem. Unemployment and underemployment are often the rule rather than the exception.

There seems to be evidence of a movement however small among some Members of Congress to do something about the miserable situation in rural areas. Yet most have so far neglected to come to grips with the problem of delivering adequate housing to an impoverished population. Whatever means are used to deliver adequate housing to the poor, we know it will take at least two things in enormous quantities—commitment and dollars.

People in the housing industry tell us year after year that the problem is one of commitment—that the commitment just is not there now. I believe that Congress was sincere when it made its promise to house the homeless in 1949 and sincere when it reaffirmed that pledge in 1968.

But likewise I believe that despite two decades of tinkering, the existing housing legislation has not done the job. It is time to take dramatic action and time to set a deadline on a promise that is almost a quarter-century old.

The bill I introduce today contemplates that the problem be attacked on an emergency basis—one which defines its goals and makes every effort to reach them in 5 years.

To do this, an independent executive agency at the Federal level is created called the Emergency Rural Housing Administration, ERHA.

It is headed by an administrator appointed by the President, with the advice and consent of the Senate. The Administrator will have powers concomitant with the emergency situation with which he is dealing. He will have the usual powers to sue and be sued, to make and repeal such rules and regulations as are necessary, to accept gifts or donations of services or property, to buy and sell or otherwise convey property, and to enter into contracts.

In addition he will have the following extraordinary powers: to acquire land by condemnation and to appoint officers and employees without regard to provisions governing appointments in the competitive service. The power to acquire land by condemnation is necessary in order to acquire adequate building sites in areas where the eligible persons to be served live, and to do so at a fair and reasonable cost.

It is desirable to exempt employees of the ERHA from the competitive civil service as this bill does for several reasons. First, the bulk of the work of the agency is to be completed within 5 years and second, it is expected that many of the persons who could be employed within the agency could come from the client population, many of which would not be able to qualify under the existing civil service system.

The Administrator will be authorized to serve all eligible people living in, or desiring to live in a rural area or small community who cannot with reasonable certainty obtain decent housing from other sources within 2 years. For this purpose, a rural area means any open country or any place in the United States which is not in a standard metropolitan statistical area and a small community means any political subdivision in the United States which has a population of less than 25,000. As fas as is practicable, the Administrator is obligated to serve eligible persons with the lowest adjusted incomes first. Also, he shall provide for home ownership rather than rental assistance to the greatest extent possible.

Homeownership assistance would be given in the form of loans to eligible persons or families. The Administrator will set the interest rate down to 1 percent on such loans, taking into account the adjusted income of the eligible person involved.

The Administrator is authorized to defer payment of up to 50 percent of the loan, which portion would become payable and interest bearing only when and to the extent the borrower's ability to repay exceeds that required to retire the undeferred portion at the maximum interest rate or upon the sale or other disposition of the property financed by the loan. In determining a borrower's ability to repay, his income will be adjusted by deducting 5 percent of the gross income plus $300 for that borrower and for each member of his family. An additional $1,000 will be deducted for each individual or family who is physically disabled or mentally retarded.

A borrower will not be required to pay more than 20 percent of his adjusted income to repay the loan; however, when that amount would be insufficient to retire a loan even with 50 percent of the principal deferred, the borrower may choose to pay a greater amount in order to be eligible for a loan.

For those eligible persons who desire to rent or do not have sufficient income to repay a loan for homeownership, the Administrator is authorized to finance all or part of the cost of acquisition, construction, rehabilitation, operation, and maintenance of rental facilities. Rent charged to eligible persons for such facilities will bear a reasonable relationship to the income, taking into account reasonable needs for food, clothing, medical care, education, and other necessities and in no case shall it be in excess of 25 percent of adjusted income.

Any construction or rehabilitation undertaken with funds from the ERHA must be designed to required minimum maintenance over a useful life of at least 50 years except when the Administrator finds that temporary facilities are necessary to accommodate less substantial renovation or to meet the need of temporary residents in an area.

All housing built, acquired, or rehabilitated by the ERHA will be minimal housing which means a safe, weatherproof dwelling with running potable water, modern sanitation facilities including a kitchen sink, toilet, and shower or tub and such other requirements as to square footage and other facilities as the Administrator shall set.

In addition, the construction should be in accordance with plans developed with the active participation of the eligible persons involved.

To carry out the housing program envisioned by this act, the administrator is authorized to enter into contracts with local agencies—any existing or new public or private agency, instrumentality, or organization which meets such criteria as the Administrator requires—to meet the total housing needs for all eligible persons within a designated area. The Administrator is authorized to furnish such financial, technical, and other assistance as these local agencies will require.

In addition, the administration is authorized to furnish supplemental assistance for any housing program authorized by any other Federal or State law if such assistance will meet the needs of eligible persons under this act.

It is anticipated that about 2,500,000 units should be assisted by the ERHA. Of the 5 million low-income families living in small towns and rural areas it is estimated that at least half of them will require assistance under this act.

The Secretary is authorized and directed to purchase any such notes and for that purpose to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act. The Secretary is also authorized to sell at any time any such notes or other obligations which shall also be treated as a public debt transaction.

In order to spread the cost of borrowing over a reasonable period of years and to eventually relieve the burden on the public debt, the act authorizes $500,000,000 to be appropriated each year, reduced by any amounts paid into the Treasury on the loans made by the Administrator, to be applied to the retirement of notes issued by the Administrator.

An emergency truly does exist in rural areas and small communities. Over 60 percent of the Nation's substandard occupied units are there. Along with the bad housing are the attendant problems of polluted and unpiped water, lack of sanitary facilities, and overcrowding. There are fewer doctors and decent medical facilities than would be needed even to begin to treat the symptoms of the problem. Add to this the fact that over half the poor in the United States live in these areas where only one-third of the population is and one begins to see the enormity of the problem. Underemployment and unemployment are often the rule rather than the exception.

I am trying to impress upon you now the crisis situation that exists in rural America. I have pledged to offer a comprehensive program for the revitalization of rural America. I see the creation of this emergency agency as the first vital step in accomplishing that revitalization. The time has surely come to make good our broken promises to rural Americans who have been severely neglected to this day.

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

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

SECTION-BY-SECTION ANALYSIS OF THE EMERGENCY RURAL COMMUNITY DEVELOPMENT ACT

Section 1.—Short title.

Emergency Rural Community Development Act.

Section 2.—Findings.

Congress finds that an emergency situation exists in rural areas with regard to housing for low-income families and individuals.

Section 3.—Definitions.

Section 4.—Establishment and duties.

Provides for the establishment of an independent federal agency called the Emergency Rural Housing Administration. Defines the ERHA's duties as providing minimal housing facilities to eligible persons in rural areas and small communities and to do so within five years to the extent possible. An eligible person as defined in Section 3 is an individual or family which lives or desires to live in a rural area or community and cannot with reasonable certainty obtain minimum housing facilities by any means other than from assistance under this Act within two years of the date of application for assistance. Provides for an Administrator of the ERHA by adding a new clause (58) to 5 U.S.C. 5314 to be appointed by the President by and with the advice and consent of the Senate. Provides that the Administrator's duties may not be transferred to any other department, agency, or instrumentality of the United States.

Section 5.—Powers.

Provides for the powers of the Administrator of the ERHA.

Section 6.—Home ownership.

Authorizes the Administrator to make loans to eligible persons for the acquisition of land and the construction of minimal housing facilities or for the acquisition or rehabilitation of existing facilities. Provides that at

least fifty percent of such loan shall be amortized over a period not exceeding forty years and at an interest rate of not less than one percent per year. The remaining balance of such a loan shall take the form of a note secured by a second mortgage which becomes payable and interest bearing when and to the extent that the borrowers ability to repay exceeds that required to retire the first note at the maximum rate of interest or upon the sale or other disposition of the property. Provides that the interest rate, the amount of deferred principal and the other terms and conditions of such loans will be set by the Administrator taking into account the adjusted income of the eligible person involved and that a borrower cannot be required to pay more than twenty percent of his adjusted annual income on principal, interest, taxes and insurance except when the borrower chooses to in order to qualify for the ownership program.

Section 8.—Rental facilities

Authorizes the administrator to finance all or part of the acquisition, construction, rehabilitation, operation and maintenance of minimal housing facilities to be rented by eligible persons, water and sewerage facilities for such housing, and related community facilities for such housing. Provides that the rental payments of the occupants and the amount of rent assistance provided shall bear a reasonable relationship to the income of the eligible persons taking into account other budget needs and in no case should any rent payment (including the reasonable cost of heat, water and light) exceed twenty-five percent of the person's adjusted income. Provides that, when feasible, lease agreements should include an option to purchase at terms consistent with Section 6.

Section 9.—Local agency agreements

Authorizes the Administrator to enter in agreements with local agencies to assume area responsibility for carrying out the purposes of the Act, Provides that the Administrator shall furnish such financial, technical and other assistance to these local agencies as may be necessary. Authorizes the Administrator to provide supplemental assistance for other federal and state housing programs if such assistance will further the purposes of this Act.

Section 10.—Limitations and conditions

Provides that the Administrator, shall not require the relocation of any eligible person in order to engage in or to facilitate the economic development of any area. Provides that construction or rehabilitation undertaken must be designed to require minimum maintenance for at least fifty years except when the Administrator finds that less permanent housing is in accordance with the Act; and be in accordance with plans developed with the active participation of the eligible persons involved.

Section 11.—Priorities

Establishes the priorities that, insofar as is practicable, persons with the lowest adjusted incomes shall be served first, and to the maximum extent feasible, ownership rather than rental occupancy will be provided.

Section 12.—Annual report

Provides that the Administrator shall prepare and transmit to the Congress and the President an annual report of the operation and activities of the Agency.

Section 13.—Borrowing authority.

Provides that for purposes of this Act the Administrator is authorized to issue notes or other obligations to the Secretary of the Treasury in such sums as may be necessary in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be prescribed by the Secretary and bear interest at a rate determined by the Secretary, 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. Authorizes the Secretary and directs him to purchase such notes and for that purpose to use as a public debt transaction the proceeds for the sale of any securities issued under the Second Liberty Bond Act and extends the purposes for which securities may be issued under that Act to include any purchase of such notes and obligations under this Act. Authorizes the Secretary to sell at any time any of the notes or other obligations acquired by him under this subsection and provides that all redemptions, purchases and sales by of the Secretary of such notes or other obligations shall be treated as a public debt transaction of the United States. Authorizes to be appropriated $500 million per year, less any amount, paid into the Treasury each year on loans made by the Administrator under this Act. Such sum is to be applied to the retirement of notes or other obligations issued by the Administrator.

S. 361

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

SECTION 1. This Act may be cited as the "Emergency Rural Housing Act of 1971".

FINDINGS

SEC. 2. The Congress finds that—

(1) after more than three decades of Federal activity in the housing field and more than two decades after the enactment of the Housing Act of 1949 which pledged this Nation to a decent home and suitable living environment for every American family, there are millions of substandard, crowded, and otherwise deficient dwelling units which lack running water and sanitation facilities essential to health and decency;

(2) more than half of these units are in nonmetropolitan areas;

(3) none of the existing housing agencies, public or private, function adequately in meeting the housing needs of the poorest people in small towns and rural areas;

(4) the administrative funds and grant and lending authorities of Farmers Home Administration are inadequate to the task, and its authorized capacity to subsidize dwellings falls far short of that required to provide housing for the poor;

(5) public housing exists in little more than token quantities in small towns and rural areas, and public housing legislation presently does not permit a subsidy adequate to meet the needs of the poorest of the poor;

(6) despite the moving rhetoric of the last two decades, the authority and funds to satisfy the housing needs of low-income families are not available;

(7) existing agencies operating under existing authorities could not meet the needs of millions of the rural poor even if all restraints on administrative funds were lifted, nor would they meet those needs if there were no ceiling placed on grant and loan funds; and

(8) the ill health and human degradation that flow from this continuing neglect and denial of responsibility call for emergency action.

DEFINITIONS

SEC. 3. For the purpose of this Act—

(1) "Administration" means the Emergency Rural Housing Administration established under section 4 of this Act;

(2) "Administrator" means the Administrator of the Administration;

(3) "adjusted income" means the total income of an individual or family reduced by—

(A) 5 per centum of that income;

(B) $300 for that individual or for each member of that family; and

(C) $1,000 for that individual if he is physically disabled or mentally retarded or for each member of that family who is physically disabled or mentally retarded;

(4) "area responsibility agreement" means an agreement between the Administrator and a local agency to provide minimal housing facilities for all eligible persons in an area;

(5) "eligible person" means an individual or family which (A) lives or desires to live in a rural area or community, and (B) cannot with reasonable certainty obtain minimum housing facilities by any means other than assistance under this Act within two years after the date of application for assistance under this Act;

(6) "local agency" means any public or private agency, instrumentality, or organization which meets such criteria as the Administrator shall by regulation require, and includes any such agency which exists under any Federal, State, or local law for purposes not inconsistent with this Act, and any such agency established hereafter for any such purpose;

(7) the term "minimal housing facilities" means a safe, weatherproof dwelling with running potable water, modern sanitation facilities including a kitchen sink, toilet, and shower or tub, but such term does not include any dwelling which does not meet the requirements established by the Administrator with respect to square footage and other facilities or standards;

(8) "rural area" means any open country or any place in the United States which is not contained in a standard metropolitan statistical area; and

(9) "small community" means any political subdivision in the United States which has a population of less than twenty-five thousand people.

ESTABLISHMENT AND DUTIES

SEC. 4. (a) There is established an Emergency Rural Housing Administration. The management of the Administration shall be vested in an Administrator who shall be appointed by the President by and with the advice and consent of the Senate.

(b) It shall be the duty of the Administration to provide minimal housing facilities for all eligible persons in rural areas and small communities and to do so to the extent possible within a five-year period. The duties and powers of the Administration shall not be transferred to any other department, agency, or instrumentality of the United States.

(c) Section 5314 of title 5, United States Code, is amended by adding at the end thereof the following new clause:

"(58) Administrator, Emergency Rural Housing Administration."

POWERS

SEC. 5. The Administrator shall have the power—

(1) to sue and be sued, and complain and defend, in its own name and through its own counsel;

(2) to adopt, amend, and repeal such rules and regulations as may be necessary;

(3) to lease, purchase, or acquire by condemnation or otherwise, and own, hold, improve, use, or otherwise deal in and with, any property, real, personal, or mixed, or any interest therein, wherever situated;

(4) to accept gifts or donations of services, or property, real, personal, mixed, tangible or intangible, in aid of any of the purposes of the Administration;

(5) to sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of its property and assets;

(6) to appoint such officers and employees as may be required without regard to the provisions of title 5, United States Code, governing appointments in the competitive service; and

(7) to enter into contracts, execute instruments, incur liabilities, and do all things which are necessary or incidental to the proper management of its affairs.

HOMEOWNERSHIP

SEC. 6. (a) The Administrator is authorized to make loans to eligible persons to finance

the acquisition of land and the construction thereon of minimal housing facilities, or to finance the acquisition or rehabilitation of existing facilities in accordance with minimum housing facilities standards.

(b) At least 50 per centum of the principal amount of any loan made under this subsection shall be amortized over a period of not more than forty years, shall bear interest at a rate of not less than 1 per centum per year, and shall be secured by a first mortgage. The remainder of such principal amount may be a note secured by a second mortgage which becomes payable and interest bearing only when and to the extent the borrower's ability to repay exceeds that required to retire the first note at the maximum interest rate or upon the sale or other disposition of the property financed by the loan. The Administrator shall determine the percentage rate, the amount of the principal deferment, and the other terms and conditions of any such loan, taking into account the adjusted income of the eligible person involved. All amounts received by the Administrator as principal or interest payments on such loans shall be paid into the Treasury in accordance with section 13 of this Act.

(c) The Administrator may not require an eligible borrower to pay more than 20 per centum of adjusted annual income on principal, interest, taxes, and insurance (PITI) but a borrower, in order to qualify for ownership may voluntarily agree to pay more.

HOUSING DEVELOPMENTS

SEC. 7. The Administrator is authorized to acquire land and engage in the development of housing projects to be sold under section 6 or rented under section 8 of this Act.

RENTAL FACILITIES

SEC. 8. (a) The Administrator is authorized to finance all or part of the acquisition, construction, rehabilitation, operation, and maintenance of (1) minimal housing facilities in rural areas and small communities to be rented by eligible persons, (2) water and sewer facilities for such housing facilities, and (3) related community facilities for such housing facilities.

(b) Rental payments and the amount of assistance shall bear a reasonable relationship to the income of the eligible person, taking into account reasonable needs for food, clothing, medical care, education, and other necessities as determined by the Administrator. In no case shall any such payment including the reasonable cost of heat, water, and light, exceed 25 per centum of the adjusted income of the eligible person.

(c) Any lease or other occupancy agreement for facilities under this section shall include whenever feasible an option to buy in accordance with the provisions of section 6 of this Act.

LOCAL AGENCY AGREEMENTS

SEC. 9. (a) The Administrator may enter into area responsibility agreements with any local agency. The Administrator shall furnish such financial, technical, and other assistance as any such local agency may require in order to carry out programs authorized by this Act in accordance with the terms of any such agreement. The Administrator shall have access to the books, records, and any other papers of any local agency which enters into an area responsibility agreement in order to insure that such agency is at all times operating in compliance with the provisions of this Act.

(b) Notwithstanding any other provision of law, any agreement under this section may provide that the Administrator may furnish supplemental assistance for programs authorized or administered under any other provision of Federal or State laws, the Administrator is satisfied upon the basis of such assurances as he may require, that such agreement will carry out the purposes of this Act.

LIMITATIONS AND CONDITIONS

SEC. 10. (a) The Administrator shall not require, as a condition of assistance under this Act, the relocation of any eligible person in order to engage in or to facilitate the economic development of any area.

(b) Any construction or rehabilitation undertaken with funds authorized under this Act shall—

(1) be designed to require minimum maintenance over a useful life of not less than fifty years: *Provided*, That this limitation shall not apply to new or rehabilitated housing if the Administrator finds that less permanent housing is in accordance with the basic purposes of this Act;

(2) be in accordance with plans developed with the active participation of the eligible persons involved.

PRIORITIES

SEC. 11. (a) The Administrator shall insofar as is practicable furnish assistance under this Act to eligible persons with the lowest adjusted incomes first.

(b) To the maximum extent feasible, the Administration shall provide for homeownership rather than rental occupancy.

ANNUAL REPORT

SEC. 12. The Administration shall, as soon as practicable after the end of each fiscal year, prepare and transmit to the Congress and the President an annual report of the operation and activities.

BORROWING AUTHORITY

SEC. 13. (a) The Administrator is authorized to issue to the Secretary of the Treasury notes or other obligations in such sums as may be necessary to carry out the purposes of this Act, in such forms and denominations, 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 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.

(b) There is authorized to be appropriated $500,000,000 per year, reduced by any amounts paid into the Treasury each such year on the loans made by the Administrator under this Act, to be applied to the retirement of notes or other obligations issued by the Administrator under subsection (a) of this section.

Mr. ABOUREZK. Mr. President, I rise today along with my distinguished colleague from South Dakota, Senator MCGOVERN, to propose legislation whose scope is no less than to provide decent housing and community environment to every rural American family.

We call the legislation the Emergency Rural Community Development Act of 1973.

It is, for now, identical to the Emergency Rural Housing Act which Senator MCGOVERN and I introduced last session. We shall propose some changes to this act later on, perhaps to reintroduce it, to bring this bill in line with what we have learned in the last year, to remove from the bill sweeping powers granted to the executive branch in one or two respects, and to remodel its working functions to more closely resemble the program concept of REA co-ops, at least in terms of how the programs and entities we propose at the local level shall be structured.

Not too long ago, an Indian walked into my Rapid City office with a tough problem.

It seems that a few months earlier he had been kicked out of a housing project on one of the reservations.

Something was said about his being a single man, and there were families in need.

He moved to Rapid City, found himself an apartment such as there are for a man of his race and color, and a short while later the flood hit.

He lost his belongings when the apartment was destroyed. He had been living in his car with such possessions as he could scrape together.

Last Thursday, he told me, someone stole his car.

People hear that story, and they laugh, and then they ask what I did for the man.

The honest answer is: Nothing.

The honest answer is that in the aftermath of the flood, and despite the fact that Rapid City was to receive 800-odd units of subsidized Federal housing, there was nothing I could do for that man. He was the one at the bottom of the ladder.

There was no way he was going to get himself under a roof without going back to the reservation. The subsidized housing would not be ready for at least a year.

Back at the reservation, odds are good that any roof he would get would be a shack.

Odds are excellent that it would be crowded, packed full and tight with bodies, possibly including generations one through four and an in-law or two between the stove and the door.

Fix a picture of the typical shack in your mind and then add 3 feet of snow, and try to guess what the wind-chill factor would be in wide open South Dakota on the coldest night in February.

That was this man's best alternative.

He would not be an altogether rare case, but let us say that he would be the poorest one in the worst shack on the coldest night this winter.

Then picture his Congressman or Senator, the ultimate messenger of the Federal Government, face to face with the guy at the bottom of the ladder.

It would not quite be fitting to tell him that we have a program that is going to get him into decent housing in only 99 years.

You could not look him in the eye and tell him that in only 99 years a house was going to trickle down to him, even though he might believe you if you left it at that.

But if you added that he would have to wait until after we have taken care of all the people in the cities before he got his house, then he would call you a liar.

He would conclude that in truth you did not have any program for him. Events would likely prove him right. Under our present system, chances are he will never even see a housing application.

Even then, he knows the applications far outnumber the houses. Even if his social indexes finally manage to filter into a program, then there is always a chance that that program would not be functioning in town this week.

Now I wonder why it is that the Federal Government does not have a program for people at the bottom of the ladder. We have a juicy tax loophole housing program for the rich and middle class.

We had, until a few days ago, a lot of programs which threw a few crumbs to the near poor. But nothing for the one at the bottom.

You can tell me there is public housing and all about piggy-backing rent supplements into 236, and the Brooke rule, and you can cite social indexes that say we've got him covered.

But the fact is, he does not have a decent place to live right now, the chances are good that he will not get one at the present rate, and he can see with his own eyes on the reservation that there are many others like him in essentially the same straits.

Here we are, the richest country in the world.

And we have millions of people who would not get a leakproof roof over their heads until they are in their grave.

As bad as things are, they may get worse before they get better.

Quite a bit of housing money has found its way to the deep freeze at 1600 Pennsylvania Avenue.

I would hope that Congress will come up with some way to unplug that freezer permanently so the money can be thawed out, and I will have more to say on this later.

The next few years may well see a concerted effort to dismantle those programs that do manage to push a few crumbs off the table to the poor.

The next few years may well see obstructionism traveling in the disguise of reorganization. As far as rural needs are concerned, we can look for reorganization to be often synonymous with destruction.

The next few years may well see an effort to hire out nearly every social function of the Federal Government to private interests, increasing the costs to the taxpayers and decreasing the progress.

The distance between the richest and poorest is growing. It looks like it is going to continue to grow.

The distance between our problems and their solutions is growing.

The neglect of rural America is growing.

So today Senator McGOVERN and I introduce the Emergency Rural Community Development Act of 1973. It is not perfect, but it is a step in the right direction.

It is a break with tradition. It starts with the people at the bottom first. And instead of waiting for them to walk into a housing office at an opportune moment, it would hire people to get out and find the people for whom the 1949 promise of a decent home and suitable living environment remains only another broken promise.

As proposed here, we would have a structure, if you will, to find these families, to identify their needs, to match them to this program or another existing program and to help them wade through the paperwork.

This, basically, is the area coverage concept of the REA co-op system. Rather than our present passive system, this bill proposes that for every area of rural America, someone within that area would be charged, on an emergency basis, to bring poor and near poor families into decent housing.

We are working on legislative language to effect that, language which visualizes employing existing resources in the public and private sector where possible. The bill provides the resources to cover the gap between what those existing programs will cover and the total need.

A second REA concept we intend to borrow is that of "owned by those they serve." This, to my way of thinking, is the best way to insure that housing created under the program will be run in the best interests of those it serves. There are technical problems we have yet to solve in that regard before proposing the exact language, but that is the principle of the thing.

A third area in which I propose to modify this bill pertains to certain authorities granted to the Administrator, particularly with respect to administrative expenses. Recent experience suggest that Congress ought to retain fuller control of those functions, and we will be proposing modifications of language to reflect that.

I entertain few illusions about the political feasibility of this bill.

I propose it as a way of saying, "If you are serious about housing rural America decently, about building rural communities, about actually solving the problem instead of tinkering with it, then this, or something like it, is needed."

We have had too much bombing and not enough building.

By Mr. HARTKE:

S. 362. A bill to provide for the compensation of persons injured by criminal acts. Referred to the Committee on the Judiciary.

CRIMINAL LOSS RECOVERY ACT OF 1973

Mr. HARTKE. Mr. President, today we are as a people are reevaluating life in America. We have seen the rise of crime in the streets do much to undermine our quality of life. Legislation has been passed, and additional legislation has been proposed, to combat both the causes and effects of crime. Undoubtedly, the most serious effect of crime is the loss of life and personal injury incurred by the victim of criminal attacks. Most victims have limited means to compensate for economic losses due to criminal attack and this economic penalty contributes to the already dangerous and widespread belief that crime pays for the criminal while government remains insensitive to the needs of the victim. This feeling undermines the trust citizens place in our democratic form of government, the main objective of which is to respond to the just needs and desires of its people.

To help eradicate this major effect of crime and hopefully ease, to a major degree, the economic effects of criminal conduct in our society, I am today introducing legislation that I proposed in the first session of the 92d Congress to compensate the victims of crimes.

Late last session the Senate acted affirmatively on the issue of crime victim compensation. Unfortunately, the necessary action by the House was not taken, and the urgent legislation died.

A number of similar proposals were introduced in the 92d Congress, most notably a proposal by the distinguished majority leader (Mr. MANSFIELD) and the distinguished Senator from Arkansas (Mr. MCCLELLAN). The legislation that has been introduced is good legislation; but it is my feeling that certain additional provisions should be included in criminal victim compensation programs. Therefore, the proposal I offer differs in scope and comprehensiveness of coverage from previously introduced legislation. I have attempted to combine the best elements of existing State programs and those of other countries to enlarge and improve upon available coverage.

Under my bill, a person injured or killed by anyone in violation of any penal law of the United States or any State shall be covered by this act. This is probably the most important feature of the Hartke legislation. Most existing and proposed compensation boards have limited the recovery of compensation to violations of certain particularized acts. This broadening of coverage is imperative because criminal injury is no respecter of legislative designation and the purpose of compensation programs should be to award those injured rather than to attempt to differentiate between types of violent crime. Most importantly, since criminal injury is one of the hazards of life in our contemporary society, the Government must recognize its obligation to protect its citizens; and, if it fails to protect, to compensate.

A shortcoming of many compensation programs has been that the number of injured who are allowed to recover is extremely limited. Under my proposal, those parties that will be covered by this act will be, the victim, his immediate family and those in a family relationship with the victim. The reasons for compensating the victim are obvious. It should be recognized that relatives and those persons living with the dependent on the victim can be real victims of the crime. Therefore, the Criminal Loss Recovery Commission will have authority to consider the financial loss to a family member of the victim and to aware financial relief where appropriate.

Most legislation dealing with crime compensation has excluded victims that are related to perpetrators from receiving compensation because of the possibility of collusive action and unjust en-

richment. Victims that are family members of the perpetrator should not be outrightly excluded as a class simply because it might require close scrutiny to ascertain improper action in attempts to receive compensation. I feel close examination of such claims could overcome the possibility of collusive suits and unjust enrichment. It is too severe a remedy to provide that a child cannot receive compensation because one parent has seriously injured another and the child then finds himself without any means of support.

Under my proposal, benefits will be awarded for medical, care, I have incorporated two additional features into this legislation. First, it should be noted that "those eligible for compensation" is a much broader class than provided for in most programs. New York law, for example, requires that the victim must show "serious financial hardship" before he will be awarded financial compensation. I feel that victims of violent crime should not be penalized simply because they have accumulated some savings. Those that lack insurance, and just personally pay for their injuries should also be compensated. Second, in addition to providing for medical expenses, it is necessary that benefits in an amount equal to the actual loss sustained by the victims should be awarded. This would include loss of earnings, both present and future, and other expenses incurred as a result of the injury. We should recognize that the obligation the country has to its citizens who have been the victims of a criminal attack cannot be specifically itemized. This obligation could in some cases go far beyond the $10,000 or $15,000 limitation normally provided in financial compensation proposals.

In closing, I would like to make a brief comment on the scope of the Criminal Loss Recovery Act of 1973. It is obviously a very comprehensive piece of legislation. The Hartke bill includes victims of both State and Federal crimes. A number of States have already recognized the need and have taken corrective action. But more still needs to be done. To do otherwise adds additional insult to the criminal injury that daily befalls too many Americans.

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

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

S. 362

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

TITLE I—SHORT TITLE AND DEFINITIONS

SEC. 101. This Act may be cited as the "Criminal Loss Recovery Act of 1973".

DEFINITIONS

SEC. 102. As used in this Act the term—

(1) "child" means an unmarried person who is under eighteen years of age and includes a stepchild or an adopted child, and a child conceived prior to but born after the death of the victim;

(2) "Commission" means the Criminal Loss Recovery Commisison established by this Act;

(3) "dependent" means those who were wholly or partially dependent upon the income of the victim at the time of the death of the victim or those for whom the victim was legally responsible;

(4) "personal injury" means actual bodily harm and includes pregnancy, mental distress, nervous shock, and loss of reputation;

(5) "relative" means the spouse, parent, grandparent, stepfather, stepmother, child, grandchild, siblings of the whole or half blood, spouse's parents;

(6) "victim" includes any person (A) killed or injured as a result of a crime of violence perpetrated or attempted against him, (B) killed or injured while attempting to assist a person against whom a crime of violence is being perpetrated or attempted, or (C) killed or injured while assisting a law enforcement official to apprehend a person who has perpetrated a crime of violence or to prevent the perpetration of any such crime if that assistance was in response to the express request of the law enforcement official;

(7) "guardian" means one who is entitled by common law or legal appointment to care for and manage the person or property or both of a child or incompetent; and

(8) "incompetent" means a person who is incapable of managing his own affairs, whether adjudicated or not.

TITLE II—ESTABLISHMENT OF CRIMINAL LOSS COMPENSATION COMMISSION

SEC. 201. (a) There is hereby established an independent agency within the executive branch of the Federal Government to be known as the Criminal Loss Recovery Commission. The Commission shall be composed of three members to be appointed by the President, by and with the advice and consent of the Senate. At least one member of the Commission must have served as a judge before a State court of general jurisdiction or on the bench of a Federal district court; and at least one member of the Commission must be licensed to practice medicine in the District of Columbia or a State of the United States. One member shall be designated Chairman.

(b) There shall be appointed by the President, by and with the advice and consent of the Senate, an Executive Secretary and a General Counsel to perform such duties as the Commission shall prescribe in accordance with the objectives of this Act.

(c) No member of the Commission shall engage in any other business, vocation, or employment.

(d) Except as provided in section 206(1) of this Act, the Chairman and one other member of the Commission shall constitute a quorum. Where opinion is divided and only one other member is present, the opinion of the Chairman shall prevail.

(e) The Commission shall have an official seal.

FUNCTIONS OF THE COMMISSION

SEC. 202. In order to carry out the purposes of this Act, the Commission shall—

(1) receive and process applications under the provisions of this Act for compensation for personal injury;

(2) pay compensation to victims and other beneficiaries in accordance with the provisions of this Act;

(3) hold such hearings, sit and act at such times and places, and take such testimony as the Commission or any member thereof may deem advisable;

(4) make grants in accordance with the provisions of title V of this Act.

ADMINISTRATIVE PROVISIONS

SEC. 203. (a) The Commission is authorized in carrying out its functions under this Act to—

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

(2) procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code, but at rates not to exceed $100 a day for individuals;

(3) promulgate such rules and regulations as may be required to carry out the provisions of this Act;

(4) appoint such advisory committees as the Director may determine to be desirable to carry out the provisions of this Act;

(5) designate representatives to serve or assist on such advisory committees as the Director may determine to be necessary to maintain effective liaison with Federal agencies and with State and local agencies developing or carrying out policies or programs related to the purposes of this Act;

(6) use the services, personnel, facilities, and information (including suggestions, estimates, and statistics) of Federal agencies and those of State and local public agencies and private institutions, with or without reimbursement therefor;

(7) without regard to section 529 of title 31, United States Code, to enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary in the conduct of his functions, with any public agency, or with any person, firm, association, corporation, or educational institution, and make grants to any public agency or private nonprofit organization;

(8) request such information, data, and reports from any Federal agency as the Director may from time to time require and as may be produced consistent with other law; and

(9) arrange with the heads of other Federal agencies for the performance of any of his functions under this title with or without reimbursement and, with the approval of the President delegate and authorize the redelegation of any of his powers under this Act.

(b) Upon request made by the Administrator 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 to the Administration in the performance of its functions.

(c) Each member of a committee appointed pursuant to paragraph (4) of subsection (a) of this section shall receive $ a day, including traveltime, for each day he is engaged in the actual performance of his duties as a member of a committee. Each such member shall also be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of his duties.

TERMS AND COMPENSATION OF COMMISSION MEMBERS

SEC. 204. (a) Section 5314, title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(55) Chairman, Criminal Loss Recovery Commission".

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

"(95) Members, Criminal Loss Recovery Commission".

(c) Section 5316, title 5, United States Code, is amended by adding at the end thereof the following new paragraphs:

"(130) Executive Secretary, Criminal Loss Recovery Commission.

"(131) General Counsel, Criminal Loss Recovery Commission".

(d) The term of office of each member of the Commission taking office after December 31, 1971, shall be eight years, except that (1) the terms of office of the members first taking office after December 31, 1971, shall expire as designated by the President at the time of the appointment, one at the end of four years, one at the end of

six years, one at the end of eight years, after December 31, 1971; and (2) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term.

(e) Each member of the Commission shall be eligible for reappointment.

(f) A vacancy in the Commission shall not affect its powers.

(g) Any member of the Commission may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.

(h) All expenses of the Commission, including all necessary traveling and subsistence expenses of the Commission outside the District of Columbia incurred by the members or employees of the Commission under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Executive Secretary, or his designee.

PRINCIPAL OFFICE

SEC. 205. (a) The principal office of the Commission shall be in or near the District of Columbia, but the Commission or any duly authorized representative may exercise any or all of its powers in any place.

(b) The Commission shall maintain an office for the service of process and papers within the District of Columbia.

PROCEDURES OF THE COMMISSION

SEC. 206. The Commission may—

(1) subpena and require production of documents in the manner of the Securities and Exchange Commission as required by subsection (c) of section 18 of the Act of August 26, 1935, and the provisions of subsection (d) of such section shall be applicable to all persons summoned by subpena or otherwise to attend or testify or produce such documents as are described therein before the Commission, except that no subpena shall be issued except under the signature of the Chairman, and application to any court for aid in enforcing such subpena may be made only by the Chairman. Subpenas shall be served by any person designated by the Chairman;

(2) administer oaths, or affirmations to witnesses appearing before the Commission, receive in evidence any statement, document, information, or matter that may in the opinion of the Commission contribute to its functions under this Act, whether or not such statement, document, information, or matter would be admissible in a court of law, except that any evidence introduced by or on behalf of the person or persons charged with causing the injury or death of the victim, any request for a stay of the Commission's action, and the fact of any award granted by the Commission shall not be admissible against such person or persons in any prosecution for such injury or death.

TITLE III—RECOVERY FOR CRIMINAL LOSS

SEC. 301. (a) In any case in which a person is injured or killed by any act or omission of any other person which is a violation of a panel offense under the laws of the United States or any State thereof, except that no award will be made for damage to property or for the violation of any motor vehicle law. The Commission may, in its discretion, upon an application, order the payment of, and pay compensation if such act or omission occurs—

(1) within the "special maritime and territorial jurisdiction of the United States" as defined in section 7 of title 18 of the United States Code;

(2) within the District of Columbia; or

(3) in any State of the United States.

(b) The Commission may order the payment of compensation—

(1) to or on behalf of the injured person; or

(2) in the case of the personal injury of the victim, where the compensation is for pecuniary loss suffered or expenses incurred by any person responsible for the maintenance of the victim, to that person;

(3) in the case of the death of the victim, to or for the benefit of the dependents or closest relative of the deceased victim, or any one or more of such dependents;

(4) in the case of a payment for the benefit of a child or incompetent the payee shall file an accounting with the Commission no later than January 31 of each year for the previous calendar year;

(5) in the case of the death of the victim, to any one or more persons who suffered pecuniary loss with relation to funeral expenses.

(c) For the purposes of this Act, a person shall be deemed to have intended an act or omission notwithstanding that by reason of age, insanity, drunkenness, or otherwise he was legally incapable of forming a criminal intent.

(d) In determining whether to make an order under this section, or the amount of any award, the Commission may consider any circumstances it determines to be relevant, including the behavior of the victim which directly or indirectly contributed to his injury or death, unless such injury or death resulted from the victim's lawful attempt to prevent the commission of a crime or to apprehend an offender.

(e) No order may be made under this section unless the Commission, supported by substantial evidence, finds that—

(1) such an act or omission did occur; and

(2) the injury or death resulted from such act or omission.

(f) An order may be made under this section whether or not any person is prosecuted or convicted of any offense arising out of such act or omission, or if such act or omission is the subject of any other legal action. The Commission may suspend proceedings in the interest of justice if a civil action arising from such act or omission is pending or imminent.

WHO MAY RECOVER LOSS

SEC. 302. A person is entitled to compensation under this Act if he is a victim as defined in section 102(6) of this Act; or is a person who was dependent on a deceased victim of a crime of violence for his support at the time of the death of that victim.

APPLICATION FOR COMPENSATION

SEC. 303. (a) In any case in which the person entitled to make an application is a child, or incompetent, the application may be made on his behalf by any person acting as his parent or attorney.

(b) Where any application is made to the Commission under this Act, the applicant, or his attorney, and any attorney of the Commission, shall be entitled to appear and be heard.

(c) Any other person may appear and be heard who satisfies the Commission that he has a substantial interest in the proceedings.

(d) Every person appearing under the preceding subsections of this section shall have the right to produce evidence and to cross-examine witnesses.

(e) If any person has been convicted of any offense with respect to an act or omission on which a claim under this Act is based, proof of that conviction shall, unless an appeal against the conviction or a petition for a rehearing or certiorari in respect of the charge is pending or a new trial or rehearing has been ordered, be taken as conclusive evidence that the offense has been committed.

ATTORNEY'S FEES

SEC. 304. (a) The Commission shall publish regulations providing that an attorney shall, at the conclusion of proceedings under this Act, file with the agency a statement of the amount of fee charged in connection with his services rendered in such proceedings.

(b) After the fee information is filed by an attorney under subsection (a) of this section, the Commission may determine, in accordance with such published rules or regulations as it may provide, that such fee charged is excessive. If, after notice to the attorney of this determination, the Commission and the attorney fail to agree upon a fee, the Commission may, within ninety days after the receipt of the information required by subsection (a) of this section petition the United States district court in the district in which the attorney maintains an office, and the court shall determine a reasonable fee for the services rendered by the attorney.

(c) Any attorney who willfully charges, demands, receives, or collects for services rendered in connection with any proceedings under this Act any amount in excess of that allowed under this section, if any compensation is paid, shall be fined not more than $2,000 or imprisoned not more than one year, or both.

NATURE OF THE COMPENSATION

SEC. 305. The Commission may order the payment of compensation under this Act for—

(1) expenses actually and reasonably incurred as a result of the personal injury or death of the victim;

(2) loss of earning power as a result of total or partial incapacity of such victim;

(3) pecuniary loss to the dependents of the deceased victim;

(4) any other pecuniary loss resulting from the personal injury or death of the victim which the Commission determines to be reasonable; and

(5) pecuniary loss to an applicant under this Act resulting from injury or death to a victim includes, in the case of injury, medical expenses (including psychiatric care), hospital expenses, loss of earnings, loss of future earnings because of a disability resulting from the injury, and other expenses actually and necessarily incurred as a result of the injury and, in addition in the case of death, funeral and burial expenses and loss of support to the dependents of the victim. Pecuniary loss does not include property damage.

FINALITY OF DECISION

SEC. 306. The orders and decisions of the Commission shall be reviewable in the appropriate court of appeals, except that no trial de novo of the facts determined by the Commission shall be allowed.

LIMITATIONS UPON AWARDING COMPENSATION

SEC. 307. (a) No order for the payment of compensation shall be made under section 501 of this Act unless the application has been made within two years after the date of the personal injury or death.

(b) There shall be no limitation on the amount that may be awarded to or on behalf of any victim.

(c) Compensation shall not be awarded if the Commission feels there is unjust enrichment to or on behalf of the offender would result. This is not to imply that a family member or relative or those victims living in wedlock with the offender may not recover.

TERMS AND PAYMENTS OF THE ORDER

SEC. 308. (a) Except as otherwise provided in this section, any order for the payment of compensation under this Act may be made on such terms as the Commission deems appropriate.

(b) The Commission shall deduct from any payments awarded under section 301 of this Act any payments received by the victim or by any of his dependents from the offender or from any person on behalf of the offender, or from the United States (except those received under this Act), a State or any of its subdivisions; for personal injury or death compensable under this Act, but only to the

extent that the sum of such payments and any award under this Act are in excess of the total compensable injuries suffered by the victim as determined by the Commission.

(c) The Commission shall pay to the person named in the order the amount named therein in accordance with the provisions of such order.

EFFECT ON CIVIL ACTIONS

SEC. 309. An order for the payment of compensation under this Act shall not affect the right of any person to recover damages from any other person by a civil action for the injury or death.

TITLE IV—CRIMINAL LOSS RECOVERY COMPENSATION GRANTS

SEC. 401. Under the supervision and direction of the Commission, the Executive Secretary is authorized to make grants to the States to pay the Federal share of the costs of State programs to compensate victims of violent crimes.

ELIGIBILITY FOR ASSISTANCE

SEC. 402. Any State desiring to receive a grant under this title shall submit to the Commission a plan and the Federal Government will underwrite 90 per centum of such plan provided that the States adopt a plan that is in substantial compliance with the scope and intended of this legislation.

TITLE V—MISCELLANEOUS REPORTS TO THE CONGRESS

SEC. 501. The Commission shall transmit to the President and to the Congress annually a report of its activities under this Act, including the name of each applicant, a brief description of the facts in each case, and the amount, if any, of compensation awarded, and the number and amount of grants to States under title IV.

PENALTIES

SEC. 502. The provisions of section 1001 of title 18 of the United States Code shall apply to any application, statement, document, or information presented to the Commission under this Act.

AUTHORIZATION OF APPROPRIATIONS

SEC. 503. (a) There are authorized to be appropriated for the purpose of making grants under title IV of this Act $ for the fiscal year ending June 30, 1973; $ for the fiscal year ending June 30, 1974; and $ for the fiscal year ending June 30, 1975.

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

EFFECTIVE DATE

SEC. 504. This Act shall take effect on January 1, 1972.

By Mr. CANNON (for himself and Mr. BIBLE):

S. 363. A bill to provide for the construction of a Veterans' Administration hospital in the State of Nevada. Referred to the Committee on Veterans' Affairs.

Mr. CANNON. Mr. President, I am introducing a bill today for myself and my Nevada colleague, Senator BIBLE, to provide for the construction of a Veterans' Administration hospital in the southern part of the State of Nevada.

At the present time, veterans in Nevada are served by only one VA hospital, located in Reno, in northwest Nevada.

Veterans in more populous southern Nevada, 500 miles to the southeast, have no VA facilities, except for limited services provided by an outpatient clinic in the Las Vegas area, and are, therefore, almost completely dependent on VA hospitals in crowded Los Angeles, 300 miles away.

I think it is a gross disservice to our veterans to force them to travel to Los Angeles to get treatment for service-related disabilities. In addition, it certainly is not fair to make the veterans of southern California wait for treatment because their facilities are overcrowded.

I urge serious consideration of this proposal at the earliest possible opportunity.

By Mr. CANNON (for himself and Mr. BIBLE):

S. 364. A bill to provide for the establishment of a national cemetery in the State of Nevada. Referred to the Committee on Veterans' Affairs.

Mr. CANNON. Mr. President, on behalf of myself and Senator BIBLE, I introduce, for appropriate reference, a bill to establish a national cemetery in the State of Nevada. At present, there is no national cemetery in Nevada to provide for the burial of deceased veterans.

Although national cemeteries came into being during the Civil War to provide for the burial of soldiers who had died in service, most of them are situated where battles occurred and, therefore, are not evenly distributed in the 50 States. For this reason, the western part of the United States has few national cemeteries, and the many veterans who served during World War II have no place within reasonable proximity to their domicile for burial. During the last world war we had approximately 16 million men under arms, and when you consider their dependents, we have a total of about 50 million people who are eligible for burial.

Due to the inexorable march of time, the need for this legislation is increasing in urgency. Early in the second session of the 92d Congress the Senate Committee on Veterans' Affairs considered the proposal to establish a national cemetery in Nevada. Unfortunately, the bill was not adopted.

I urge the committee to reconsider this proposal at the earliest possible opportunity.

By Mr. NELSON:

S. 365. A bill to provide for a study and investigation to assess the extent of the damage done to the environment of South Vietnam, Laos, and Cambodia as the result of the operations of the Armed Forces of the United States in such countries. Referred to the Committee on Foreign Relations.

VIETNAM WAR ECOLOGICAL DAMAGE ASSESSMENT ACT OF 1973

Mr. NELSON. Mr. President, 1 year ago almost to the day, I introduced the Vietnam War Ecological Damage Assessment Act. I am reintroducing this legislation today and would like to repeat what I said last year. It is tragically ironic that the destruction which I described last year continues on an increased scale. The remarks made last year on this matter are as appropriate now as they were then.

Mr. President, suppose we took gigantic bulldozers and scraped the land bare of trees and bushes at the rate of 1,000 acres a day or 44 million square-feet a day until we had flattened an area the size of the State of Rhode Island, 750,000 acres.

Suppose we flew huge planes over the land and sprayed 100 million pounds of poisonous herbicides on the forests until we had destroyed an area of prime forests the size of the State of Massachusetts or 5½ million acres.

Suppose we flew B–52 bombers over the land dropping 500-pound bombs until we had dropped almost 3 pounds per person for every man, woman, and child on earth—8 billion pounds—and created 26 million craters on the land measuring 15 feet deep and 30 feet in diameter.

Suppose the major objective of the bombing is not enemy troops but rather a vague and unsuccessful policy of harassment and territorial denial called pattern or carpet bombing.

Suppose the land destruction involves 80 percent of the timber forests and 10 percent of all the cultivated land in the Nation.

We would consider such a result a monumental catastrophe. That is what we have done to our ally, South Vietnam.

While under heavy pressure the military finally stopped the chemical defoliation war and has substituted another massive war against the land itself by a program of pattern or carpet bombing and massive land clearing with a huge machine called a Rome Plow.

The huge areas destroyed pockmarked, scorched, and bulldozed resemble the moon and are no longer productive.

This is the documented story from on-the-spot studies and pictures done by two distinguished scientists, Prof. E. W. Pfeiffer and Prof. Arhur H. Westing. These are the same two distinguished scientists who made the defoliation studies that alerted Congress and the country to the grave implications of our chemical warfare program in Vietnam, which has now been terminated.

The story of devastation revealed by their movies, slides, and statistics is beyond the human mind to fully comprehend. We have senselessly blownup, bulldozed over, poisoned, and permanently damaged an area so vast that it literally boggles the mind.

Quite frankly, Mr. President, I am unable adequately to describe the horror of what we have done there.

There is nothing in the history of warfare to compare with it. A "scorched earth" policy has been a tactic of warfare throughout history, but never before has a land been so massively altered and mutilated that vast areas can never be used again or even inhabited by man or animal.

This is impersonal, automated, and mechanistic warfare brought to its logical conclusion—utter, permanent, total destruction.

The tragedy of it all is that no one knows or understands what is happening there, or why, or to what end. We have simply unleashed a gigantic machine which goes about its impersonal business destroying whatever is there without plan or purpose. The finger of responsibility points everywhere but nowhere in particular. Who designed

this policy of war against the land, and why? Nobody seems to know and nobody rationally can defend it.

Those grand strategists who draw the lines on the maps and order the B–52 strikes never see the face of that innocent peasant whose land has been turned into a pockmarked moon surface in 30 seconds of violence without killing a single enemy soldier because none were there. If they could see and understand the result, they would not draw the lines or send the bombers.

If Congress knew and understood, we would not appropriate the money.

If the President of the United States knew and understood, he would stop it in 30 minutes.

If the people of America knew and understood, they would remove from office those responsible for it, if they could ever find out who is responsible. But they will never know because nobody knows.

By any conceivable standard of measurement, the cost-benefit ratio of our program of defoliation, carpet bombing with B–52's, and bulldozing is so negative that it simply spells bankruptcy. It did not protect our soldiers or defeat the enemy, and it has done far greater damage to our ally than to the enemy.

These programs should be halted immediately before further permanent damage is done to the landscape.

The cold, hard, and cruel irony of it all is that South Vietnam would have been better off losing to Hanoi than winning with us. Now she faces the worst of all possible worlds with much of her land destroyed and her chances of independent survival after we leave in grave doubt at best.

This has been a hard speech to give and harder to write because I did not know what to say or how to say it—and I still do not know. But I do know that when the Members of Congress finally understand what we are doing there, neither they nor the people of this Nation will sleep well that night.

For many reasons I did not want to make this speech but someone has to say it, somewhere, sometime.

Mr. President, I ask unanimous consent that certain statistics based on Pentagon munitions totals and impact projections of Doctors Arthur H. Westing and Egbert W. Pfeiffer be printed in the Record at this point.

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

IMPACT OF U.S. MUNITIONS, SOUTH VIETNAM, 1965–71

[In pounds]

Expenditure	Military region I	II	III	IV	South Vietnam total
Per acre	972	224	1,234	112	497
Per person	2,214	1,390	1,907	160	1,215

IMPACT OF U.S. MUNITIONS, 1965–71

[In pounds]

Expenditure	South Vietnam	North Vietnam	Laos	Cambodia	Total Indochina
Per acre	497	26	59	7	142
Per person	1,215	38	1,312	46	584

ECOLOGICAL IMPACT 1965–1971

Country	Number of craters (in millions)	Area with "shrapnel" (in million acres)	Area cratered (in thousand acres)	Earth displaced (in million cubic yards)
South Vietnam	21.3	26.6	345.1	2,784
Military Region I	6.8	8.5	109.6	889
Military Region II	4.2	5.3	69.0	556
Military Region III	9.2	11.5	149.4	1,206
Military Region IV	1.1	1.3	17.1	138
North Vietnam	1.1	1.3	17.3	140
Laos	3.5	4.3	56.0	452
Southern Laos	2.6	3.2	41.4	334
Northern Laos	0.9	1.1	14.6	118
Cambodia	0.3	0.4	4.6	37
Total Indochina	26.1	32.6	432.1	3,413

ALL INDOCHINA

[In millions of pounds]

Year	Air munitions	Surface munitions	Total munitions
1965	630		630
1966	1,024	1,164	2,188
1967	1,866	2,413	4,279
1968	2,863	3,003	5,866
1969	2,774	2,808	5,583
1970	1,955	2,389	4,344
1971	1,526	1,655	3,182
1972	[1] 2,200	[2] 1,700	3,900
Total	14,838	15,132	29,971

[1] Projected figure based on 11-month total for 1972.
[2] Projection based on 10-month total for 1972.

MUNITIONS EXPENDITURES

[In millions of pounds]

Year	South Vietnam	North Vietnam	South Laos	North Laos	Cambodia	Total Indochina
1965	594	65	60	10	0	630
1966	1,778	255	135	20	0	2,188
1967	3,634	415	200	30	0	4,278
1968	5,185	330	310	40	0	5,866
1969	4,674	0	490	420	0	5,583
1970	3,333	0	655	240	115	4,344
1971	2,170	1	700	140	170	3,182
Total	21,269	1,066	2,550	900	285	26,071

Mr. NELSON. Mr. President, this is the same bill I introduced in the previous Congress. Congressman GUDE introduced the same bill in the House of Representatives last year. It was endorsed by the 7 million member American Association for the Advancement of Science at the annual meeting in Washington, D.C., in December.

In supporting this proposal to study the environmental consequences of the extensive destruction brought about by the war in Southeast Asia, AAAS, a federation of 300 scientific bodies, said in its resolution:

United States science and technology have had profound and often destructive effects on human welfare in Indochina . . . scientists and the public at large should have a full scientific assessment of the constructive as well as destructive applications of American science in Indochina, proposed in a bill introduced by Sen. Gaylord Nelson and Rep. Gilbert Gude, (R-Md.) calling upon the National Academy of Sciences to report on the ecological effects of U.S. activities in Vietnam, Laos, and Cambodia.

AAAS President Dr. Leonard Rieser said that "unless Congress sets up such a study, we'll never know" the truth about many allegations—for example, the charge that U.S. chemicals have begun to cause genetic mutations and consequent malformations in Vietnamese children.

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

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

RESOLUTION ON ASSESSMENT OF THE ECOLOGICAL CONSEQUENCES OF THE VIETNAM WAR

(Adopted by the Council of the American Association for the Advancement of Science December 30, 1972)

Whereas the Board of the AAAS in October 1969 issued a statement which reads in part as follows: ". . . for the coming decade the main thrust of AAAS attention and resources shall be dedicated to a major increase in the scale and effectiveness of its work on the chief contemporary problems concerning the mutual relations of science, technology, and social change, including the uses of science and technology in the promotion of human welfare," and

Whereas United States science and technology have had profound and often destructive effects on human welfare in Indochina, and

Whereas scientists and the public at large should have a full scientific assessment of the constructive as well as destructive applications of American science in Indochina as proposed in a bill (S–3084) introduced by Senator Gaylord Nelson and Representative G. Gude, calling upon the National Academy of Sciences to report on the ecological effects of U.S. activities in Vietnam, Laos, and Cambodia,

Therefore be it resolved that the AAAS endorses the purposes of Senate Bill S–3084 entitled the "Vietnam War Ecological Damage Assessment Act of 1972."

By Mr. CANNON:

S. 366. A bill to promote public confidence in the legislative, executive, and judicial branches of the Government of the United States. Referred to the Committee on Rules and Administration.

FEDERAL FINANCIAL DISCLOSURE ACT OF 1973

Mr. CANNON. Mr. President, I introduce a bill entitled the "Federal Financial Disclosure Act of 1973." Its aim is to promote public confidence in the Federal Government. In order to cultivate confidence, it is necessary to let the citizens know what is going on in the Government that represents them. It is widely believed that Americans are being denied information which, if openly shared, would help to restore trust in elected officials and in the Government itself.

The public disclosure of income from sources other than one's Government salary, or of transactions in stocks, bonds, or other securities, is almost nonexistent. The executive branch has a Presidential Executive order which is more of an administrative directive than a disclosure measure. The Federal courts subscribe to canons of ethics but do not require any reporting of financial or business activities. In the Congress, each body has a "code of ethics" but those codes call for public reporting only with respect to contributions, gifts, or honorariums. Reports of outside income, activities, and holdings are filed on a con-

fidential basis and are not open to the public.

If the principle of disclosure is to be honored it should be observed by all officers and employees in policymaking positions in every branch, department, or agency of the Government. And, the provisions of any disclosure bill should apply equally and uniformly to all—not to some officers and employees.

My bill would apply equally to everyone who is compensated by the U.S. Government at an annual rate in excess of $15,000, or who performs duties of a kind generally assigned to an individual holding grade GS–16 or higher in the General Schedule. In other words, the intent of this disclosure bill is to reach every officer or employee of the U.S. Government who holds a policymaking position of the executive, or legislative, or judicial branches, from the President and Vice President, and the Supreme Court and the Congress, down to the lowest civil servant falling within the compensation or grade levels provided in the bill.

This bill was considered in committee last year but was not reported. Questions have been raised concerning many of the provisions of the bill and my response to those questions is that answers can be found to these issues if there is an honest desire to enact a disclosure law as a first step toward restoring confidence in the Government.

Mr. President, I ask that this bill be referred to the Committee on Rules and Administration for consideration and hearings.

The PRESIDING OFFICER. Without objection it is so ordered.

By Mr. TOWER:

S.J. Res. 17. A joint resolution to authorize and request the President of the United States to issue a proclamation designating October 14, 1973, as "German Day." Referred to the Committee on the Judiciary.

GERMAN DAY

Mr. TOWER. Mr. President, I am introducing today a joint resolution requesting the President of the United States to issue a proclamation designating October 14, 1973, as "German Day," in honor of the many great traditions and accomplishments of the outstanding, talented, and patriotic German-American community.

There are many fine ethnic groups in America, each with a splendid history of its own and heroes of its own. None of these, however, can be said to excel the accomplishments over the years of Americans of German descent, whose deeds are, to say the least, inspiring to everyone familiar with the facts.

The most immediate and impressive fact is their contribution to the overall population of the United States. Of all American ethnic groups, the English alone exceed the Germans in total figures, and then only providing that you consider together the genuine English descendants with Scots, Irish, and Welsh descendants.

A distinct characteristic of the German immigrants throughout their history has been the very slight return migration to the old country as compared with recent immigrations. These German immigrants found America to their liking, and they and their descendants have made the most of it.

In the beginning, so far as the first English colonists were concerned, the *Mayflower* provided the key to a glorious land of promise. The Germans had their *Mayflower* too, under a different name. This was the good ship *Concord,* which arrived in Philadelphia in October 1683, bearing the first group of German immigrants to these shores. The leader of the group was Franz Daniel Pasturius, who had come in advance to purchase from William Penn a tract of land, on which to establish the first permanent German settlement in the American Colonies. This settlement, which was established only 2 years following the founding of Philadelphia, became known as Germantown, and for the next 100 years or so, it was to serve as a distribution center for all German colonists.

In a short time, hundreds of Germans were spread throughout the central and southern counties of Pennsylvania, and Lancaster County was developing into a kind of German stronghold. Some Germans went north, to New Jersey and New York, but the vast majority moved southward, colonizing western Maryland, Virginia's Shenandoah Valley, and many counties in Tennessee, Kentucky, and North Carolina.

The most northerly settlement of Germans in the 18th century was established at Waldoboro, Maine, in 1751, and the most southerly that of the Salzburgers, in 1734 at Ebenezer, Ga., which was at the time also the most southerly point of America settlement on the east coast. Many German tradesmen remained in the coast cities of Philadelphia, New York, Baltimore, and Charleston. Pennsylvania, however, remained the State most thickly settled by the German element.

The German Quakers of Germantown immortalized themselves by their formal protest against Negro slavery in 1788, the first time such action was taken in the history of the American people. The first Bible printed in the German language was published by Christopher Saur in the year 1743, and is another example of the religious quality of these early German settlers. This was not the first time that a German printer and publisher wrote himself into history, for Peter Zenger, the founder of the independent newspaper, the New York Weekly Journal, was tried for libel in 1735, and the case became the first great fight for freedom of the press in America.

During the 19th century, German immigration outdistanced all others and reached surprising heights. From 1846 to 1854, a period embracing the ill-favored German Revolution of 1848–49, almost 900,000 Germans came to America—an extremely large number for those days. Over half of them arrived in the years 1852 to 1854.

The arrival of this particular group of Germans had a profound effect on the long-established social customs of early America. For more than 200 years English puritanism had kept watch over the public morals of American society. But with the coming of the Germans, the puritan tradition received a severe jolt. Fresh from the battlefields of the German Revolution of 1848, where the great questions of economic and political liberty were being decided, the new arrivals held many opinions not in keeping with the puritan attitude. In the matter of things spiritual, the Germans held a liberal view of religion and the Sabbath. They also developed community singing, occasionally neglected business for the sake of intellectual pleasure, and took great delight in outdoor life.

Missouri, Wisconsin, and Texas were the pioneer sections toward which many directed their course, as immigration continued, interrupted only by the two World Wars.

In the industrial history of the 19th century in America, the Germans became preeminent in all branches requiring technical training. They had had the advantage of technical schools at home, before such schools were founded in the United States. Above all, the Germans led the way in the field of engineering. John A. Roebling built the first great suspension bridge over the Niagara River, and followed it with construction of the famous Brooklyn Bridge. Another bridge builder of note was Charles C. Schneider, who planned and directed construction of a bridge over the Niagara—this time a cantilever-type structure, superior for carrying heavy railway traffic. Gustan Linderthal was consulting engineer and the architect of the Hell's Gate steel-arch bridge across New York's East River.

The only equal or near equal of Thomas Edison in the field of electricity and electrical engineering was Charles P. Steinmetz, the wizard of Schenectady. Albert Fink, expert railway engineer, was the originator of through traffic in freight and passage service—while Count Zeppelin made his first experiments in military aviation in this country during the United States Civil War.

In the 19th century, however, the Germans led not only in the engineering branches of industry, but also in many other areas requiring technical training and the ingenuity of expertise. Thus, it comes as no surprise, that in the chemical industries and in the manufacture of drugs, German names were outstanding: Rosengarten, Pfizer, Dohm, Vogler, Meyer, Schieffelin, Lehn, and Fink, to list but a few. In the manufacture of pianos and other musical instruments, such great names as Steinway, Krabe, Weber, Sohmer, Wurlitzer, and Gemunder, stand out. In the development of optical instruments we recall Bausch & Lomb. The list of technical developments and accomplishments is almost endless.

Nor were the accomplishments of Germans in America limited to the contributions of these individuals of genius. On the contrary, Germans as a group performed remarkably in many areas. It has been estimated that the number of German volunteers during the American Revolution and the Civil War exceeded in proportion that of native Americans and all other foreign elements—certainly a wonderful tribute to their loyalty and courage.

In political affairs, Germans in Amer-

ica have long been active in reform movements, carrying on the principles of democracy enuniciated in the German revoluntary movement of the 1840's. Among those German-American politicians who found in our great land a flowering of the democracy they so cherished and loved was the outstanding historical figure of Carl Schurz, who helped to organize the Republican Party in Wisconsin, became a Union general in the Civil War, and later a U.S. Senator from Missouri and a cabinet member in the administration of President Rutherford B. Hayes.

Germans have also played a major part in American education. Indeed, both the highest and lowest level of the American system of education—the university and the kindergarten—were imported from Germany. Moreover, the secondary school felt the German influence when Horace Mann reported favorably on the Prussian school system in the 1840's, and established the normal, or training school for teachers.

In the area of the arts, the German influence again has served America well. Gottlieb Graupner won distinction as the father of orchestral music in America in the early 19th century, and the German participation played a major part in establishing American opera in the eyes of European critics. German ability was further demonstrated by the noted painter, Emanuel Leutze, best known for his large historical picture of "Washington Crossing the Delaware."

In the field of organized religion, German-Americans founded three major American churches early in the 18th century—the Lutheran, the German Reformed, and the United Brethren of Moravian.

One of the greatest military organizers in our Nation's history was Baron Frederick Von Steuben, who endorsed the American Revolution and made plans to engage in it, in the interest of democracy, the moment it began. Von Steuben served alongside George Washington at Valley Forge, during those bitter early months of 1778. He trained Washington's troops admirably, and throughout the war, the Continental Army proved itself fully the equal in discipline and skill of the best of the British Regulars. Of all the heros of the American Revolution, few exceeded Baron Von Steuben in the importance of their contributions.

Certainly, we can all take pride in the accomplishments and contributions of our German-American citizens, past and present. They have played a large role in America's climb to its present position of world leadership. The scope of German-American efforts has been nationwide, and every part of our great Republic has benefited from the influence of the German settlers.

Texas is particularly fortunate in having felt the influence of the German arrivals upon our land and its fortunes. Germans began settling in Texas even while it was still a Mexican province. The first German colony was organized by Baron Von Bastrop and located on the Colorado River. Bastrop, as the settlement was named, was the northernmost white settlement in the valley of the Colorado. Much exposed to Indian attack, the early settlement was abandoned several times, but the persistence of the German settlers was eventually responsible for making this area a center for the German newcomers.

A great many of the Germans came to Texas between 1836, when it won its independence from Mexico, and 1845, when it joined the Union. Because so much of the State was unexplored as well as unsettled, and was populated by large and hostile Indian tribes, conditions were conducive to organized colonies such as the Germans established. A lone settler had little chance of survival. For these reasons, in many parts of Texas, Germans outnumbered native Americans.

Political disturbances in the 1840's drove many Germans to seek new homes where, possibly, an ideal German state might be established. Persecuted by the Diet of the German Confederation, members of the "Burschenschaften," or students' organization, began to come to Texas, and were soon followed by the German masses.

In the German-American communities of south central and southwestern Texas, the customs and culture of the founders survive—their great contributions being in music, painting, literature, and quaint colonial architecture. They established schools, singing societies, social organizations, a literary society, and pioneered in agriculture and labor organizations. Many of their descendants still observe customs of German origin in Fredericksburg, New Braunfels, and other communities where their forefathers settled.

The German settlements on the Guadalupe and the Pedernales prospered despite unpredictable weather conditions, crop failures, and the Indian raiders. The Germans joined with Texans to wage punitive campaigns against the Indians, and in great numbers volunteered with the U.S. Army during the war against Mexico in 1846. That war had the effect of further integrating German-Americans, both in Texas and the rest of our growing, westward-expanding Nation.

The Germans were destined to play a large role in the eventual growth of this vast and powerful land. Although the Germans of Texas were never reconciled to slavery, and few names could be found on the roles of Hood's Texas Brigade when the Civil War broke out, nevertheless, in succeeding wars, German-Americans of Texas have always been found—like all Texans—more prominent than their numbers would warrant in the annals of our Nation's military forces. Two descendants of the Germans who came to Texas in its frontier days particularly distinguished themselves in World War II: General of the Army Dwight D. Eisenhower, and Fleet Admiral Chester W. Nimitz. Together they wore a total of 10 stars upon their shoulders.

German-Americans who came to America came for various reasons: for material enrichment; in search of the freedom offered by true representative democracy; and out of a sense of persecution at home in the old country. Whatever their reasons, however, once on our proud shores they brought to bear the full weight of their talents, ambitions, and patriotic fervor.

The people of Texas are fortunate, indeed, to have shared in the German contribution to the United States of America. The names of German-American communities across our landscape are tangible evidence of their presence, and we should commend them for strengthening the fabric of America, and defending the principles of democracy along the way.

Mr. President, at this time, I ask unanimous consent that the text of my joint resolution be printed at this point in the RECORD.

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

SENATE JOINT RESOLUTION 17

Joint resolution to authorize and request the President of the United States to issue a proclamation designating October 14, 1973, as "German Day"

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States is authorized and requested to issue a proclamation designating October 14, 1973, as "German Day" and calling upon the people of the United States and interested groups and organizations to observe such day with appropriate ceremonies and activities.

By Mr. JAVITS (for himself and Mr. RIBICOFF):

S.J. Res. 18. A joint resolution to authorize and request the President to proclaim April 29, 1973, as a day of observance of the 30th anniversary of the Warsaw Ghetto Uprising. Referred to the Committee on the Judiciary.

THE 30TH ANNIVERSARY OF WARSAW GHETTO UPRISING

Mr. JAVITS. Mr. President, I submit for appropriate reference, for myself and the senior Senator from Connecticut (Mr. RIBICOFF), a joint resolution to mark April 29 in commemoration of the 30th anniversary of the uprising against the Nazi occupation forces by the beleaguered and outnumbered Jews of the Warsaw Ghetto who, by their heroic struggle, reaffirmed the ineradicable determination of mankind to fight for freedom from oppression and symbolized the indestructible spirit of liberty.

It was 30 years ago in April that the world was electrified by the news of the heroic resistance against the mighty Nazi war machine by the outnumbered and beleaguered Jews of the Warsaw Ghetto.

We who live in security and freedom must long remember and be inspired by those who, under such hopeless circumstances, died for freedom and dignity. Their resistance will remain forever a monument of light in a dark era of man's history.

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

S. 7

At the request of Mr. ROBERT C. BYRD (for Mr. RANDOLPH), the Senator from Rhode Island (Mr. PASTORE), the Senator from Alaska (Mr. GRAVEL), the Senator

from Illinois (Mr. PERCY), and the Senator from Minnesota (Mr. HUMPHREY) were added as cosponsors of S. 7, a bill to amend the vocational Rehabilitation Act to extend and revise the authorization of grants to States for vocational rehabilitation services, to authorize grants for rehabilitation services to those with severe disabilities, and for other purposes.

S. 48

At the request of Mr. BROOKE, the Senator from South Dakota (Mr. ABOUREZK), the Senator from Nevada (Mr. BIBLE), the Senator from Colorado (Mr. HASKELL), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Utah (Mr. Moss), and the Senator from California (Mr. TUNNEY) were added as cosponsors of S. 48, the Vietnam Disengagement Act of 1973.

S. 162

At the request of the Senator from Arkansas (Mr. MCCLELLAN), the Senator from Arkansas (Mr. FULBRIGHT) was added as a cosponsor of S. 162, to authorize the modification of the White River Basin project in the State of Arkansas.

ADDITIONAL COSPONSORS OF A RESOLUTION

SENATE RESOLUTION 15

At the request of the Senator from Michigan (Mr. HART), the Senator from Hawaii (Mr. FONG), and the Senator from California (Mr. TUNNEY) were added as cosponsors of Senate Resolution 15, for a study of Senate Hearing Officer System.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Is there further morning business? If not morning business is closed.

The Senator from Minnesota.

SHORTAGE OF FUEL

Mr. HUMPHREY. Mr. President, a matter of grave and vital concern, particularly to the Midwest, is the current fuel oil shortage—not merely heating oil that we call fuel oil No. 2, but propane gas, diesel fuel for trucks and locomotives, and indeed gasoline itself are in short supply.

I have joined with a number of other Senators from the Midwest, including the distinguished present Presiding Officer, the junior Senator from South Dakota (Mr. ABOUREZK), in bringing this matter to the attention of the President of the United States.

Several of us in Midwest caucus have addressed a letter to the President, a copy of which I shall ask to have placed in the RECORD. We have met with officers of the Department of the Interior, the Office of Emergency Preparedness, individually and collectively, to try to get some relief from what is at present a serious situation of fuel oil shortage, and can be and will be a dangerous and critical situation.

Mr. President, just the other day, on the date of January 10, I received a statement from the civil defense office of the State of Minnesota, the Department of Public Safety, outlining 18 critical fuel situation problems in our State, ranging from the Eveleth School District, which had its fuel supply cut and will have to shut down its classes, to a notice that the Minnesota Transport Association reports that Standard Oil has effected a cutback on diesel fuel for truckers of some 25 percent for January; the State Education Commissioner has advised school officials to close Minnesota public schools if the fuel supply is inadequate to maintain a reasonable temperature in classrooms. According to the information I have received this morning, the Long Prairie schools are shut down.

I do not think I need document the fact that we have an energy crisis, but I think it needs to be underscored that there were no plans to meet this crisis. In fact, we have one crisis after another befalling us, with no plans. We have a housing shortage crisis. We have problems in our school systems that are mounting. But in particular this fuel oil crisis is unpardonable, and it is being aggravated by current action of the Government.

I, first of all, want to pay my thanks and respect to the Office of Emergency Preparedness for the efforts they are making to be of help. We have had good cooperation from that office both at the national level and at the regional level. The Governor of the State of Minnesota has set up an emergency office in our State capital to try to alleviate the current fuel oil shortage; but, Mr. President, it is nothing but an emergency effort—transporting small amounts of fuel oil from one place to another to keep a school open or hospital heated. In the meantime factories are closing their doors. Trucks and locomotives that are supposed to be bringing our needed food supplies and grains find their diesel fuel cut back. And we have seen many householders being denied adequate fuel oil.

The situation is the worse it has been since the end of World War II. But above all that, it comes at a time when I discovered a situation yesterday which really requires immediate action on the part of the Government. I was informed that the Department of Defense had stepped up their orders for jet fuel for military aircraft. I was so shocked by this information that I refused at first to even comment upon it, but then I had verification, which I now share with the Senate.

One of the trade publications in the oil industry is known as Platts Oilgram. It is like a bulletin that comes out daily, telling what happens within the refinery business, the oil business, the fuel business. On the date of January 8, in a dateline from New York, is the following communication or news story:

Defense Fuel Supply Center has raised its sites on its call for supplies of JP–4 Jet Fuel by over 2,000,000 barrels.

The air war in Viet Nam is said to be the reason.

In mid-December, the agency was issuing a request for about 4.7 million barrels of JP–4.

Now, according to trade sources who have been asked to bid on supplies of the material, the government wants 314 million gallons or 7.4 million barrels.

One source says a high ranking Naval Official has been calling refineries to see what the supply situation might be.

Reportedly, DFSC wants telegraphic bid response and it will close bidding on January 18. Product is sought from date of award through March 31.

Mr. President, January 18 to March 31 is the coldest part of the year. In my part of the country it is very cold as it is in the other parts of the Midwest, and it is also unreasonably cold in the Northeastern sections of this Nation. At the very time that our refineries are working at 98 percent of capacity when there is still a fuel oil and gasoline shortage which will get worse every day, the Department of Defense is stepping up its request for bids to these same refineries by 2.7 million barrels. In mid-December they wanted 4.7 million barrels. In the middle of January they want 7.4 million barrels.

Mr. President, what does that mean to the fuel oil situation? JP–4 jet fuel is used by our bombers and also by commercial aircraft. It is made like a straight run gasoline. It is a light vapor pressure material. About 60 percent of kerosene is used in making JP–4.

Mr. President, all kerosene is interchangeable with No. 2 heating oil and is a part of the general heating oil pool.

Mr. President, when we increase the demand for jet fuel for the bombers, as the Department of Defense has done just this past week, we are denying the schools and the hospitals and the industries and the homeowners of this country, as well as the trucks and the locomotives and the commercial aircraft of the kind of fuel they need for the purpose of heat and travel.

This one order of the Defense Department means that there will be approximately 1.7 fewer barrels of fuel oil available between mid-January and March 31.

Mr. President, I have to say to this distinguished body and for the record that unless some adjustment is made in the request of the Department of Defense upon an already overworked refinery industry, there are going to be catastropic conditions prevailing in the Midwest.

It is a pity that this Government did not have the foresight earlier to permit a larger importation of crude and fuel oil. Only within the last few weeks has that been possible.

Mr. President, I read about this relaxation of import quotas by the Hess Oil Co., the Amerada Oil Co., in the Virgin Islands. Supposedly 250 million gallons are going to come in. Mr. President, this will be unloaded on the eastern seaboard. It will never get to the Midwest.

I submit that the Hess Oil Co. cannot even verify that this is what is going to happen at all. In the meantime what do we have in the Government? We have a situation where the right hand does not know what the left hand is doing. We have the distinguished officer of the Office of Emergency Preparedness before the Committee on Interior and Insular Affairs chaired the Senator from Washington (Mr. JACKSON) and say in all good conscience that they are doing

everything they can to alleviate the fuel oil shortage. On the other hand, within the same week, the Department of Defense is increasing its request to the refineries, that are already refining at maximum capacity, to the rate of 2.7 million barrels between January 18 and March 31; 1.7 million fewer barrels of fuel oil will be available for South Dakota, for Minnesota, for Wisconsin, for Michigan, for North Dakota, for Montana, for Iowa, for Illinois, and for the States that are in the cold belt. This is also true for many other States that I did not mention.

I have written as of yesterday to the Secretary of Defense, Mr. Laird, and to the Director of the Office of Emergency Preparedness, General Lincoln, asking that they get together and come to some resolution of this problem.

Mr. President, every Senator in this body who comes from a State where the climatic conditions are what we call winter and frigid is in trouble. His constituents are in trouble.

In this morning's "Today Show," they reported in a story out of New York that the airlines cannot fly their regular schedules. The large jets are taking off with just enough jet fuel to get from one place to another.

That is already a problem. However, if one has ever been to Minneapolis, Minn., when the furnace goes out in midwinter; if one has ever been in Brainerd, Minn., when they have to lay off all of the workers in the railroad yards; if one has ever been in the Dakotas or in Wisconsin when it is 20 below zero and there is no fuel oil, he will realize what a situation we face.

It is nice for the people in Washington who can sit around and have the assurance that their buildings are going to be warm.

We have schools in Minnesota and schools in Denver, Colo., that are closing down. We have factories in Minnesota that are closing down and trucks that are taken off the road. We have filling stations closed up. We have fuel oil distributors with no fuel oil. And without any consultation with anyone, the Secretary of Defense says that they will buy 7.4 million additional barrels of jet fuel. They may need it. However, I think they ought to give us some justification.

I do not think we ought to have one officer of the Government come up here on one day and say that they will take care of things, and then have another officer of the Government reach out and say to the refineries, "Get that jet fuel here for the Department of Defense."

I know that they have needs for this fuel. I am not unaware of that. However, I know that the Defense Department likes to have additional supplies.

Mr. President, I suggest that, when there is a shortage here, they ought to do a little less bombing abroad and maybe we can get some of the material needed by the people at home.

Mr. President, I ask unanimous consent that the letters and other material to which I referred be printed in the RECORD.

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

STATE OF MINNESOTA,
DEPARTMENT OF PUBLIC SAFETY,
Saint Paul, Minn., January 10, 1973.

Hon. HUBERT H. HUMPHREY,
Senator from Minnesota,
Washington, D.C.

DEAR SENATOR HUMPHREY: Following are some of the incidents that have been reported to us concerning the critical fuel situation here in Minnesota.

The Eveleth School District has had their fuel supply cut and *will have to shut down in a week.*

The Twin City Bus Lines diesel fuel has been cut 20% causing them to curtail the service and eliminate night service.

The truck companies are on allocation of fuel, which makes *mandatory curtailment of that business.*

The Rooney Oil Company at Belgrade has been *shut down* and out of business as of this date. Also out of heating fuel oil are Tim's Implement, Bemidji; Otter Tail County Courthouse, Fergus Falls; Wally's Oil, Bemidji; Appleton Creamery, Appleton; Mora Municipal Power Plant; and Wright Brothers, Bemidji.

The Koch Refinery at Pine Bend has been *struck* by the oil, chemical and atomic workers. However, the plant is still being operated by supervisory personnel.

The State Education Commissioner advised school officials to close Minnesota public schools if the fuel supply is inadequate to maintain a reasonable temperature in classrooms. *The Long Prairie schools are shut down now.*

Clearbrook: Mobil dealer Al Wasson today reports he is *unable to get enough No. 2 fuel* oil and is doling out his supply in 30–50 gallon lots.

Bagley: Mobil dealer Alvin N. Bragget reports that he is *unable to purchase needed No. 2 fuel oil* to service his accounts.

Pipestone: Wicks Oil Company reports receiving only 166,000 gallons of 700,000 gallon commitment. Has had to cut off his commercial accounts. Has 99 homes, 2 schools.

Cloquet: Erickson Oil Company, has been cut off from his usual suppliers and needs 50,000 gallons of #2 oil per week.

Duluth: Office of Emergency Preparedness reported an inquiry from Congressman Blatnik concerning fuel oil for the Superwood Plant. We put them in touch with a supplier who is sending them 10,000 gallons daily.

Wabasha County: Brice Carlson Company voluntarily reduced LP quotes 10% (Skelly)

McIntosh: Coop Oil Station, Ray Bartz, unable to deliver fuel to the school. Arnold Carlson, Superintendent of Schools called the Governor's office. He was put in touch with a supplier.

Minneapolis: Firestone Oil Company, wrote Governor Anderson stating that they will be short 100,000 gallons soon and need 350,000 gallons of #2 for the season.

Metallurgical Heat Treatment: Richard Sandol reported shortage of propane gas. They are interruptible users of natural gas using propane gas as secondary fuel.

Grand Rapids: Bart Hoard Oil Company reports his usual supplier is unable to give him his needed supply. He is trying other suppliers with no positive results.

Midland Cooperative Oil: Werner Johnson reported that they are unable to meet their demands because they are unable to secure adequate amounts of crude oil to keep their refineries at top production. We have been trying to move their application for importation of crude oil with the Department of Interior.

Minnesota Motor Transport Association: Jim Denn, General Manager, reports that Standard Oil has effected a cutback on diesel fuel for truckers of some 25% for January.

Reports of incidences of fuel shortages, and curtailment of normal operations of all public and commercial activities are coming in continually.

Sincerely,

F. JAMES ERCHUL,
Director.

U.S. SENATE,
Washington, D.C., January 10, 1973.

The PRESIDENT,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: Shortages of petroleum products, including fuel oil and gasoline, have reached crisis proportions in the Midwest. Shortages of fuel oil and propane have struck crippling blows at our schools, hospitals, and industries, including our grain drying facilities. Shortages of gasoline have forced small independent marketers from business and threaten the viability of many others. The prospect is for more of the same.

On September 21, 1972, the Oil Import Regulations was amended to grant independent deep water terminal operators on the East Coast increased allocations of No. 2 fuel oil.

While commendable, this action does not help the Midwest.

In the last few weeks, the Director of the Office of Emergency Preparedness, who had earlier disclaimed overall product shortages, has been exhorting consumers to conserve fuel and refineries to produce more fuel.

This action, while again commendable, has not provided heat for Midwest households nor gasoline for their cars. When refineries switch production from gasoline to fuel oil, gasoline shortages, of course, worsen.

This week a program has been announced which purports to lift quotas on No. 2 fuel oil imported from Amerada-Hess's Virgin Island refinery. Distributors in District I–IV who have the requisite "arrangements" with Hess are entitled under the program to No. 2 fuel oil allocations.

This action will do nothing to alleviate the severe product shortages in the Midwest.

Mr. President, we respectfully request that you immediately suspend all import quotas on oil until enough for all uses moves into these critically affected areas.

Immediate imports of crude oil and finished products, including heating oil, should be permitted from all origins. At least 100,000 barrels of oil per day will be immediately available from Canada alone if restrictions are lifted.

We recommend that, in response to the present emergency, imports of gasoline and fuel oil from abroad must be increased immediately.

Mr. President, we await your action and sincerely hope that a proclamation suspending the oil import allocation in the manner suggested is forthcoming.

JANUARY 11, 1973.

Hon. MELVIN R. LAIRD,
Secretary of Defense,
Department of Defense,
Washington, D.C.

DEAR MR. SECRETARY: I have just learned that the Defense Fuel Supply Center has asked refineries to bid on additional supplies of JP–4 jet fuel at the very time that we are suffering one of the most critical fuel oil shortages in recent history.

I call to your attention the enclosed news item from Platts Oilgram, January 8, 1973.

It is my understanding that the DFSC is seeking an additional 2.7 million barrels of JP-4 over and beyond the original mid-December request of 4.7 million barrels of JP–4. I have been informed by technicians that JP–4 consists of about 60% kerosene and that kerosene is interchangeable with No. 2 heating oil and can go into a heating oil pool.

It may well be that the Department of

Defense needs additional JP–4, but surely any additional supply order should be tempered or moderated by the urgent requirements of our domestic economy.

All through the Midwest factories are closing, schools are closing, buses and trucks are having to curtail services, diesel fuel for railroads has been cut back, and the fuel oil supply for homes is at a dangerously low level. All of this is due to a critical shortage of fuel oil, propane, and diesel fuel.

I respectfully request that your office immediately coordinate its purchase orders with General Lincoln, Director of the Office of Emergency Preparedness. General Lincoln has been assuring the Congress that he is doing everything possible to alleviate the fuel oil shortage. At the very time that he is testifying before a committee of the Congress, the Department of Defense is asking the refiners to increase supplies of JP–4. Our refineries are working at 98% of capacity. If they are asked to produce more JP–4, they will be doing it at the expense of fuel oil or kerosene.

Surely there can be some arrangement agreed upon that will meet the basic needs of the Defense Department and the critical needs of our civilian economy. I urge your prompt attention.

Sincerely,

HUBERT H. HUMPHREY.

JANUARY 11, 1973.

Gen. GEORGE A. LINCOLN,
Director, Office of Emergency Preparedness, Executive Office Building Annex, Washington, D.C.

DEAR GENERAL: I am deeply concerned over what I have just learned concerning a Department of Defense request for additional JP–4 jet fuel.

I have directed a letter to the Secretary of Defense (copy enclosed). I am also enclosing a copy of a news story from Platts Oilgram (January 8, 1973) which gives you additional information.

If the Department of Defense proceeds as it plans, the fuel oil shortage will be considerably worse and at dangerous proportions. It is imperative that you and the Secretary of Defense come to some understanding in order to meet the needs of our people and our civilian economy.

I respectfully urge your prompt attention to this matter.

Sincerely,

HUBERT H. HUMPHREY.

[From the Platts Oilgram, January 8, 1972]

DFSC RAISES JET FUEL NEEDS FOR WAR

NEW YORK, NEW YORK, January 7, 1973.—Defense Fuel Supply Center has raised its sites on its call for supplies of JP–4 Jet Fuel by over 2 million barrels.

The air war in Viet Nam is said to be the reason.

In mid-December, the agency was issuing a request for about 4.7 million barrels of JP–4.

Now, according to trade sources who have been asked to bid on supplies of the material, the government wants 314 million gallons or 7.4 million barrels.

One source says a high ranking Naval Official has been calling refineries to see what the supply situation might be.

Reportedly, DFSC wants telegraphic bid response and it will close bidding on January 18. Product is sought from date of award through March 31.

Jet fuel is made like a straight run gasoline or BTX raffinate. Sometimes using a residue from benzene and toluene—its a light vapor pressure material, about 60% kerosene is used in making JB–4. The control factor is the end distillate point will not exceed 500°F and meet a —72°F freeze point, not over 2½ lbs. vapor pressure (commercial kerosene is 525°F)

All kerosene is interchangeable with No. 2 heating oil and can go into a heating oil pool.

The PRESIDING OFFICER. Under the previous order, the Senator from Arkansas and the Senator from North Carolina are recognized for 45 minutes for the purpose of having a colloquy.

Mr. McCLELLAN. Mr. President, I ask unanimous consent that Mr. Blakey, Mr. Hawk, and Mr. Thelen, members of the staff of the subcommittee, be permitted floor privileges during my remarks.

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

Mr. ERVIN. Mr. President, I ask unanimous consent that Mr. Bill Pursley of my staff be permitted to be present on the floor during the consideration of this matter.

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

S.1—CRIMINAL JUSTICE CODIFICATION, REVISION, AND REFORM ACT OF 1973

Mr. McCLELLAN. Mr. President, last week I introduced for myself and the distinguished Senators from North Carolina (Mr. ERVIN) and Nebraska (Mr. HRUSKA) S. 1, the Criminal Justice Codification, Revision, and Reform Act of 1973.

The Senate legislative counsel has suggested that this bill may be one of the longest ever introduced in the U.S. Senate, longer even than the Internal Revenue Code of 1954.

But if the occasion of the introduction of this legislation is important or historic, it is for reasons more profound than the sheer bulk of the bill.

Unlike some of the States—14 at last count—and unlike most of the other countries of the world, the United States has never had a true "criminal code." Starting in 1790, the Congress has enacted criminal statutes, and these statutes have been cumulated and reordered and revised technically in 1877 (revised statutes), 1909 (35 Stat. 1088), and 1948 (62 Stat. 683). But the Federal criminal law has remained a consolidation rather than a code.

The difference between a code and a consolidation has been stated as:

> [The term "code"]—is usually reserved for a body of laws which are drafted at one time, by one person or a closely cooperating body of draftsmen, with the intention of stating clearly and systematically all the rules applicable in a given area of law—for example, penal law. This description . . . may be contrasted with the situation reflected in . . . [a] Consolidated Laws . . . The statutes in . . . [a] Consolidated Laws were drafted at many different times, by different bodies of draftsmen, to cover a very diverse body of subjects in an essentially random manner. That is, the legislator in these laws was dealing with small problems, as they arose, and was making no particular effort to achieve unity, consistency, or thorough coverage in a broad area of law. (Strauss, *On Interpreting The Ethiopian Penal Code*, V Journal of Ethiopian Law, 375, 389–390 (1968).)

Mr. President, S. 1 is far from a final penal code for the United States. In fact, while my cosponsors and I are satisfied that its structure, form, and general outlines are sound, we view it only as the preliminary and immediate work product of 2 years of efforts by the Subcommittee on Criminal Laws and Procedures, which I am privileged to chair. I note, too, that a number of the provisions in S. 1 will be controversial. Indeed, there is much room for debate on this bill. I myself have not reached firm judgments on a number of provisions as they are now drafted. There is much that I wish to study further. My mind is not made up definitely on everything the bill contains. Both the Senator from North Carolina (Mr. ERVIN) and the Senator from Nebraska (Mr. HRUSKA) also share with me differences of emphasis on sections of S. 1 as now drafted. I think this is only to be expected in a measure of its scope and magnitude.

But when all that is said, the fact is that the "Criminal Justice Codification, Revision and Reform Act of 1973" represents the first legislative proposal ever filed in the Congress in bill form to create a "Federal Criminal Code." It is an important and historic milestone.

But it is not a milestone without a background. In a very real sense, this bill is the product of many years of hard work and careful thought by a number of distinguished and concerned people. Indeed, it represents an example of the best kind of joint legislative development by private and public bodies and individuals.

The real starting point for this legislation came in 1952—20 years ago—when the American Law Institute began work on the planning and drafting of a "Model Penal Code," and its chief reporter published the substance of the plan in a law review article. Wechsler, "The Challenge of a Model Penal Code," 65 Harvard Law Review 1097 (1952).

The first concrete step leading to the introduction of the "Criminal Justice Codification, Revision and Reform Act of 1973" then came in March of 1953, when the Council of the American Law Institute met and considered "Tentative Draft No. 1" of a Model Penal Code.

In commenting on those early beginnings, the chief reporter for the Model Penal Code, now the director of the American Law Institute, told the Subcommittee on Criminal Laws and Procedures in 1971:

> Preliminary studies left no doubt to us that the central challenge of the penal law inhered in the state of our penal legislation. Viewing the country as a whole, criminal law consisted of an uneasy mixture of fragmentary and uneven and fortuitous statutory articulation, common law concepts of uncertain scope and a miscellany of modern enactments passed on an ad hoc basis and frequently producing gross disparities in liability or sentence. Hearings before the Subcommittee on Criminal Laws and Procedures of the Senate Committee on the Judiciary. *Reform of the Federal Criminal Law*, 92d Cong. (hereinafter cited as *Hearings*, Pt. II, p. 552.)

The institute labored for 10 years and in 1962 published the "Proposed Official Draft" of a Model Penal Code.

Without in any way overlooking the

groundbreaking significance of the enactment in 1942 by the Louisiana legislature—Act 43 of 1942—of the first modern American Criminal Code—itself the product of over 100 years of effort—see McClellan, "Codification, Reform, and Revision: The Challenge of a Modern Federal Criminal Code." 1971 Duke Law Journal 661, and without neglecting to mention the modern criminal codes passed simultaneously with the development of the Model Penal Code in Wisconsin, 1965; Illinois, 1962; Minnesota, 1963; and New Mexico, 1963; it may be said that the next major step in the lineal progression toward the introduction of S. 1 was the legislative creation in New York State in 1961 of a "Temporary Commission on Revision of the Penal Law and Criminal Code."

The New York Commission prepared a code which differs from and in some ways is better attuned to the needs of society than the Model Penal Code, but which clearly traces its lineage to the institute's brilliant work. In signing the New York Revised Penal Law, Gov. Nelson Rockefeller observed:

[The Code] reorganizes and modernizes penal provisions proscribing conduct which has traditionally been considered criminal in Anglo-Saxon jurisprudence. Related crimes are grouped together in logically related titles, definitions are more carefully prescribed, and a new scheme of sentencing is provided affording ample scope for both the rehabilitation of offenders and the protection of society. In line with the Commission's objective, a system of penal sanction is achieved which protects society against transgressors, balanced with safeguards for persons charged with crime. (Governor's Memorandum of Approval, July 20, 1965)

A similar comment could be made of this bill.

The next key step was taken by the Congress itself in 1966. In that year Public Law 89–801 was enacted, creating a "National Commission on Reform of Federal Criminal Laws," called after its distinguished chairman, former Gov. Edmund G. "Pat" Brown of California, the "Brown Commission." The Commission was charged by the Congress to:

Make a full and complete review and study of the statutory and case law of the United States which constitutes the Federal system of criminal justice for the purpose of formulating and recommending to the Congress legislation which would improve the Federal system of criminal justice. It shall be the further duty of the Commission to make recommendations for revision and recodification of the criminal laws of the United States, including the repeal of unnecessary of undesirable statutes and such changes in the penalty structure as the Commission may feel will better serve the ends of justice.

The Commission, on which my two cosponsors and I were privileged to serve, prepared its own draft recommendations, which also made important improvements, but followed lineally from the earlier works. The product of nearly 3 years of deliberation by the Commission, its advisory committee, consultants, and staff, the recommendations were submitted to the Congress and the President on January 7, 1971, in the form of a final report. A special comment here on the contribution by the Commission's Director, Prof. Louis Schwartz, is appropriate. History will one day record that it was in no small measure due to his intellectual insight and aid that the enactment of a Federal code was made possible. The final report itself, some 364 pages in length, was submitted as a "work basis" for congressional consideration. In fact, it has served as just that, for intensive and extensive hearings by the Subcommittee on Criminal Laws and Procedures. The bill that we have now introduced derives from the draft of the National Commission, in much the same way that the National Commission's draft derives from the New York Revised Penal Law and the Model Penal Code. As members of the Commission, the subcommittee, and sponsors of the bill, we hope that it, too, is an extension and improvement over earlier works.

A welcome next step came when the President of the United States, on January 16, 1971, issued a statement commending the Brown Commission for its labors and directing the U.S. Department of Justice in a simultaneous memorandum to establish a special team of attorneys within the Department to work fulltime on the study of the draft and codification and to "work closely with appropriate congressional committees and their staffs through the evaluation and recommendation process." President Nixon declared in his statement:

Over the two centuries the Federal criminal law of the United States has evolved in a manner both sporadic and haphazard. Needs have been met as they have arisen. Ad hoc solutions have been utilized. Many areas of criminal law have been let to development by the courts on a case-by-case basis—a less than satisfactory means of developing broad governing legal principles.

Not unexpectedly with such a process, gaps and loopholes in the structure of Federal law have appeared; worthwhile statutes have been found on the books side by side with the unusable and the obsolete. Complex, confusing and even conflicting, laws and procedures have all too often resulted in rendering justice neither to society nor to the accused.

Laws that are not clear, procedures that are not understood, undermine the very system of justice of which they are the foundations. (*Hearings*, Pt. I, p. 5)

In addition, the President had this to say about a new code in his radio address to the Nation on crime on October 15, 1972:

I will propose to the new Congress a thorough-going revision of the entire Federal criminal code, aimed at better protection of life and property, human rights and the domestic peace.

We will welcome his suggestions and support in this effort.

Finally, a summary of the efforts of the Subcommittee on Criminal Laws and Procedures in 1972 and 1972 may also serve as a useful background to the study of this bill.

In February of 1971, the subcommittee began its hearings and studies on the recommendations of the Commission. The hearings and studies continued over the course of the 92d Congress. When the final report of the Commission was released, the subcommittee sent out 6,000 letters to all State attorneys general, local and county district attorneys, professors of criminal law and related fields, criminal defense attorneys, and private groups, asking for comments on the recommendations of the Commission. A hearing record has now been compiled which, when all the material is printed, will run well over 4,000 pages of testimony, statements, and exhibits. There have been 13 days of public hearings on the work of the Commission. State experience with criminal law revision and on the various policy questions presented by the Draft Code prepared by the National Commission. In all, 64 witnesses gave testimony before the subcommittee during these hearings. Prepared statements have been received from approximately 50 additional persons or organizations.

Numbers alone do not do credit to the tremendous amount of study, discussion, and preparation that went into the presentations of a number of the organizations which appeared or submitted comments: The organizations include: the Association of the Bar of the City of New York, the American Civil Liberties Union, the National Legal Aid and Defender Association, the National Council on Crime and Delinquency, the New York County Lawyers Association, the National District Attorneys Association, the National Association for the Advancement of Colored People Legal Defense and Education Fund, the Federal Bar Association, the Committee for Economic Development and the American Bar Association's Sections on Taxation, Antitrust, Corporation, Banking, and Business Law, and a Special Committee of the Section of Criminal Law of the American Bar Association.

In addition, a number of staff studies and surveys were undertaken by the subcommittee which have involved the sending of questionnaires to various groups requesting specialized information and suggestions. A mailing was made to district attorneys and public defenders in States having a bifurcated trial system in capital cases; a questionnaire was sent to all State and local wardens and correctional administrators on the utility of "good time" credits against prison sentences; a questionnaire was sent to all 92 U.S. chief probation officers—which drew an 80 percent response rate—on aspects of probation; a letter was sent to the mental health departments of each of the 50 States setting forth all the proposed approaches to the problem of the criminal defendants who may be mentally ill; letters were sent to groups involved with Indian affairs and to the attorneys general of the States which now have criminal jurisdiction over Indians, requesting opinions on the scope of Federal criminal jurisdiction over Indians; a questionnaire was sent to each Federal executive department, agency, and commission with jurisdiction over one or more offenses in the United States Code requesting an analysis, comparison, and evaluation of the impact of the proposed code on their work; a letter-questionnaire was sent to each of the professors of comparative law in North America and to each of the foreign law divisions

of the Library of Congress requesting detailed information on the form and content of foreign criminal codes.

An additional word on the foreign law study, unique in depth and scope, may be in order, for the staff of the Law Library of the Library of Congress deserves special commendation for, in a relatively short period of time, preparing detailed studies on the criminal law and criminal codes of 25 foreign countries; the comparative law study, published as part III–C—Comparative Law—of our hearings, has provided all of us with much food for thought.

Further, the Administrative Office of the U.S. Courts prepared several volumes on the criminal business of the Federal courts and the impact of the proposed code. In turn, this study has been the subject of extensive correspondence by the subcommittee with the Federal judiciary. An effort has also been made to enlist the aid and support of the relevant advisory committees of the judicial conference. In this connection, the assistance of Judges Albert B. Maris, of Philadelphia, and J. Edward Lumbard, of New York, deserves special mention. They have been most understanding and helpful. The National Institute of Law Enforcement and Criminal Justice also prepared several specific memoranda, and the Department of Justice has made a special effort to work closely with the subcommittee.

In light of all this effort, I am confident that when it is finally printed, the complete record of the subcommittee's hearings will provide the basic source material for the task of criminal law reform not only now, but for years to come. It should prove of particular aid to those States which will face the task of codification, revision, and reform after us.

Finally, the subcommittee prepared a 524-page committee print, which embodied tentative resolutions of a number of issues raised by the hearings and the subcommittee's studies. Over 1,800 copies of this print were circulated throughout the country to all of the witnesses who had appeared in the hearings, law professors, and other interested groups and individuals. Their many and detailed comments and criticisms have been reflected in the proposal we have now introduced.

And I underline the word "proposal," for just as the Brown Commission's efforts were a "work basis," so this legislation is only a "study bill." We have taken a major step forward, but we have a long way to go.

Mr. President, many people deserve credit for the effort that has been made by the subcommittee to implement the recommendations of the National Commission. Each member of the subcommittee has made a special effort to be at the hearings and to participate in every way possible in the processing of these most important recommendations. Senators ERVIN, KENNEDY, HART, and THURMOND deserve special mention. Each has given much of his time. But none deserves more credit than the distinguished Senator from Nebraska (Mr. HRUSKA). He has given unselfishly both of his time and his talent over the past 2 years. As we all know, a Senator is frequently called upon to attend to necessary business away from Washington. On each occasion that I have had to attend to other duties, my colleague from Nebraska has faithfully seen that the work of the subcommittee on the recommendations of the National Commission went forward. It is in no small measure due to his special efforts that the subcommittee has made its progress.

Mr. President, one last item should be made explicit about this bill at this point. The "Criminal Justice Codification, Revision and Reform Act of 1973" is not a partisan bill. The goals of codification and reform are shared by both major political parties. The need for coordination, systematization, and simplification of the Federal criminal laws is accepted by Members on both sides of the aisle in both Houses of Congress. Moreover, this bill should not be looked at "politically." As I explained upon the receipt of the final report of the National Commission:

> There is no surer lesson of history than that politics should not be mixed in the process of codification, reform, and revision, although it will inevitably, in some measure, taint the work of any such endeavors. . . . The issues of crime and criminal justice . . . are far too important to be made the subject of narrow political advantage. Too much is at stake and too great is the need for reform to run the risk of losing it all for the momentary gains of politics. Debate, on the other hand, is not only to be expected, but to be welcomed, for it is only through the examination of diverse views stated by able advocates that we may reach sound decisions. . . . Differences should be confined to particular issues and not generalized to the Code itself. Otherwise, the attempt will be in vain. (McClellan, *Codification, Reform, and Revision: The Challenge of a Modern Federal Criminal Code*, 1971 Duke L.J. 663)

It is appropriate now to turn to the bill itself.

I. STRUCTURE

The bill is divided into four titles.

Title I, the heart of the bill, sets forth the provisions to be included in a new title 18 of the United States Code. The new title 18 will be entitled "Federal Criminal Code," in contrast with the present "Crimes and Criminal Procedure," since criminal procedural provisions are better dealt with through the Rules of Criminal Procedure, at least in most cases. The new title 18 is itself divided into three parts: Part I—The General Part; Part II—The Special Part; and Part III—Administration.

There are four chapters in Part I (The General Part): Chapter 1, General Provisions; Chapter 2, Principles of Criminal Liability; Chapter 3, Bar and Defenses to Criminal Liability; and Chapter 4, Sentencing. There are 44 sections in these four chapters, all of them applicable or potentially applicable to all of the specific crimes and offenses or punishment therefor in the Code and other Federal legislation.

There are five chapters in Part II (The Special Part); Chapter 5, Offenses Involving the Nation; Chapter 6, Offenses Involving Governmental Processes; Chapter 7, Offenses Against the Person; Chapter 8, Offenses Against Property; and Chapter 9, Offenses Against Public Order. There are 137 sections in these five chapters, all but a handful of which define the elements of specific offenses against the United States.

There are four chapters in Part III (Administration); Chapter 10, Law Enforcement; Chapter 11, Courts; Chapter 12, Corrections; and Chapter 13, Miscellaneous. There are 99 sections in these four chapters.

Where appropriate, the chapters are further divided into subchapters. A numbering system has been devised that leaves room for change and expansion but enables a reader to know instantly into which Part, Chapter, and Subchapter a particular statute belongs.

Title II of the bill transfers the remaining criminal procedure sections in present Title 18 of the United States Code into the Federal Rules of Criminal Procedure.

Title III sets forth the necessary conforming amendments. These amendments are of two types: (1) Those that transfer from present title 18 specific offense statutes that more properly belong with the other statutory law on the subject. For example, a number of criminal statutes relating to farm products are moved to title 7, Agriculture; a number of criminal statutes relating to Indians are moved to title 25, Indians; and a number of criminal statutes relating to the post office are moved to title 39, The Postal Service. (2) Those that conform the language or the criminal justice policy of the other 49 titles of the United States Code to that of the projected Federal Criminal Code.

Title IV includes a severability clause and provides for a delayed effective date to give Federal judges, prosecution personnel, probation officers, defense counsel, legal scholars, and the community at large ample time to prepare for an easy conversion to the new Code. Under this provision, an entire Congress is provided in which technical amendments may be made before the Code becomes effective. Thus, for example, if the Code were enacted by the 93d Congress in 1974, it would not become effective until the January following the final adjournment of the 94th Congress, or January 1977.

If it has taken twenty years to reach the date of filing a Code bill for the Federal Government, we can afford to take our time before putting such a Code into effect.

The lesson of history, as I pointed out in my Duke Law Journal article, is that—

> History . . . teaches the futility of haste. The codes of Justinian and Napoleon carried with them the imperfections of too little attention to detail. Each stands in sharp and unfavorable contrast with the remarkable effort of the German nation in the production, criticism, and recodification of its civil code. It is not, of course, necessary that an ideal or perfect product be produced; the study of history indicates in its careful students a measure of humility. The code that the Congress writes today will serve others tomorrow, but we must recognize that today's work will be tomorrow reexamined—if nothing else, history teaches that each new generation rightly desires to develop its own fundamental code of conduct. Enough time must be spent to produce a workable and just code for today, without laboring too long in an idle attempt to secure perpetual validity through perfection. (McClellan, *Codification,*

Reform, and Revision: The Challenge of a Modern Federal Criminal Code, 1971 Duke Law Journal 663).

II. PREMISES

Title I of the "Criminal Justice Codification, Revision and Reform Act of 1973" rests on a number of premises.

(1) Federal Criminal Jurisdiction.—The criminal jurisdiction of the Federal Government is a limited jurisdiction. It is and must remain limited to the specific needs and areas delineated by the Constitution and our traditions of federalism. The Draft Federal Criminal Code, prepared by the National Commission, however, was greeted by substantial criticism with respect to some of its jurisdictional provisions. It was suggested in the Subcommittee's hearings that the Draft Code might lead to a national police force. This led to a great deal of concern. In response to that concern, the proposed bill carefully redrafts the National Commission's proposals so that there is little significant expansion over present law of the reach of the Federal power to investigate and prosecute crime and criminals, and where an expansion necessarily occurs, it is carefully circumscribed.

The key difference between present title 18 statutes and proposed title 18 statutes is that the basis for Federal prosecution is written into the definition of the crime in the present law but is stated in a separate subsection in the proposed code. Where Federal jurisdiction is complete and inherent, however, as in the crime of treason or other national security offenses, there is, of course, no such jurisdictional subsection.

This new treatment of jurisdiction is important. Rather than defining certain conduct which interferes with a jurisdictional factor as criminal, the code would define certain conduct as criminal and declare that the malefactor is subject to prosecution by the Federal Government where such conduct or misconduct takes place within the Federal jurisdiction States. For example, under the present mail fraud statute (18 U.S.C. § 1341 (1964), the offense is written, and its "gist" has been accurately perceived not as fraud punishable by the Federal Government because its mails are used, but as a sullying of the Federal sovereign by depositing fraud-related materials in its mails. (E.g., *Atkinson* v. *United States,* 344 F. 2d 97, 98 (8th Cir.), *cert.* denied, 382 U.S. 867 (1965).) Consequently, each mailing is a separate offense, although it was done in execution of a single fraud. (*Wood* v. *United States,* 279 F. 2d 359 (8th Cir. 1960).)

Yet the mailing of one letter in one fraudulent scheme and its consequent defrauding of ten victims remain only one offense punishable by a maximum of only five years, regardless of the enormity of the fraud perpetrated. Finally, under present law, the Government must prove that the defendant at least contemplated that his fraud would be committed by use of the mails. (*United States* v. *Kellerman,* 431 F. 2d 319 (2d Cir.), *cert. denied,* 400 U.S. 957 (1970).) Under the proposed Code, however, the offense is conceived and formulated as a scheme to defraud. (Proposed 18 U.S.C. § 2–8D5.) Use of the mails becomes a jurisdictional base under which the offense may be federally prosecuted, with the consequence that several aspects of present law just mentioned are reversed.

Although the change in the treatment of jurisdiction and criminal conduct is, in a real sense, more formal than substantial, several important consequences flow from the change, consequences which make it possible, in fact, to write a Federal penal code.

First, definitions of offenses can be consolidated and standardized without the need, for example, of an enormous number of separate statutes for different kinds of theft or robbery. Second, since the focus of the statutes is on the criminal misconduct rather than on the breach of a Federal jurisdictional factor, punishment can be proportionate to the conduct rather than scaled to the jurisdictional feature. Third, the Code would eliminate the multiplication of offenses that results from the existence of multiple jurisdictional bases.

Thus, theft of Government property from the mail on a military reservation would no longer be three offenses, but one, prosecutable by the Federal Government on any one of three grounds: Federal enclave, U.S. mails, or Federal property. Fourth, offenses are defined in a fashion consistent with the terms of international treaties for extradition of offenders. At present, problems have been encountered when the United States seeks to extradite a person from a foreign country for a Federal crime such as "use of the mails to defraud" and not for mailing a letter pursuant to a scheme to defraud.

(2) Technique of drafting.—Under title I, a conscious effort has been made to avoid verbose or technical language and endless examples, but rather the effort was made to speak in common English.

Present title 18, U.S.C. section 2311, for example, prohibits theft of a motor vehicle which is defined to mean "automobile, automobile truck, automobile wagon, motorcycle, or any other self-propelled vehicle designed for running on land but not on rails." Proposed § 2–8–D3 simply describes the term "property of another." Present title 18 also makes criminal "extortionate credit transactions" (18 U.S.C. §§ 891–896). The proposed code prohibits "loansharking" (§ 2–9C2)—and calls it that.

The manner in which offenses are drafted is designed to avoid the need for extensive cataloging of terms for definitional purposes and to make the code understandable to everyone.

The proposed code makes clear that its language is to be construed by the courts in light of purpose rather than with an eye toward technicalities. There is a section which sets forth the rule of construction:

> The code shall be construed in light of . . . [the] principle [of legality] as a whole according to the fair import of its terms to achieve its general purposes (§ 1–1A3).

And there is an entire section which sets forth the General Purposes of the Federal Criminal Code:

> The purpose of this code is to establish justice in the context of a Federal system so that the nation and its people may be secure in their persons, property, relationships, and other interests.
>
> This code aims at the articulation of the nation's fundamental system of public values and its vindication through the imposition of merited punishment.
>
> This code seeks to promote the general security through deterrence by giving due notice of the offenses and sanctions prescribed by law, and where this proves ineffective, by the rehabilitation of the corrigble offender or the appropriate incapacitation of the incorrigible offender. (§ 1–1A2.)

Repetitive definitions are specifically avoided by providing that the term "includes," as used in specific offenses, is to be read as if the phrase "but is not limited to" is also set forth.

Generally, where a technical word or phrase is used in more than one section in a chapter, it is defined in the introductory section in the chapter; where such a word or phrase is used in more than one chapter, it is defined in the general definitions section in The General Part, § 1–1A4.

To avoid the temptations to appellate litigation that can flow from different linguistic patterns, a standard and uniform format was developed for all of the specific offenses in the proposed title 18. The specific format is not important in terms of policy, but it is important that there be uniformity if this is to be a code rather than a mere consolidation masquerading as a code.

By the technique of drafting simply, uniformly, and precisely, it is hoped that a more rational Federal penal policy can be implemented with confidence, that it will not be frustrated in the courts because of the inherent ambiguity of human language or misunderstood by the juries who must apply it to concrete cases.

(3) The Sentencing Scheme.—In present title 18, the maximum sentence and, where indicated, the minimum sentence, is stated as part of the definition of the crime. Not surprisingly under such an approach, there are 18 different maximum prison terms and 14 different fine levels in present title 18. In lieu of this method, the proposed code classifies all offenses into one of seven categories: Class A felony, Class B felony, Class C felony, Class D felony, Class E felony, Misdemeanor, and Violation. (§ 1–1A5) This separation of the definition of an offense from the sentence to be imposed was one of the most significant contributions of the Model Penal Code. In Tentative Draft No. 2 (1954), the Chief Reporter noted:

> The number and variety of the distinctions of this order found in most existing systems is one of the main causes of the anarchy in sentencing that is so widely deplored. Any effort to rationalize the situation must result in the reduction of distinctions to a relatively few important categories. [Model Penal Code, A.L.I. Tent. Draft No. 2, p. 10.]

Other features of the sentencing scheme, which has been designed to give our courts a full range of options, may be quickly sketched. It is streamlined and integrated. It carries forward, as the Commission recommended (Final Report at 440–41), the concept of upper range

sentences for dangerous special offenders. (On the need for and rationale of such sentences, see McClellan, The Organized Crime Control Act (S. 30) or Its Critics: Which Threatens Civil Liberties, 46 Notre Dame Law. 57, 146–88 (1970).)

In doing so, it achieves by a legislative determined proportionate maximum something that title X of Public Law 91–452 had left to judicial determination on a case by case basis, subject to a 25 year upper limit. As under present law, such sentences are made subject to appellate review. (See id. at 174–88.) Whether appellate review should be authorized on a broader scope, as the Senator from Nebraska (Mr. HRUSKA) has long advocated, is a question that will merit close scrutiny in the coming legislative hearings. Certainly, the evidence of sentence disparity presented to the subcommittee calls for some close attention. I, for one, am beginning to believe that some sort of review is needed in this area, and it is my intention to hold additional hearings on this vital issue soon.

The bill would grant greater flexibility to Federal trial judges to make the punishment fit the crime and the offender. It also explicitly recognizes that probation and parole can be made more effective substitutes for costly-to-taxpayers and often counter-productive incarceration. Finally, the bill rejects in large part the notion of indeterminate sentences on the ground that our Federal judges acting with United States Parole Board (renamed the Parole Commission, § 3–12F1) are and should both be the duly constituted authorities to determine length of imprisonment.

(4) Techniques of Grading.—The National Commission in its Draft proposed the use of "piggyback" jurisdiction as a means for achieving appropriate sentence grading where certain offenses were committed. In the Final Report, the Commission recommended, that, although the Study Draft had been somewhat more expansive, crimes against persons and property which take place in the course of commission of a Federal offense should themselves be separately prosecutable in the Federal courts as Federal offenses. (See generally comment 81 Yale L.J. 1209 (1972).) The Commission set forth in its § 201(b) as a jurisdictional base for Federal investigation and prosecution that—

> The offense is committed in the course of committing or in immediate flight from the commission of any other offense defined in this code over which federal jurisdiction exists.

This provision was extensively criticized in Hearings before the Subcommittee on Criminal Laws and Procedures, chiefly by representatives of the National Association of Attorneys General and the National Association of District Attorneys on the ground that it could lead to a vast expansion of Federal criminal jurisdiction.

Appropriate grading, not expansion of jurisdiction, was the purpose of § 201(b), as I can attest as a member of the Commission, and as Governor Brown and Congressman Poff, the Chairman and Vice Chairman, explained to the subcommittee in its initial hearings.

In line with this purpose, the proposed code has been recast, using a different means of drafting to achieve the same objective: appropriate sentence grading where compound criminal conduct is present. With the use of this technique, it will not be necessary to use "piggyback" jurisdiction.

The technique used in the bill is actually the same technique as now used in individual sections of the present title 18, although under the proposed bill it has been used systematically rather than idiosyncratically. For example, in the present bank robbery status (18 U.S.C. § 2113), the basic offense of bank robbery is punishable by a maximum of twenty years imprisonment (§ 2113(a)), but the maximum may be increased up to 25 years if "assault" occurs in the course of the bank robbery (§ 2113(b)), or up to death if there is a "murder" or "kidnapping" in the course of such robbery (§ 2113(e)).

The key provision in the bill is a subsection of proposed section 1–1A5 (Classification of Offenses), which reads as follows:

> (d) Compound offense.—Offenses are graded by simple classification or by cross reference to the classification of designated compound offenses. If a designated offense is committed as an integral part of, including immediate flight from, the commission of another offense, the compound offense is an offense of the classification of the designated offense or, where appropriate, a lesser included offense of the designated offense.

This approach, best termed "compound grading," is distinguishable from and superior to "piggyback" jurisdiction in several ways. By its very nature, compound grading will permit only the assaultative or violent qualities of criminal conduct to be considered as aggravating factors for the purpose of sentencing. In contrast, "piggyback" jurisdiction, as a technique, can be confined in this fashion, but, as the Study Draft shows, its potential is much less restrictive. Any offense could be "piggybacked" onto any other offense. The danger of an ever expanding Federal jurisdiction would always be present.

In addition, compound grading is appropriate only when conduct of a potentially higher classification is considered in relation to other less serious conduct. It envisions, moreover, the prosecution of only one Federal offense, as the addition of "assault" to "theft" results in "robbery," not "assault" and "theft." "Piggyback" jurisdiction, on the other hand, is not similarly circumscribed. The prosecution is for two offenses—with all of the collateral consequences that duly follow. There would be, for example, an incentive to bring multiple count charges to enhance the possibility of conviction and to secure cumulative sentences. Offenses less serious, the same, and more serious could be "piggybacked," and inconsistent verdicts would always be a real possibility. In short, the potential for abuse of "piggyback" jurisdiction is disproportionate to its value to grading as long as there is a viable alternative.

To summarize, compound grading provides a rational and uniform means of grading Federal offenses, for scaling the relative seriousness of misconduct integral to the commission of a "basic" offense, and for achieving a clear proportionality where compound qualities are present in criminal conduct—all without the potential for abuse present in "piggyback" jurisdiction. Finally, unlike the Commission draft, the proposed legislation would leave State courts free to prosecute for State offenses independent of the Federal prosecution.

(5) Procedure.—Experience has shown that the U.S. Supreme Court and its Advisory Committee on the Rules of Criminal procedures are generally, although not always, in a better position to examine and promulgate detailed day to day changes in the rules of criminal procedure. Accordingly, the procedural statutes in present title 18 are directly placed in appropriate order within the present rules. Since the enabling statute on the rules is not changed, but included as proposed section 3–11A1, the Supreme Court, acting through the rulemaking process, would be free, subject to the present approach of congressional oversight, to modify these provisions in accordance with present law.

III. HIGHLIGHTS

I should now like to highlight major policy questions of general concern, which must be resolved in the enactment of a new Federal Criminal Code. This discussion identifies the issue, summarizes present Federal law on the question, notes the proposal of the National Commission of Reform of Federal Criminal Laws, outlines alternatives and arguments, and finally identifies the resolution proposed in the "Criminal Justice Codification, Revision, and Reform Act of 1973."

Mr. President, an initial word of caution is in order. Each of these issues is important, but none of them should be made more important than the codification itself. (See Testimony of Hon. Edmond G. Brown, vol. I, Hearings at 97). If the Code is held hostage to adoption of a particular point of view on any particular issue, there will be no Code, and the Nation as a whole will suffer. I would hope, therefore, that it will be possible to meet, debate and decide these issues without fracturing the processing of the Code itself.

(1) ABORTION

(a) Present Federal law.—There is no general criminal abortion statute in present title 18. As discussed more fully below in Part (4) (Enclaves Jurisdiction), Federal courts apply local State law under the Assimilated Crimes Statute (18 U.S.C. § 13). In some enclaves, abortions are legal under certain circumstances, while in others they are criminal.

(b) Commission proposal.—There is no criminal abortion statute in the proposed Code. The homicide sections (sections 1601–1603) are phrased in terms of causing the death of another "human being," and human being is defined as "a person who has been born and is alive." (Section 109(p)) There is only a passing discussion of the problem of

abortion in the comments to individual sections. See., e.g., Final Report, Comments to Section 209, p. 23. The issue is not as clearly resolved as it might be, but it probably cannot be inferred that the adoption of the Code in its present form would mean the decriminalization of all abortions in Federal enclaves or elsewhere. Consequently, under the assimilated crimes provisions of the Code, the Federal courts would continue to apply State law as to abortions performed in Federal enclaves, but they would apply a sharply lowered penalty scheme.

(c) Alternatives and arguments.—Several basic alternatives exist in drafting a new Code. Abortion under certain circumstances could be explicitly decriminalized. This is the position of a number of groups, particularly among those concerned with the women's rights movement and among people concerned with population control and poverty. They argue that a fetus, particularly in the first months of pregnancy, is not human life. Consequently, the decision to abort or to give birth should be that of the woman and her doctor it is not a community judgment to be governed by the penal law.

On the other hand, abortion could be explicity criminalized. This would follow the traditional approach in State law. It is also the position of a number of religiously oriented and civil rights groups concerned with human life. They argue that a fetus is a form of human life. Consequently, the decision to abort cannot be left to the woman and her doctor, since the right to life of the fetus must be considered; human life must be protected by the penal law.

Finally, the issue could be left for resolution in each enclave area by the incorporation of local law through the Assimilated Crimes Act approach. The argument that would support this position would be rooted in respect for federalism.

This abortion issue is part of a broader problem of conflict of laws and comity, which is discussed under Enclave Jurisdiction. It raises common issues with drugs, obscenity, and sodomy. Any resolution of the issue should take into consideration these other related questions.

(d) Bill.—There is no criminal abortion section in the proposed Federal Criminal Code. Rather section 1–1A8, Assimilated Offenses, provides for the enforcement and prosecution by the Federal Government of local law in all Federal enclaves and for the imposition of the penalty imposed under local law.

(2) CAPITAL PUNISHMENT

(a) Present Federal law.—The death penalty is an authorized sentence upon conviction under at least ten sections of present law, including murder, treason, rape, air piracy and delivery of defense information to aid a foreign government. [18 U.S.C. §34 (destruction of motor vehicles or motor vehicle facilities where death results); 18 U.S.C. §351 (assassination or kidnaping of Member of Congress); 18 U.S.C. § 794 (gathering or delivering defense information to aid a foreign government); 18 U.S.C. §1111 (murder in the first degree within the special maritime and territorial jurisdiction of the U.S.); 18 U.S.C. §1114 (murder of certain officers and employees of the U.S.); 18 U.S.C. §1716 (causing death of another by mailing injurious articles); 18 U.S.C. §1751 (Presidential and Vice Presidential murder and kidnaping); 18 U.S.C. §2031 (rape within the special maritime or territorial jurisdiction of the U.S.); 18 U.S.C. §2381 (treason); and 49 U.S.C. §1472(i) (aircraft piracy).]

As drafted, they appear to be unconstitutional under the 1972 decision in *Furman* v. *Georgia*, 408 U.S. 238 (1972). In addition, there are several other statutes that authorize the death penalty, but each appears to be unconstitutional under *United States* v. *Jackson*, 390 U.S. 570 (1968), because by permitting the jury and not the court to impose the penalty, they inhibit the exercise of the right to demand a jury trial.

(b) Commission proposal.—Capital punishment would be abolished for all Federal criminal offenses under the proposed code. Section 3601 authorizes life imprisonment or the maximum sentence for a class A felony (30 years) upon conviction of treason or murder, where the court is satisfied that the defendant intended to cause the death of the victim.

A minority of the Commission, however, proposed an alternative approach—one which would retain the death penalty for at least intentional murder or treason. (Sections 3601, 3602, 3603 and 3604) The significant features of the alternate are the adoption of: (i) a bifurcated trial and (ii) standards for imposition. Before the court imposes a death penalty upon a convicted defendant, it would be required to hold separate hearings on the question of life or death and at that hearing evidence normally inadmissible at the criminal trial where the issue was guilt could be introduced by either party (section 3602). The death sentence, moreover, could not be imposed if the defendant was less than 18 years old at the time of the commission of the crime; if the defendant's physical or mental conditions calls for leniency; if in the judge's mind the evidence "does not foreclose all doubt" respecting the defendant's guilt, or if there are other substantial mitigating circumstances (section 3603). Finally, special criteria for mitigating and aggravating circumstances are listed (section 3604). A finding of their presence or absence would guide the imposition of the sentence.

(c) Alternative and arguments.—Testimony was taken by the Subcommittee on capital punishment. The arguments on capital punishment are set out fairly in the Final Report (pp. 463–64) and Volume II of the Working Papers (pp. 1347–76). I need not repeat them here. Assuming, however, the retention of the death penalty, other issues remain. Should it be limited to murder and treason? Or should it be applied to other crimes? How should it be imposed? Should it be discretionary or mandatory? Should standards be set for the exercise of discretion?

The arguments for and against the two-stage trial and standards are reviewed in *McGautha* v. *California*, 403 U.S. 83 (1971) and *Crampton* v. *Ohio*, 402 U.S. 183 (1971), which hold that neither is required by the Due Process Clause of the Constitution. In general, those in favor of these procedures argue that they are fairer, since they permit a wider range of materials to be reviewed under appropriate standards. Others suggest that they are an unduly protracted procedure that may, in fact, result in a greater imposition of death sentences.

(d) Bill.—The bill proposes that the death penalty be retained for the most heinous crimes, murder and treason, and sections 1–4E1 and 1–4E2 adopt the two-stage trial model.

It is not my intention now to enter into a full discussion of the implications of Furman for the purposes of the Code, but a number of points should be made. First, Furman is a per curiam opinion; it merely holds that the "imposition and carrying out of the death penalty in these cases constitutes cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments." (408 U.S. 239–40) No general opinion was written for the court. Consequently, it has little value as a precedent or as a guide to a legislature in drafting new legislation. Second, it is clear that the Supreme Court has not held that capital punishment may not be imposed in other cases under different circumstances. The two "swing" Justices—Stewart and White—explicitly stated in Furman that they had not held the death penalty per se unconstitutional. Rather, they concluded that the death penalty as presently applied and administered in the United States constitutes a violation of the Eighth Amendment. Mr. Justice Stewart objected to its imposition in "so wantonly and freakishly" a manner. He then hinted that a mandatory penalty might avoid this result. See 408 U.S. at 307–08. Mr. Justice White objected to it "as it is presently administered. . . ." (408 U.S. at 312–13.) He felt that—

> The recurring practice of delegating the sentencing authority to the jury and the fact that a jury in *its own discretion* and without violating its trust *or any statutory* policy may refuse to impose the death penalty no matter what the circumstances of the crime. (408 U.S., at 314) (Emphasis added.)

His hint was that standards to guide discretion might pass constitutional muster.

These aspects of the concurring opinions of Justices Stewart and White were emphasized by the dissent of the Chief Justice. His comments bear quoting at some length. He observed:

> Today the Court has not ruled that capital punishment is *per se* violative of the Eighth Amendment; nor has it ruled that the punishment is barred for any particular class or classes of crimes. The substantially similar concurring opinions of Mr. Justice Stewart and Mr. Justice White, which are necessary to support the judgment setting aside petitioners' sentences, stop short of reaching the ultimate question. The actual scope of the Court's ruling, which I take to be embodied in these concurring opinions, is not entirely clear. This much, however, seems apparent: if the legislatures are to continue to authorize capital punishment for some crimes, juries and judges can no longer be permitted to make the sentencing determination in the same manner they have in the past. . . .

The critical factor in the concurring opinions of both Mr. Justice Stewart and Mr. Justice White is the infrequency with which the penalty is imposed. This factor is taken not as evidence of society's abhorrence of capital punishment—the inference that petitioners would have the Court draw—but as the earmark of a deteriorated system of sentencing. It is concluded that petitioners' sentences must be set aside, not because the punishment is impermissibly cruel, but because juries and judges have failed to exercise their sentencing discretion in acceptable fashion. . . .

This novel formulation of Eighth Amendment principles—*albeit* necessary to satisfy the terms of our limited grant of certiorari—does not lie at the heart of these concurring opinions. The decisive grievance of the opinions—not translated into Eighth Amendment terms—is that the present system of discretionary sentencing in capital cases has failed to produce evenhanded justice; the problem is not that too few have been sentenced to die, but that the selection process has followed no rational pattern. . . It is essentially and exclusively a procedural due process argument. . . .

Since the two pivotal concurring opinions turn on the assumption that the punishment of death is now meted out in a random and unpredictable manner, legislative bodies may seek to bring their laws into compliance with the Court's ruling *by providing standards for juries and judges to follow in determining the sentence in capital cases or by more narrowly defining the crimes for which the penalty is to be imposed.* If such standards can be devised or the crimes more meticulously defined, the result cannot be detrimental. (408 U.S. at 396–401) (Emphasis added.)

Mr. President, the "Criminal Justice Codification, Revision, and Reform Act of 1973" has been drafted to meet the legitimate evils identified by the Supreme Court. The arbitrariness and unfairness to the defendant of the traditional single-stage trial can be, in my judgment, avoided by the adoption of the two-stage trial and the articulation of statutory standards for the imposition of capital punishment. Since sections 1–4E1 and 1–4E2 are carefully and rigorously drafted, they will, I believe, withstand constitutional challenge. Nevertheless, it is my intention to examine the implications of Furman and the question of capital punishment in further hearings on the Code.

(3) DRUGS

(a) Present Federal law.—In 1970, the Congress enacted the Comprehensive Drug Abuse Prevention and Control Act (Public Law 91–513). The 1970 Act sets up a complete regulatory scheme together with a series of criminal provisions. Its provisions need not be summarized here, other than to note that it did not decriminalize marijuana, although it did lower its penalty category.

(b) Commission proposal.—While the Congress was processing the 1970 Act, the Commission was simultaneously drafting a comprehensive subchapter on "dangerous, abusable and restricted drugs." (§ 1821, Classification of Drugs; § 1822, Trafficking in Restricted Drugs; § 1824, Possession Offenses; § 1825, Authorization a Defense under sections 1822 to 1824; § 1826, Federal Jurisdiction Over Drug Offenses; § 1827, Suspended Entry of Judgment; and § 1829, Definitions for sections 1821 to 1829.)

The criminal provisions of the new Drug Act and those of the Code proposed by the Brown commission are not substantially different, with the exception of the question of treatment of marijuana.

Proposed section 1824 (Possession Offenses) declares that: "If the drug is marijuana, the offense is an infraction." Under the Code, an infraction "means an offense for which a sentence of imprisonment is not authorized" (section 109[s]). Present Federal Law makes possession of marijuana a misdemeanor, that is, a criminal offense for which a sentence of imprisonment may be imposed). Alternatively, the Commission proposes that a person is guilty of a class A misdemeanor if, "except as authorized by the regulatory law," he knowingly possesses a usable quantity of a dangerous or abusable drug.

(c) Alternatives and arguments.—The Commission's arguments for treating possession of marijuana as an offense, but an offense that would not subject the defendant to imprisonment sanctions, are summarized in the Comment to proposed section 1824:

Available evidence does not demonstrate significant deleterious effects of marijuana in quantities ordinarily consumed; . . . any risks appear to be significantly lower than those attributable to alcoholic beverages; . . . the social cost of criminalizing a substantial segment of otherwise law abiding citizenry is not justified by the, as yet, undemonstrated harm of marijuana use; and . . . jail penalties for use of marijuana jeopardize the credibility and therefore the deterrent value of our drug laws with respect to other, demonstrably harmful drugs. (Final Report at 255)

The alternative Commission draft, which would continue to make marijuana possession a misdemeanor, is supported by the arguments that: (1) there is significant evidence which suggests that at least long-term use of marijuana can have harmful physical consequences; (2) infraction penalties are so minimal, especially since many defendants will be "judgment proof" and unable to pay fines, that the Federal Government will in effect have no control over the possession and use of marijuana; (3) the fact that alcohol is uncontrolled and dangerous does not mean that a second such substance should be uncontrolled; (4) the "social costs of misdemeanor sanctions" can be moderated under proposed section 1827 on suspension of proceedings; (5) the credibility of community disapproval would be undermined by too precipitate a reduction of penalties.

(d) Bill.—The bill makes possession of marijuana a misdemeanor. Section 2X9E1(b)(6). It also follows present law in most other respects.

(4) ENCLAVE JURISDICTION

(a) Present Federal law.—Article I § 8(Cl. 17) of the Constitution gives Congress jurisdiction over "all places purchased by the consent of the Legislature" of a state—the so-called Federal enclaves, including military reservations, parks, national forests and Federal building complexes. Under 18 U.S.C. § 7, the "special maritime and territorial jurisdiction of the United States" is defined to include ships, airplanes and land reserved or acquired for use of the United States, that is, Federal enclaves. Present 18 U.S.C. § 13, the Assimilated Crimes Statute, provides that whoever commits an act subject to federal jurisdiction under § 7 which has not been made a specific crime by Congress but which "would be punishable if committed or omitted within the jurisdiction of the State" where the enclave is located shall be guilty of a similar Federal offense and subjected to the same punishment as is provided by State law. The effect of this constitutional provision and these two Federal statutes is, in large measure, to incorporate by reference state-criminal law in Federal enclaves.

(b) Commission proposal.—The Commission carries over the definition of "special maritime and territorial jurisdiction" as § 210 of the proposed Code. The Commission proposes, however, to modify the Assimilated Crimes provisions to: (1) exempt conduct if "it may be inferred that Congress did not intend to extend penal sanctions to such conduct" and (2) limit the maximum punishment that may be imposed for conduct which Congress has not made criminal to that authorized for a Class A misdemeanor under the Code (1 year imprisonment).

(c) Alternatives and arguments.—The present "Assimilated Crimes" provision means that except for matters of "Federal question jurisdiction," the same criminal law applies in State and Federal courts within the same State whenever the Congress has failed to make the particular conduct criminal. The Commission would limit that similarity in cases where it may be "inferred" that Congress chose not to act rather than failed to act and in all cases it would limit the sanctions to a misdemeanor level.

What the first change means is that if Congress elects to decriminalize or treat differently from State law, abortion, drugs, obscenity, sodomy, or similar issues, Federal enclaves in States which do not follow a similar course of action will, to that degree, end up as "protected havens" or centers for abortion, drugs, obscenity or homosexuals in that State. The implication for abrasive Federal-State relations is obvious.

(d) Bill.—The bill continues the policy of the present law. (§ 1–1A8.) The Federal criminal law should reinforce, not compete, with local and State criminal law.

(5) GUN CONTROL

(a) Present Federal law.—Under present Federal law, there is no general criminal prohibition against the production, possession of, or trafficking in, handguns or other firearms, and there is no general requirement of registration, but there are sections which:

Prohibit the mailing of handguns (18 U.S.C. § 1715);

Prohibit the receipt, possession, transportation in commerce or affecting commerce of firearms other than shotguns and rifles by felons, mental incompetents, veterans who are other than honorably discharged and former citizens who have renounced their citizenship (Public Law 90–351, 197 (1968));

Prohibit the shipping, transporting or receiving of any firearm or ammunition in interstate commerce except as to Fed-

erally licensed importers, manufacturers and dealers. (Public Law 90–618 (1968));

Make it a felony to use a firearm to commit any felony or to carry a firearm during the commission of a felony (18 U.S.C. § 924[c]);

Set tight standards for Federal firearm licenses;

Require that all firearms have serial numbers;

Ban sales of firearms to persons under 18 and persons who are non-residents of the state in which the sale is taking place;

Ban sales of handguns or ammunition to anyone under 21;

Ban importation of firearms except with the approval of the Secretary of the Treasury; and

Make it a crime to possess, receive or transfer a firearm with the intent to use it in crime.

In addition, there is some firearms' legislation outside present title 18: 22 U.S.C. § 1934 (Mutual Security Act); 26 U.S.C. § 5865 (bootlegging); 49 U.S.C., § 1472 (airplane transportation); 36 C.F.R. 31 (possession in National Parks).

(b) Commission proposal.—A majority of the Commission voted to recommend that Congress:

(1) Ban the production and possession of, and trafficking in, handguns, with exceptions only for military, police and similar official activities; and

(2) Require registration of all firearms.

These recommendations were not drafted in legislative form.

The full Commission approved and the Draft Code includes four sections which adapt to the Code the firearms provisions of present law. The sections are:

§ 1811. Supplying Firearms, Ammunition, Destructive Devices or Explosives for Criminal Activity;

§ 1812. Illegal Firearms, Ammunition or Explosive Materials Business;

§ 1813. Trafficking In and Receiving Limited-Use Firearms;

§ 1814. Possession of Explosives and Destructive Devices in Buildings.

(c) Alternatives and arguments.—The arguments pro-and-con for firearms registration or the banning of handguns may be outlined. On one hand arguments have been put forth that the number of violent crimes and accidental homicides would be markedly reduced by the national suppression of handguns, which are peculiarly susceptible to criminal activity or use under the heat of an emotional argument or situation; nationwide registration of all firearms would facilitate tracing a firearm that had been found at the scene of a crime.

On the other hand, it is argued that the suppression of handguns will not reduce the amount of violent crime, since criminals will continue to be able to obtain them just as heroin addicts now appear to be able to continue to obtain narcotics. But law-abiding citizens would be without necessary means of self-defense. Further, national suppression of handguns would be largely unenforceable, and to the extent that an attempt would be made to enforce it, would tend one step more toward the creation of a national police force. In addition, a national gun law would violate basic principles of federalism. States should be free to follow their own policy. New York City and Butte, Mont., need to be treated the same. Gun registration is also opposed on the ground that it is a step toward confiscation of firearms, an end which is undesirable for the reasons sketched above as to handguns.

(d) Bill.—The bill incorporates the four sections on firearms and explosives approved by all of the members of the National Commission, as Sections 2–9D2, 2–9D3, 2–9D4, and 2–9D5. It thus carries forward present law without substantial change. Specifically, it does not adopt the handgun recommendation of the Brown Commission.

(6) MENTAL ILLNESS DEFENSE

(a) Present Federal law.—At present, there is no uniform federal law as to the defense of insanity. Neither Congress nor the Supreme Court has set forth a definitive standard or rule. In the 3d Circuit, for example, the defense is available if the defendant lacked capacity to conform his conduct to the requirements of the law violated, *United States* v. *Currens*, 290 F. 2d 751 (3rd Cir. 1961). In the 2d, 6th, 7th, 9th and 10th Circuits the so-called Model Penal Code formulation is followed: it requires "substantial capacity to appreciate and conform." See Model Penal Codes § 4.01(1) (1962).

(b) Commission proposal.—The Commission recommends the adoption of the insanity defense proposed by the American Law Institute in the Model Penal Code (1962). Proposed § 503 declares that the defendant is not responsible for criminal conduct if at the time "as a result of mental disease or defect he lacks substantial capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law." It is also specifically provided that the sociopath (one with "an abnormality manifested only by repeated criminal or otherwise antisocial conduct") is not a person with a "mental disease or defect" within the meaning of this section.

(c) Alternatives and arguments.—The range of alternatives is wide—from the M'Naghten rule, to the irresistible impulse test, to the various rules in use today in the Federal courts. A number of members of the Commission, for example, preferred the following test:

> Mental disease or mental defect is a defense to a criminal charge only if it negates the culpability required as an element of the offense charged. In any prosecution for an offense, evidence of mental disease or mental defect of the defendant may be admitted whenever it is relevant to negate the culpability required as an element of the offense.

Another possibility is the alternative put forward in the draft of the Model Penal Code, under which the insanity defense is available if the defendant's capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law "is so substantially impaired that he cannot justly be held responsible." Model Penal Code, Tentative Draft No. 4, comment at 27, 157. It is arguable that when a psychiatrist, court or jury makes a decision on whether a defendant is not guilty by reason of insanity what they are really doing is making a moral judgment: was the defendant so deranged that it seems unreasonable or unjust to hold him criminally responsible? If that is so, ask the question directly.

(d) Bill.—The bill adopts with minor language changes, the formulation of the American Law Institute and the National Commission as Section 1–3C2.

(7) OBSCENITY

(a) Present Federal law.—There are five obscenity sections in present Title 18:

18 U.S.C. § 1461 (mailing obscene matter); § 1462 (importation or transportation of obscene matters); § 1463 (mailing indecent matter on wrappers or envelopes); § 1464 (broadcasting obscene language); § 1465 (transportation of obscene matters for sale or distribution).

(b) Commission proposal.—The proposed Code would consolidate the present offenses into one new section (§ 1851—Disseminating Obscene Material). The word "disseminate", defined to mean "sell, lease, advertise, broadcast, exhibit or distribute," makes the consolidation possible. The offense is also committed if the defendant "produces, transports, or sends obscene material with intent that it be disseminated."

The Final Report did not define the term "obscene" or "obscenity". The Commission expressed the view that there is too much constitutional-law confusion and difficulty.

Federal criminal jurisdiction would rest on three bases:

(1) Committed within the special maritime and territorial jurisdiction of the United States;

(2) Use of the mails or a facility in interstate or foreign commerce; and

(3) The property is moved across a State or the boundary of the United States (§§ 201[a], [e], [j].

The crime is a felony (Class C) only if the government can show that "dissemination is carried on in reckless disregard of risk of exposure to children under eighteen or to persons who had no opportunity to avoid exposure." Otherwise, it is a Class A misdemeanor.

(c) Alternatives and arguments. The Commission also offered alternatives:

(1) There should be a defense to prosecution which would effectively legalize the dissemination of obscene materials to adults; alternative § 1851(2)(c) would make it a defense that the dissemination was "carried on in such a manner as, in fact, to minimize risk of exposure to children under eighteen..."

(2) The offense should in all cases be a Class A misdemeanor.

At least one additional alternative was considered by the Commission. It would broaden the definition of obscenity to include violence as well as sex and isolate the evaluative aspects of the present constitutional definition and make them jury questions keyed to local community standards.

(d) Bill.—The bill proposes a strong, consolidated obscenity statute. Section 2–9F5. The section contains a new definition of obscenity which meets, in my judgment, the constitutional requirements laid down by the Supreme Court.

Obscenity would become a jury question keyed to local community standards.

(8) PENTAGON PAPERS

(a) Present Federal law.—Present Federal law treats unlawful dissemination of confidential governmental documents in a number of separate places. In broad outline, present law:

Prohibits the "communication" of national defense information to a person not entitled to it (18 U.S.C. § 793);

Prohibits the "communication" or "publication" of the disposition of the armed forces in time of war (18 U.S.C. § 794(b);

Prohibits the transfer or "publication" of photos of defense installations (18 U.S.C. § 797); and

Prohibits the transfer or "publication" of cryptography or communication of intelligence information (18 U.S.C. § 798).

Other limited provisions are found in other titles of the United States Code. See, e.g., 50 U.S.C. § 783(b) (prohibits any officer or employee of the United States to communicate classified data to a representative of a foreign power or a member of any Communist organization).

See generally the concurring opinion of Mr. Justice White in *New York Times* v. *United States*, 403 U.S. 713, 736–39 (1970).

(b) Commission proposal.—The Commission would basically codify present law into three sections;

Mishandling National Security Information (§ 1113);

Misuse of Classified Communications Information (§ 1114); and

Communication of Classified Information by Public Servant or a Former Public Servant (§ 1115).

The proposed section 1113 would probably not extend to "publication." Proposed § 1115 would explicitly extend to "publication." Proposed § 1115 would probably not extend to "publication," unless it was shown to be a means of communication with a foreign power or a communist. The Commission, according to the comments to § 1115, considered and rejected broader prohibition of "communication" or "publication" of classified information.

(c) Alternative and arguments.—Testimony was taken before the Subcommittee which showed that there are honest and deeply held differences of opinion not only on what the law is, but what it ought to be. The basic alternative to present law or the Commission proposal is a broader prohibition. The argument for it is in essence the Government's underlying position in the New York Times case; the national security interest demands, if not prior restraint, at least subsequent prosecution. The contrary argument is essentially that of Mr. Justice Black. The First Amendment means "no law"—period. The contrary argument, by the same token, also calls into question the possible scope of present law.

However these provisions are drafted in this bill—it attempts no more than a restatement of present law—I know that my cosponsors and I will want to look into this question further as legislative hearings progress.

(d) Bill.—The bill attempts to maintain current law. (See Section 2–5B8 and the definitions "communications Information" and "national defense information" in section 2–5A1.) This is done only to serve as a starting point for further discussion.

(9) SODOMY

(a) Present Federal law.—There are at present no Federal criminal statutes in the "sex crimes" area, except for rape and "statutory rape." Homosexual conduct in a Federal enclave is subject to the law of the State, under the Assimilated Crimes Act.

(b) Commission proposal.—The Commission drafted a complete set of sex-crimes provisions (§§ 1641–1650), but the list does not include a section on Sodomy, that is, deviated sexual intercourse between adults. High penalties are imposed for homosexual rape (§1643—Aggravated involuntary Sodomy) and "statutory" homosexual rape (§ 1644—Involuntary Sodomy), but consensual conduct between adults is not made criminal. According to II Working Papers 872: "Private acts of sexual deviation between consenting adults (except for defined situations where unfair advantage is taken) are not declared criminal under these proposed provisions."

(c) Alternatives and arguments.—The argument that the government should not concern itself with sexual activity by adults has been stated elsewhere. It need not be repeated here.

The Commission also argued the need for a general Federal rule in these terms: "Given the frequency and necessity of travel by Federal personnel and others from one Federal enclave to another, in a different part of the country, it might be well to formulate once more a complete set of statutes on sex crimes, rather than subject persons to very different criminal laws as they enter new Federal enclaves." III Working Papers, 868. As noted above, the problem with this approach to the formulation of the law consensual homosexual conduct and Assimilated Crimes is that Federal enclaves could become centers or havens for homosexuals seeking refuge from State laws.

(d) Bill.—The bill incorporates sodomy by force (which is homosexual rape) into section 2–7E1, Rape. Sodomy which involves taking advantage of another's incapacity or youthful age or which involves abuse of position or use of fraud is incorporated in section 2–7E2, Statutory Rape. Otherwise, the bill would incorporate State law and its penalty structure by reference.

(10) STANDARDS VERSUS RULES: TREATMENT OF DEFENSE OF PERSON AND PROPERTY

(a) Present Federal law.—The present Federal law on self-defense, defense of others, defense of property and premises, use of force, use of deadly force, and crime prevention is case law.[(See e.g., *Brown* v. *United States*, 256 U.S. 335, 343 (1921) (Use of force to repel knife attack) ("Detached reflection cannot be expected in the presence of an uplifted knife").]

(b) Commission proposal.—The Commission proposed that the rules on justification and excuse be codified as detailed precepts "so that Congress may correct some unfortunate rules of the uncodified law, as well as settle some questions which are cloudy in existing law." I Working Papers 261. The Commission drafted detailed and specific rules: § 603 (Self-Defense); § 604 (Defense of Others); § 605 (Use of Force by Persons with Parental, Custodial or Similar Responsibilities); § 606 (Use of Force in Defense of Premises and Property); and § 607 (Limits on the Use of Force; Excessive Force; Deadly Force).

(c) Alternative and arguments.—As voiced in testimony before the Subcommittee, a principal concern about the "defense" sections in the Draft Code is that they are so specific and detailed as to be unworkable, and they would virtually foreclose further case-by-case development by the judiciary in areas that have traditionally been viewed as judicial. Moreover, it is arguable that nationwide rules may not be equally appropriate in all areas of the country. For example, it is necessary that the rules on retreating or not retreating before using deadly force be the same in New York City and rural Texas?

These arguments are well stated by a European authority in an essay comparing the Study Draft of the Proposed Federal Criminal Code with European Penal Codes:

> One cannot but be struck by the difference in drafting techniques between European Codes and the Study Draft on this subject. European Codes tend to deal with the subject in short provisions in general terms, whereas the Study Draft has very detailed provisions, dealing separately with . . . [these questions]. The provisions of the German Code . . . on self-defense (including defense of others and defense of property), consists of thirty words only. . . . I note these differences without drawing any conclusions. For the person engaged in defense of himself or others I do not think a detailed statutory regulation gives more guidance than a provision framed in general terms, leaving more to sound judgment and common sense. (III Working Papers 460 (Professor Andaneas).)

Similar observations were offered at the 1971 Hearings of the Subcommittee by the former director of the Connecticut criminal code revision project: "The new Federal Code attempts to cover the field. We . . . were somewhat more modest . . . for two reasons. First, we had the realization that if we tried to cover the field we may have left something out. The second was that we felt that we were not omnipotent in our wisdom. We felt that this body of law had always been developed by the case method, that there should be some room left for judicial flexibility and ingenuity." (Hearings, Pt. II, p. 577.) This argument for the use of standards rather than rules reflects the approach of Dean Pound (II Jurisprudence, pp. 124–28 (1959). ("Note the element of fairness or reasonableness in standards. This is a source of difficulty. As has been said, there is no precept defining what is reasonable and it would not be reasonable to attempt to formulate one.")

On the other hand, detailed rules such as the proposed Code of the Brown Commission recommends, might reduce the amount of appellate court litigation on jury instructions, or they might make it easier to reform what the Commission calls the "chaotic" state of Federal law

on these subjects. The probability that detailed rules once enacted into law will become "frozen" could well be termed the lesser of two evils.

(d) *Bill.*—An effort has been made to draft the defenses in terms of general standards which can be applied, construed, and developed by the courts consistent with present case law rather than to lay down a detailed book of rules which would be difficult to amend. (See Section 1–3C4.)

IV. SIGNIFICANT FEATURES

In addition to these major policy questions, I should like to highlight several other features of the bill, which are new to Federal criminal law.

West Germany and the Scandanavian countries have an ingenious system of criminal fines, generally known as the "day-fine" system. Under it, the sentencing judge fines the convicted defendant for a period of time consistent with the seriousness and nature of the offense committed. Once the duration of the fine is set (e.g., 120 days), a daily fine is fixed based upon the defendant's ability to pay. The total amount due in penalty is the number of days times the daily amount. This method, which is introduced in section 1–4C1, will give Federal judges greater flexibility in imposing fines that reflect both the nature and character of the offense and the capacity of the offender or his ability to pay.

I am looking forward to testing the viability of this concept in the coming legislative hearings.

The fine as a sanction for violation of Federal criminal law today may not be as effective as it could be as a sanction, except as to corporation defendants. The reason, of course, is that many fines are never collected. The bill contains a provision (section 3–10A4) which would turn over the responsibility for collecting and enforcing fines levied by Federal courts to the Internal Revenue Service. Fines would also be treated in the same way as tax liens.

I am also looking forward to testing this idea in the hearings we will hold on this measure.

The United States Board of Parole is at present deluged with 17,000 cases per year to be decided by a single board. Dissatisfaction with the parole system is widespread. Many have come to recognize that reform in this area is overdue. In this connection, the Subcommittee has attempted to work closely with the Board of Parole itself and the Subcommittee on National Penitentiaries, which is chaired by the distinguished Senator from North Dakota (Mr. BURDICK). The measure which we have introduced incorporates major features of Senator Burdick's bill, S. 3993 of the 92d Congress, which was designed to create a system of regional parole boards. (Section 3–12F1.)

I am looking forward to working out these ideas as we proceed.

The monumental task begun by the National Commission, and which now faces the Congress, is a task that requires constant and diligent study. There is a need, in my judgment, for a permanent body to oversee the operation of the Federal Criminal Code, once it goes into effect, and to make recommendations for improvement from time to time. The bill proposes the creation of a "Criminal Law Reform Commission" to do just that. Sections 3–13C1 through 3–13C6).

V. CONCLUSIONS

Mr. President, all history teaches us that civilized society presupposes peace and good order, security of social institutions, security of general morals and the conservation and intelligent use of social resources. At the same time, it teaches us that, to maintain a civilized society, government must protect individual initiative, which is the basis of social and economic progress; government must protect and preserve freedom of criticism, which is necessary for political progress; and government must maintain unrestricted intellectual activity, which is a prerequisite to cultural development, diversity and individuality. Above all, history demands that government insure that each citizen be able to live a material, moral and social life as a respected human being.

Dean Roscoe Pound has reminded us that in many periods of history these various demands on the law have been seen as opposed to one another. (R. Pound, Criminal Justice in the American City, 18–19 (1922). He observed:

For historical reasons this difficulty has taken the form of a condition of internal opposition in criminal law . . . As a result, there has been a continual movement back and forth between an extreme solicitude for general security, leading to a minimum of regard for the individual accused . . . and at the other extreme excessive solicitude for the . . . individual . . . , leading to a minimum of regard for the general security . . . (*Id.* at 19.)

Mr. President, in my judgment, we are today just beginning to move out of one such period of extreme solicitude for the accused individual. Our criminal law and procedures today tip the scale too far away from the best interests and the full protection of society. In making this turn, however, two difficulties confront us. On the one hand, there are those who will resist any change that would make the administration of justice more effective. To them I would cite the wisdom of Edmund Burke, who remarked to the House of Commons on the issue of electoral reform in 1780:

Consider the wisdom of a timely reform. Early reformations are amicable arrangements with a friend in power; late reformations are terms imposed upon a conquered enemy; early reformations are made in cool blood; late reformations are made under a state of inflammation. In that state of things the people behold in government nothing that is respectable. They see the abuse, and they will see nothing else. They fall into the temper of a furious populace provoked at the disorder of a house of ill fame; they never attempt to correct or regulate; they go to work by the shortest way; they abate the nuisance, they pull down the house. (*Edmund Burke: Selected Writings and Speeches*, 278 (1963, P. Stanlis ed.)

Our people today are restless with the administration of Justice, Federal and State. Reform is now timely. If we delay reform too long, we run the real risk that the price of delayed reform may be that the framework of civil liberty and federalism embodied in our Constitution and Bill of Rights will be condemned and demolished by those seeking to achieve only efficiency in the operation of our system of criminal justice. We cannot permit that to happen.

Mr. President, we must recognize that there are those who would adopt any change that might promise relief from the ills that beset our system of criminal justice. Expediency, not sound judgment, is all that seems to occupy their minds. To them I would recall the words of Dean Pound:

[I]n criminal law, as everywhere else in law, the problem is one of compromise; of balancing conflicting interests and of securing as much as may be with the least sacrifice to other interests. (R. Pound, *Criminal Justice in the American City*, 18 (1922).)

In my judgment, however, we can enact a new Code without sacrificing either our liberty or our security. The task will not be easy; the road will be hard. But with a spirit of good will, compromise, and cooperation on the part of all, it can be done.

I, for one, welcome the challenge.

Mr. President, I ask unanimous consent to have printed in the RECORD at this point the following exhibits:

(1) A section-by-section highlight of the proposed Code.

(2) A series of comparison tables between present title 18, the recommendations of the Brown Commission and the proposed Code.

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

EXHIBIT I

SECTION-BY-SECTION HIGHLIGHTS

Part I—General part

§ 1–A1. Title

The present Title 18 is entitled "Crimes and Criminal Procedure." In the years following enactment of the Act of June 29, 1940, c. 445, 54 Stat. 688, authorizing the Supreme Court of the United States to promulgate rules of criminal procedure, most of the procedural sections of Title 18 have become rules of court. The remaining procedural sections will now be transferred to the Rules and the new proposed title is "Federal Criminal Code." The word Code indicates that it is the intent that this be an integrated, systematic, and consistent body of law covering general principles (Part I), specific offenses (Part II), and administration (Part III). The word Criminal is used to mean all segments of the criminal justice system of the government of the United States: law enforcement, courts, and corrections.

§ 1–A2. General Purposes

This section sets forth the basic focus and purposes of the Code, with the understanding that its provisions will be construed by the courts to achieve these objectives. These objectives recognize the multi-purpose and inclusive character of any modern code. See, e.g., J. Hall, *Science, Common Sense and Criminal Law Reform* pp. 21–22. 1963 (John F. Murray Endowment Lecture). They also make it explicit that its objectives must be sought "in the context of a federal system." Finally, the value system the code embodies is qualified as "public" to distinguish it clearly from "private" values not shared by all or felt not to be a matter for political action, i.e., religion under the first amendment.

§ 1–AA. Principle of Legality; Rule of Construction

The basic principle of legality, that a person sought not to be found guilty unless his conduct and its accompanying culpability is contrary to law, is declared in a number of

foreign criminal codes. The principle is included so that there may be no question but that it is part of the Code. See generally J. Hall, *General Principles of Criminal Law* pp. 27–69 (1960).

This section also makes it explicit that each provision shall be "construed . . . as a whole according to the fair import of its terms." It is impossible in drafting to cover literally all conceivable applications of the law, and efforts to do so in the past have created a maze of criminal statutes unintelligible and indecipherable. "Fair import" construction permits the Code to be intelligible, while protecting the public against those who would seek to exploit unintended gaps in the law.

§ 1–1A4. General Definitions

Words and phrases that are used in more than one chapter of the Code and for which a statutory definition is necessary or desirable are defined in this section. Generally, when a word or phrase is used in only one chapter, it is defined in the first section in that chapter; when a word or phrase that needs definition is used only in one or two sections, it is there defined.

Comments concerning the specific definitions in this section will be found in the comment and analysis of the section in which the term or phrase has its principal use, unless it is essentially self-explanatory.

§ 1–1A5. Classification of Offenses

This section established seven categories for all offenses in Federal penal law. It has been estimated that there are 65 to 75 categories in the present United States Code. [Comment to § 3002. Final Report, p. 227].

Under this classificatory system, there are five grades of felonies. The lowest, the Class E felony, subjects the convicted defendant to a potential imprisonment of up to one year. § 1–4B1(c). The Class D felony carries a maximum prison term of 3 years in the ordinary situation or 6 years if the defendant is a dangerous special offender. §§ 1–4B1(b), (a), 1–4B2. The Class C felony carries a maximum prison term of 5 years in the ordinary situation or 10 years if the defendant is a dangerous special offender. The Class B felony carries a maximum prison term of 10 years or 20 years if the defendant is a dangerous special offender. The Class A felony carries a maximum prison term of 20 years or 30 years if the defendant is a dangerous special offender; certain Class A felonies, however, may subject the convicted defendant to a sentence of death. The misdemeanor, which is not subdivided into classes, carries a maximum prison term of 6 months, a change from present law (18 U.S.C. § 1 (less than 1 year)); prosecutions for misdemeanor offenses may be brought before a magistrate and there is no constitutional requirement that there be a jury trial. *Duncan* v. *Louisiana*, 391 U.S. 145 (1968). The violation carries a maximum prison term of 30 days § 1–4B1(c).

In addition to the 7-grade, felony, misdemeanor, violation classification system, the Code employs a concept termed "compound offense," in conjunction with certain of the specific offenses in Part II, for example, under the armed robbery section, if one of the designated "compound offenses" is committed "as an integral part of, including immediate flight from, the commission" of a bank robbery, the defendant may be tried and convicted in Federal court of the compound offense. (§ 2–8D1). In that situation, if the defendant murders a guard, for example, he may be prosecuted for robbery-murder in the course of the same proceeding and convicted if all of the elements of the offense of murder (§ 2–7B1) or all of the elements of a lesser included offense to murder (§ 2–7B1(b)) are proved by the government. Upon conviction, according to the subsection on "compound grading" to the section on armed robbery (§ 2–8D1), the defendant may be convicted of a Class A felony. Absent this compound offense, armed robbery is punishable only as a Class B felony. Note, too, that in such an "armed robbery-murder" prosecution if murder were not shown, armed robbery would be lesser included offense to "armed robbery-murder," since it would be a "lesser grade" of the same offense. See § 1–1A4(38).

§ 1–1A6. Territorial Jurisdiction

Since the general provisions (Part I) are intended to apply in all Federal prosecutions, the exceptions, if any will be stated explicitly.

Subsection (d) contemplates a situation in which the offense charged has a jurisdictional base which an included offense does not have.

Subsection (e) establishes the rules for jurisdiction over the offenses of criminal attempt, criminal solicitation and criminal conspiracy.

Subsection (f) provides for jurisdiction over a compound offense.

Subsection (g) sets forth as a rule of general applicability that the existence of Federal criminal jurisdiction shall not, "prevent any state or local government from exercising jurisdiction to enforce its own laws applicable to the conduct in question." Where preemption is intended, it is stated explicitly.

§ 1–1A7. Extraterritorial Jurisdiction

Hitherto the United States has declined to assert the full international criminal jurisdiction permitted to it as a sovereign nation under international law.

This section is intended to remedy that omission and assert extraterritorial applicability of the Code to the full extent, consistently with the law and jurisprudence of other nations. [See Hearings, Part III–C.]

§ 1–1A8. Assimilated Offenses

This section substantially continues the policy expressed in present 18 U.S.C. § 13, the Assimilated Crimes Act.

The section does not accept the proposal of the National Commission [§ 209, Final Report p. 23] which would assimilate state offenses committed in Federal enclaves but would reduce the authorized sentence for such offenses if greater than 1 year imprisonment to no more than 1 year imprisonment regardless of the authorized sentence under state law and which would decriminalize or immunize conduct in Federal enclaves "if, having regard to federal legislation as to the conduct constituting the type of offense and the failure of Congress to penalize the specific conduct in question, it may be inferred that Congress did not intend to extend penal sanctions to such conduct."

The position adopted appears best suited to the encouragement of harmonious federal-state relations in the criminal justice field. [See generally Report of the Interdepartmental Committee for the Study of Jurisdiction over Federal Areas Within the State. Jurisdiction over Federal Areas Within the States, Part I (1956).]

§ 1–2A1. Culpability

This section defines the kinds of *mens rea* or culpability for Federal offense in the code and elsewhere and it sets forth general rules governing the requirement of culpability.

Subsection (a) defines 'culpably' in terms of the four possible culpable mental states recognized and sets forth the four states of mind. "Intentionally" imports purpose or objective. "Knowingly" means the person "is aware of the quality of his conduct" without such conduct necessarily being his "conscious objective," as is the case with intentionally. "Recklessly" requires awareness of and disregard of a risk: the "gross deviation" phrase makes clear that the meaning of recklessness in the Code is not the same as recklessness in the law of torts. "Criminal negligence", by contrast with recklessness, involves simply a failure to be aware of a risk, although that failure must likewise involve a "gross deviation" from the standard of care that a reasonable person would observe in his situation.

Subsection (b) requires proof of the relevant culpability requirement in each prosecution, subject to exceptions, as to each "element of the offense." The phrase "statute or section" is included to make clear the application of these provisions both inside and outside the Code. "Element of an offense" is defined in § 1–1A4(23) to mean "as specified in the definition of the offense or its grading, (i) the conduit, (ii) the attendant circumstances, (iii) the culpability, and (iv) the result." Grading factors and jurisdiction are not included in the definition and hence to do not require culpability. Culpability must be established as to each of the elements unless "the statute provides that a person may be guilty without culpability as to those elements", the section declares that the offense is "a violation", or "on intent to impose liability without culpability as to those elements is otherwise present.

Subsection (c) emphasizes that culpability is not required as to a fact which is a basis for Federal jurisdiction or grading, as to an element "as to which it is expressly stated that it must 'in fact' exist", or as, outside the Code, to the legal result that the conduct constitutes an offense or is prohibited by law. The latter obviates any contention that the defendant must know that his conduct is criminal. Subsection (d) provides that if the culpability required is intentionally or knowingly it is sufficient to prove that the defendant acted recklessly as to an attendant circumstance. Also, a lower kind of culpability includes all higher kinds.

The simplier scheme of culpability here proposed responds to hearing testimony that expressed dissatisfaction with the Brown Commission's recommendations.

§ 1–2A2. Causal Relationship Between Conduct and Result

This section, by only stating a "but for" requirement for causation, leaves the matter of causation largely to judicial development in terms of the culpability requirement. Once "but for" is established, liability follows *mens rea*.

In foreign countries, legislatures have normally refrained from attempting to define the causal relation. [Hearings, Part III–C.] "When questions of causation arise they will most often be questions of a factual nature, pertaining to the competence of the expert. But, although infrequent in practice, the legal questions may be very complex and not easily solved through one short formula." [Andenaes, "Comment Comparing Study Draft of Proposed New Federal Criminal Code to European Penal Code," III Working Papers 1456. (1971)] In testimony prepared for the Subcommittee on Criminal Laws and Procedures, the Association of the Bar of the City of New York advised against any attempt to codify the law of causation: "The problem of instructing a jury under this type of language [commission draft § 305] may be formidable for trial judges. We believe that this is matter best left to judicial development, and that codification should not be attempted."

§ 1–2A3. Criminal Solicitation

A number of statutes in present Title 18 provide criminal penalties for soliciting the commission of substantive offenses, there is no general prohibition against solicitation. This section, which applies to all the offenses in the Special Part of the Code except as otherwise provided, makes such specific references unnecessary.

The section makes it explicit that it is not possible to "attempt" a "solicitation". Completed solicitation is as far back into inchoate criminality as the Code reaches. If the person solocited agrees and conduct is com-

mitted, the person may be guilty under the section on criminal attempt (§ 1–2A4) or criminal conspiracy (§ 1–2A5).

This section penalizes the solicitation whether or not the person solicited agreed or acted where the conduct solicited in fact constitutes a crime. (Under § 1–1A4(16) "crime" means a misdemeanor or a felony; the broader term, "offense" includes a violation as well—§ 1–1A4(47)).

§ 1–2A4. Criminal Attempt

This section establishes a general provision on attempt which is applicable to every federal crime, except as specifically excluded in the section on a specific offense [e.g. § 2–8D5, Scheme to Defraud]. This section eliminates the need for special attempt statutes (sections) or subsections in the Special Part, the approach used in present Title 18 [e.g. 18 U.S.C. § 1113. Attempt to commit murder or manslaughter].

This section would deal uniformly with questions of renunciation, impossibility, corroboration, penalty, incapacity. It sets standards for intent and conduct, and follows the example of the Model Penal Code (M.P.C. § 5.01(2)) in giving illustrations of conduct which may be sufficiently corroborative of a person's intent to engage in prohibited conduct to constitute a "substantial step" for purposes of criminal attempt.

As in solicitation above, it makes it explicit that it is not possible to "solicit" an "attempt."

§ 1–2A5. Criminal Conspiracy

This section codifies, neither expanding nor contracting, the present Federal law on conspiracy in the form of a general statute applicable to all Special Part offenses, except where specifically excluded. This attempt to restrict the offense of conspiracy in the National Commission draft (§ 1004) could have, according to testimony before the subcommittee, a deleterious consequence on law enforcement in the organized crime, and antitrust fields and does not appear justified.

"Attempt to conspire" is expressly excluded. Solicitation to conspire would be permitted.

§ 1–2A6. Complicity

This section basically restates present 18 U.S.C. § 2, with changes to codify case law. Subsection (a)(3) codifies the doctrine of *Pinkerton v. United States*, 328 U.S. 640 (1946), making a co-conspirator guilty of each specific offense committed in furtherance of the criminal conspiracy and as a reasonably foreseeable consequence of the conspiracy.

The proposal of the Commission to create a separate offense of Criminal Facilitation (FR § 1002) has not been accepted. If a person engages in conduct which aids another person to commit an offense, with knowledge that conduct constituting, in fact, an offense was to be committed, the person is in complicity under this section and may be found guilty of the offense.

§ 1–2A7. Organization Criminal Liability

This section sets forth those circumstances under which an organization (defined in § 1–1A4(51)) may be criminally liable for offenses committed by its agents. It restates present law. The suggestions of the commission both to narrow the scope of present law and impose liability, under the alternative draft formulation, based on a standard of "reckless toleration" (§ 402), have been rejected. Both received sharp criticism in the Hearings. The Commission draft on this point, § 402, was also restricted to 'corporate" criminal liability. Organizations and organized in the corporate form, such as business trusts or labor unions, should be criminally liable to the same extent as the corporation.

The fact that the organization cannot, upon conviction, be sentenced to imprisonment because of its nature should not lead to an exemption of organizations from criminal liability since other sanctions may be quite as efficacious as a deterrent and to promote rehabilitation.

§ 1–2A8. Personal Criminal Liability for Conduct on Behalf of Organization

This section is the converse of § 1–2A7. It deals with the criminal liability of agents of an organization and makes explicit that the human perpetrator is not absolved from guilt by the fact that an organization is criminally liable for the offense.

§ 1–3A1. General Principles

Chapter 3 partially codifies the general bars to prosecution and defenses to criminal liability.

Subsection (a) indicates that where a particular defense is codified, that provision controls. For example, a court would not be free to use its own definition of the insanity defense as well as that set out in the code.

Subsection (b), which states that the defenses in this chapter "are not exclusive," is intended to make clear that it is not the intent of Congress to foreclose through the codification further judicial development of other defenses to criminal liability.

Subsection (c) declares that the defenses in this chapter are available to a Federal public servant [public servant is defined in § 1–104(58)] or a person acting at his direction based "on acts performed in the course of the public servant's official duties, under sections 1–3C3 (Execution of Public Duty) and 1–3C4 (Defense of Person, Property or Prevention of Criminal Conduct". It is intended that these defenses should be available to public servants in any criminal proceeding, not merely in a Federal prosecution. Other defenses, such as "insanity" would, of course, continue to be defined by local law.

§ 1–3B1. Time Limitations

Subsection (b) of this section derives from present 18 U.S.C. § 3281.

Subsection (c) of this section derives from present 18 U.S.C. §§ 3282, 3283, 3284, 3286, 3291.

Subsection (d) of this section derives from present 18 U.S.C. §§ 3288, 3289.

Subsection (e) of this section derives from present 18 U.S.C. § 3290.

Subsection (h) of this section derives from present 18 U.S.C. § 3287.

Subsection (i) of this section derives from present 18 U.S.C. §§ 3284, 3285.

Provisions of the Brown Commission draft calling for special limitations applicable after special hearings have been rejected because of sharing criticism in the hearings. It was felt that they would be too complex and time consuming to be workable.

§ 1–3B2. Entrapment

Entrapment as a bar to prosecution is here reduced to statutory form for the first time. As a bar to prosecution, entrapment must be determined by the court prior to trial. The need for the section is obvious: under no rationale of the criminal law is it proper for the police to encourage the commission of crimes that would not otherwise be committed in order thereby to make arrests and obtain convictions.

§ 1–3B3. Immaturity

This section codifies present Federal practice which escews prosecution as adults of persons less than 16 years of age at the time of commission of the prohibited conduct. For the Code provisions on juvenile delinquency see Subchapter B of Chapter 13, sections 3–13B1 through 3–13B7.

Since immaturity, is a bar to prosecution, the government need not introduce any evidence as to defendants age unless the issue has been raised.

§ 1–3C1. Intoxication

This section is not strictly necessary, since any factor, condition, or state which negates an element of an offense (as defined in § 1–1A4(23)) defeats the prosecution, which has the burden of proof. If the defendant is an alcoholic but his condition does not negate an element of the offense, the court upon sentencing may take his condition into account and sentence him to a treatment facility rather than a prison or order him placed on probation on condition that he undergo treatment for the disease. See §§ 1–4A1(c), 1–4D2(b)(3) and (13), 3–12C2(c).

§ 1–3C2. Mental Illness or Defect

At present there is no Federal statute on the defense of insanity. The defense has been defined by decisional law which varies from circuit to circuit.

This section establishes a uniform Federal position on the circumstances when mental illness or defect is a defense. The test employed is a variation of the Penal Code test [Model Penal Code § 4.01].

§ 1–3C3. Execution of Public Duty

Subsection (a) is a general provision which incorporates many Federal laws, which permit public servants to act in certain ways in the execution of their official duties. Under this provision, for example, it would be a defense to a charge of theft that the defendant was a marshall levying execution on a shipment of goods in interstate commerce. Wiretapping under court order would also be excluded from the prohibition against the interception of private communications. Other illustrations could be multiplied.

Subsection (b) protects the ordinary citizen who responds to a specific request for assistance from a public servant, except where the citizen "acts in reckless disregard of the risk that the conduct was not required or authorized by law."

§ 1–3C4. Defense of Person, Property or Prevention of Criminal Conduct

This section, in contrast with proposed sections 603, 604, 605, 606, and 607 of the draft prepared by the Brown Commission, sets standards but does not attempt to define detailed rules for the defenses of self-defense, defense of others, defense of property, crime prevention, use of force, and use of deadly force. "For the person engaged in defense of himself or others . . . a detailed statutory regulation [probably does not] give any more guidance than a provision framed in general terms, leaving more to sound judgment and common sense." [Andenaes, III Working Papers at 1460] In general, foreign criminal codes do not attempt to prescribe detailed rules of permitted behavior for emergency situations such as self-defense and defense of others. In testimony prepared for the Subcommittee on Criminal Laws and Procedures, the Special Committee on the Proposed New Federal Criminal Law of the Association of the Bar of the City of New York declared:

"Our analysis of these provisions leads us to the conclusion that these defenses are not a subject appropriate for codification . . . The defenses themselves, as they have developed through decisional law, have many nuances and are in a constant process of development. We believe that any effort to freeze them in statutory language will lead to ambiguity and confusion and impede the process of adaptation and change necessary in this field." (Report, p. 15)

The basic standard under the proposed code for conduct in defense of person, property or otherwise is that such conduct be believed in "good faith" to be "necessary" and to be "reasonable". The "good faith" element means it must be a real belief honestly held, although the belief need not be one that a reasonable man would have under the circumstances. The "reasonableness" element

qualifies the conduct objectivity in light of the good faith subjective belief. In addition, the use of force must always be "proportionate." Deadly force should not, for example, be employed to prevent the theft of a chicken. Finally, provision is made to excuse "understandable" mistakes based on "fear" and a "reasonable man" test. See § 608(2) of the final report; *Brown* v. *United States*, 256 U.S. 335 (1921). Force may also be used where reasonable care is exercised in its use and the defendant stands in an enumerated special relation to the other person.

§ 1–3C5. Ignorance or Mistake of Fact

Strictly speaking, this section states only a truism. It is included for purposes of clarity. It permits a defense of mistake of fact in two situations: where a good faith mistake "negates the kind of culpability required for commission of the offense" or where the defendant believes that his conduct is "necessary" for any of the purposes which would establish any other defense to criminal liability specified in Chapter 3 of the Code.

As above the mistake must be in "good faith," i.e., honest; it need not be "reasonable."

§ 1–3C6 Ignorance or Mistake of Law

Subsection (a) provides a limited defense of mistake of law where a good faith mistake "negates the kind of culpability required for commission of the offense." Once again, this subsection is technically not necessary in view of the requirement that:

"No person may be convicted of an offense unless each element of the offense is proved beyond a reasonable doubt." Federal Rules of Criminal Procedure. Rule 25.1(a).

If an element of the offense such as culpability is negated, the prosecution fails. This would be the case under present law, for example, in the tax field. See e.g., *United States* v. *Murdock*, 290 U.S. 389 (1933). The subsection is included, however, for purposes of clarity.

Subsection (b) provides a somewhat broader defense of mistake of law but only as an affirmative defense. Here the defense is available, even though knowledge of the legal norm is not required as an element of the definition of the offense. An affirmative dedense is one which "must be proved by the defendant by a preponderance of evidence". Rules, Rules 25.1(g). It is a defense, if established affirmatively, that the defendant in essence acted in conformity with an "official statement of the law afterward determined to be invalid or erroneous." Reliance upon the opinion of an attorney is not sufficient to give rise to a defense of mistake of law.

§ 1–3C7. Duress

This section excuses from criminal liability conduct which is engaged in because of certain compelling circumstances which would have caused a person of reasonable firmness in the defendant's situation to succumb. The defense is, however, an affirmative defense, and under subsection (b) it is not a defense to intentional or knowing homicide, and it is not a defense if the person recklessly or criminally negligently placed himself in a situation in which it was reasonably probable that he would be subjected to duress.

§ 1–3C8. Consent

Subsection (a) provides that there is a defense if a person's consent to the defendant's conduct negates an element of the offense. Again, this provision only states a truism.

Subsection (b) specifies situations such as lawful sports events, where consent to bodily injury is a defense.

Subsection (c) provides four situations in which consent is not a defense, notwithstanding the general language of subsection (a). These are situations where the law declares the consent to be ineffective or void as a matter of policy.

§ 1–4A1. Authorized Sentences

This section provides a comprehensive list of the alternative dispositions which may be imposed by a sentencing judge upon the conviction of a defendant. Most of the options are the subject of one or more specific sections in the chapter, so this section is primarily a 'check list' or introductory guide. The thrust of the sentencing chapter is to maximize the discretion of Federal judges upon conviction, consistent with the general purposes of the Code enunciated in section 1–102.

Forfeitures (§§ 1–4A4, 3–13A2) and civil damages to person or property by reason of a criminal violation of the Code (§ 3–13A2) are not included in the list in subsection (c). Option (c)(6) continues the split-sentence or shock probation sentence now authorized in present 18 U.S.C. § 3651 and (c)(8) authorizes the sentencing judge to require the offender to give notice of his conviction.

Subsection (a) provides that "every person" (defined in § 1–1A4(52) to include a legal person as well as a human being) who is convicted of an offense against the United States, not just persons convicted of specific offenses in the Code, shall be sentenced in accordance with Chapter 4. In addition, the imposition of a sentence must be accompanied by "an appropriate" statement of facts and reasons. Simple cases need only have short findings and reasons appear in the record. More complex cases might require more detail.

§ 1–4A2. Resentence

This section follows *North Carolina v. Pearce*, 395 U.S. 711 (1969), which permits a sentencing court to impose a higher sentence on remand or reconviction. A requirement for a statement of reasons appears in § 1–4A1, supra.

§ 1–4A3. Disqualification

This section provides uniform treatment for cases in which a criminal conviction should carry the forfeiture of or disqualification from office or employment, or other disability under the code.

Use of the sanction of disqualification rests in the discretion of the court. Under subsection (a), the court "may" order the offender, if he is a Federal public servant, disqualified for a period not in excess of the authorized term. Whether the "authorized term" extends to the upper range would depend on a dangerous special offender finding. Under subsection (b), the court "may" order the offender, if he is an "executive officer or other agent of an organization or a member of a licensed profession", disqualified for a similar term from exercising similar functions in the same or other organizations, from practicing his profession, or from practicing his profession except under specified conditions.

Subsection (c) authorizes the court to terminate any disqualification or disability "for good cause" at any time after sentence.

Subsection (d) limits judicial discretion by mandating that any disability or other disqualification "be suitable and reasonably related to the nature of the offense of which the person is convicted." "Suitability" is a concept now employed by the Civil Service Commission.

Subsection (e) preserves the existing jurisdiction of some of the regulatory agencies to oversee, for example, bank employees. It is included out of caution, since this jurisdiction would probably continue without this subsection.

§ 1–4A4. Criminal Forfeiture

This section brings together all the necessary provisions—jurisdiction, and procedure—under which an offender may be ordered to forfeit property "tangible or intangible, real or personal, including money" to the United States. This is distinct from civil forfeiture under § 3–13A2, which requires a separate civil proceeding. It reflects current law, 18 U.S.C. § 1963 et seq.

§ 1–4A5. Joint Sentence

This section avoids the difficulties involved in deciding, in cases involving multiple offenses, whether to impose consecutive or concurrent terms of imprisonment, by introducing into American criminal jurisprudence the continental code concept of the joint sentence for multiple offenses. [See Hearings, Part III–C.] The joint sentence "may" no longer than the maximum term of imprisonment or fine authorized for any one of the offenses but shall not exceed 75 percent of the combined total for all the offenses.

§ 1–4B1. Sentence of Imprisonment

In place of the 16 different maximum terms of imprisonment found in present Title 18, this section authorizes seven. Each offense is allocated to one or another of the classes.

With respect to the four upper grades of felonies, the sentencing judge may impose sentences in the upper ranges of the authorized maximum only in accordance with section 1–4B2 and Rule 32.2 of the Rules of Criminal Procedure. This follows current law, 18 U.S.C. § 3575.

Subsection (d) provides that the Bureau of Corrections (at present, the Bureau of Prisons; name changed by § 3–12C1(a)) shall determine the place of confinement at which a sentence of imprisonment shall be served.

§ 1–4B2. Upper-range Imprisonment for Dangerous Special Offenders

This section, which is derived from section 3575 of present Title 18, and reflect the recommendations of the Commission that there be established the system under which extra-long prison terms may be imposed.

Such long sentences mainly perform an incapacitative function and should therefore be imposed only on offenders who are exceptionally dangerous. The terms "dangerous" and "special offender" are defined in subsection (b).

One the rationale and need for such sentences, see McClellan, "The Organized Crime Control Act (S. 30) or Its Critics: which Threatens Civil Liberties?," 46 *Notre Dame Law* 57, 146–88(1970)

§ 1–4B4. Duration of Imprisonment

Subsections (a) and (b)(1) continue present 18 U.S.C. § 3568. Subsection (b)(2) grants a similar credit for prison time served by a defendant who is first arrested on one charge and later prosecuted for another where such time has not been credited against another sentence.

Subsection (b)(3) replaces present 18 U.S.C. §§4161, 4162, 4165, and 4166 with an approach to "good time" credits which is more consistent with the rehabilitative purposes of such reductions in prison sentences. [See generally responses to Subcommittee questionnaire on good time, in Hearings, Part III-D.] Where good-time credits are awarded semi-mechanically, they serve no valid penal objective. The offender's general good behavior in the institution can adequately be taken into account by the Parole Commission is determining release on parole. But correctional experts and officials affirm that sentence reductions for special performance can be a powerful and helpful incentive for a prisoner. The details of this "excellent performance" system of good-time credits is to be developed by the Bureau of Corrections by regulations.

Subsection (b)(4) is a change from the Brown Commission's recommendations and present law. Present law gives a parolee or probationer no credit for "clean time." Section 3403(3)(a) would give full credit to a parolee. This provision follows a middle course of 50% credit.

§ 1–4C1. Fines

Present Title 18 sets 14 different maximum fine levels for offenses, and the amounts authorized do not appear to be correlated to

the nature or seriousness of the criminal conduct involved. This section sets a much smaller number.

The section also adopts the "daily fine" system which is part of the criminal codes of a number of foreign countries. [See Hearings, Part III–C.] The daily-fine system permits the court to sentence the offender to a given number of days of fine, depending upon the seriousness of the offense and characteristics of the offender and without regard to his ability to pay. The "per diem" amount, however, shall be set by taking "into account the financial resources of the person and the nature of the burden that its payment will impose."

Subsection (c) authorizes the court to revoke, modify, or adjust any sentence to pay a fine upon petition of the offender.

§ 1–4C2. Response to Nonpayment of Fines

The system for collection of criminal fines is set forth in Part III, Administration, at section 3–10A3. Primary responsibility, under that section, is vested in the Internal Revenue Service.

This section provides for the issuance of an order to show cause where collection efforts fail. (Subsection (a)).

Subsection (c) authorizes the court, upon a finding that the default in payment of the fine is excusable, to extend the time for payment, reduce the amount, or revoke the sentence to pay a fine in whole or in part.

Subsection (b) authorizes imprisonment of the offender who defaults in payment of a fine unless the offender shows that (1) "his default was not attributable to an intentional failure to obey the sentence", and that (2) the default is not attributable "to a failure on his part to make a good faith effort to obtain the necessary funds for payment."

§ 1–4D1. Probation and Conditional Discharge

This section provides that a convicted defendant may be released from custody under supervision (probation) or without supervision (conditional discharge). The probation may be under "close" or "limited" supervision.

Subsection (a) provides that the authorized term of probation or conditional discharge is up to five years for a felony or misdemeanor (as under present 18 U.S.C. § 3651), or up to one year for a violation.

Subsection (b) contains no bias or presumption either in favor of or against probation as a proper disposition. One of the criteria to be considered, in determining whether to place an offender on probation or sentence him to imprisonment, is the available resources of the Federal probation service.

Subsection (c) lists a number of factors that may be considered by the sentencing judge in deciding whether to grant probation. The list is neither all-inclusive nor is it meant to be inclusive as to disposition.

§ 1–4D2. Conditions of Release

This section expands upon the short list of possible conditions of probation in present 18 U.S.C. § 3651 in order to promote a more considered and to make more probable an individualized approach to probation dispositions. The 16 named conditions are not all inclusive; in fact subsection (b)(16) requires the offender "to comply with any other condition or conditions deemed by the court to be reasonably related to the rehabilitation of the offender or public safety or security." At the same time, the list is not so general that all of the listed conditions can logically be imposed on all persons placed on probation. By contrast, the general conditions of release in subsection (a) do apply to all offenders released on probation or conditional discharge.

§ 1–4D3. Duration of Probation or Conditional Discharge

This section provides that the period of probation starts to run on the date the order is entered, and that the court may at any time alter the conditions of release or discharge the offender completely from the supervision or the conditions.

§ 1–4D4. Response to Noncompliance With Condition of Release

The duties of probation officers are set forth in section 3–12B1.

This section declares the powers of the court and the probation officer with respect to an offender who has failed to comply with a condition of release or as to whom there is probable cause to believe that he has so failed.

[On revocation of probation, modification of probation, and arrest of probationer see Rules 42.1 (f), (g) and (l) of the Rules of Criminal Procedure.]

§ 1–4E1. Sentence of Death

Subsection (a) authorizes imposition of capital punishment upon an offender who has been convicted of murder (§ 2–7B1) or treason (§ 2–5B1).

Subsection (b) sets forth 7 circumstances which mitigate against imposition of the sentence of death in the case of both murder and treason, 3 aggravating circumstances in the case of treason and 7 aggravating circumstances in the case of murder. These circumstances must be considered by the factfinder in a proceeding separate from trial on the question of guilt, in accordance with section 1–4E2.

§ 1–4E2. Separate Proceeding to Determine Sentence of Death

Subsection (a) directs a separate proceeding, before a jury (unless waived) to determine whether a person convicted of murder or treason shall be sentenced to death.

Subsection (b) sets forth that this proceeding shall not be limited by the usual rules of evidence and makes provision for arguments. Both of these rules would probably obtain without being explicitly stated.

Subsection (c) bars imposition of the death penalty unless the jury is specifically asked and unanimously concludes that the sentence should be death.

This procedure eliminates the arbitrary and capricious nature of the traditional capital case where the same jury in a single proceeding determined both liability and penalty. That procedure has been held to be "cruel and unusual" and therefore unconstitutional. *Forman* v *Georgia*, 4080 S. 238 (1972). This procedure, in contrast, should pass constitutional muster. See dissenting opinion of the chief justice, 408 U.S. at 396–401.

Part II—Special part

§ 2–5A1. Definition of Terms

This section defines words and phrases used in more than one section of the chapter on Offenses Involving the Nation.

§ 2–5A2. Jurisdiction

The Federal government has inherent (and unlimited) jurisdiction over the offenses defined in this chapter, as this section indicates.

§ 2–5B1. Treason

This section copies, with only changes in punctuation, the definition of treason contained in the United States Constitution, Article III, Section 3. As to who may be tried and convicted or treason, as distinct from other national security offenses, the section uses the concept of a "national of the United States." "National of the United States" is defined in section 2–5A1(10) to mean a Uited States citizen or a person "who owes allegiance to the United States."

§ 2–5B2. Military Activity Against the United States

This section includes a non-national of the United States but sets forth an affirmative defense that the person acted as a member of the armed forces of the enemy in accordance with the laws of war.

§ 2–5B3. Armed Insurrection

This section penalizes heavily armed insurrection or the advocacy of armed insurrection "under circumstances in which there is substantial likelihood" such advocacy will produce an armed insurrection. The term is defined in subsection (d).

§ 2–5B4. Sabotage

This section combines peacetime and wartime sabotage crimes, and then makes the existence of a state of war a grading factor. There is no attempt made in this chapter to define "war."

§ 2–5B5. Avoiding Military Service Obligations

This section penalizes severely violation of selective service obligations.

§ 2–5B6. Obstructing Military Service

This section penalizes various forms of obstruction of the armed forces of the United States.

§ 2–5B7. Espionage

This section consolidates the present espionage statutes (§§ 18 U.S.C. §§ 793–798) into one provision with grading variations.

2–5B8. Misuse of National Defense Information

The key phrases in this section ("national defense information", "communications information") are defined in § 2–5A1(3), (10).

The section is an attempt to translate the language of present law into the format of the code. On the scope of present law, see *New York Times* v. *United States*, 4030. S. 713, 736 n. 7, and 737 n. 8 (1970) (White, J.), Difficult issues on the construction of present law in reference to "intent" and "publication" are acknowledged.

§ 2–5B9. Wartime Censorship of Communications

This section brings into the Federal Criminal Code the wartime censorship provisions of the Trading With the Enemy Act (50 U.S.C. App. § § 3(c), (d)).

§ 2–5B10. Aiding National Security Offenders or Deserters

This section derives from present 18 U.S.C. § § 792 and 1381. The law is extended to include murder of the President, Vice President, or other high public servant in addition to the basic national security crimes.

§ 2–5811. Aiding Escape of Prisoner of War or Enemy Alien

This section derives from present 18 U.S.C. § 757.

§ 2–5B12. Offenses Relating to Vital Materials

This section incorporates by reference into the Criminal Code provisions of the Atomic Energy Act relating to unlicensed trafficking in and use of nuclear materials, atomic weapons, utilization and production facilities, and destruction of restricted data, as well as the provision in Title 50 relating to unlicensed sale or transfers of helium under certain circumstances.

§ 2–5C1. Conduct Hostile to a Nation With Which the United States Is Not at War

This section derives from present 18 U.S.C. § § 960, 956, but drops the designation of a country with which the United States "is at peace" as a "friendly" nation, in favor of "a nation with which the United States is not at war."

Appropriately higher grading is provided at the suggestion of the Association of the Bar of New York City.

§ 2–5C2. Foreign Armed Forces

This section derives from present 18 U.S.C. § 959.

§ 2–5C3. International Transactions

This section incorporates into the Federal Criminal Code a series of statutes which use criminal sanctions to enforce prohibitions or complex regulatory schemes designed to conserve American assets or to implement American foreign policy objectives.

The intent requirement distinguishes them

from the statutes themselves, which remain outside Title18.

§2–5C4. Departure of Vessels and Vehicles

This section is based upon § 1205 of the Draft prepared by the Commission.

§ 2–5C5. Foreign Agents

This section brings into the Code the felony defined in 50 U.S.C. § 851, and also makes it a felony both to fail to register as a foreign agent (under 22 U.S.C. § § 611–21) and surreptitiously to engage in the activity as to which registration is required or to conceal being a foreign agent.

§ 2–5D1. Unlawful Entry Into the United States

This section makes it a felony to enter the United States illegally or intentionally to bring illegal aliens into the country.

§ 2–5D2. Hindering Discovery of Illegal Entrants

This section penalizes one who is an accessory after the fact as to illegal aliens. Under subsection (a) (1) it is an offense to employ an illegal alien if done "with intent to hinder, delay, or prevent [his] discovery or apprehension."

§ 2–5D3. Fraudulent Acquisition or Improper Use of Naturalization, Evidence of Citizenship, or United States Passport

This section consolidates present 18 U.S.C. §§ 1015(a), 1424, 1425(a), (b) and 1542 regarding citizenship documents and passports.

§ 2–6A1. Definition of Terms

This section defines terms used in more than one section of Chapter 6, Offenses Involving Governmental Processes.

§ 2–6B1. Physical Obstruction of Government Function

This is a board general statute making it a Class E felony intentionally to obstruct any government function by physical interference or obstacle. ["Government" is defined in § 1–1A4(33) and "official proceeding" is defined in § 1–1A4(50)]. If any additional offense (assault, aggravated assault, maiming, malicious mischief or aggravated malicious mischief, arson or kidnapping, criminally negligent homicide, manslaughter, reckless homicide, murder), the defendant will be treated more severely by the application of compound grading. [See § 1–2A5(d).]

§ 2–6B2. Preventing Arrest, Search, or Discharge of Other Duties

This section singles out and creates a specific offense of a particular kind of physical interference with government function, i.e., effecting an arrest, executing an order for a wire tap or other process by creating a substantial risk of bodily injury or employing means require the use of substantial force to overcome resistance. This section protects the government officer in the exercise of his duty, leaving questions as to the validity of such action to be resolved in the courts rather than in the streets. It would set aside the result of cases like *John Bad Elk* v. *United States*, 177 U.S. 529, 537 (1900).

§ 2–6B3. Hindering Law Enforcement

This section derives from present 18 U.S.C. §§ 3, 4, 1071, 1072.

§ 2–6B4. Bail Jumping

This section derives from present 18 U.S.C. § 3150, but the penalty levels are raised for serious crimes to be the same as the penalty for the highest offense with which the person was charged at the time he was released "upon condition or undertaking that he appear before a court or judicial officer as required."

§ 2–6B5. Escape

This section derives from present 18 U.S.C. § 751 but broadens the offense. For the definition of "official detention" see § 1–1A4(49). The same affirmative defense of unavoidable circumstances is provided for failure to return under this section (e.g. from work release) as is provided under § 2–6B4, Bail Jumping.

§ 2–6B6. Contraband

This section derives from present 18 U.S.C. §§ 1791, 1792. The statutory authority for the rules incorporated into this section is found in section 3–12C1(d) (1) (authorizing Bureau of Corrections to promulgate rules for the governance of Federal correctional facilities).

§ 2–6B7. Flight To Avoid Prosecution or Giving Testimony

This section derives from present 18 U.S.C. §§ 1073, 1074.

§ 2–6C1. Obstruction of Justice

This section replaces a number of specific sections with a broad and general provision penalizing the obstruction of the administration of justice.

§ 2–6C2. Impeding Justice

This section derives from §§ 1342, 1343, 1344, 1345 of the Draft prepared by the Commission.

§ 2–6C3. Harassment of Juror

This section derives from present 18 U.S.C. §§ 1503, 1504.

§ 2–6C4. Demonstrating To Influence Judicial Proceedings

This section derives from present 18 U.S.C. § 1507 but sets a limit of "200 feet" rather than use the term "near."

§ 2–6C5. Eavesdropping on Jury Deliberations

This section derives, in part, from present 18 U.S.C. § 1508.

§ 2–6C6. Criminal Contempt

This section derives from present 18 U.S.C. § 401.

§ 2–6D1. Perjury

This section derives from present 18 U.S.C. §§ 1621, 1623.

§ 2–6D2. False Statements

This section consolidates in one section on false statements a large number of false statements provisions in present Title 18: e.g. §§ 35, 152, 286, 287, 288, 289, 372, 505, 550, 911, 954, 965, 966, 1001, 1005, 1006, 1007, 1008, 1010, 1011, 1012, 1014, 1015, 1016, 1017, 1018, 1019, 1020, 1021, 1022, 1025, 1026, 1027, 1423, 1424, 1425, 1426, 1506, 1541, 1542, 1546, 1623, 1713, 1722, 1732, 1917, 1919, 1920, 1922, 2072, 2388, 2391.

§ 2–6D. Tampering With Public Records

This section derives from present 18 U.S.C. §§ 2071, 1506.

§ 2–6E1. Bribery

This section deals with the bribery of and bribe receiving by public servants. ("Public servant" is defined in section 1–1A4(58))). Commercial bribery is covered in section 2–8F3, bribery of witnesses and informants is covered in section 2–6C1(a)(1), (3), and bribery of voters is covered by section 2–6H1(a)(3), (4). "Benefit" and "pecuniary benefit" are defined in section 1–1A4(8).

§ 2–6E2. Graft

This section derives from a consolidation of §§ 1362, 1363, 1364, 1365 in the Draft prepared by the Commission.

§ 2–6E3. Threatening a Public Servant

This section penalizes threats to engage in criminal conduct with intent to influence a public servant.

§ 2–6E4. Retaliation

This section derives from § 1367 of the Draft prepared by the Commission.

§ 2–6E5. Misuse of Personnel Authority

This section derives from and broadens § 1533 of the Draft prepared by the Commission.

§ 2–6F1. Disclosure of Confidential Information

This section derives from present 18 U.S.C. § 1905, but states the information to be protected in generic rather than specific terms. It rejects a similar provision of the Brown commission (§ 1371) as too broad.

§ 2–6F2. Nondisclosure of Retainer

This section makes it an offense to fail to disclose a retainer, unless the public servant is aware of the person's employment or retainer.

§ 2–6F3. Conflict of Interest

This section is a limited but general conflict-of-interest provision.

§ 2–6F4. Impersonating an Official

This section derives from present 18 U.S.C. §§ 912, 913, 915.

§ 2–6G1. Tax Evasion

This section derives from § 1401 of the Draft prepared by the Commission, but adds a Class B felony grade for an evasion of taxes which exceeds $100,000 similar to the highest grade under § 2–8D3(a)(1) theft where the amount stolen exceeds $100,000. It has also been substantially modified in light of testimony before the subcommittee.

§ 2–6G2. Disregard of Tax Obligations

This section derives from § 1402 of the Draft prepared by the Commission.

§ 2–6G3. Trafficking in Taxable Object

This section derives from §§ 1403, 1404, 1405 of the Draft prepared by the Commission.

§ 2–6G4. Smuggling

This section derives from present 18 U.S.C. § 545.

§ 2–6H1. Election Fraud

This section derives from § 1431 of the Draft prepared by the Commission.

§ 2–6H2. Wrongful Political Contribution

This section derives from present 18 U.S.C. §§ 602, 603, 607.

§ 2–6H3. Foreign Political Influence

This section derives from present 18 U.S.C. § 613.

§ 2–7A1. Definition of Terms

This section defines terms used in more than one section in Chapter 7, Offenses Against the Person.

§ 2–7B1. Murder

This section provides for only a single class of murder, intentional killing. Under §§ 1–4E1, 1–4E2, the death penalty may be imposed. Jurisdiction is limited to federal enclaves, piracy, and the killing of a high public servant, but if a murder (or included homicide offense) is committed in "as an integral part of, including immediate flight from, the commission of "another offense under the Federal Criminal Code as to which compound grading is available, the killing may be prosecuted in federal court as part of the compound offense. See section 1–1A5(d) [For analogies in present Title 18 see, e.g., §§ 2113, 241.]

§ 2–7B2. Reckless Homicide

This section separates out the so-called felony-murder type of murder into a separate section, graded as a Class A felony. If the killing in the course of commission of a felony is, in fact, intentional, the defendant may of course be prosecuted for murder.

§ 2–7B3. Manslaughter

This section derives from § 1602 of the Draft prepared by the Commission.

§ 2–7B4. Criminally Negligent Homicide

This section creates a new Federal crime to cover the conduct proscribed in present 18 U.S.C. § 1112(a) under the phrase "without due caution and circumspection." The word criminal is used before negligence, in the culpability standard used here (for the definition of criminal negligence, see § 1.2A1 (a)(5)) which indicates clearly that the civil or tort law standard of negligence is not the applicable test.

§ 2–7B5. Aiding Suicide

This section derives from § 210.5 of the Model Penal Code.

§ 2–7C1. Maiming

This section derives from present 18 U.S.C. § 114.

§ 2–7C2. Aggravated Assault

This section derives from present 18 U.S.C. §§ 111, 112, 113.

§ 2–7C3. Assault

This section derives from § 1611 of the Draft prepared by the Commission.

§ 2–4C. Menacing

The term 'assault' is used in the Code and in present Title 18 to cover the common-law meaning of the word 'battery.' This section denominates a type of common-law asaults as an offense.

§ 2–7C5. Terrorizing

Both threats against the President (under (a)(1)) and threats that cause large-scale fear and evacuation of buildings and other places (under (a)(2)) are extremely serious, specialized assault crimes. The section derives from present 18 U.S.C. §§ 871, 876, 877, 35, 837(d). Subsection (a)(3) covers the conveying of false information that has the same effect as a threat.

§ 2–7D1. Aggravated Kidnapping

This section derives from present 18 U.S.C. § 1201.

§ 2–7D2. Kidnaping

This section provides a lower level of the offense of kidnapping.

§ 2–7D3. Unlawful Imprisonment

This section derives from present 18 U.S.C. § 1201.

§ 2–7D4. Skyjacking

This section makes air piracy a specialized kidnapping offense, graded at the highest level.

A skyjacking that involved an intentional homicide would be a murder order § 2–781, for which the death penalty would be authorized. Note that since compound grading is not involved, two separate offense would have been committed.

§ 2–7D5. Mutiny or Commandeering

This section derives from present 18 U.S.C. § 2193 and § 1805 of the Draft prepared by the Commission.

§ 2–7E1. Rape

This section consolidates homosexual rape by force with rape into a single offense. "Sexual act" and "spouse" are defined in section 2–7A1.

There seems to be no reason to distinguish rape of men from rape of women.

§ 2–7E2. Statutory Rape

This section covers nonforceful sexual imposition by drugs, misrepresentation, abuse of status (e.g. custodian in institution), or taking advantage of a person below the age of consent, a mentally-ill person or one who is unconscious.

§ 2–7E3. Sexual Assault

This section penalizes a variety of sexual assaults. For the definition of "sexual contact" see § 2–7A1.

§ 2–7F1. Deprivation of Civil Rights

This section derives from present 18 U.S.C. §§ 241, 242 with the addition of the culpability requirement (intentionally) enunciated in *Screws v. United States*, 325 U.S. 91 (1945). It and the following civil rights statutes follow present law.

§ 2–7F2. Interference With Government Benefits or Programs

This section derives from present 18 U.S.C. § 245.

§ 2–7F3. Discrimination

This section derives from present 18 U.S.C. § 245.

§ 2–F4. Interference With Civil Rights Activities

This section derives from present 18 U.S.C. § 245.

§ 2–7F5. Unlawful Acts Under Color of Law

This section makes a specific offense of the kind of misbehavior on the part of law enforcement or prison officials that has most often been dealt with under the general language of present 18 U.S.C. § 242.

It comes from a suggestion made in the hearings.

§ 2–7F6. Interference With Activities of Employees and Employers

This section derives from present 18 U.S.C. § 1231.

§ 2–7G1. Eavesdropping

This section derives from present 18 U.S.C. § 2511.

§ 2–7G2. Trafficking in Eavesdropping Device

This section derives from present 18 U.S.C. § 2512.

§ 2–7G3. Interception of Correspondence

This section derives from present 18 U.S.C. § 1702.

§ 2–8A1. Definition of Terms

This section defines the words and phrases used in more than one section of Chapter 8, Offenses Against Property.

§ 2–8A2. Valuation

The grade for sentencing purposes of a number of the offenses defined in Chapter 8 turns on the value of the property destroyed, stolen, forged etc. This section provides a series of valuation rules applicable to all sections in the chapter.

§ 2–8B1. Aggravated Arson

This section defines the highest and most severely punished grade of arson—where the arson is undertaken "in reckless disregard of the risk that at the time of such conduct a person may be in such structure."

§ 2–8B2. Arson

This section provides a lesser degree of the offense of arson.

§ 2–8B3. Release of Destructive Forces

This section derives from present 18 U.S.C. § 832.

§ 2–8B4. Failure to Control or Report Dangerous Fire

This section derives from present 18 U.S.C. § 1856.

§ 2–8B5. Aggravated Malicious Mischief

This section and § 2–8B6 consolidate a number of property destruction and tampering with property crimes in present law [e.g. 18 U.S.C. §§ 1361, 1362, 1363, 1364].

§ 2–8B6. Malicious Mischief

This section provides a lower grade of the offense defined in § 2–8B5.

§ 2–8C1. Armed Burglary

This section penalizes and grades at a higher level burglary in which the defendant or an accomplice is armed with a dangerous weapon. ["Dangerous weapon" is defined in § 1–1A4(19)].

§ 2–8C2. Burglary

This section introduces a general burglary offense statute in Title 18.

§ 2–8C3. Possession of Burglar's Tools

This section penalizes the possession of tools or other articles adapted for the commission of an offense involving forcible entry with intent to use the thing possessed in the commission of such an offense.

§ 2–8C4. Aggravated Criminal Trespass

This section penalizes the take-over and occupancy of the property of another, without authority, by force or threat of force.

§ 2–8C5. Criminal Trespass

This section penalizes knowing unlawful entry on property of another on entering or remaining unlawfully on such property after an order to leave or not to enter personally communicated. "Property of another" is defined in § 8A1(9) and "property" is defined in § 2–8A1(8). Since property is defined to mean "anything of value" the offense of criminal trepass includes "entering and stowing away" in an airplane or ship or "entering and concealing" oneself in a motor vehicle.

§ 2–8D1. Armed Robbery

This section penalizes and grades at a higher level robbery in which the defendant or an accomplice is armed with a dangerous weapon.

§ 2–8D2. Robbery

This section consolidates in one provision a number of specific object robbery statutes in present Title 18: 18 U.S.C. §§ 2113 (robbery of banks), 2114 (robbery of mails and other Federal property) 1951 (robbery "affecting commerce"), 2111 (robbery in federal enclaves).

§ 2–8D3. Theft

This single section consolidates a large number of theft offense statutes in present Title 18. There is no need to maintain the distinctions the common law drew between larceny, larceny by trick, false pretenses, embezzlement, fraudulent conversion and the like. The offense is graded depending upon the nature of the property stolen or its value. The offenses and provisions consolidated in this section include present 18 U.S.C. §§ 152, 153, 201, 285, 286, 287, 288, 289, 332, 371, 436, 549, 550, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 659, 660, 661, 663, 664, 914, 1003, 1005, 1006, 1007, 1008, 1010, 1011, 1013, 1014, 1020, 1023, 1024, 1025, 1027, 1163, 1421, 1422, 1506, 1656, 1658, 1702, 1704, 1706, 1707, 1708, 1709, 1710, 1711, 1712, 1719, 1720, 1721, 1722, 1723, 1725, 1726, 1728, 1733, 1851, 1852, 1853, 1854, 1861, 1901, 1911, 1912, 1919, 1920, 1921, 1923, 1951, 2071, 2073, 2113, 2197, 2199, 2233, 2271, 2272, 2312, 2313, 2314, 2315, 2316, 2317, 3487, 3497.

§ 2–8D4. Receiving Stolen Property

The offense has not been consolidated in the general theft section because of the basic distinction between one who steals and one who trades in the property stolen by another.

§ 2–8D5. Scheme to Defraud

This section combines the present mail and wire fraud sections (18 U.S.C. §§ 1341, 1342, 1343). It also reflects 18 U.S.C. § 371 (conspiracy to defraud). Because this section is actually a form of Attempted Theft and involves a combination, neither § 1–2A6 (criminal attempt) or § 1–2A5 (criminal conspiracy) apply under this provision.

The language is taken from present law to carry forward judicial construction.

§ 2–8D6. Misapplication of Entrusted Property

This is a specialized provision with a lower proof requirement than for theft.

§ 2–8D7. Interference with Security Interest

This section offers special protection to Federal government securities.

§ 2–8D8. Joyriding

This section penalizes the use of a motor vehicle under circumstances not amounting to theft.

§ 2–8E1. Counterfeiting

This section consolidates present 18 U.S.C. § § 471, 472, 473, 478, 479, 480, 482, 483, 484, 485, 486, 489. "Falsely makes" is defined in § 2–8A1(4) and includes falsely making, falsely altering or falsely completing.

§ 2–8E2. Forgery

This section is the same as § 2–8E1, except that counterfeiting concerns false making of a security or other obligation of the United States government or a foreign government whereas forgery covers false making of any writing (defined in § 8A1(12)) and includes non-governmental paper.

§ 2–8E3. Counterfeiting Paraphernalia

This section consolidates present 18 U.S.C. §§ 474, 475, 476, 477, 481, 504.

§ 2–8E4. Trafficking in Specious Securities

This section derives from present 18 U.S.C. § 2314.

§ 2–8E5. Making or Passing Slugs

This section derives from present 18 U.S.C. § 491.

§ 2–8E6. Issuance of Written Instrument Without Authority

This section covers the situation that is not counterfeiting or forgery because the security is in fact genuine, but is issued without authority.

§ 2–8F1. Bankruptcy Fraud

This section derives from § 1756 of the Draft prepared by the Commission.

§ 2–8F2. Commercial Bribery

This section covers bribing and bribe-receiving in certain non-governmental contexts.

§ 2–8F3. Environmental Spoilation

This section penalizes "gross" or "flagrant" pollution in violation of statute or regulation.

It is new to the bill.

§ 2–8F4. Unfair Commercial Practices

This section consolidates or incorporates a number of current provisions.

It is new to the bill.

§ 2–8F5. Securities Violations

This section incorporates by reference a number of offenses involving securities.

§ 2–8F6. Regulatory Offenses

There are a great many offenses in the United States Code which are designed to support or reinforce regulatory Acts of Congress through the imposition of criminal sanctions on those who fail to comply. This section is designed to achieve consistency in penal policy among these scattered regulatory offenses.

Sanctions for violation shall be governed by this section in the Federal Criminal Code even though the offense is defined in the Title (e.g. agriculture, postal service) to which it is substantively addressed.

It should be noted that this section does not apply, unless the specific offense statute declares on its fact that it is a "regulatory offense." There is no general incorporation by reference.

§ 2–9A1. Definition of Terms

This section defines the words and phrases used in more than one section in Chapter 9, Offenses Against Public Order.

§ 2–B1. Inciting Riot

This section derives from present 18 U.S.C. § 2101.

§ 2–9B2. Arming Rioters

This section derives from § 1802 of the Draft prepared by the Commission.

§ 2–9B3. Engaging in a Riot

This section makes it a crime to engage in a riot. "Riot" is defined in § 2–9A1(7).

§ 2–9B4. Disobedience of Public Safety Orders Under Riot Conditions

This section supports public safety officers engaged in riot control by making it a violation to disobey an order to move, disperse or refrain from specified activities. It reflects the tradition in Anglo-American law of "reading the riot act."

§ 2–9C1. Racketeering Activity

This section derives from present 18 U.S.C. §§ 1961, 1962.

§ 2–9C2. Loansharking

This section derives from present 18 U.S.C. §§ 891, 892, 893, 894.

§ 2–9C3. Extortion

This section derives from present 18 U.S.C. §§ 872, 873, 874, 875, 876, 877, 1951(a) and (b)(2). The language is taken from § 1951 to carry forward its judicial construction.

§ 2–9C4. Coercion

This section derives from § 1617 of the Draft prepared by the Commission.

§ 2–9D1. Para-Military Activities

This section derives from § 1104 of the Draft prepared by the Commission.

§ 2–9D2. Procuring or Supplying Dangerous Weapon for Criminal Activity

This section derives from § 1181 of the Draft prepared by the Commission.

§ 2–9D3. Illegal Firearms, Ammunition, or Explosive Materials Business

This section derives from § 1812 of the Draft prepared by the Commission.

§ 2–9D4. Trafficking in and Receiving Limited-Use Firearms

This section derives from § 1813 of the Draft prepared by the Commission.

§ 2–9D5. Possession of Explosives and Destructive Devises in Buildings

This section derives from § 1814 of the Draft prepared by the Commission.

§ 2–9D6. Armed Criminal Conduct

This section, new to the code, is based on 18 U.S.C. § 924(c). It applies across the full range of other Federal offenses, except those listed, which already are specialized weapon offenses.

§ 2–9E1. Drug Trafficking or Possession

This section derives from the Comprehensive Drug Abuse Prevention and Control Act of 1970 (Public Law 91–513).

It restates present law.

§ 2–9F1. Illegal Gambling Business

This section derives from present 18 U.S.C. § 1955.

§ 2–9F2. Protecting State Antigambling Policies

This section derives from § 1832 of the Draft prepared by the Commission.

It also reflects 18 U.S.C. § 1084(d).

§ 2–9F3. Illegal Prostitution Business

This section adopts, with appropriate differences, present 18 U.S.C. § 1955 to the business of prostitution.

§ 2–9F4. Protecting State Antiprostitution Policies

This section adopts to the protection of state policy as to prostitution § 1832 of the Draft prepared by the Commission.

§ 2–9F5. Disseminating Obscene Material

This section derives from § 1851 of the Draft prepared by the Commission. The provision, however, is broader and more precise in defining obscenity and the kind of conduct that may be found to fall within its scope.

It is to be noted, however, that it may not be as broad as present law. 18 U.S.C. § 1461 applies to "indecent" and "profane" radio broadcasting.

§ 2–9G1. Misuse of American Flag

This section derives from present 18 U.S.C. § 700.

Part III—Administration

§ 3–10A1. Obligations of the Attorney General

This section authorizes and directs the Attorney General of the United States, as the nation's chief law enforcement officer, to "prepare, cause to be published, and periodically revise administrative regulations" on criminal investigative jurisdiction and prosecutive discretion.

States and local representatives must be consulted in developing the standards. This provision is designed to respond to the fears expressed in the hearing that abuses of prosecutive discretion might develop.

In a limited class of cases, it may be against the national interest if state or local as well as Federal officers are involved in a criminal case. If the victim of the offense is a high public servant, for example, the President, and if the crime is one named in this section, the Attorney General is authorized to assert exclusive Federal investigative or prosecutive jurisdiction which suspends state or local action until the Federal action has been terminated. Provision is made, however, for the Attorney General to seek from state and local authorities such help as he may need in a particular case. In an appropriate investigation, the aid of the military could also be sought, i.e., the killing of the President. Finally, the section excludes the independent agencies or commissions, i.e., S.E.C., F.T.C., etc., from its scope and make explicit what would be true anyway; Prosecutive discretion on investigative jurisdiction should not be matter of litigation. See e.g., *United States* v. *Hutcheson*, 345 F. 2d 964 (D.C. 1965)

§3–10A2. Rewards and Appropriations for Rewards

This section derives from present 18 U.S.C. § 3059. The principal change is an increase in the amount of money authorized to be expended by the Attorney General in the form of rewards for the capture or for information leading to the arrest of offenders.

§ 3–10A3. Conviction Records

This section derives from present 18 U.S.C. § 3578.

§ 3–10A4. Collection of Fines

This section places primary responsibility for the collection of criminal fines on the Internal Revenue Service (Secretary of the Treasury or his delegate). The section also applies to the collection of fines as tools used successfully in Federal tax collection. Under present law, "one of the principal differences in the collection of fines and taxes is that fines are collected like private civil judgments." [Hearings, Part II–B, p. 1722.] This section upgrades the collection of fines by adapting and incorporating collection provisions of Federal tax law. [See generally Hearings. Part III–B, pp. 1709–1732.]

§ 3–10A5. Interned Belligerent Nationals

This section derives from present 18 U.S.C. § 3058.

§ 3–10A6. Protected Facilities

This section derives from Title V of the Organized Crime Control Act of 1970, Public Law 91–452, 84 Stat. 933–34.

§ 3–10B1. Federal Bureau of Investigation

This section derives from present 18 U.S.C. § 3052.

§ 3–10B2. United States Marshals

This section derives from present 18 U.S.C. §§ 3053, 4086, 4006.

§ 3–10B3. Secret Service

This section derives from present 18 U.S.C. § 3056.

§ 3–10B4. Postal Service

This section derives from present 18 U.S.C. § 3061.

§ 3–10B5. Federal Probation Service

This section derives from present 18 U.S.C. § 3653.

§ 3–10B6. Bureau of Corrections

This section derives from present 18 U.S.C. §§ 3050, 4004.

§ 3–10C1. Definition of Terms

This section derives from present 18 U.S.C. § 2510.

§ 3–10C2. Authorization for Interception of Private Communication

This section derives from present 18 U.S.C. §§ 2516, 2517.

§ 3–10C3. Procedure for Interception of Private Communication

This section derives from present 18 U.S.C. §§ 2517, 2518.

§ 3–10C3. Report Concerning Intercepted Communication

This section derives from present 18 U.S.C. § 2519.

§ 3–10C5. Intercepted Private Communications

This section derives from 18 U.S.C. §§ 2515, 2518(8), (9), (10), 3504.

§ 3–10D1. Definition of terms

This section derives from present 18 U.S.C. § 6001.

§ 3–10D2. Immunity Generally

This section derives from present 18 U.S.C. §§ 6002, 2514.

Language changes codify the Supreme Court's opinion in *Kasyisan* v. *United States*, 1406 U.S. 441 (1972); see *Wong Sun* v. *United States*, 371 U.S. 471, 488 (1963).

§ 3–10D3. Court or Grand Jury Proceeding

This section derives from present 18 U.S.C. § 6003.

§ 3–10D4. Administrative Proceeding

This section derives from present 18 U.S.C. § 6004.

§ 3–10D5. Congressional Proceeding

This section derives from present 18 U.S.C. § 6005.

§ 3–10E1. Definition of Terms

This section derives from Title 18.—Appendix, Interstate Agreement on Detainers, §§ 3, 4.

§ 3–10E2. General Provisions

This section derives from Title 18.—Appendix, Interstate Agreement on Detainers, §§ 5, 6, 7.

§ 3–10E3. Interstate Agreement on Detainers

This section derives from Title 18.—Appendix, Interstate Agreement on Detainers, § 2.

§ 3–10E4. Fugitive from State to State

This section derives from present 18 U.S.C. § 3182, 3194.

§ 3–10F1. General Provisions

Subsection (a) of this section derives from present 18 U.S.C. § 3181.

Subsection (b) of this section derives from present 18 U.S.C. § 3186.

Subsection (c) of this section derives from present 18 U.S.C. § 3195.

§ 3–10F2. Extradition of Fugitive

Subsection (a) of this section derives from present 18 U.S.C. § 3184.

Subsection (b) of this section derives from present 18 U.S.C. § 3183.

Subsection (c) of this section derives from present 18 U.S.C. § 3185.

§ 3–10F3. Procedure for Extradition

Subsection (a) of this section derives from present 18 U.S.C. § 3187.

Subsection (b) of this section derives from present 18 U.S.C. §3188.

Subsection (c) of this section derives from present 18 U.S.C. §§ 3189, 3190, 3191.

Subsection (d) of this section derive from present 18 U.S.C. § 3192.

Subsection (e) of this section derives from present 18 U.S.C. § 3193.

§ 3–11A1. Rules

Subsection (a) of this section derives from present 18 U.S.C. §§ 3771, 3402.

Subsection (b) of this section derives from present 18 U.S.C. § 3772.

§ 3–11A2. Appointment of Counsel

This section derives from present 18 U.S.C. § § 3006A (i), (j), (1).

§ 3–11A3. Foreign Documents

Subsection (a) of this section derives from present 18 U.S.C. § 3495(c).

Subsection (b) of this section derives from present 19 U.S.C. § 3496.

§ 3–11A4. Admissibility of Confessions

This section derives from present 18 U.S.C. § 3501.

§ 3–11A5. Admissibility of Eyewitness Testimony

This section derives from present 18 U.S.C. § 3502.

§ 3–11A6. Execution of Sentence of Death.

This section derives from present 18 U.S.C. § 3566.

§ 3–11B1. Power of Courts and Magistrates

This section derives from present 18 U.S.C. § 3041.

§ 3–11B2. Jurisdiction Outside the United States

This section derives from present 18 U.S.C. § 3042.

§ 3–11B3. District Courts

This section derives from present 18 U.S.C. §§ 3231, 3241.

§ 3–11B4. United States Magistrates

This section derives from present 18 U.S.C. § 3401(a).

§ 3–11B5. Offenses Involving Two Districts

This section derives from present 18 U.S.C. § 3237.

§ 3–11B6. Offenses Not Committed in Any District

This section derives from present 18 U.S.C. § 3258.

§ 3–11B7. New District or Division

This section derives from present 18 U.S.C. § 3240.

§ 3–11B8. Place of Commission of Specific Offenses

Subsection (a) of this section derives from present 18 U.S.C. § 3236.

Subsection (b) of this section derives from present 18 U.S.C. § 3239.

Subchapter C. Mental Incapacity [§§ 3–11C1, –11C2, –11C3, –11C4, –11C5, –11C6, –11C7, –11C8]

This subchapter derives from a revision of present chapter 313 of Title 18 prepared by an Intradepartmental Committee of the Department of Justice and by the Committee on the Administration of the Criminal Law of the Judicial Conference of the United States. It has been modified to conform with the scope of the mental illness or defect defense in section 1–3C2.

§ 3–11D1. Sentencing Recommendation of the Attorney for the Government

This section is new. It recognized that the necessary role of the executive extends beyond obtaining evidence and presenting it in court. Justice must also take into consideration the disposition of the offender and the consequences in the community. Only the prosecutor can speak for the community at the time of sentence.

§ 3–11D2. Psychiatric Examination

This section permits the defendant, upon conviction, to raise the issue of mental illness prior to sentencing. The court may refer the offender to a panel of qualified psychiatrists for an examination and report. The report is not binding on the sentencing judge but may be considered by him.

§ 3–11D3. Effect of Presidential Remission

This section derives from present 18 U.S.C. § 3570.

§ 3–11E1. Appeal by United States

This section derives from present 18 U.S.C. § 3731.

Subsection (c) of this section derives from present 18 U.S.C. § 2518(10)(b).

§ 3–11E2. Appeal from Conditions of Release

This section derives from present 18 U.S.C. § 3149.

§ 3–11E3. Review of Sentence

This section derives from present 18 U.S.C. § 3576.

§ 3–12A1. Definition of Terms

This section defines terms used in more than one section in Chapter 12. It has no analogue in present Title 18.

§ 3–12B1. Duties of Probation Officers

This section derives from present 18 U.S.C. § 3655.

§ 3–12B2. Duties of Administrative Office of United States Courts

This section derives from present 18 U.S.C. § 3656.

§ 3–12B3. Transportation of Probationers

This section derives from present 18 U.S.C. § 4283.

§ 3–12C1. Organization, Director, and Responsibilities

Subsections (a) and (b) of this section derive from present 18 U.S.C. § 4041. The post of Director of the Bureau of Prisons is made subject to appointment by and with the advice and consent of the Senate, because of the importance of the position in the Federal criminal justice system.

Subsection (c) derives from present 18 U.S.C. § 4001.

Subsection (d) derives from present 18 U.S.C. §§ 4042, 4125.

§ 3–12V2. Character of Correctional Facilities

Subsection (a) of this section derives from present 18 U.S.C. § 4081.

Subsection (b) of this section derives from present 18 U.S.C. § 5011.

Subsection (c) of this section derives from present 18 U.S.C. § 4253.

Subsection (d) of this section derives from present 18 U.S.C. § 4005.

§ 3–12C3. Contracting

Subsection (a) of this section derives from present 18 U.S.C. § 4002.

Subsection (b) of this section derives from present 18 U.S.C. § 5003.

Subsection (c) of this section derives from present 18 U.S.C. §§ 5013, 4255.

§ 3–12C4. Federal Institutions in States Without Appropriate Facilities

This section derives from present 18 U.S.C. § 4003.

§ 3–12C5. Appropriations and Acquisitions

Subsection (a) of this section derives from present 18 U.S.C. § 4009.

Subsection (b) of this section derives from present 18 U.S.C. § 4010.

Subsection (c) of this section derives from present 18 U.S.C. § 4011.

§ 3–12D1. Official Detention

Subsections (a), (c), and (e) of this section derive from present 18 U.S.C. § 4082.

Subsection (b) of this section derives from present 18 U.S.C. § 4084.

Subsection (d) of this section derives from present 18 U.S.C. §4007.

§ 3–12D2. Transfer to State Facility

This section derives from present 18 U.S.C. § 4085.

§ 3–12D3. Transportation of Offenders

This section derives from present 18 U.S.C. § 4008.

§ 3–12D4. Discharge

Subsection (a) of this section derives from 18 U.S.C. § 4282.

Subsection (6) of this section derives from present 18 U.S.C. § 4163.

Subsection (c) of this section derives from present 18 U.S.C. §§ 4281, 4284.

§ 3–12E1. Organization

Subsections (a) and (b) of this section derives from present 18 U.S.C. § 4121.

Subsection (c) of this section derives from present 18 U.S.C. § 4127.

Subsection (d) of this section derives from present 18 U.S.C. § 4128.

§ 3–12E2. Administration

This section derives from present 18 U.S.C. §§ 4122, 5123.

§ 3–12E3. Purchase of Goods and Services of Correctional Industries

This section derives from present 18 U.S.C. § 4124.

§ 3–12E4. Correctional Industries Fund

This section derives from present 18 U.S.C. § 4126.

§ 3–12F1. Parole Commission

This section derives, in large part, from legislation introduced by Senator Burdick in the Senate in the 92d Congress (S. 3993) to create a system of regional parole boards and which received favorable testimony in Hearings before the Subcommittee on National Penitentiaries.

§ 3–12F2. Duties of Probation Officers as to Parole

This section derives from present 18 U.S.C. § 3655.

§ 3–12F3. Parole

This section derives from present 18 U.S.C. §§ 4202, 4203, 4254, 4164, 4208(c).

§ 3–12F4. Conditions of Parole

This section derives from present 18 U.S.C. §§ 4204, 4203.

§ 3–12F5. Duration of Parole

This section derives from present 18 U.S.C. § 4208(d).

It also reflects, in part, § 3403(3) of the Brown commission's recommendations. See supra § 1–4B4 (Duration of Imprisonment)

§ 3–12F6. Response to Noncompliance With Condition of Parole

This section derives from present 18 U.S.C. §§ 4205, 4206, 4207, 4210.

§ 3–12F7. Finality of Parole Determinations

This section derives, in part, from § 3406 of the Draft prepared by the Commission. Since an appellate process is provided within the Parole Commission and its rules are subject to periodic review by the Congress, the decisions of the commission are not made subject of other reexamination.

§ 3–13A1. Injunctions

This section derives from present 18 U.S.C. § 1964. Its policy is extended to other similar sections of the Code.

§ 3–13A2. Damages

This section derives from present 18 U.S.C. §§ 1964, 2520. Appropriate charges have been made to integrate it with § 3–13A1.

§ 3–13A3. Civil Forfeiture

This section consolidates a number of individual sections found in present Title 18. See, e.g., 18 U.S.C. § 2513.

§ 3–13A4. Procedure

This section derives from present 18 U.S.C. §§ 1965, 1966, 1967.

§ 3–13A5. Civil Investigation Demand

This section derives from present 18 U.S.C. § 1968.

§ 3–13B1. Definition of Terms

This section derives from present 18 U.S.C. § 5031.

§ 3–13B2. Surrender to State Authorities

This section derives from present 18 U.S.C. § 5001.

§3–13B3. Alleged Juvenile Delinquent

This section derives from present 18 U.S.C. § 5035.

§ 3–13B4. Juvenile Delinquency Proceedings

This section derives from present 18 U.S.C. §§ 5032, 5033, 5034, 5036.

It also codifies, the result of *Kent* v. *United States*, 383 U.S. 541, 552–54 (1966).

§ 3–13B5. Parole of Juvenile Delinquent

This section derives from present 18 U.S.C. § 5037.

Subchapter C. Criminal Law Reform Commission [§§ 3–13C1, 3–13C2, 3–13C3, 3–13C4, 3–13C5, 3–13C6]

This Subchapter is new to Title 18 and is introduced to fill the need for a continuing and independent entity to study the operation of the new Federal Criminal Code and to make recommendations for changes, as well as to conduct continuing and comprehensive studies of aspects of the criminal justice system.

It reflects recommendations made in the hearings.

Section-by-section Analysis of Title II Amendments to Federal Rules of Criminal Procedure

Rule 3.1. Commencement of Prosecution

This rule derives from § 701(6) of the Draft prepared by the Commission. A basic change is to stop the running of the statute of limitations at the time a complaint, as well as an indictment or information, is filed.

Rule 4 (c), (d), Warrant or Summons Upon Complaint

Subdivision (c) of Rule 4 derives from present 18 U.S.C. § 3047.

Subdivision (d) of Rule 4 derives from present 18 U.S.C. § 3045.

Rule 5.1. Preliminary Examination: Time

This rule derives from present 18 U.S.C. § 3060.

Rule 6.1. Special Grand Jury

Subdivisions (a) and (b) of Rule 6.1 derive from present 18 U.S.C. § 3331.

Subdivision (c) of Rule 6.1 derives from present 18 U.S.C. § 3332.

Subdivisions (d), (e), (f), (g), (h) and (j) derive from present 18 U.S.C. § 3333.

Subdivision (i) of Rule 6.1 derives from present 18 U.S.C. § 3334.

Rule 15. Depositions

This rule derives from present Rule 15 and present 18 U.S.C. § 3503. The text is that drafted by the Rules Committee on the Federal Rules of Criminal Procedure.

Rule 16.1. Demands for Production of Statement and Reports of Witnesses

This rule derives from present 18 U.S.C. § 3500.

Rule 16.2. Capital Offense

This rule derives from present 18 U.S.C. § 3432.

Rule 23.1 Trial by Magistrate

This rule derives from present 18 U.S.C. § 3401.

Rule 25.1. Principles of Proof

This rule derives from § 103 of the Draft, Federal Criminal Code prepared by the Commission.

Rule 26.2. Foreign Documents

Subdivision (a) of Rule 26.2 derives from present 18 U.S.C. § 3491.

Subdivision (b) of Rule 26.2 derives from present 18 U.S.C. § 3492.

Subdivision (c) of Rule 26.2 derives from present 18 U.S.C. § 3493.

Subdivision (d) of Rule 26.2 derives from present 18 U.S.C. § 3494.

Subdivision (e) of Rule 26.2 derives from present 18 U.S.C. § 3495.

Rule 28.1. Accused as Witness

This rule derives from present 18 U.S.C. § 3481.

Rule 32. Presentencing Procedures

This rule derives from present 18 U.S.C. §§ 3577, 4208(b), and 4252.

Rule 32.1(g), (h), (i). Sentence and Judgment

Subdivision (g) of Rule 32.1 derives from present 18 U.S.C. § 3651.

Subdivision (h) of Rule 32.1 derives from § 3102(3) of the Draft, Federal Criminal Code prepared by the Commission.

Subdivision (i) of Rule 32.1 derives from present 18 U.S.C. § 3653.

Rule 32.2. Sentencing Dangerous Special Offenders

This rule derives from present 18 U.S.C. § 3575.

Rule 32.3. Probation Officers

This rule derives from present 18 U.S.C. § 3654.

Rule 40(c). Commitment to Another District: Removal

Subdivision (c) of Rule 40 derives from present 18 U.S.C. § 3049.

Rule 41(i), (j), (k). Search and Seizure

Subdivision (i) of Rule 41 derives from present 18 U.S.C. § 3103a.

Subdivision (j) of Rule 41 derives from present 18 U.S.C. § 3105.

Subdivision (k) of Rule 41 derives from present 18 U.S.C. § 3109.

Rule 42.1. Jury Trial for Contempt in Labor Cases

This rule derives from present 18 U.S.C. § 3692.

Rule 42.2 Security of the Peace and Good Behavior

This rules derives from present 18 U.S.C. § 3043.

Rule 44.1. Counsel

This rules derives from present 18 U.S.C. § 3006A.

Rule 46.1. Release Pending Trial

This rule derives from present 18 U.S.C. § 3146.

Subdivision (a) of Rule 46.1 derives also from present 18 U.S.C. § 3141.

Subdivision (i) of Rule 46.1 derives from present 18 U.S.C. § 3152(1).

Rule 46.2 Release in Other Cases

Subdivision (a) of Rule 46.2 derives from present 18 U.S.C. § 3149.

Subdivisions (b) and (d) of Rule 46.2 derive from present 18 U.S.C. § 3148.

Subdivision (c) of Rule 46.2 derives from present 18 U.S.C. § 3144.

Rule 46.3. Enforcement

Subdivision (a) of Rule 46.3 derives from present 18 U.S.C. § 3150.

Subdivision (b) of Rule 46.3 derives from present 18 U.S.C. § 3142.

Subdivision (c) of Rule 46.3 derives from present 18 U.S.C. § 3143.

Rule 46.4 Orders Respecting Persons In Custody

This rule derives from present 18 U.S.C. § 3012.

TITLE III—CONFORMING AMENDMENTS

In general, the Sections in Title III adhere to the guidelines and recommendations set down in Volume III of the Working Papers of the Commission, with such changes in terminology as are required to conform to Titles I and II of the bill. No analysis of individual sections is presented here.

The amendments are made in order title by title and section by section. Each part contains the amendments for that title, i.e., Part A contains the amendments to Title 2. Conforming amendments are up to date through the 92nd Congress to provisions outside title 18. Certain recent (since Oct. 15, 1970) amendments to title 18 have not yet been integrated into the proposed title 18. See, e.g., P.L. 91–644 (18 U.S.C. § 1752); P.L. 92–539 (18 U.S.C. § 970).

The following types of conforming amendments have been made: (1) a uniform criminal intent terminology is introduced into criminal provisions outside title 18. Usually, "knowingly" (see § 1–2A1(3)) is substituted for "willfully" or whatever other intent term is used, where present law has no intent requirement, none has been introduced. See, e.g., *United States* v. *Dotterweich*, 320 U.S. 217 (1943) (misbranded or adulterated drugs). (2) The penalty structure of provisions outside title 18 is classified within the system of the proposed code. In addition, lower level crimes are transferred outside title 18 into their appropriate titles, and higher level crimes outside title 18 are brought within the proposed code. Generally, all offenses outside title 18 have been lowered to authorized terms not to exceed 1 year. This is the misdemeanor level of present law (18 U.S.C. § 1). It becomes the class E felony level of the proposed code (§ 1–4B1 (c)(1)), since this misdemeanor level has been reduced to six months (§ 1–4B1(c)(2)). (3) Where provisions outside title 18 are essentially duplicative of proposed new provisions, they are repealed. (4) It should be noted that the conforming amendment do contain a limited number of reforming amendments based on testimony received in the hearings or staff studies, see, e.g., vol. III, Subpart B, p. 1559; 18 U.S.C. § 712, amended by, Part B (Title 4 amendments) section 302(a). (5) No change has been made in the fine level of offenses defined outside of title 18.

TITLE IV—GENERAL PROVISIONS

Section 401. Sections of the bill and of Title I (Federal Criminal Code) are severable, if any provision is declared unconstitutional.

Section 402. The members of the Parole Commission are given salary schedules commensurate with the reorganization of the commission mandated by the code.

Section 403. The Federal Criminal Code, the amendments to the Federal Rules of Criminal Procedure, and the conforming amendments will not become effective until the January following the adjournment of the Congress following the Congress which passes the legislation.

EXHIBIT NO. 2

[Cautionary note: These tables should be used as only a rough guide, since they compare materials that are not always comparable]

TABLE I—COMPARISON TABLES

Introductory note: This table traces the provisions of present title 18, United States Code, to the Federal Criminal Code proposed by the National Commission on Reform of Federal Criminal Laws and to S. 1, the "Criminal Justice Codification, Revision and Reform Act of 1973."

PART I—CRIMES

Present title 18	Commission draft	S. 1
Ch. 1.—General provisions:		
1	109 (j), (s), (z), (ab)	1–1A5.
2	401	1–2A6.
3	1303–04	2–6B3.
4	1303	2–6B3.
5	109(am)	1–1A4(68).
6	109(n)	1–1A4(34).
7	210	1–1A4(64).
8	1754(j)	2–8E1(c).
9	210	Omitted.
10	219(a), (b)	1–1A4(31), (42).
11	109(m), 1112(4)(c), 1201(2)(a).	2–5A1(8).
12	Title 39	Title 39.
13	209	1–1A8.
14	211	1–1A6(c).
15	1754(b), (k)	Omitted.
Ch. 2.—Aircraft and motor vehicles:		
31	Omitted	Omitted.
32	1611–13, 1701–09	2–8B1, 2–8B2, 2–8B5, 2–8B6, 1–2A4.
33	1611–13, 1701–09	2–8B1, 2–8B2, 2–8B5, 2–8B6, 1–2A4.
34	1601–09	1–4E1.
35	1354, 1614	2–7C3, 2–6D2.
Ch. 3.—Animals, birds, fish, and plants:		
41	1705, title 16	2–8B6, title 16.
42	1411, title 16	2–6G4, title 16.
43	1411, title 16	2–6G4, title 16.
44	Title 16	Title 16.
45	1705, title 16	2–8B6.
46–47	Title 16	Title 16.
Ch. 5.—Arson:		
81	1701	2–8B1, 2–8B2.
Ch. 7—Assault:		
111	1301–02, 1367, 1611–14, 1616–18, 1631–33.	2–7C2, 2–7C3, 2–7C4, 2–6B1, 2–6B2, 2–6B3.
112	1611–14, 1616–18, 1631–33	2–7C2, 2–7C3.
113	1001, 1611–14, 1616–18	2–7C2, 2–7C3, 1–2A4.
114	1612	2–7C1.
Ch. 9.—Bankruptcy:		
151	1756(3)	2–8F1(d).
152	1321, 1351–52, 1356, 1361, 1732, 1756.	2–8F1, 2–6D1, 2–6D2, 2–6D3, 2–6E1, 2–8D3.
153	1732–1737	2–8D3, 2–8D6.
154–55	Title 11	Title 11.
Ch. 11.—Bribery, Graft and Conflicts of Interest:		
201	1321, 1361–63, 1732, 1741(k), 3501.	1–1A4(58), 2–6E1, 2–6E2, 2–8D3, 1–4A3.
202	Title 5	Title 5.
203	1362, 1365, Title 5	2–6E1, 2–6E2, Title 5.
204	Title	Title 5.
205	1363, 1365, Title 5	2–6E2, Title 5.
206	Title 5	Title 5.
207–09	1327, Title 5	2–6F3, Title 5.
210	1361, 1364	2–6E1, 2–6E2.
211	1361, 1364–65, Title 5	2–6E1, 2–6E2, Title 5.
212–16	1857, Title 12	2–8F2, Title 12.
217	1361–63	2–6E1, 2–6E2.
218	3301(2), Title 5	1–4C1(1), Title 5.
219	1206, Title 5	2–5C5, Title 5.
224	1757	2–8F2.
Ch. 12.—Civil Disorders:		
231	1801–04	2–9B1, 2–9B3, 2–9B4.
232	1801–04	2–9A1.
233	206	1–1A6(g).
Ch. 13.—Civil Rights:		
241	1501	2–7F1.
242	1502–1521	2–7F1, 2–7F5.
243	Title 28	2–7F2, Title 28.
244	Title 10	Title 10.
245	1511–16	2–7F2, 2–7F3, 2–7F4.
Ch. 15.—Claims and Services in Matters Affecting Government:		
281	Title 5	Title 5.
283	Title 5	Title 5.
285	1356, 1732, 1735 (2) (e), 1753	2–6D3, 2–8D3.
286	1352, 1732	2–6D2, 2–8D3, 1–2A5.
287–89	1352, 1732	2–6D2, 2–8D3.
290	Title 38	Title 38.
291	Title 28	Title 28.
292	1363, Title 5	2–6E2.
Ch. 17.—Coins and Currency:		
331	1751	2–8E1.
332	1732, 1751	2–8D3, 2–8E1.
333	Title 12	Title 12.
334	1753	2–8E6.
335	1753	2–8E2.
336–37	Title 31	Title 31.
Ch. 18.—Congressional Assassination, Kidnapping and Assault:		
351	[Omitted as separate section].	2–7B1, 2–7D1, 2–7C2, 1–2A5, 3–10A1(b).
Ch. 19.—Conspiracy:		
371	1004, 1732–34, 1751	1–2A5, 2–8D3, 2–8D5.
372	1301, 1303, 1352, 1366–67, 1401, 1511 (c).	1–2A5, 2–6B1, 2–6B3, 2–6E3, 2–6E4, 2–6D2, 2–7F1.
Ch. 21.—Contempts:		
401	1341–45, 1349	2–6C6.
402	1341–45, 1349	2–6C1, 2–6C2.
Ch. 23.—Contracts:		
431–33	1372; Title 5	2–6F3; Title 5.
435	Title 15	Title 15.
436	1733, Title 18, Pt. E	2–8D3.
437	1372; Title 25	2–6F3; Title 25.
438–39	1363; Title 25	2–6E2; Title 25.
440	Title 39	Title 39.
441	Title 41	Title 41.
442	Title 44	Title 44.
443	1356; Title 41	2–6D3; Title 41.
Ch. 25.—Counterfeiting and Forgery:		
471–73	1751	2–8E1.
474	1751–52	2–8E3, 2–8E1.
475	Title 31	Title 31.
476–77	1752	2–8E3.
478	1751	2–8E1.
479–80	1751	2–8E1, 28E2.
481	1751–52	2–8E1, 2–8E2, 2–8E3.
482–83	1751	2–8E1, 28E2.
484	1751	2–8E2.
485–86	1751	2–8E1.
487–88	1752	2–8E3.
489	1411; Title 31	2–6G4, Title 31.
490	1751	2–8E1.
491	1755	2–8E5.
492	Title 31	1–4A4; Title 31.
493–97	1751	2–8E2.
498	1751	2–8E1, 2–8E2.
499	1381, 1751, 1753	2–6F4, 2–8E1, 2–8E2.
500	1751, 1753	2–8E1.
501	1751–53	2–8E1, 2–8E3.
502	1751	2–8E1.
503	1751–52	2–8E2, 2–8E3.
504	Title 31	Title 31.
505	1351–52, 1751	2–6D1, 2–6D2, 2–8E1.
506	1751–52	2–8E1.
507	1751	2–8E2.
508	1751	2–8E1.
509	1752	2–8E3.

Present title 18	Commission draft	S. 1
Ch. 27.—Customs:		
541–42	1411	2–6G4.
543–45	1411; Title 19	2–6G4; Title 19.
546	Title 22	Title 22.
547	1411	2–6G4.
548	1411, Title 19	2–6G4; Title 19.
549	1411, 1732	2–6G4, 2–8D3.
550	1352, 1732	2–6D2, 2–8D3.
551	1323, 1367, 1411	2–6B3, 2–6Cl, 2–6G4.
552	401, 1002	1–2A6, 2–9F5.
Ch. 29.—Elections and Political Activities:		
591	Omitted	1–1A4.
592	1535	2–6H1.
593–94	1511, 1531	2–6H1, 2–7F3.
595	1511, 1531–32	2–6H1, 2–7F2, 2–7F3.
596	Omitted	Omitted.
597	1531	2–6H1.
598	1532	2–7F2.
599–600	1364–65, 1531	2–6E2.
601	1511, 1532–33	2–6H1, 2–7F2.
602–03	1534	2–6H2.
604–05	1532	2–7F2.
606	1533	2–6E5.
607	1534	2–6H2.
608–12	Title 2	Title 2.
613	1541	2–6H3.
Ch. 31.—Embezzlement and Theft:		
641	1732	2–8D3.
642	1732, 1752	2–8D3, 2–8E3.
643	1732, 1737; Title 5	2–8D3, 2–8D6; Title 5.
644	1732, 1737; Title 12	2–8D3, 2–8D6; Title 12.
645–47	1732, 1737; Title 28	2–8D3, 2–8D6; Title 28.
648–53	1732, 1737; Title 5	2–8D3, 2–8D6; Title 5.
654	1732, 1737	2–8D3, 2–8D6.
655	1732, 1737, 3501	1–4A3, 2–8D3. 2–8D6.
656–57	1732, 1737	2–8D3, 2–8D6.
658	1738	2–8D7.
659	206, 707, 1732, 1737	2–8D3, 2–8D6, 3–11B5, 2–8D4.
660	707, 1732, 1737	2–8D3, 2–8D6, 3–11B5.
661	1732, 1737	2–8D2, 2–8D3, 2–8D6.
662	1732, 1737	2–8D4.
663–64	1732, 1737	2–8D3, 2–8D6.
Ch. 33.—Emblems, Insignia and Names:		
700	Title 4	2–9G1.
701	Title 4	Title 4.
702	Titles 10, 42	Titles 10, 42.
703	Title 22	Title 22.
704	Title 10	Title 10.
705–06	Title 36	Title 36.
707	Title 7	Title 7.
708	Title 22	Title 22.
709	Title 4	2–8F4; Title 4.
710	Title 10	Title 10.
711	Title 7	Title 7.
712–13	Title 4	Title 4.
714	Title 43	Title 43.
Ch. 35.—Escape and Rescue:		
751	1306	2–6B5, 1–2A4.
752–53	1306	2–6B5, 1–2A6, 2–6B3.
754	1301	2–6B1.
755	1306–07	Omitted.
756–57	1120	2–5B11.
Ch. 37.—Espionage and Censorship:		
792	1118	2–5B10.
793–94	1112–13	2–5B7, 2–5B8.
795–97	1112–13, 1712; Title 50	2–5B7, 2–5B8, 2–8C5; Title 50.
798	1114	2–5B8.
799	1712; Title 42	2–8C5; Title 42.
Ch. 39.—Explosives and Other Dangerous Articles:		
831	Title 49	Title 49.
832–34	1602, 1613, 1701, 1704; Title 49.	2–7B3, 2–8B1, 2–8B3; Title 49.
835	Title 49	Title 49.
836	Title 15	Title 15.
Ch. 40.—Importing, Manufacturing, Distribution and Storage of Explosive Materials:		
841	Title 26	Title 26.
842	1812; Title 26	2–9D3, Title 26.
843	Title 26	Title 26.
844	109(i), 1614, 1618, 1701, 1705, 1811, 1814, 3202(2)(e); Title 26.	2–7c3, 2–8B1, 2–8B5, 2–9D2, 2–9D5; Title 26.
845–48	Title 26	Title 26.
Ch. 41.—Extortion and Threats:		
871	1614–15	2–7C3.
872	1381, 1617, 1732–33	2–6F4, 2–9C3, 2–9C4.
873	1381, 1617, 1732–33	2–9C3, 2–9C4.
874	1732	2–9C3.
875–77	1614, 1617–18, 1732–33	2–7C3, 2–9C3, 2–9C4.
Ch. 42.—Extortionate Credit Transactions:		
891–96	1771	2–9C2.
Ch. 43.—False Personation:		
911	1352	2–6D2.
912–13	1381	2–6F4.
914	1732–33	2–8D3.
915	1381	2–6F4.
916	Title 7	Title 7.
917	Title 36	Title 36.
Ch. 44.—Firearms:		
921	Title 26	Title 26.
922	1812; Title 26	2–9D3; Title 26.
923	Title 26	Title 26.
924	1811, 3202(2)(e); Title 26	2–9D2, 1–4B2(b)(2)(v); Title 26.
925–28	Title 26	Title 26.
Ch. 45.—Foreign Relations:		
951	1206; Title 22	2–5C5; Title 22.
952	1112–14	2–5B7, 2–5B8
953	Omitted	Omitted.
954	1353	2–6D2(a)(7).
955	Title 22	Title 22.
956	1202	2–5C1, 1–2A5.
957	1001–02	Omitted.
958	1203	2–5C2.
959	1203; Title 22	2–5C2, Title 22.
960	1201–02	2–5C1.
961	1204–05; Title 22	2–5C3, 2–5C4; Title 22.
962	1201, 1204–05; Title 22	2–5C1, 2–5C3, 2–5C4; Title 22.
963–64	1204–05; Title 22	2–5C3, 2–5C4; Title 22.
965	1204–05, 1352; Title 22	2–5C3, 2–5C4, 2–6D2; Title 22.
966	1352; Title 22	2–6D2; Title 22.
967	1204–05, Title 22	2–5C3, 2–5C4; Title 22.
969	Title 22	Title 22.
970	(Not Considered)	(Not considered).
Ch. 47.—Fraud and False Statements:		
1001	1352	2–6D2.
1002	1751	2–8E2.
1003	1732, 1751	2–8D3, 2–8E2.
1004	1753; Title 12	Title 12.
1005	1352, 1732, 1751, 1753; Title 12.	2–6D2, 2–8D3, 2–E2, Tilte 12.
1006	1352, 1372, 1732, 1751, 1753, 1758; Title 12.	2–6D2, 2–6F3, 2–8D3, 2–8E2, 2–8F3; Title 12.
1007	1352, 1732	2–6D2, 2–8D3.
1008	1352, 1732, 1751	2–6D2, 2–8D3, 2–8E2.
1009	Title 12	Title 12.
1010	1352, 1732, 1751, 1753	2–6D2, 2–8D3, 2–8E2.
1011	1352, 1732	2–6D2, 2–8D3.
1012	1352, 1356, 1361; Title 42	2–6D2, 2–6D3, 2–6E1; Title 42.
1013	1732	2–8D3.
1014	1352, 1732	2–6D2, 2–8D3.
1015	1108, 1221, 1224, 1351–52, 1753.	2–6D2, 2–5D3, 2–5D1.
1016	1352, 1753	2–6D2.
1017–19	1753	2–6D2.
1020	1352, 1732–33	2–6D2, 2–8D3.
1021–22	1753	2–6D2.
1023	1732–1737	2–8D3, 2–8D6.
1024	1732; Title 10	2–8D3, Title 10.
1025	1732, 1753	2–8D3, 2–6D2.
1026	1352	2–6D2.
1027	1352, 1732–33	?–6D2, 2–8D3.
Ch. 49.—Fugitives From Justice:		
1071–72	1303	2–6B3.
1073–74	1310	2–6B7.
Ch. 50.—Gambling:		
1081	Title 46	Title 46.
1082	1831; Title 46	2–9F1; Title 46.
1083	Title 46	Title 46.
1084	1831–32	2–9F1, 2–9F2.
Ch. 51.—Homicide:		
1111	1601–02	2–7B1, 2–7B2.
1112	1601–03	2–7B3, 2–7B4.
1113	1001	2–7B1, 2–7B3, 1–2A4.
1114	1601–03	2–7B1, 2–7B3, 2–7B4.
1115	1601–03	2–7B4.
1116–17	(Not considered)	[Omitted as separate section.]
Ch. 53.—Indians:		
1151–53	211	1–1A6(b).
1154–56	Title 25	Title 25.
1158–62	Title 25	Title 25.
1163	1732	2–8D3.
1164–65	Title 25	Title 25.
Ch. 55.—Kidnaping:		
1201	1631–33; 1635	2–7D1, 2–7D4.
1202	1304	2–6B3(a)(3).
Ch. 57.—Labor:		
1231	1551	2–77F6.
Ch. 59.—Liquor Traffic:		
1261–65	Title 27	Title 27.
Ch. 61.—Lotteries:		
1301–03	1831–32	2–9Fl. 2–9F2.
1304–05	Omitted	Omitted.
1306	Title 12	Title 12.

EXHIBIT NO. 2—Continued

TABLE I—COMPARISON TABLES—Continued

PART I—CRIMES—Continued

Present title 18	Commission draft	S. 1
Ch. 63.—Mail Fraud:		
1341–43	1001, 1732, 1751	2-8D5.
Ch. 65.—Malicious Mischief:		
1361	1705	2-8B5, 2-8B6.
1362	1107, 1705	2-5B4, 2-8B5, 2-8B6.
1363	1107, 1613, 1704–05	2-5B4, 2-8B5, 2-8B6.
1364	1701, 1705	2-8B1, 2-8B2.
Ch. 67.—Military and Navy:		
1381	1119	2-5B10.
1382	1712	2-8C5.
1383	1712; Title 10	2-8C5, Title 10.
1384	1841–43	2-9F3, 2-9F4.
1385	Title 10	Title 10.
Ch. 69—Nationality and Citizenship:		
1421	1732, 1737; Title 28	2-8D3, 2-8D6, Title 28.
1422	1362, 1732	2-6E2, 2-8D3.
1423	1225, 1352, 1531, 1751, 1753	2-5D3, 2-6D2.
1424	1221, 1224, 1351–52, 1753	2-5D1, 2-5D3, 2-6D1, 2-6D2.
1425	1224, 1351–52, 1361, 1753	2-5D3, 2-6D1, 2-6D2, 2-8E6.
1426	1351–52, 1751–52	2-6D1, 2-6D2, 2-8E2, 2-8E3.
1427	401, 1002	1-206, 2-5D3.
1428	Title 8	Title 8.
1429	1342–43	2-6C2.
Ch. 71.—Obscenity:		
1461	1851	2-9F2.
1462–6	1851	2-9F5.
Ch. 73.—Obstruction of Justice:		
1501	1301–02, 1611–12	2-6B1, 2-6B2, 2-7C1, 2-7C2.
1502	1301–02	2-6B1, 2-6B2.
1503	1301, 1321–24, 1327, 1346, 1366–67.	2-6B1, 2-6C1, 2-6C3, 2-6F2, 2-6C4, 2-6E3, 2-6E4.
1504	1324	2-6C3.
1505	1301, 1321–23, 1327, 1346, 1366–67.	2-6B1, 2-6C1, 2-6F2, 2-6C4, 2-6E3, 2-6E4.
1506	1323, 1352, 1356, 1732	2-6C1, 2-6D2, 2-6D3, 2-8D3.
1507	1325	2-6C4.
1508	1326	2-6C5.
1509	1301	2-6B1.
1510	1322, 1367	2-6C1, 2-6E4.
1511	1361, 1831–32	2-9F1, 2-6E1.
Ch. 75.—Passports and Visas:		
1541	1381, 1753	2-6F4, 2-6D2, 2-8E6.
1542	1225, 1352, 1753	2-5D3, 2-6D2.
1543	1751	2-8E2.
1544	401, 1002, 1221–22, 1225; Title 22.	1-2A6, 2-5D1, 2-5D3; Title 22.
1545	Title 22	Title 22.
1546	1221–22, 1351–52, 1751–53	2-5D1, 2-6D1, 2-6D2, 2-8E2, 2-8E3.
Ch. 77.—Peonage and Slavery:		
1581	1301, 1631–32	2-6B1, 2-7D1, 2-7D2.
1582	401, 1002	1-2A6, 2-7D2.
1583	1631	2-7D1.
1584–85	1631–32	2-7D1, 2-7D2.
1586	1002	Omitted.
1587–88	1631–32	2-7D1, 2-7D2.
Ch. 79.—Perjury:		
1621	1351	8-6D1.
1622	401, 1003	2-6D1, 1-2A6, 1-2A3, 2-6C1.
1623	1351	2-6D1, 2-6D2.
Ch. 81.—Piracy and Privateering:		
1651	201(l); Chs. 16–17	E-1A4 (53) and (54); Chs. 7–8.
1652	208(h)	1-1A7, 2-7B1, 2-8B2.
1653	208(g)	1-1A7.
1654	208(h), 401, 1002	1-1A7, 1-2A6.
1655	1805	2-7D5.
1656	1732	2-8D3.
1657	401, 1002–04, 1805	2-7D5, 1-2A6, 1-2A4, 1-2A5.
1658	1613, 1705, 1732	2-8B6, 2-8D3.
1659	201(a)(1), 1721	1-1A4 (54) and (65), 2-8D2.
1660	1304, 1732	2-8D4, 2-6B3.
1661	201(l), 1721	1-1A4(54), 2-8D2.
Ch. 83.—Postal Service:		
1691–99	Title 39	Title 39.
1700	1737; Title 39	2-8D6; Title 39.
1701	1301	2-6B1.
1702	1564, 1732	2-7G3, 2-8D3.
1703	1564, 1705; Title 39	2-7G3, 2-8B6; Title 39.
1704	1732; Title 39	2-8D3; Title 39.
1705	1301, 1564, 1705	2-6B1, 2-7G3, 2-8B6.
1706	1301, 1705, 1732	2-6B1, 2-8B6, 2-8D3.
1707–10	1732	2-8D3.
1711	1732, 1737	2-8D3, 2-8D6.
1712	1352, 1732; Title 39	2-6D2, 2-8D3; Title 39.
1713	1753; Title 39	2-6D2; Title 39.
1714	Omitted	Omitted.
1715	Title 39	Title 39.
1716	1001, 1601–03, 1612–13, 1701–02, 1704–05; Title 39.	Chs. 7–8; Title 39.
1716A	Title 39	Title 39.
1717	1001, 1003; Title 39	1-2A3, 1-2A4; Title 39.
1718	Title 39	Title 39.
1719	1733	2-8D3.
1720	1733, 1751	2-8D3.
1721	1732, 1737; Title 39	2-8D3; 2-8D6; Title 39.
1722	1352, 1733; Title 39	2-6D2, 2-8D3; Title 39.
1723	1733; Title 39	2-8D3; Title 39.
1724	Title 39	Title 39.
1725	1733; Title 39	2-8D3; Title 39.
1726–28	1732; Title 39	2-8D3; Title 39.
1729–31	1381; Title 39	2-6F4; Title 39.
1732	1753; Title 39	2-6D2; Title 39.
1733	1733; Title 39	2-8D3; Title 39.
1734	Title 39	Title 39.
1735–37 (new)	Title 39	Title 39.

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Ch. 84.—Presidential Assassination, Kidnaping and Assault:		
1751	1001, 1004, 1601–03, 1611–12, 1631–32; Title 18, pt. D.	2-7B1, 2-7D1, 1-2A4, 1-2A5, 3-10A1.
1752	[Not considered]	2-6B1, 2-8B6.
Ch. 85.—Prison-Made Goods:		
1761–62	Title 15	Title 15.
Ch. 87.—Prisons:		
1791	1309; Title 18, pt. E	2-6B6, 3-12C1.
1792	1308–09	2-6B6, 2-9B1, 2-9B3, 1-2A4, 1-2A5.
Ch. 89.—Professions and Occupations:		
1821	Title 15	Title 15.
Ch. 91.—Public Lands:		
1851	1732	2-8D3.
1852–54	1705, 1732	2-8B6, 2-8D3.
1855	1702, 1704–05	2-8B2, 2-8B3, 2-8B6.
1856	1703	2-8B4.
1857–58	1705	2-8B6.
1859	1301	2-6B1.
1860	1617; Title 43	2-9C4; Title 43.
1861	1732; Title 43	2-8D3; Title 43.
1862–63	1712	2-8C5.
Ch. 93.—Public Officers and Employees:		
1901	1732, 1737, 3501; Title 5	2-8D3, 2-8D6, 1-4A3; Title 5.
1902	1371–72	2-6F1, 2-6F3.
1903	1372	2-6F3.
1904	1371–72	2-6F1, 2-6F3.
1905	1371, 3501	2-6F1, 1-4A3.
1906	1371; Title 12	2-6F1; Title 12.
1907–08	1371, 3501; Title 12	2-6F1, 1-4A3; Title 12.
1909	1363; Title 12	2-6E2; Title 12.
1910	Title 28	Title 28.
1911	1732, 1737; Title 28	2-8D3, 2-8D6; Title 28.
1912	1363, 1732, 3501	2-6E2, 2-8D3, 1-4A3.
1913	Title 5	Title 5.
1915	Title 19	Title 19.
1916	1737; Title 5	2-8D6; Title 5.
1917	1352, 1512; Title 5	2-6D2, 2-7F3; Title 5.
1918	Omitted	Omitted.
1919	1352, 1732	2-6D2, 2-8D3.
1920	1352, 1732	2-6D2, 2-8D3.
1921	1732; Title 5	2-8D3, Title 5.
1922	1352, 1511, 1617; Title 5	2-6D2, 2-7F2, 2-9C4, Title 5.
1923	1732, 1734	2-8D3.
Ch. 95.—Racketeering:		
1951	1001, 1004, 1721, 1732	2-9C1, 2-9C3, 2-8D2, 2-8D3.
1952	1361, 1403, 1701, 1732, 1822–24, 1831–32, 1841.	2-9C1, 2-6E1, 2-6G3, 2-8B1, 2-9E1, 2-9E2, 2-9F4.
1953	1831–32	2-9F2.
1954	1758; Title 18, Pt. E	2-8F2.
1955	1831; Title 18, Pt. D	2-9F1, 1-4A4.
Ch. 96.—Racketeer Influenced and Corrupt Organizations:		
1961	[Not considered]	2-9C1.
1962	[Not considerde]	2-9C1.
1963	[Not considered]	2-9C1, 1-4A4.
1964	[Not considered]	3-13A1, 3-13A2, 3-13A3.
1965	[Not considered]	3-13A4.
1966	[Not considered]	3-13A4.
1967	[Not considered]	3-13A4.
1968	[Not considered]	3-13A5.
Ch. 97.—Railroads:		
1991	1001, 1711, 1713	2-7B1, 2-8D2, 1-2A4.
1992	707, 1601–03, 1613, 1701–02, 1705.	2-7B1, 2-7B2, 2-7B3, 2-7B4, 2-8B1, 2-8B2, 2-8B5, 2-8B6.
Ch. 99.—Rape:		
2031	1641–42	2-7E1.
2032	1641, 1646	2-7E2.
Ch. 101.—Records and Reports:		
2071	1356, 1705, 1732	2-6D3, 2-8B6, 2-8D3.
2072	1753; Title 7	2-6D2, Title 7.
2073	1732–33, 1737, 1753	2-8D3, 2-8D6, 2-6D2.
2074	Title 15	Title 15.
2075	Title 5	Title 5.
2076	Title 28	Title 28.
Ch. 102.—Riots:		
2101–02	206, 707, 1801–02	2-9B1, 2-9B2, 2-9A1.
Ch. 103.—Robbery and Burglary:		
2111–12	1721	2-8D2.
2113	1601–03, 1611–13, 1711, 1721, 1732.	2-7B1, 2-7B2, 2-7B3, 2-7B4, 2-7C1, 2-7C2, 2-8C1, 2-8C2, 2-8D1, 2-8D2, 2-8D3.
2114	1611–13, 1721	2-7C1, 2-7C2, 2-8D1, 2-8D2.
2115	1711	2-8C2.
2116	1301, 1611–12, 1712–13	2-6B1, 2-7C1, 2-7C2, 2-8C5.
2117	206, 707, 1001, 1712–13	1-2A4, 2-8C5, 2-8C2.
Ch. 105.—Sabotage:		
2151	1105	2-5B4.
2152	1107, 1301, 1705, 1712	2-5B4, 2-6B1, 2-8B6, 2-8C5.
2153–54	1004, 1105–07	2-5B4, 1-2A5.
2155–56	1004, 1105, 1107	2-5B4, 1-2A5.
2157	Omitted	Omitted.
Ch. 107.—Seamen and Stowaways:		
2191	1612, 1633	2-7C1, 2-7C2, 2-7D3.
2192	1001, 1003–04, 1110, 1633, 1801, 1803.	2-5B6, 2-7D3, 2-9B1, 2-9B3, 1-2A3, 1-2A4, 1-2A5.
2193	1805	2-7D5.
2194	1631–33	2-7D1, 2-7D2, 2-7D3.

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Ch. 107.—Seamen and Stowaway—Continued		
2195	Title 46	Title 46.
2196	1613	2–8B6.
2197	1732, 1751, 1753	2–8D3, 2–8E2.
2198	1642	2–7E2.
2199	1714, 1733	2–8D3.
Ch. 109.—Searches and Seizures:		
2231	1301, 1366, 1611–13, 1616	2–6B2, 2–6E3, 2–7C2, 2–7C3, 2–7C4.
2232	1301, 1323	2–6B1, 2–6B2, 2–6C1.
2233	1301, 1323, 1401, 1732	2–6B1, 2–6C1, 2–6G1, 2–8D3.
2234–36	1521	2–7F5.
Ch. 111.—Shipping:		
2271	1004, 1705, 1732	2–8B6, 2–8D3, 1–2A5.
2272	1705, 1732	2–8B6, 2–8D3.
2273	1705	2–8B6.
2274	1001–04, 1705; Title 46	2–8B6, 1–2A3, 1–2A4, 1–2A5; Title 46.
2275	1601, 1611–13, 1701–05	2–7B1, 2–7C1, 2–7C2, 2–8B1, 2–8B2, 2–8B3, 2–8B4, 2–8B5.
2276	1001, 1705, 1711–13	2–8B6, 2–8C2, 2–8C5, 1–2A4.
2277–78	Title 46	Title 46.
2279	1712; Title 46	2–8C5; Title 46.
Ch. 113.—Stolen Property:		
2311	1735(7), 1736, 1741(f), 1754(k), (1).	2–8A1(12), 2–8A2.
2312	1732, 1736	2–8D3, 2–8D8.
2313	1732	2–8D3.
2314–15	1732, 1751, 1752	2–8D3, 2–8E2, 2–8E3.
2316–17	1732	2–8D3.
2318	Title 15	Title 15.
Ch. 115.—Treason, Sedition, and Subversive Activities:		
2381	1101–02	2–5B1, 2–5B2.
2382	1118	2–5B10.
2383–85	1103	2–5B3.
2386	1104; Title 50	2–9D1; Title 50.
2387	1110	2–5B6.
2388	1004, 1109–11, 1303	2–5B6, 2–6D2(a)(6), 2–6B3, 1–205.
2389–90	1101–03, 1203	2–5B1, 2–5B2, 2–5B3, 2–5C2.
2391	1004, 1109–11, 1303	2–5B6, 2–6D2(a)(6), 2–6B3, 1–205.
Ch. 117.—White Slave Traffic:		
2421	1841	2–9F4.
2422–23	1631–32, 1841–42	2–7D1, 2–7D2, 2–9F4.
2424	Omitted	Omitted.
Ch. 119.—Wire Interception and Interception of Oral Communications		
2510	1563; Title 18, pt. D	3–10C1.
2511	1561; Title 18, pt. D; title 47	2–7G1.
2512	1562	2–7G2.
2513	5802	1–4A4, 3–13A3.
2514		3–10D2.
2515	5803	3–10C5.
2516	5804	3–10C2.
2517	5805	3–10C3, 3–10C2.
2518	5806	3–10C3, 3–10C5, 3–11E1.
2519	5807	3–10C4.
2520	5808	3–13A2.

PART II.—CRIMINAL PROCEDURE

Ch. 201.—General Provisions:		
3001	Omitted	Rule 1, 2, 54, 59, etc.
3002	Omitted	Rule 56.
3003	Omitted	Rule 50.
3004	Omitted	Rule 53.
3005	6001	Rule 16.2, 44, 44.1
3006	Omitted	Rule 44.
3006A	4001	Rule 44.1, § 3–11A2.
3007	Omitted	Rule 12, 47.
3008	Omitted	Rule 49.
3009	Omitted Rule 55	Rule 55.
3010	Omitted	Rule 51.
3011	Omitted	Rule 45.
3012	4002	Rule 46.4.
Ch. 203.—Arrest and Commitment:		
3041	4101	3–11B1.
3042	4102	3–11B2.
3043	4103	Rule 42.2.
3044	Omitted	Rule 3.
3045	4104	Rule 4(d).
3046	Omitted	Rule 4, 9.
3047	4105	Rule 4(c).
3048	Omitted	Rule 40.
3049	4106	Rule 40(c).
3050	5905	3–10B6.
3052	5901	3–10B1.
3053	5902	3–10B2.
3054	Title 16	Title 16.
3055	Title 25	Title 25.
3056	5903	3–10B3.
3057	4107	Omitted.
3058	4108	3–10A5.
3059	4109	3–10A2.
3060	4110	Rule 5.1.
3061	5904	3–10B4.
Ch. 205.—Searches and Seizures:		
3101	Omitted	Rule 54.
3102	Omitted	Rule 41(a).
3103	Omitted	Rule 41(b).
3103a	4201	Rule 41(i).
3104	Omitted	Rule 41(c).
3105	4202	Rule 41(j).
3106	Omitted	Rule 41(c).
3107	5901	3–10B1.
3108	Omitted	Rule 41 (c), (d).
3109	4203	Rule 41(k).
3110	Omitted	Rule 41(g).
3111	Omitted	Rule 41(b).
3112	Title 16	Folio Title 16.
3113	Title 25	Title 25.
3114	Omitted	Rule 41(e).
3115	Omitted	Rule 41(d).
3116	Omitted	Rule 41(f).
Ch. 207.—Release:		
3141	4301	Rule 46.1(a).
3142	4302	Rule 46.3(b).
3143	4303	Rule 46.3(c).
3144	4304	Rule 46.2(c).
3145	Omitted	Rule 5(b), 46.
3146	4305	Rule 46.1.
3147	4306	3–11E2.
3148	4307	Rule 46.2 (d), (b).
3149	4308	Rule 46.2(a).
3150	4309	Rule 46.3(a), § 2–6B4.
3151	4310	2–6C6.
3152	4311	Rule 46.1(i), § 1–1A4(47).
Ch. 209.—Extradition:		
3181	4401	3–10F1(a).
3182	4402	3–10E4.
3183	4403	3–10F2(b).
3184	4404	3–10F2(a).
3185	4405	3–10F2(c).
3186	4406	3–10F1(b).
3187	4407	3–10F3(a).
3188	4408	3–10F3(b).
3189	4409	3–10F3(c).
3190	4410	3–10F3(c).
3191	4411	3–10F3(c).
3192	4412	3–10F3(d).
3193	4413	3–10F3(e).
3194	4414	3–10E4.
3195	4415	3–10F1C.
Ch. 211.—Jurisdiction and Venue:		
3231	4501	3–11B3.
3232	Omitted	Rule 18.
3233	Omitted	Rule 19.
3234	Omitted	Rule 20.
3235	6003	Rule 18.
3236	4502	3–11B8(a).
3237	4503	3–11B5.
3238	4504	3–11B6.
3239	4505	3–11B8(B).
3240	4506	3–11B7.
3241	4507	3–11B3(b).
3242	Title 25	Title 25.
3243	Title 25	Title 25.
Ch. 213.—Limitations:		
3281	S. 701	1–3B1(b).
3282	S. 701	1–3B1(c).
3283	S. 701	1–3B1(c).
3284	S. 701	1–3B1(c), (i), (1).
3285	S. 701	1–3B1(i), (2).
3286	S. 701	1–3B1(c).
3287	S. 701	1–3B1(h).
3288	S. 701	1–3B1(d), (3).
3289	S. 701	1–3B1(d), (3).
3290	S. 701	1–3b1(e), (1).
3291	S. 701	1–3B1(c).
Ch. 215.—Grand Jury:		
3321	4601	Rule C(a).
3322	Omitted	Rule C(a).
3323	Omitted	Rule C(b).
3324	Omitted	Rule C(c).
3325	Omitted	Rule C(d).
3326	Omitted	Rule C(e).
3327	Omitted	Rule C(f).
3328	Omitted	Rule C(g).

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TABLE I—COMPARISON TABLES—Continued

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Ch. 216.—Special Grand Jury:		
3331	4609	Rule 6.1(a), (b).
3332	4610	Rule 6.1(c).
3333	4611	Rule 6.1.
3334	4612	Rule 6.1(i).
Ch. 217.—Indictment and Information:		
3361	Rule 7	Rule 7.
3362	Rule 7	Rule 7(b).
3363	Rule 8	Rule 8(a), 13.
3364	Rule 8	Rule 8(b), 14.
3365	Rule 7	Rule 7(e).
3366	Rule 7	Rule 7(f).
3367	Rule 48	Rule 48, 6(b), (2).
Ch. 219.—Trial By United States Magistrates:		
3401	4801	Rule 23.1, S. 3–11B4.
3402	4802	3–11A1(a).
Ch. 221.—Arraignment, Pleas and Trial:		
3431	Rule 45	Rule 45(c).
3432	6004	Rule 16.2.
3433	Rule 16	Rule 10.
3434	Rule 43	Rule 43.
3435	Repealed	Omitted.
3436	Rule 13	Rule 13.
3437	Rule 14	Rule 14.
3438	Rule 11	Rule 11, 32.1(d).
3439	Rule 12	Rule 12.
3440	Rule 12	Rule 12(b).
3441	Rule 23	Rule 23.
3441	Rule 23	Rule 23.
3442	Rule 24	Rule 24.
3443	Rule 30	Rule 30.
3444	Rule 25	Rule 25.
3445	Rule 29	Rule 29.
3446	Rule 33	Rule 33.
Ch. 223.—Witnesses and Evidence:		
3481	5001	Rule 28.1.
3482	Omitted	Rule 26.
3483	Omitted	Rule 27(b).
3484	Omitted	Rule 17.
3485	Omitted	Rule 28.
3487	Repealed	2–8D3(c)(2).
3488	Title 25	Title 25.
3489	Omitted	Rule 16.
3490	Omitted	Rule 27.
3491	5002	Rule 26.2(a).
3492	5003	Rule 26.2(b).
3493	5004	Rule 26.2(c).
3494	5005	Rule 26.2(d).
3495	5006	Rule 26.2(e), S.3–11A3(a).
3496	5007	3–11A3(b).
3497	Repealed	2–8D3(c)(2).
3498	Omitted	Rule 15, 17(f).
3499	Omitted	Rule 17(g).
3500	5008	Rule 16.1.
3501	5009	3–11A4.
3502	5010	3–11A5.
3503	5011	Rule 15.
3504	5012	3–10C5(f).
Ch. 225.—Verdict:		
3531	Rule 31	Rule 31.
3532	Rule 29	Rule 29(b).

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Ch. 227.—Sentence, Judgment, and Execution:		
3561	Omitted	Rule 32.1(b).
3562	Omitted	Rule 32.1(a), (c).
3563	3001	1–4A1.
3564	3001	1–4A1.
3565	Repealed	3–10A4.
3566	6005	3–11A6.
3567	6006	Omitted.
3568	3205	1–4B4.
3569	3304	1–4C2.
3570	5201	3–11D3.
3571	Omitted	Rule 36.
3572	Omitted	Rule 35.
3573	Omitted	Rule 34, 32, 1(d).
3574	Omitted	Rule 38A.
3575	5202	1–4B2, Rule 32.2.
3576	5202	3–11E3.
3577	5203	Rule 32.
3578	5204	3–10A3.
Ch. 229.—Fines, Penalties and Forfeitures:		
3611	5301	1–4A4.
3612	5302	1–4A4.
3613	5303	3–10A4.
3614	Repealed	3–10A4.
3615	Title 27	Title 27.
3617	Title 27	Title 27.
3618	Title 27	Title 27.
3619	Title 27	Title 27.
3620	5304	Title 46.
Ch. 231.—Probation:		
3651	3101 et seq	1–4D1, 1–4D2, 1–4D3, Rule 32.1(g).
3652	Omitted	Rule 32.1(e), (c).
3653	5401	1–4D3, 1–4D4, 3–10B5, Rule 32.1 (i).
3654	5402	Rule 32.3.
3655	5403	3–12B1, 3–12F2.
3656	5404	3–12B2.
Ch. 233.—Contempts:		
3691		Rule 42(b).
3692	5501	Rule 42.1.
3693	Omitted	Rule 42.
Ch. 235.—Appeal:		
3731	5601	3–11E1.
3732	Omitted	Rule 37(a).
3733	Omitted	Rule 37(a)(1).
3734	Omitted	Rule 51; 37(a)(1).
3735	Omitted	Rule 38(a), 46.2(b).
3736	Omitted	Rule 37(b).
3737	Omitted	Rule 39(b), 51, 37(a)(1).
3738	Omitted	Rule 39(c).
3739	Omitted	Rule 39(a).
3740	Omitted	Rule 39(d).
3741	Omitted	Rule 52, 7, 12(b), (2), 30
Ch. 237.—Rules of Criminal Procedure:		
3771	5701	3–11A1(a).
3772	5702	3–11A1(b).

EXHIBIT 2

COMPARISON TABLE—TABLE II

INTRODUCTORY NOTE

This table identifies provisions of the United States Code outside of Title 18 which would necessarily be subject to conforming amendments as part of a Federal criminal codification effort. These amendments are contained within Title III of S. 1.

Set forth below, with respect to each Title of the United States Code, are: (1) those sections which will be modified to some extent, but retained within their present format; and (2) those sections currently embodied in Title 18 which will, by force of S. 1, be transferred to other titles in the United States Code.

Title 2. The Congress

Sections Amended By S. 1:

167g	252
192	269
241	390
248	

Sections Transferred Into Title 2:

591	610
608	611
609	612

Title 4. Flag and Seal, Seat of Government, and the States

Section Amended By S. 1: 3.

Sections Transferred Into Title 4:

700	712
701	713
709	

Title 5. Government Organization and Employees

Sections Amended By S. 1:

304	1507
551	7313
552	8125
555	8312

Sections Transferred Into Title 5:

202	643
203	648
204	649
205	650
206	651
207	652
208	653
209	1901
218	1913
219	1916
292	1917
431	1921
432	1922
433	2075

Title 7. Agriculture

Sections Amended by S. 1:

13	135a
13–1	135b
13a	135e
13b	135f
15	150gg
59	163
60	166
87b	167
87c	195
87f	203
96	207
215	615
218a	620
221	953
222	1011
270	1153
282	1156
472	1157
473	1373
473c–1	13791
473c–2	1380o
491	1433
499c	1596
499d	1622
499m	1642
499n	1887
503	1903
511i	1986
511k	2023
517	2044
586	2048
596	2105
608a	2112
608c	2115
608d	2149
608e–1	2150
610	

Sections Transferred Into Title 7:

707	916
711	2072

Title 8. Aliens and nationality

Sections Amended By S. 1:

333	1182
334	1185
338	1225
339	1227

Sections Amended By S. 1—Continued

1251 1325
1252 1326
1281 1327
1282 1328
1284 1330
1286 1356
1304 1357
1306 1425
1322 1446
1323 1451
1324 1481

Section transferred into title 8: 1428.

Title 9. Arbitration

Sections amended by S. 1: 7.

Title 10. Armed Forces

Sections amended by S. 1:

504 4501
2276 7678
2671 9501

Sections transferred into title 10:

244 1024
702 1383
704 1385
710

Title 11. Bankruptcy

Sections amended by S. 1:

32 104
43 205
69

Sections transferred into title 11:

154
155

Title 12. Banks and banking

Sections amended by S. 1:

92a 1464
95 1713
95a 1715z–4
209 1725
211 1730
374a 1730a
378 1738
582 1750b
617 1818
630 1820
631 1828
640i 1829
1141j 1847
1458 1909

Sections transferred into title 12:

212 1006
213 1009
214 1306
333 1906
644 1907
1004 1908
1005 1909

Title 13. Census

Sections Amended By S. 1:

211 222
212 223
213 224
214 225
221

Title 14. Coast Guard

Sections Amended By S. 1:

83 431
84 638
85 639
89 892

Title 15. Commerce and Trade

Sections Amended By S. 1:

1 76
2 77
3 77v
8 77x
13a 77yyy
20 78o
24 78o–3
49 78u
50 78ff
54 79r
68h 79z–3
691 80a–9
701 80a–33
72 80a–36
80a–41 1116
80a–44 1172
80a–48 1173
80b–3 1175
80b–9 1176
80b–17 1193
155 1194
158 1196
159 1197
235 1200
241 1212
293 1233
298 1242
377 1243
645 1244
687b 1264
687f 1281
714m 1282
715e 1314
715h 1335
717m 1611
717t 1674
1004 1703
1007 1714
1024 1717

Sections transferred into title 15:

836 1821
1761 2074
1762 2318

Title 16. Conservation

Sections amended by S. 1:

3 462
9a 471
25 551
45e 552d
63 590n
98 606
114 666a
117c 668
123 668cc–4
127 668dd
146 690g
152 693a
170 707
198c 718e
204c 718g
256b 730
354 772e
363 776b
364 776c
371 783
373 811
374 825c
395c 825f
403c–3 825o
403h–3 831t
404c–3 852
408k 853
413 916e
414 916f
422d 954
423f 957
425g 984
426i 989
428i 990
430g 1029
430v 1030
433 1082
460k–3 1167
460n–5 1184
460n–8 1246

Sections Transferred Into Title 16:

41 46
42 47
43 3054
44 3112
45

Title 17. Copyrights

Sections Amended By S. 1:

14 105
18 115
104

Title 19. Customs Duties

Sections Amended By S. 1:

60 468
64 507
70 1304
81s 1333
283 1341
1431 1581
1436 1586
1438 1599
1445 1613
1455 1618
1460 1620
1461 1708
1465 1919
1510 1975

Sections Transferred Into Title 19:

543 1915
545 2279
548

Title 20. Education

Sections Amended By S. 1:

581
867

Title 21. Food and Drugs

Sections Amended By S. 1:

17 841
63 842
104 843
117 844
122 845
127 846
134e 847
135a 848
143 849
145 850
158 851
198a 876
198c 885
212 952
331 953
333 954
372a 955
458 956
461 957
467 958
467d 959
611 960
622 961
671 962
675 963
676 964
677

Title 22. Foreign relations and intercourse

Sections Amended By S. 1:

253 1182
254 1198
258a 1199
277d–21 1200
286f 1203
287c 1623
447 1631n
450 1641k
455 1641p
461 1642h
614 1642m
615 1643k
618 1934
703 2518
1179 2584

Sections Transferred Into Title 22:

546 964
703 965
708 966
951 967
955 969
959 1543
961 1544
962 1545
963

Title 24. Hospitals, asylums, and cemeteries

Sections Amended By S. 1:

50
154
286

Title 25. Indians

Sections Amended By S. 1:

70b 399
201 1323
202

Sections Transferred Into Title 25:

437 1155
438 1156
439 1158
1154 1159

1160 3055
1161 3113
1162 3242
1164 3243
1165 3488

Title 26. Internal Revenue Code

Sections Amended By S. 1:
4817 7203
4918 7204
5203 7205
5274 7206
5551 7207
5557 7208
5601 7209
5602 7210
5603 7211
5604 7212
5605 7213
5606 7214
5607 7215
5608 7231
5661 7232
5662 7233
5671 7234
5672 7235
5674 7236
5675 7239
5676 7240
5681 7241
5682 7262
5683 7263
5685 7264
5686 7265
5687 7266
5689 7267
5691 7268
5762 7270
5861 7271
5871 7272
6065 7273
6531 7274
6680 7302
6685 7401
7201 7604
7202

Section Transferred Into Title 26:
841 923
842 924
843 925
844 926
845 927
846 928
847 3615
848 1201
921 1202
922 1203

Title 27. Intoxicating liquors

Sections Amended By S. 1:
202 207
204 208
206

Sections Transferred Into Title 27:
1261 1264
1262 1265
1263

Title 28. Judiciary and judicial procedures

Sections Amended By S. 1:
454 1867
636 1869
1291 1918
1355 2321
1784 2678
1864 2901
1865 2902
1866

Sections Transferred Into Title 28:
243 1421
491 1910
645 1911
646 2076
647

Title 29. Labor

Sections Amended by S. 1:
161 308c
162 308e
186 439
215 461
216 463
259 501
308 502
503 524
504 530
522 629

Title 30. Mineral lands and mining

Sections Amended By S. 1:
689 733
729 819

Title 31. Money and finance

Sections Amended By S. 1:
155 665
163 1003
243 1018
395

Sections Transferred Into Title 31:
336 489
337 492
475 504

Title 33. Navigation and navigable waters

Sections Amended By S. 1:
1 449
2 452
3 474
157a 495
158 499
244 502
354 507
368 519
391–396 533
395 554
406 555
410 601
411 682
412 915
419 927
421 928
441 931
442 937
443 938
444 941
445 990
447 1005
448 1008

Title 35. Patents

Sections Amended By S. 1:
24 186
25 187
33 292

Title 36. Patriotic Societies and Observances

Sections Amended By S. 1:
181
379
728

Sections Transferred Into Title 36:
705
706
917

Title 38. Veteran's Benefits

Sections Amended By S. 1:
787 3501
3313 3502
3405 3505

Section Transferred Into Title 38:
290

Title 39. The Postal Service

Sections Amended By S. 1:
410 3008
602 3011
1008 5206
2201 5403
3001 5603
3003 5604

Sections Transferred Into Title 39:
440 1716A
1692 1717
1693 1718
1694 1721
1695 1722
1696 1723
1697 1724
1698 1725
1699 1726
1700 1727
1703 1728
1704 1729
1712 1730
1713 1731
1715 1732
1716 1733
1734 1737
1735 3061
1736

Title 40. Public Building, Property, and Works

Sections Amended By S. 1:
13m 193h
53 193s
56 212b
101 318c
193 332
193f

Title 41. Public Contracts.

Sections Amended By S. 1:
39
51
54

Sections Transferred Into Title 41:
435
441
443

Title 42. The Public Health and Welfare

Sections Amended By S. 1:
246 1975a
250 1975d
257 1987
259 1990
261 1995
262 2000e–5
263 2000e–8
263i 2000e–10
263j 2000e–12
271 200g–2
402 2000h
405 2000h–1
406 2271
408 2272
1306 2273
1307 2274
1400f 2275
1400s 2276
1422 2277
1712 2278
1874 2278a
1973g 2278b
1973i 2281
1713 2462
1857f–4 2515
1857f–6 2703
1857f–6c 3188
1973j 3220
1973l 3425
1973aa–1 3426
1973aa–3 3610
1973bb–2 3611
1974 3631
1974a

Sections Transferred Into Title 42:
799
1012

Title 43. Public Lands

Sections Amended By S. 1:
104 1064
105 1096
183 1191
254 1212
255 1333
315a 1334
362

Sections Transferred Into Title 43:
714
1860
1861

Title 44. Public Printing and Documents

Sections Amended By S. 1:
3508
3511

Section Transferred Into Title 44:
442

Title 45. Railroads

Sections Amended By S. 1:
39 152
60 228m
64a 354
65 355
66 359
81 362
83

Title 46. Shipping

Sections Amended By S.1:

7	369
8	391a
22	398
45	403
58	407
59	408
62	410
77	413
831	452
85f	471
85g	381
88f	497
88g	498
91	526m
101	526p
142	563
143	564
151	599
152	643
154	652
156a	658
157	660
158	672
161	676
162	684
163	701
170	707
194	709
203	711
224a	712
229e	728
229f	738b
232	738c
235	808
239	812
239c	815
246	817b
249c	817c
251	820
251a	831
277	835
316	836
319	837
320	838
321	839
322	941
323	119a
324	1132
1171	1226
1223	1228
1224	1277
1225	1333

Sections Transferred Into Title 46:

1081	2277
1082	2278
1083	2278
2195	3620
2274	

Title 47. Telegraphs, telephones, and radiotelegraphs

Section Amended By S. 1:

13	205
21	220
22	223
23	312
24	362
25	386
27	409
28	501
29	502
30	503
31	506
33	508
37	509
202	605
203	606

Section Transferred Into Title 47:

2511

Title 48. Territories and Insular Possessions

Sections Amended By S. 1:

1417	1461
1421i	1572
1423f	1704
1424	

Title 49. Transportation

Sections Amended By S. 1:

1	46
5	47
6	121
10	305
15	314
16	319
19a	322
20	906
20a	917
41	1010
1013	1472
1017	1473
1021	1523
1159	1679
1378	1681
1471	1725

Sections Transferred Into Title 49:

831	834
832	835
833	

Title 50. War and National Defense

Sections Amended By S. 1:

23	797
167k	822
192	823
210	824
217	843
459	855
783	856
792	1436
794	

Sections Transferred Into Title 50:

795–797
2386

Title 50. Appendix, War and National Defense

Sections Amended By S. 1:

3	781
5	783
7	1152
12	1191
16	1193
19	1215
34	1884
327	1941d
460	1985
462	2009
468	2017g
473	2017m
520	2025
522	2073
530	2155
531	2160
532	2165
534	2213a
535	2255
590	2284
643a	2405
643b	

EXHIBIT NO. 2

TABLE III

INTRODUCTORY NOTE

This table identifies those provisions of S. 1 which are without antecedent in current Federal statutory law. They are identified as with an antecedent in the recommendations of the National Commission on Reform of Federal Criminal Laws or wholly new to S. 1.

The Table also identifies proposals advanced by the National Commission, but wholly omitted in S. 1.

Section—S. 1: New Law	Commission antecedent
1-1A1. Title	X.
1-1A2. General Purposes	X.
1-1A3. Principle of Legality; Rule of Construction	X.
1-2A1. Culpability	X.
1-2A2. Causal Relationship Between Conduct and Result	X.
1-3B2. Entrapment	X.
1-3C1. Intoxication	X.
1-3C2. Mental Illness or Defect	X.
1-3C3. Execution of Public Duty	X.
1-3C4. Defense of Person or Property	X.
1-3C5. Ignorance or Mistake of Fact	X.
1-3C6. Ignorance or Mistake of Law	X.
1-3C7. Duress	X.
1-3C8. Consent	X.
1-4A3. Disqualification	X.
1-4A5. Joint Sentence	New to S. 1.
1-4E2. Separate Proceeding to Determine Sentence of Death	X.
2-7B5. Aiding Suicide	New to S. 1.
2-8C3. Possession of Burglar's Tools	Do.
2-8F3. Environmental Spoilation	Do.
2-8F4. Unfair Commercial Practices	Do.
2-8F6. Regulatory Offenses	X.
3-11C2. Panel and Examination	New to S. 1.
3-11C5. Determination of Defense of Mental Illness or Defect	X.
3-11C7. Disposition of Criminal Charges	X.
3-11C8. Civil Commitment	New to S.1.
3-11D1. Sentencing Recommendation of the Attorney for the Government	Do.
3-11D2. Psychiatric Examination	X.
3-12F7. Finality of Parole Determinations	X.
3-13C1. Establishment of Criminal Law Reform Commission	New to S.1.
3-13C2. Duties	Do.
3-13C3. Powers	Do.
3-13C4. Compensation and Exemption of Members	Do.
3-13C5. Staff	Do.
3-13C6. Expenses	Do.

OMITTED

Commission recommendations

*Sec.**

703. Prosecution for Multiple Related Offenses
704. When Prosecution Barred by Former Prosecution for Same Offense
705. When Prosecution Barred by Former Prosecution for Different Offense
706. Prosecutions Under Other Federal Codes
707. Former Prosecution in Another Jurisdiction: When a Bar
708. Subsequent Prosecution by a Local Government: When Barred
709. When Former Prosecution is Invalid or Fraudulently Procured
1307. Public Servants Permitting Escape
1613. Reckless Endangerment
1648. General Provisions for Sections 1641 to 1647 (sex offenses)
1848. Testimony of Spouse in Prostitution Offenses
1852. Indecent Exposure
1861. Disorderly Conduct
3003. Persistent Misdemeanants
3601. Life Imprisonment Authorized for Certain Offenses

*Section references are to the Final Report of the National Commission on Reform of Federal Criminal Laws.

Mr. McCLELLAN. Mr. President, I would also advise those interested that copies of the bill, S. 1, the "Criminal Justice Codification, Revision, and Reform Act of 1973," is available and that it and the final report of the Commission may be obtained by writing the subcommittee at room 2204, Dirksen Senate Office Building, Washington, D.C. 20510.

Mr. President, I want to emphasize—as a Member of this body—as one who served on the Brown Commission—and as chairman of the Senate Judiciary Subcommittee on Criminal Laws and Procuredures—it is not going to be an easy task to process this bill, and we will never succeed in bringing to the floor a bill that will meet with the unanimous approval of the 100 Members of this body. There will have to be some give and take.

The bill that we will bring from the subcommittee will have provisions to which I may object or about which I may not be enthusiastic, and that may be true as to each member of the subcommittee and the full Judiciary Committee. But if we are to bring about this reform, again I say that there has to be some give and take. We will have to make up our minds that we are not going to vote against the whole program just because it contains one provision of law or one feature of the bill that we do not like.

I could pick out statutes on the books today that I would like to see reformed; but they are the law of the land, and we must obey them.

I know that I am going to have—and I thank them in advance—the full cooperation and the diligent assistance of all members of the Subcommittee on Criminal Laws and Procedures. We will undertake to expedite these hearings and to get this bill before the Senate at the earliest practical date.

I yield now to the distinguished Senator from Nebraska.

The PRESIDING OFFICER. The Chair recognizes the Senator from Nebraska.

Mr. HRUSKA. Mr. President, I thank the Senator from Arkansas and I commend him on his excellent presentation, a basic presentation of a very monumental piece of legislation.

Mr. President, as the ranking minority member of the Subcommittee on Criminal Laws and Procedures, I want to take this opportunity to salute our distinguished chairman, the senior Senator from Arkansas (Mr. MCCLELLAN), on the introduction of S. 1, the "Criminal Justice Codification, Revision and Reform Act of 1973." The effort necessary to produce this legislative proposal can only be fairly described as Herculean. The bill contains a little over 500 printed pages.

I am honored to join with our distinguished chairman on the bill, as well as the distinguished Senator from North Carolina (Mr. ERVIN), who is a cosponsor thereof, just as I am.

The recasting of our Federal criminal laws was early recognized as a long-term project that would require strong bipartisan support and a healthy spirit of reconciliation, good will, and accommodation. The introduction of S. 1 represents a major step toward our goal and reinforces my belief that we shall find ultimate success in the not too distant future. It is my hope that the entire rewriting of title 18 can be concluded and enacted into law as soon as possible.

The idea, indeed the inspiration and basis for S. 1, can be traced to the establishment of the National Commission on Reform of Federal Criminal Laws by the 89th Congress in Public Law 89–801.

The Commission was chaired by the Honorable Edmund G. Brown, former Governor of California. The vice-chairman was Congressman Richard H. Poff of Virginia, the author of the statute creating the Commission, and presently a Justice of the Supreme Court of Appeals of Virginia.

Other members were:

U.S. Circuit Judge George C. Edwards, Jr.

U.S. District Judge A. Leon Higginbotham, Jr.

Congressman ROBERT W. KASTENMEIER.

U.S. District Judge Thomas J. MacBride.

Congressman ABNER J. MIKVA.

Donald Scott Thomas, Esq.

Theodore Voorhees, Esq.

U.S. Senator JOHN MCCLELLAN of Arkansas.

U. S. Senator SAM ERVIN of North Carolina.

U.S. Senator ROMAN HRUSKA of Nebraska.

In the final report of the National Commission, the 92d Congress was given what the 89th had requested—a broad, comprehensive framework in which to decide the issues involved in recodification and possible reform of the Federal criminal code.

This report was the result of nearly 3 years of deliberation by the Commission, its Advisory Committee, consultants and staff. The Advisory Committee, headed by retired Justice and former Attorney General, Tom C. Clark, consisted of 15 persons with a broad range of experience.

In addition to Justice Clark its members were:

Maj. Gen. Charles L. Decker.
Hon. Brian P. Gettings.
Hon. Patricia Roberts Harris.
Fred B. Helms, Esq.
Hon. Byron O. House.
Hon. Howard R. Leary.
Robert M. Morgenthau, Esq.
Dean Louis H. Pollak.
Cecil E. Poole, Esq.
Milton G. Rector.
Hon. Elliot L. Richardson.
Gus Tyler.
Prof. James Vorenberg.
William F. Walsh, Esq.
Prof. Marvin E. Wolfgang.

Working with a budget of $850,000 and a staff of some 50, headed by Prof. Louis B. Schwartz of the University of Pennsylvania Law School, the Commission worked through preliminary memoranda and drafts in periodic discussion meetings. Reports of other bodies were used extensively, such as the President's Commission on Law Enforcement and Administration of Justice, the National Commission on Causes and Prevention of Violence, the National Advisory Commission on Civil Disorders, the American Bar Association Project on Standards for Criminal Justice, the American Law Institute, the National Council on Crime and Delinquency and numerous State penal law revision commissions.

At the conclusion of this first phase of intensive study, the Commission published the study draft of June 1970 in order to secure the benefit of public criticism before the Commission made its decisions. The comments submitted in response to the circulation of 5,000 copies of the study draft greatly aided the members of the Commission as they met again and again to determine the final shape and scope of the Report.

The final report was submitted to the President and to Congress on January 7, 1971. It was made clear in the letter transmitting this report that no Commissioner is committed to every feature of the proposed code. However, each of us, I believe, is convinced that the great bulk of the proposal has great merit as a basis and vehicle for legislation. We desire enactment of a total revision of title 18 at the earliest possible opportunity.

Such an effort runs no risk of redundancy. Since the enactment of our first set of criminal laws in 1790 (1 Stat. 112, Crime Act of 1790) this Nation has never legislated a comprehensive reform of its criminal laws. There have been occasional revisionary—essentially editorial—efforts, the last one over two decades ago (Act of June 25, 1948, 62 Stat. 683). And since that modest undertaking, Congress has enacted in title 18 alone over 250 separate Federal offenses, seriatim. The consequence is that the Federal criminal laws are riddled with anomalies and their efficacy is frustrated.

In January of 1971, President Nixon publicly commended the Commission and requested that the Department of Justice create a special unit of experienced Department attorneys to undertake an evaluation of the Commission's many suggestions and further to make the results of their evaluation available to the appropriate committees of the Congress in a close and cooperative spirit.

The hearings and studies conducted by the Criminal Laws Subcommittee during the 92d Congress and the bill under discussion have added greatly to the knowledge and options available in the field of criminal law codification.

Under the direction of former Attorney General Mitchell and the present Attorney General Richard Kleindeinst, the Department of Justice has devoted enormous resources over the last 2 years to the task of reconstructing title 18 to meet the needs of our criminal justice system, in a modern setting. This was, of course, facilitated by the often expressed interest of the President in this venture.

The administration's bill will be forwarded to the Congress shortly. That proposal and S. 1 will provide the primary vehicle to which the Criminal Laws Subcommittee can turn in the coming months.

With this preliminary work completed it is essential that we not lose the opportunity to capitalize on and build upon the accomplishments up to this date. It is my hope that the Senate and the other body will seize this chance to make a significant contribution to Federal law by enacting during the 93d Congress an entirely new—both in form and substance—criminal code.

Much remains to be done if we are to fashion this new code and draw together the best of past experience and the best of innovation into a workable, comprehensive and scholarly code. This will be the task of the 93d Congress.

This Senator is not at this time willing to give a blanket endorsement to S. 1, nor the administration bill which will be forthcoming. In discussing its provisions with my colleagues over the past 2 years, different approaches to some fundamental problems have developed. This is as it should be when such a vast and complex subject is discussed. Of course, I am still open to suggestion on

these problems just as I am sure other members of the committee are. Just as the subcommittee hearings during the 92d Congress have been very useful, I look forward to the upcoming ones. It will be our duty during the 93d Congress to diligently explore S. 1 and the administration's bill, as well as the suggestions presented by outside experts, and to come up with the best bill possible. I intend to do everything that I can to assist the chairman in this task.

It is essential that our future efforts not be politicized or polarized on single issues and that we proceed cautiously, but with deliberate speed. This revision is more important than any single issue and it should be approved even if all concerned cannot agree on each section and aspect of the new code. As the Senator from Michigan (Mr. HART), a member of the committee stated on one occasion, "we ought not to keep the whole reform as ransom" to any single notion of what the law should be—see Hearings at 111 Vol. I. Governor Brown supported this view by saying that however the controversial questions are settled,

> the work, the real work, of the Commission, the work of codification should go forward. (Id. at 95.)

Mr. President, since my appointment to the National Commission, I have spent a great deal of time considering the proper form Federal criminal law should take in this Nation. This is a compelling issue that touches the lives of most citizens in one way or another, and the lives of some citizens to an overwhelming degree. During the deliberations of the Commission and later the subcommittee, we have been exposed to some remarkable new thinking in this field which has been incorporated into both the Final Report of the Commision and now S. 1. Many of these ideas have much merit. Their adoption will result in a more fair, a more compassionate, a more effective, a more balanced, and a more workable criminal justice system. This should be our ultimate goal.

Of course, in other instances I am content to walk some of the more traditional paths of current law.

The work of the subcommittee in this field is one of the most important tasks that confronts this Congress. I am anxious to get on with our work in concert with my able colleagues; we can look forward to its challenges and the consequences that will flow from it. The text of S. 1 will be of material benefit to our work, and once again I congratulate our chairman and the subcommittee staff on this excellent bill because it was they who principally worked this out to the form which it enjoys today.

In my commendations I wish to include, of course, the Senator from North Carolina because certainly without those two Senators we would not have had that continuing and diligent interest in this subject which was necessary in order to have made as much progress as we have made, but it will take a continuing, abiding, and a persistent interest in the months ahead to finish the job, but I am confident this Congress can and will reach the point of enactment in due time.

Mr. MCCLELLAN. Mr. President, I yield to the distinguished Senator from North Carolina (Mr. ERVIN).

The PRESIDING OFFICER. The Chair recognizes the Senator from North Carolina.

Mr. ERVIN. Mr. President, on January 4, 1973, Senator JOHN MCCLELLAN, Senator ROMAN HRUSKA, and I jointly introduced S. 1, a bill to codify, revise and reform the Federal criminal law and procedure.

I would like to take this occasion to commend the work of all members of the National Crime Commission, the work of all members of the staff of the Subcommittee on Criminal Laws and Procedures, and especially the chairman of the subcommittee, who is also a member of the Crime Commission, and the ranking minority member of the committee, Senator HRUSKA, who is also a member of the Crime Commission.

I would also like to express my personal appreciation to a distinguished North Carolina lawyer, Fred B. Helms, of Charlotte, N.C., who rendered great service as a member of the advisory committee to the Commission, and also to Robert B. Smith, now Chief Counsel of the Government Operations Committee, for the assistance he gave me as a member of the National Crime Commission in the study of these proposed reforms, and to Bill Pursley, who has since that time assisted me materially in the study of this bill.

I have joined in sponsoring S. 1 because I believe it represents a reasonable blueprint from which the Congress can begin a comprehensive consideration of reform of the Federal criminal law. I do not support every provision incorporated in the bill. Indeed, I have serious reservations with respect to several sections of the bill as presently drafted. Nevertheless, having served as a member of the National Commission on Reform of Federal Criminal Laws, with Senator MCCLELLAN and Senator HRUSKA, and having worked closely with these Senators in the preparation of S. 1, I am satisfied that it is a thoughtful beginning in what will certainly be a very important and demanding task—reform of the Federal criminal law.

S. 1 is based upon a comprehensive study of the Federal criminal law undertaken by the National Commission on Reform of Federal Criminal Laws. Established by Congress in 1966, the Commission was directed to make recommendations to Congress which would improve our system of criminal justice. On January 7, 1971, the Commission submitted to the President and Congress its final report. During 1971 and 1972, the Senate Subcommittee on Criminal Laws and Procedures conducted hearings to examine and consider the Commission's recommendations. Members of Congress, judges, Justice Department officials, professional associations, law school professors, citizens groups and others participated in these hearings and offered a wide variety of suggestions with respect to reform of the Federal criminal law. The time has now arrived for Congress to proceed with a serious and careful effort to translate these studies and recommendations into legislation.

Incorporated in S. 1 are new approaches to Federal criminal jurisdiction, to definitions of Federal crimes, to sentencing, and to the general organization of Federal criminal law. A major effort has been made in S. 1 to simplify the terminology of Federal criminal statutory provisions so that a more rational and unified body of law can be established. In addition there are important substantive alterations from present law as to what constitutes Federal criminal conduct. These and other aspects of S. 1 merit and require careful congressional consideration.

There are provisions in the present draft of S. 1 about which I have considerable concern. I intend to study carefully the proposed sections with respect to crimes pertaining to the national security, the disclosure of confidential information, and the dissemination of obscene material. Provisions relating to the interception of communications, provisions dealing with the death penalty, the proposal for appellate review of sentences, the system for classification of sentences, the section on organizational criminal liability, juvenile delinquency, election fraud, and immunity of witnesses also require special study in my opinion. Furthermore, I am concerned about the redesignation of certain provisions now in title 18, such as the Bail Reform Act of 1966, as Federal Rules of Criminal Procedure. Such a redesignation raises questions with respect to the authority of the Supreme Court to modify congressional action with respect to criminal procedure.

It is my understanding that there will be comprehensive committee hearings on S. 1 and any other such proposals which may be introduced in this session of Congress. I am confident that such hearings and continuing study of S. 1 by Members of Congress will result ultimately in wise legislation which will improve our system of criminal justice. Although I am not satisfied with a number of the provisions of S. 1 as presently drafted, I believe this bill does represent a reasonable starting point for the Congress as it proceeds to address the pressing problems associated with crime in our country.

I would like to express my complete agreement with the statements made by the distinguished Senator from North Carolina (Mr. MCCLELLAN) and the distinguished Senator from Nebraska (Mr. HRUSKA) with respect to the herculean nature of the task which confronts the subcommittee, the full Judiciary Committee, the Senate, and the Congress ultimately, in connection with this legislation. As they have stated, it will not be possible in a legislative proposal of this scope for the subcommittee or the full committee to bring out for the consideration of the Senate a bill which will meet with the approval in all respects, of all the members, of either the subcommittee or the full committee of the Senate, but it is essential that the criminal laws of this Nation be reformed and I think Congress must be prepared to pass a bill which will accomplish these reforms even though some of the provisions of the bill

may not commend themselves to many members of Congress and many members of the subcommittee and many members of the full Judiciary Committee.

I would like to reiterate in closing that the Nation owes a great debt of gratitude to many men and women in connection with this legislative proposal and that it is especially indebted to the distinguished Senator from Arkansas (Mr. McCLELLAN) and the distinguished Senator from Nebraska (Mr. HRUSKA).

Mr. McCLELLAN. Mr. President, I want to thank my distinguished colleagues for the remarks they have made this afternoon, and I certainly join with them in commendation of the staff that has worked so faithfully on the subcommittee for the help they have given us. We must rely upon them heavily, and they are meeting their responsibilities most effectively, most efficiently, and most courteously, and I appreciate it very much. I wanted the RECORD to so reflect.

TRANSACTION OF ROUTINE MORNING BUSINESS

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

JOINT STATEMENT OF SENATORS KENNEDY, TUNNEY, AND CRANSTON REGARDING PYRAMID LAKE

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to insert in the RECORD a joint statement by Senators KENNEDY, TUNNEY, and CRANSTON.

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

JOINT STATEMENT OF SENATORS KENNEDY, TUNNEY, AND CRANSTON REGARDING PYRAMID LAKE

In 1859 the United States created the Pyramid Lake Indian Reservation in Nevada for the Pyramid Lake Paiute Tribe of Indians. The heart of the Reservation—geographically, culturally, and economically—is Pyramid Lake. The lake is not only the single most important asset of the Tribe, which has lived on its shores and depended on its fishery but it is also a natural resource from time immemorial, of unique importance to the country generally. But presently Pyramid Lake, and the Tribe, are in trouble.

Pyramid Lake is the terminus of the Truckee River, which, except for a small amount of precipitation and drainage from surrounding mountains, is the sole source of water for the Lake. Yet, as a result primarily of man-made upstream diversions of Truckee River water, the level of the Lake has dropped more than 70 feet since 1906. This decline in the Lake has devastated its natural fishery, threatens recreation development which would benefit both the Tribe and all citizens of this nation.

Recognizing that the Lake's existence is in peril and with the full support of the Tribe, the Department of Justice filed suit in the Supreme Court on behalf of the Tribe in September of last year. The suit asked the Court to assume original jurisdiction of a suit against California and Nevada and to declare the Pyramid Lake Tribe's right to Truckee River water in a sufficient amount to stabilize the level of the Lake and to maintain a natural fishery in the Lower Truckee River.

This suit is long overdue. For years, according to testimony and evidence presented in hearings before the Senate Subcommittee on Administrative Practice and Procedure last year, the Justice Department and Interior Department have been passing the buck back and forth, giving lip service to the plight of the Tribe and the demise of the Lake, but refusing to take concrete action to preserve them. In the past the federal government has abdicated its trust responsibilities to the First Americans through incredible conflicts of interest. This suit should become a symbol of the Government's concern for and action in behalf of the best interests of Indian people. It is our hope that at last the Government will act meaningfully to fulfill its trust responsibility to this American Indian Tribe.

It seems that the Tribe cannot fully be protected until there is a judicial determination of the amount of Truckee River water subject to allocation between California and Nevada and the amount to which the Pyramid Lake Paiute Tribe is entitled. Administrative or Congressional action would otherwise be premature, in that it would only be based on a speculative determination of the Tribe's rights. We therefore support the efforts of the Tribe and Federal Government to obtain a judicial determination in the Supreme Court.

ORDER FOR PERIOD FOR TRANSACTION OF ROUTINE MORNING BUSINESS ON TUESDAY, JANUARY 16, 1973

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on Tuesday next, immediately following recognition of the two leaders or their designees under the standing order, there be a period for the transaction of routine morning business for not to exceed 30 minutes, with statements limited therein to 3 minutes, and that the period for the transaction of routine morning business, of course, follow the recognition of any Senators under 15-minute orders which may have been previously entered.

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

ORDER FOR RECOGNITION OF SENATOR HARRY F. BYRD, JR. TODAY

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at the conclusion of the routine morning business today, the distinguished senior Senator from Virginia (Mr. HARRY F. BYRD, JR.) be recognized for not to exceed 30 minutes, and that at the conclusion of his remarks there be a resumption of routine morning business for not to exceed 3 minutes.

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

Mr. ROBERT C. BYRD. 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. HARRY F. BYRD, JR. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. HARRY F. BYRD, JR. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. HARRY F. BYRD, JR. Mr. President, is the Senate still in the period for the transaction of morning business?

The PRESIDING OFFICER. The Senator is correct.

Mr. HARRY F. BYRD, JR. 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. HARRY F. BYRD, JR. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

CONCLUSION OF MORNING BUSINESS

Mr. HARRY F. BYRD, JR. Mr. President, I ask that morning business be closed.

The PRESIDING OFFICER (Mr. NUNN). Without objection, morning business is closed. Pursuant to the previous order, the Senator from Virginia (Mr. HARRY F. BYRD, JR.) is recognized for a period not to exceed 30 minutes.

THE NOMINATION OF ELLIOT L. RICHARDSON TO BE SECRETARY OF DEFENSE

Mr. HARRY F. BYRD, JR. Mr. President, during the past few days—Tuesday, January 9, Wednesday, January 10, and Thursday, January 11—the Committee on Armed Services has been considering the nomination of the Honorable Elliot L. Richardson to be Secretary of Defense. The committee has held very full hearings. As a matter of fact, I believe that these hearings were more detailed than any confirmation hearings in recent years with the exception of those on the Attorney General and some Supreme Court appointees. Certainly they were the most detailed confirmation hearings before the Armed Services Committee in quite awhile.

As senior Senator from Virginia, I put a large number of questions to the appointee. It seems to me that in considering the nominations of persons to high positions in our Government—and the position of Secretary of Defense is one of the highest—we in the Senate have an obligation to hold more than perfunctory hearings. I feel that we have an obligation to go fully into the philosophy, the judgment, and the qualifications of the nominees.

So, as I say, in these hearings, which consumed the better part of 3 days, I put to Mr. Richardson many questions on many different subjects. Neither I nor anyone else on the committee expected the Secretary-designate to be able to answer all of the questions, but my reason for the detailed questioning of Mr. Richardson was to attempt to develop something of his philosophy and something of his judgment. I was attempting to make a judgment as to his judgment.

I have been alarmed that, in recent

years, the executive branch of the Government has, for one reason or another, increased its own powers while the legislative branch has relinquished many of its powers. I think the fault is twofold. First, the tendency of the executive branch is to assume as much power and as much authority as it possibly can. That is probably a very natural inclination. The other reason that Congress has lost many of its responsibilities and powers is that Congress itself has voluntarily given up those powers, or has refused to exercise them.

I want to see Congress reassert itself. I want to see the elected representatives of the people, the 435 Members of the House of Representatives and the 100 Members of the U.S. Senate, come to grips with the grave problems facing our Nation, and cease turning over to the executive branch, or permitting the executive branch to usurp authority and power rightly delegated by the Constitution to Congress.

The question of the confirmation of members of the President's Cabinet and others in high office who are subject to confirmation is one which I feel Congress should not take lightly. I have sat through too many hearings in recent years in which only perfunctory examination has been given to the prospective nominees. When we are confirming men who will inevitably have a major effect on the course of events, then we have a special obligation to try to understand something of their philosophy and of their thought processes. That is particularly true, I think, when the question of possible use of American manpower in war could be involved, or where the individuals, such as the Secretary of Defense, could be called upon to give a judgment to the Commander in Chief as to what course of action should be taken under difficult circumstances in which the country may in future years find itself.

Over the weekend, I read a most interesting book, written by David Halberstam, entitled "The Best and the Brightest." The book dealt with some of the decisionmaking processes within the White House and within the departments of Government during the administration of Presidents Kennedy and Johnson, dealing specifically with the way the war in Vietnam developed.

I am not touting the book by Mr. Halberstam. I can say that the book is very ably written. I do not know Mr. Halberstam personally, but he was a New York Times reporter and evidently has done a great deal of research in developing his book.

I can also say that in my capacity as a member of the Committee on Armed Services and as a Member of the Senate, I have had considerable contact with most of the individuals whom he mentions in his book. From my experience on the outside, what he wrote appears to me to be very accurate, indeed, with respect to the way the Vietnam war developed and progressed, and with respect to how it reached the point where we had at one time 550,000 Americans serving in uniform in Vietnam.

Some of the individuals mentioned in the book, who played such an important part in the events leading to the war in Vietnam and the acceleration of the war there, came before the Committee on Armed Services for confirmation. Going back 6 or 7 years, there was one question I put to every Defense Department appointee who came before the Armed Services Committee for confirmation. That question was this:

In your judgment, is United States involvement in a long war in Vietnam advantageous to the Soviet Union?

The reason I asked that question was that it gave me some insight into the thinking of the appointee.

In virtually every case during the administration of President Johnson, every appointee to whom I directed that question took the view that U.S. involvement in a long war in Vietnam was not advantageous to the Soviet Union.

What that meant to me was that in 1966, 1967, 1968, and all through that period, there was no sense of urgency in trying to end this war.

I might say that with many appointees lengthy questioning was required to get an answer to that question, sometimes as long as an hour. The only one I can recall who answered it with one word was Eugene Rostow, who at that time was an Under Secretary of State for Political Affairs. He answered it categorically, and he answered it, as I have indicated a moment ago, by saying that, in his judgment, U.S. involvement in a long war was not advantageous to the Soviet Union.

Others who answered the question less concisely or less forthrightly—others who come to mind at the moment—were Mr. McNaughton, Assistant Secretary of Defense, and Mr. Townsend Hoopes, who had been nominated, as I recall, to be Under Secretary of the Air Force. I cite that merely to show that the appointees of that period did not, in my judgment, indicate any sense of urgency in ending the war.

Now we come to this year's hearings. I put that same question to Secretary Richardson. I will read from the transcript of the testimony. The testimony goes thus:

Senator BYRD. The United States has been involved in combat operations in Indochina for nearly 10 years. We are still involved. In your judgment, has this long involvement in Vietnam, utilizing two and one half million American troops and hundreds of billions of dollars, been beneficial to the Soviet Union?

Secretary RICHARDSON. In my judgment, no.

Senator BYRD. Your judgment is that U.S. involvement in Vietnam over 10 years, the expenditure of hundreds of billions of dollars, the use of two and one half million U.S. troops, 50,000 deaths, and 300,000 wounded—that that has not been advantageous to the Soviet Union?

Secretary RICHARDSON. That is correct.

I commend Secretary Richardson on his candor. He was the only one so candid, with the exception of Eugene Rostow, the Under Secretary of State in the Johnson administration. Mr. Richardson made a frank and candid and concise statement. I commend him on his candor; I do not commend him on his judgment.

How in the world can anyone say—after identifying the Soviet Union as being a potential threat to the United States, and after saying, as Mr. Richardson did, that it is largely because of this threat that we must spend $80 billion for defense—that U.S. involvement in Vietnam, costing hundreds of billions of dollars, 50,000 American lives, and 300,000 wounded, has not been advantageous to the Soviet Union? Nevertheless, that is his view. He is entitled to his view, just as much as I am entitled to mine. I disagree with him on that. Nevertheless, that is his view.

Another question I put to Mr. Richardson was this:

It has been asserted by some that the use of ground troops in Vietnam was a grave error of judgment. Do you agree or disagree?

Mr. Richardson, in essence, did not have a view on this matter. That, of course, is his prerogative. I would have thought that certainly at this stage of the game, after 10 years, most of us—certainly those in positions of high responsibility—would have a view one way or the other.

I want to say that I would not be critical of whatever answer the prospective Secretary of Defense might make to that question. Many or most Members of the Senate had one view on that question in the earlier days and have a different view now. So I would have no criticism whatever of the prospective Secretary of Defense, however he might have answered the question. But it does seem to me that anyone who is going to be Secretary of Defense should have some judgment, should have some view, as to whether or not the use of ground troops in Vietnam was a grave error of judgment.

Rightly or wrongly, the Senator from Virginia has been consistent in his view on this matter. I do not ask that anyone else take my view. But hundreds of times in this Chamber I have expressed the view that the sending of ground troops to Southeast Asia, to Vietnam, was a grave error of judgment. Once the troops were sent, we had an obligation to support them, and I have done so, but that does not alter the error of the original judgment.

In asking that question of a man who will be the new Secretary of Defense, I have in mind that the President of the United States cannot carry alone the whole burden of decisions on defense matters. He must rely on his key officials; and in the defense field Mr. Elliot Richardson will be the key adviser, along with the Chairman of the Joint Chiefs of Staff, to the President. Of course, I leave it to each individual to determine for himself just how he might regard Mr. Richardson's comment on that particular question.

I went into some detail on Vietnam in the committee hearing because, for one thing, we are not yet out of Vietnam. In that connection I should say that I believe President Nixon has done well in withdrawing U.S. ground troops from Vietnam. I believe he is making a sincere effort to achieve a lasting peace.

Another reason why I wanted to know Mr. Richardson's views on some of these problems in regard to Vietnam is that similar problems might arise in the future elsewhere, even in Southeast Asia again.

In putting the questions to the distinguished Secretary designate, I was not doing it with the idea of expressing my own view, or seeking to find him in accord with what he might consider to be my view. What I wanted to do was to find out his views. I wanted to ascertain his thinking.

I have given some examples of why I have not been in agreement with the new Secretary. I am in disagreement in one case, and in another case I am concerned about his apparently not having a view. But I want to say that, overall, in his total testimony, I think, he certainly handled himself well. He is very smart; he is an able lawyer.

I have not counted the number of questions, but I estimate that I asked well over a hundred; and I want to say again, as I said earlier, that I certainly did not expect him to be able to answer them all. Some of them were a little technical. I tried to keep away from any very technical questions. But I was trying to develop, for my own information, something about his judgment, his thoughts on the great matters upon which he will be called to give advice in some cases and in other cases to act on his own.

Mr. Richardson is a man of ability, a man of integrity. If and when confirmed I certainly want to cooperate fully with him and I want to cooperate fully with the Department of Defense. I think it is vitally important that this country maintain a strong national defense in this uncertain age, in this nuclear age. I do not believe we can afford to let our guard down. I do not believe we can afford to be a second-rate military power.

Many of my questions to the Secretary were an effort to draw out his thinking on this subject and to see, as best I could, the direction he might take for the Department if and when he is confirmed to that very high and difficult position. I think that being Secretary of Defense is a very difficult position. My own feeling is that Secretary Laird made an excellent Secretary of Defense. In concluding my remarks I want to commend the work of Mr. Laird.

Mr. President, in asking unanimous consent for certain documents to be printed in the RECORD, I want to emphasize this is not the total transcript of the committee hearings. I am incorporating in the RECORD for the most part questions which I put to Secretary Richardson and his replies. Included in the transcripts that I will submit for the RECORD in a moment are a few questions by the chairman of the committee, several questions by the distinguished Senator from Georgia (Mr. NUNN), and I think we have several from the Senator from Arizona (Mr. GOLDWATER), and several other members of the committee. It is not a complete transcript. It is, however, a complete transcript of the questions which the senior Senator from Virginia put to Mr. Richardson, the Secretary-designate, and Mr. Richardson's replies.

Mr. President, I ask unanimous consent to have printed in the RECORD the transcript of portions of the hearings before the Commitee on Armed Services of Tuesday, January 9, 1973, concerning the confirmation of Elliot L. Richardson, as well as Wednesday, January 10, and Thursday, January 11, 1973.

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

RICHARDSON CONFIRMATION, TUESDAY, JANUARY 9, 1973

* * * * *

The CHAIRMAN. Senator Byrd.

Senator BYRD. Thank you, Mr. Chairman.

(At this point a woman in the audience arose and started to address the Committee.)

The CHAIRMAN. The idea is that you can't hear in the rear, is that it?

(The woman continued to address the Committee.)

The CHAIRMAN. You will help us out now by being quiet for the time being, and if you want a seat up nearer why the officer will provide you one, provided you are quiet but if you are not we will just be compelled to ask you to excuse yourself from the room. Now, we will have to proceed.

(At this point the woman was requested to leave by the officers in the Committee room.)

The CHAIRMAN. We will ask you back later, thank you for coming this morning.

All right. Sorry about the interruption, let's have quiet, please. That is enough entertainment for a while. All right, Senator.

Senator BYRD. Thank you, Mr. Chairman.

Mr. Secretary, you have had a very distinguished career and I would like this morning to try to develop a little bit of your general philosophy which I must say I am not too familiar with.

The CHAIRMAN. Senator, maybe we should put these a little closer to us.

Senator BYRD. Thank you.

In reading, first in reading, your biography, a very impressive one, I might say, I note that you were a director of the Salzburg Seminar on American Studies. Would you give the Committee a little information as to what the Salzburg Seminar on American Studies is, where it is located, and so forth.

Secretary RICHARDSON. I would be very glad to, Senator Byrd.

The Salzburg Seminar on American Studies was founded very shortly after World War II, by young men concerned that although the United States would foreseeably have a major role in Western Europe in the future, there was very little understanding of or knowledge about the United States in Western Europe. Very few courses were taught on American civilization or history or literature in European universities. So the seminar was conceived of as a means whereby American teachers, American labor leaders, American public servants could come to one place in Europe, where students, young civil servants, judges or others engaged in important activities in Western European countries could come and take courses from the American faculty. It was started as a summertime only project, and expanded over the years so that it would conduct sessions several times during the year. It is ordinarily a session on American law, sometimes on American business or American labor relations, the American novel, for instance.

I believe it has been over the years a very effective force for creating better understanding by Europeans of the United States. It has now had thousands of participants who have gone back to positions of comparative significance in their communities. A lot of people, distinguished Americans, have served as faculty members, Secretary Acheson after his State Department service, many others from business and from American university faculties.

Senator BYRD. How is it funded, Mr. Secretary?

Secretary RICHARDSON. It is funded partly by individual contributions, relatively small amounts, partly by corporate contributions, and to a large extent by foundation grants principally Rockefeller, Ford and the Commonwealth Fund. It has also received some money, I don't know whether it is getting any now, from the State Department funds for the support of U.S. educational and cultural activities abroad.

Senator BYRD. Could you supply for the record a little additional detail as to what governments of what other countries participated in those seminars?

Secretary RICHARDSON. No other government. It is strictly a private organization, a U.S. charitable corporation. It is—I didn't answer your question of where it is located. It is called the Salzburg Seminar because it occupies an old schloss in Salzburg, has from the beginning. It has a small European staff, but it has no participation by other governments.

Senator BYRD. I was interested because neither the Library of Congress nor the Austrian Embassy was able to identify it.

Now, to another question——

Secretary RICHARDSON. I am surprised the Austrian Embassy was not able to identify it. Their Chancellor of Austria participated in the 25th anniversary of the founding this year.

Senator BYRD. Mr. Secretary, we have been spending about $77 billion to defend this country militarily. The indications are that in the new budget the requests will be for $80-plus billion. In your judgment which country or countries represent the greatest potential threat to the United States requiring the expenditure of $80 billion for defense?

Secretary RICHARDSON. Clearly the Soviet Union in terms of its own military capabilities, its constantly buildup of its military strength. The situations in which tension continues are all elements that have influenced the need for adequate U.S. forces. The other countries are to a degree also increasing their military capability, notably the Peoples Republic of China. This is not, of course, to say that because the Soviet military strength is so great and is continuing to grow that there is a threat of imminent danger to the United States. It is to say that for the United States not to maintain military capability that is sufficient to deter aggression on the part of any other country would be imprudent on our part. It would be to accept a degree of risk to our national security that would seem to me unconscionable.

Senator BYRD. But you identify the Soviet Union as the potential threat?

Secretary RICHARDSON. Principally, yes.

Senator BYRD. You mentioned in your colloquy with, I believe, Senator Symington, that you had made a speech in 1970 of some significance. I wonder if your office could have a copy of that speech delivered to my office so that I might look it over but before tomorrow's meeting?

Secretary RICHARDSON. I would be very glad to do that, Senator.

Senator BYRD. Thank you.

Before I forget it, also in your discussion with Senator Symington you said the Defense Department had offered to give to the Committee a full accounting of the recent bombing. I am wondering why that cannot be given, not just to the Committee but to the public. The public is intensely interested in this matter.

Secretary RICHARDSON. That is a question I would have to discuss with those who are now in the Defense Department, Senator Byrd. Obviously, Secretary Laird in the first instance, and his associates would have to answer that question.

Senator BYRD. It has been asserted by some that the use of ground troops in Vietnam

was a grave error of judgment. Do you agree or disagree with that assessment?

Secretary RICHARDSON. I have never attempted, Senator Byrd, to review in sufficient detail the whole history of the gradually increasing involvement of the United States in South Vietnam to be able to make a competent judgment on that score. The problem, of course, is that we look back on those decisions with the benefit of hindsight.

In my view there was a genuine interest of the United States at stake in Southeast Asia, and the question then of what should have been the form of U.S. support for the government of South Vietnam, whether it should have included ground troops, and so on, is, I think, a highly difficult issue, and I would have had to do much more than I have ever had the opportunity to do to reach a clear judgment about it.

When I first became deeply involved in the problems of Vietnam we were already carrying out the declared objective of President Nixon to disengage from South Vietnam on the basis that would assure, so far as reasonably possible, the survival of South Vietnam as an independent country and, if possible, the negotiation of the peace on honorable terms. And so my own really thorough understanding of the situation there dates, for all practical purposes, only from the beginning of this Administration.

Senator BYRD. But it goes a little beyond, it seems to me, just a question of your detailed information. It goes to the question of whether, in your judgment, and after all, as Secretary of Defense the judgment of the Secretary of Defense is going to determine whether this country gets into difficulties or doesn't get into difficulties, and I think the whole country ought to know whether in your judgment the use of ground troops in Vietnam was an error in judgment or whether it was desirable and appropriate.

Secretary RICHARDSON. If you are asking me, Senator Byrd, what I believe to be appropriate U.S. policy with respect to hostilities between Southeast Asian countries, one of which is a country with which we are allied or which we support, my answer would be an answer in terms of the Nixon Doctrine. The President has made very clear in his statement initially at Guam, and in subsequent statements, that he does not believe that we should use U.S. ground forces in that kind of situation. We should rather support the development of the indigenous capability of such countries to protect themselves against aggression by a neighbor; that the U.S. role should be restricted to military material, to economic assistance and, of course, to economic support. We should involve U.S. forces only in a situation where the aggression itself might have involved a major power.

Senator BYRD. The United States has been involved in combat operations in Indochina for nearly ten years. We are still involved. In your judgment, has this long U.S. involvement in Vietnam, utilizing two and one-half million American troops and hundreds of billions of dollars, been beneficial to the Soviet Union?

Secretary RICHARDSON. In my judgment, no.

Senator BYRD. Your judgment is that U.S. involvement in Vietnam over ten years, the expenditure of hundreds of billions of dollars, the use of two and a half million American troops, 50,000 casualties, deaths, 300,000 wounded, that that has not been advantageous to the Soviet Union?

Secretary RICHARDSON. That is correct.

Senator BYRD. Do you favor the U.S. sending troops, did you favor the U.S. sending troops, into Cambodia April 30, 1970?

Secretary RICHARDSON. Yes, I did.

The CHAIRMAN. Senator, I hate to interrupt, Senator, but your time is up at this time.

Senator BYRD. Oh, yes, I appreciate the Chairman calling that to my attention.

The CHAIRMAN. All right. Senator Byrd, that brings us to you, sir.

Senator BYRD. Thank you, Mr. Chairman.

Mr. Secretary, my last question to you yesterday was, did you favor the United States sending troops into Cambodia April 30, 1970, and you answered that with one word, yes.

My next question is, do you approve or disapprove of President Nixon's mining of Haiphong?

Secretary RICHARDSON. I do approve of it. I think it was, in the circumstances, a very difficult decision to make in my view a very courageous one. I believe that it made a significant contribution to containing the not immediately but in the course of time, the capacity of the North Vietnamese to sustain their massive offensives, and I think that, I further believe that it was a demonstration of determination on the part of the President which far from jeopardizing the opportunities for serious negotiation with the Soviet Union in Moscow, actually reinforced them.

Senator BYRD. Do you think the mining should be continued until a peace agreement is signed?

Secretary RICHARDSON. Yes, I do.

Senator BYRD. For several years the Defense Department has been running protective reaction raids over North Vietnam. What is your view in regard to protective reaction raids?

Secretary RICHARDSON. I understand that the term embraces raids that are conducted to knock out anti-aircraft installations that are firing on U.S. planes carrying out missions directed toward military targets. I understand that there has been some room for ambiguity as to the circumstances under which a raid was justified by this objective, but I would say that insofar as there is strict adherence to guidelines that govern when a raid is legitimately a protective reaction raid that it is justified, and I would not expect to advocate a change of that policy.

Senator BYRD. Do you favor or oppose the pre-Christmas bombing of North Vietnam described as perhaps the heaviest bombing ever?

Secretary RICHARDSON. This, of course, is a question we have touched on before. I will try to answer that in a slightly different way than I did yesterday. The problem in asking me whether I favor it or oppose it is that it implies a knowledge of all the considerations that affected the decision. I know less about that than I know, for example, about Cambodia. I can certainly see in this situation, the negotiating situation, the military situation, those elements of it that affect the ability to maintain a stable cease fire, a set of factors which would, in my view, have justified the decision the President made. It must have been an agonizing decision for him. No one, in a position of responsibility, would want to be confronted with that kind of choice knowing as he must, that not only will military targets be hit but that there could well be and perhaps inevitably will be civilian casualties.

On the other hand, this has been a long and agonizing war in itself. The North Vietnamese offensive of last spring, within the last three days have been estimated to have brought about more than 20,000 civilian deaths. These bombing raids, according to figures released by Hanoi, caused some 1300 civilian deaths. The President's objective has been from the outset to bring about peace, to bring about peace on terms that could contribute to preventing another war. The problem has always been for him how to reduce the loss of life, and in this situation, as in all wars, the problem of a Commander-in-Chief is what must he do that will reduce the loss of life over time even though the immediate decision may cause loss of life, and I can well understand, or at least, I think I can have some glimpse of the kind of thought the President must have given to this and I can certainly see in the situation forever factors that might well had I been in the same situation brought me out where he came out.

Senator BYRD. While your reply was somewhat lengthy, would it be accurate to say that what you are saying, in effect, is that you favor what the President did in the December raids?

Secretary RICHARDSON. I think it would be more accurate to say that I support it. Now, if that seems like a quibble it is only because to say that I favor it implies an actual process of participation in the decision and actual knowledge of all the factors which he actually took into account. In any event, because I have felt that his other very difficult decisions, taken in South Vietnam, decisions that in several instances have evoked massive public criticism were justified, and I think in retrospect many more people would agree to this than had agreed at the time, and I believe that knowing that the President would have approached this decision in the same kind of way I have a, what you might call a, respect for it that leads me to support it.

Senator BYRD. If the Vietnamese do not come to terms in the current Paris peace talks, would you favor or oppose resuming the bombing of Hanoi, Haiphong and other North Vietnamese targets?

Secretary RICHARDSON. That, I think, is a question too speculative for me to comment on. In any event, of course, the Secretary of Defense is charged directly with primarily military concerns, and this is a question which obviously involves concerns that are within the province of the Secretary of State and others.

Senator BYRD. You mean to say the Secretary of Defense is not involved as to whether or not there shall be bombing of military targets in an enemy country?

Secretary RICHARDSON. No, I did not say that, Senator.

Senator BYRD. Well, you implied that it was the responsibility of the Secretary of State.

Secretary RICHARDSON. No, I said that the question of what to do, given a breakdown in negotiations, is a question that involves considerations transcending purely military considerations but I do not think that I should try to answer the question, therefore, both because it is hypothetical and because it would involve the roles and responsibilities of people other than the Secretary of Defense. I do not mean to imply that I would not be involved or that I would not have views or recommendations, but I do not believe that I should try to give you a yes or no answer to such question under these circumstances.

Senator BYRD. Vietnam has been described as a *limited war*. Would you give the Committee your thinking as to the theory of a limited war, whether a war can be limited or should be limited?

Secretary RICHARDSON. I believe that there was justification in South Vietnam, so far as U.S. forces were engaged to prescribe rules of engagement that restricted their use. I think that the risks of a wider conflagration were sufficiently serious to justify this.

Now, one could well ask whether the, on balance, U.S. involvement under such restricted conditions really adequately served the purposes nor led to our intervention in the first place. This, I think, is a very difficult question, we touched on it yesterday, but I do believe that we should be prepared to engage in the use of U.S. forces under limited conditions, and indeed the United States has traditionally and in many situations done this. Not to be in that position would mean, in effect, that either we did nothing or we precipitated an all out war. It seems to me neither of those alternatives is admissible.

Senator BYRD. None of us favor war, of course, but if the U.S. should become involved in another war would you, as Secretary of Defense, favor fighting that war to win it?

Secretary RICHARDSON. Not necessarily, Senator Byrd. I think that the question of

the role and purpose of the engagement of U.S. forces could well in other situations be an objective short of total victory. I think that even notwithstanding that, that their use might nevertheless be justified.

Senator BYRD. During your term in the Cabinet Congress debated the establishment of an ABM system. Did you favor or oppose the Government setting up an ABM defense system?

Secretary RICHARDSON. I favored it. I attended all the National Security Council meetings which discussed it. Indeed, I believe that a very narrow vote by which the ABM program was sustained contributed tremendously to the success of SALT I and I believe that one of the most significant outcomes of SALT I was made possible by the fact that the United States decided to go forward with an ABM program.

Senator BYRD. Yesterday you replied to Senator Symington stating, "Vietnamization, the Vietnamization program, has been remarkably successful." Now, if the United States completely withdraws, including air power, do you feel South Vietnam can effectively resist North Vietnamese aggression?

Secretary RICHARDSON. So far as I have enough information to form a judgment, I think the answer is yes, subject, of course, to continuing U.S. economic support and materiel.

Senator BYRD. In regard to economic support, if and when the peace arrangements are completed, would you favor economic aid to North Vietnam?

Secretary RICHARDSON. Yes, I would. I think that an international program of rebuilding to which the United States contributed, would be constructive.

Senator BYRD. Would you give the Committee your view on the Ellsberg matter and whether Mr. Ellsberg should be prosecuted for his handling of the Pentagon papers?

Secretary RICHARDSON. It seems to me, Senator, that it would be inappropriate for me to comment on a matter which I understand to be pending in court now.

Senator BYRD. It would be improper for you to comment on papers which have been stolen from the Defense Department, improper for you to express a view as to that case?

Secretary RICHARDSON. I am certainly against stealing.

Senator BYRD. I beg your pardon?

Secretary RICHARDSON. I am against stealing papers from the Pentagon but——

Senator BYRD. Do you feel——

Secretary RICHARDSON. But I don't believe that I should comment on a pending case as such.

Senator BYRD. Did not the Defense Department, did not the Justice Department on behalf of the Defense Department bring the case?

Secretary RICHARDSON. Yes.

Senator BYRD. Well, could you not tell the Committee your view as to whether in your judgment the stealing of the Pentagon papers by Mr. Ellsberg, whether he should or should not be prosecuted?

Secretary RICHARDSON. I can answer that. I believe that the prosecution is justified.

Senator BYRD. That was my original question.

Mr. Richardson, are you in favor of maintaining strategic and conventional U.S. military strength superior to that of the Soviet Union?

Secretary RICHARDSON. I believe that the United States should maintain forces constituting a sufficient capability to deal with any contingency that arises. I believe that we must have the capacity to deter aggression. This involves elements of technological superiority, but I think that to go beyond that involves issues of what you might call numbers, and here we get into the overall balance issues that are of course fundamental to SALT, and I think the key to it all is that we should have the ability to deal with a wide range of possible situations, including conventional capability, and that we should in no case allow a situation of inferiority as between the United States and any other power to develop.

Senator BYRD. Mr. Richardson, do you believe that the United States can maintain military strength that is adequate to national security and, at the same time, reduce the defense budget?

Secretary RICHARDSON. In dollar terms that seems to me unlikely that we can reduce the defense budget in the foreseeable future. I think we can continue the process of gradual reduction of the proportion of the defense budget to the total budget. That, of course, has been taking place throughout this Administration and as Secretary Laird has pointed out it is now I think the lowest proportion of the budget since 1951. I think it will be possible, and with continuing economic growth, and, therefore, continuing revenue increases to meet the constantly escalating expectations of people for greater action on domestic programs while also maintaining adequate military strength. But I don't think it is likely so far as I can see, that we are going to be able to do this and also bring about actual dollar reductions because of personnel costs, because of the inflation factor in the acquisition process, and because, of course, of the extent to which improvements in weaponry involve increasing costs.

Senator BYRD. If you hope, as we all do, that mutual disarming by the Soviets and ourselves may become possible, are you nevertheless prepared to provide superior U.S. military power?

The CHAIRMAN. Senator, you have fine questions there, I have been very much interested in them, but if you will excuse me your time has run over. We will come back to that.

Senator BYRD. Thank you.

The CHAIRMAN. Thank you.

Senator Goldwater.

Senator GOLDWATER. No questions. As to the Chair's understanding regarding this question of the relationship between the pilot and the crew, I visited every air field in the theater and the aircraft carriers many times, and the closeness of the pilots and the crew is as good today as it has been throughout my whole experience in flying. I think there might be isolated cases but I don't think anyone can find such a close rapport on the sea or on the land, Air Force or Army or Marines as exists between the pilot and the men who make it possible for him to fly. I have to take my hat off to these men because we are flying some old junk and if we didn't have these men they wouldn't be flying. I have no questions.

The CHAIRMAN. Thank you, Senator. Your statement is very reassuring and I am glad you found it that way. There are certainly some exceptions. Senator Hughes.

Senator HUGHES. Thank you very much, Mr. Chairman.

Mr. Secretary, philosophically how do you view your position as Secretary of Defense in relationship to the control of the civilian over the military?

Secretary RICHARDSON. I believe, Senator Hughes, that civilian control is a very fundamental part of the kind of * * *.

NOMINATION OF ELLIOT L. RICHARDSON TO BE SECRETARY OF DEFENSE

(Afternoon session, January 10, 1973)

The CHAIRMAN. The Committee will come to order.

Mr. Secretary, are you ready?

Secretary RICHARDSON. Yes.

The CHAIRMAN. Are you ready?

Senator BYRD. Yes, sir.

The CHAIRMAN. All right, we will resume our consideration and examination in these matters and I call on Senator Byrd.

Senator BYRD. Thank you, Mr. Chairman.

First, I would like to say I do not like to take so much time of the committee and of the nominee.

The CHAIRMAN. That is entirely all right. We appreciate your sentiments but that is what we are here for. You proceed as you see fit.

Senator BYRD. I have reached the conclusion that these confirmation hearings should be more than perfunctory, and we do need to know in a position of this great importance more detail than I think has been available on the particular nominee.

Now, Mr. Richardson, the Soviets are committing greater resources than the United States to strategic offensive and defensive weapons. Do you believe that the United States is committing sufficient resources to our strategic offensive and defensive weapons?

STATEMENT OF ELLIOT L. RICHARDSON, NOMINEE TO BE SECRETARY OF DEFENSE—RESUMED

Secretary RICHARDSON. I would want to take the new and more thorough look at this question should I be confirmed, Senator Byrd, but I believe that from what I know of the budget requests for Fiscal 1973, and the upcoming Fiscal Year 1974, that if these are approved by the Congress, if they are approved, and they are continued along the lines as have been planned in weapons development and replacement, that we should be in an adequately strong position.

Senator BYRD. Should Health, Education and Welfare enjoy a priority higher than national defense?

Secretary RICHARDSON. No.

Senator BYRD. If both super powers have an adequate retaliatory capability, do you believe the Soviet Union will attempt to attain a first strike capability?

Secretary RICHARDSON. On that score, Senator Byrd, I can only say that my impressions of the results of SALT I and negotiations would suggest that the Soviet Union realizes that to seek a preemptive first strike capability would be seriously destabilizing. The very possibility, in fact of a SALT agreement depends I believe to a large extent in part of the acceptance by each side of the understanding that the launching of the first strike would be followed by assured destruction from the other side as a second strike and so—I think I should stop there.

Senator BYRD. I take it that you do not feel that the Soviets are seeking a first strike capability.

Secretary RICHARDSON. I should say I think that from what I know at this point the evidence seems to me to point to a conclusion that they are not doing so or have not done so to this point. But I think it is obviously a matter that should be watched very closely, indeed it is, I believe. And that the Soviet testing and construction programs, weapons development so far as this can be inferred, should be looked at constantly to try to make assessments of this kind. But I think we have to base our own decisions primarily upon what we know of their present and likely capabilities, and on that basis, I believe that from what I know of our present plans that these would keep us in a position of clear sufficiency.

Senator BYRD. Secretary Laird has testified before this Committee and before the House Armed Services Committee that he felt that the Soviets were seeking to attain a first strike capability. Your reply to my previous question seems to me, it puts your views different from his in that regard.

Secretary RICHARDSON. I know that Secretary Laird has been concerned that the development by the Soviet Union of the SS–9 might mean that they were pursuing a first strike capability, and if the Soviet Union were in position to appear to be in the process of indefinitely expanding the number of its very heavy SS–9 missile launchers one would, I think, be justified in worrying seriously

about the possibility that they were pursuing a first strike capability.

Senator BYRD. But you feel that at this point it is not—one does not need to, to use your words, to worry seriously about it.

Secretary RICHARDSON. I think the fact that they accepted a limitation on the number of SS–9 launchers in itself would suggest that they were not pursuing that objective, at least by that means.

Senator BYRD. Should the United States have a policy of military superiority over Russia?

Secretary RICHARDSON. This again, I think, gets us into questions of a comparison of weapons systems capabilities. There are, of course, substantially asymmetries in the weapons mix of each side and I think that the terms that we ought to use are those of sufficiency, technological superiority, continuing alertness to developments, and the willingness to commit resources to assure that we do not lose a position of sufficiency, and that we are not at any point placed in the position of inferiority.

Senator BYRD. You are familiar, of course, with the amendment offered by Senator Jackson to the SALT agreements cosponsored, incidentally, by Senator Stennis, myself and others. Do you favor the Jackson approach, the percentage approach, which it is now?

Secretary RICHARDSON. Yes, I do, although I think that I would want at another time in an executive session to discuss with the Committee the questions of its interpretation. These, I think, may well arise in the course of future SALT negotiations, depending upon how these progress.

Senator BYRD. Well, of course, the thrust of the Senate action was that our negotiators should be certain that any agreements which are made by or at SALT II, that we should be certain that the United States is on a parity with the Soviet Union. I assume that you—well, I better not assume, I will ask you is that your view that any agreements made at SALT II should provide for parity on the part of the United States, with the Soviet Union in conformity with S. Res. 241, the so-called Jackson Amendment.

Secretary RICHARDSON. Yes, I certainly agree with that. We should insist on no less than parity. The only question that could arise might involve the question of equality in intercontinental ballistic missiles.

Senator BYRD. That is right. That is what the Jackson Resolution addressed itself to, and which in the Jackson Resolution, under the Jackson Resolution, that would be required if the negotiators are to carry out the intent of the Senate in adopting the Jackson proposal.

Secretary RICHARDSON. What is not clear to me, Senator Byrd, is the precise understanding of the Senate with respect to the ability of the United States to be able to deliver strategic armaments on Soviet soil by means other than intercontinental ballistic missiles. And I am not sure just where the Senate or this Committee would feel that equality applied.

Senator BYRD. Well, the equality applies, I will read just a part of this Resolution, then I will ask the Chairman if we may put the text of the Resolution into the record.

The CHAIRMAN. Yes, without objection you can put it now in the record and read such part as you wish.

Senator BYRD. "Urges and requests the President to seek a future treaty that would not limit the United States levels of intercontinental strategic forces inferior to the limits provided for the Soviet Union."

As we know in SALT I the United States is in an inferior position numerically and this proposal, which deeply concerned the Senate, would provide for parity in regard to intercontinental ballistic missiles.

Secretary RICHARDSON. Well, I think we probably pursued this as far as would be appropriate to do at the moment, Senator, but the problem is in the distinction between intercontinental ballistic missiles and intercontinental strategic forces. I do not believe, in other words, that the United States in intercontinental strategic forces did accept a position inferior in SALT I.

Senator BYRD. Well, without arguing that point, let's address ourselves to SALT II as to whether the United States, if I may use the words "urges and requests the President to seek a future treaty that would not limit the United States to levels of intercontinental strategic forces inferior to the limits provided for the Soviet Union."

Secretary RICHARDSON. I agree with that proposition, as I said in the beginning. But I would add that I felt that at some point it might become important to work with the Committee on an understanding of what is meant by that phrase. But the objective, I think, clearly is one that we should pursue and that I would seek to uphold.

Senator BYRD. Should we install an antiballistic missile defense system around Washington?

Secretary RICHARDSON. That is a question on which I would have to reserve at this point, Senator Byrd. I know that we have retained under the ABM treaty, the right to do this, but whether we should do it or not is a matter on which I would need further information before being able to make a judgment.

Senator BYRD. Should we use existing technology to improve the accuracy of our ICBMs and our submarine-launched missiles?

Secretary RICHARDSON. I would have to give the same answer to that, Senator Byrd. I know that this is a difficult and delicate question, and I would need more information.

Senator BYRD. Are we spending enough money or too much for military research and development?

Secretary RICHARDSON. Again I have no sufficiently informed basis of judgment. The question of how much is enough, of course, underlies many of the most difficult problems confronting the military forces of the United States in the years ahead. To be prepared against every possible contingency would involve substantially more resources presumably than the Congress or the people are prepared to commit to military purposes, and to starve them, on the other hand, invites serious risks.

On the question of whether we are spending enough on R&D or whether we are spending it in the right ways, I would have to know more. I do know that this is an area in which the Congress has tended to cut appropriations requests and in general I believe that it is an area where we should make sure that we are spending enough because I believe that in terms of the stability of the balance between the United States and any potential adversary the advance in technology, weapons capability is probably the central, most important single element, assuming relative stability in force levels.

Senator BYRD. Using just round figures, we are spending about $8 billion on research and development, and without getting into the detail of where that $8 billion goes, is it your feeling that that is about the level of spending we should designate for that.

Secretary RICHARDSON. I really don't know enough to know at this point whether I think it ought to be more or less or how much more or how much less. It is certainly an area in which more could be spent. On the other hand, we are going to face very severe fiscal stringencies, and I think as a practical matter as against any abstract level of desirbility, that my real concerns will be with trying to assure we get the maximum output for the dollars we do spend within a range more or less like that. I do not believe it is going to be practical to be able to expect that we could get much more than that even if we wanted to.

Senator BYRD. Should DIA and CIA provide independent intelligence estimates on subjects involved in our national securtiy?

Secretary RICHARDSON. I think they should certainly operate on a basis in which they give their independent best judgment, and I think that if there is a split in the final assessment that it should so appear. In other words, I don't think that differences should be buried in a homogenized assessment, and I think it is desirable that there be independent sources of information and analysis as part of the whole intelligence system.

Senator BYRD. That, in essence, is my next question as to whether we should rely on a single intelligence source or whether we should have more than one source.

Secretary RICHARDSON. I think we should have more than one, Senator. I think there should be an overview that takes into account the allocation of resources and money in order to eliminate unnecessary duplication so that, in other words, where there is a need for independent sources that this is deliberate and not the result simply of a failure to get rid of unnecessary overlap.

Senator BYRD. We now have, of course, the CIA and DIA and each of the services, each has its own intelligence-gathering facilities. Do you feel perhaps we should tighten up on the intelligence gathering by having more than one source but not having as many sources as we have now?

Secretary RICHARDSON. I think, my impression is, that there may well be opportunities to tighten up and without reducing the intelligence community or the President and civilian leadership of the Pentagon to too narrow a source base, I think that, that working with Mr. Schlessinger, should he also be confirmed, that we can hopefully bring about efficiencies without reduction of capability.

Senator BYRD. Should we continue to install multiple independently targeted reentry vehicles in our ICBMs and submarine launched missiles?

Secretary RICHARDSON. I believe that until and unless there should be some international agreement to the contrary, that agreement would have to take into account all the things we have already discussed, that we should continue to do so.

Senator BYRD. We should continue the MIRV program?

Secretary RICHARDSON. Yes.

Senator BYRD. How can we insure that our armed forces get the quality and the quantity of manpower they need without the draft?

Secretary RICHARDSON. Here there will be needed, I think, the kinds of special incentives that the Administration has already requested and that will be coming before this Committee again soon.

Senator BYRD. You are speaking now about recruitment incentives.

Secretary RICHARDSON. Yes, we will have to continue to improve our recruitment processes. I think, first of all, we need to take measures to enhance respect for and prestige of the military services in order to make these careers effective.

Senator BYRD. Would you consider it appropriate for a foreign officer to be the supreme allied commander in Europe?

Secretary RICHARDSON. This is not a question I have ever had occasion to consider. I wouldn't want to rule it out of hand. I think, on the other hand, the factors that have up to now, so far as I know, led to the selection of Americans are very substantial.

Senator BYRD. You have had a keen interest in NATO, just as I have, and you have had a keen interest in NATO, and you mentioned a moment ago that you would not rule out a foreign officer serving as supreme

allied commander. How then would you handle our tactical nuclear weapons?

Secretary RICHARDSON. Well, I believe this gets into an area in which I would need to be briefed further than I am but I think in general the chain of command would—I think I had better stop here, Senator, I don't believe I ought to go further on this without further information and perhaps in an executive session.

Senator BYRD. Some people are saying that the attack carrier has become too expensive and we should stop building them. What are your thoughts in this regard?

Secretary RICHARDSON. I don't really know enough to give you a good answer on that. I think in general that this is an example of the kind of problem that arises at many other points where we have to confront the problem of cost and problem of capability. I think we should not let ourselves get into a position where the costs of our weapons systems or carriers or planes are such that we are forced to shrink our forces in being to the point that radically reduces their flexibility. This leads me to believe that we have got to look for——

Senator BYRD. Excuse me, I didn't understand that, you would have to do what?

Secretary RICHARDSON. This leads me to believe we have got to look very hard for ways of maintaining force levels and flexibility while seeking economies in materiel, equipment, ships. This may mean that we ought to pursue further the course that gives us a nucleus of highly sophisticated weapons and ships with a larger number of lighter and less expensive types of equipment.

Senator BYRD. Well, your reply impresses me, and maybe incorrectly, but impresses me, that you are not very keen on the carrier program.

Secretary RICHARDSON. No, I wouldn't want my reply to be pressed quite that far. I really need more knowledge about that.

As you have been able to, I think, gather from my answers to questions, I feel that I have some competence derived from my service in the Department of State and with various National Security Council bodies in political-military issues such as SALT, but I am by no means well informed about weapons systems or ships or planes or force levels numbers. These are all things that I would need, will need to learn a lot more about.

Senator BYRD. I realize that in the detail of many of the more complicated systems, but I would have thought that in regard to the aircraft carrier that you would certainly have a view on that. You will be coming before the Committee pretty shortly proposing expenditures in regard to this matter. The carrier, the last carrier that was approved, will cost $992 million. The two previous ones cost $660 million—I am using round figures—and if there is any doubt in the mind of the Secretary, in the mind of the Secretary of Defense, that doubt should be expressed to the Committee at a very early date it would seem to me. It is a billion, in round figures, a billion dollar ship.

What I am really seeking is just a little information as a member of the Committee. What is your general view, not in detail but your general view, as to the importance or lack of importance of the aircraft carrier?

Secretary RICHARDSON. Well, my responding in the terms of your question, and with the understanding that I am only giving you a general view, I believe that we do need substantial carrier capability. I believe that this contributes considerably to our ability to respond to a range of critical situations. But when it comes to the question of how much carrier capability, and whether we should build more of these very large carriers and if so, how many more, I get beyond the point of competence in my present judgment because I would need to be in a position to consider what we would do with the money if we used it for something else. We are going to have some very tough trade-offs, I think, between competing choices, and since that is the kind of thing that I will be confronting, I can't give you now an answer that would have to take into account these other probabilities.

Senator BYRD. Let me phrase it one other way and then I will go to another subject: The third of the Nimitz class has been approved. I would assume that any doubts you might have in going—in additional aircraft carriers would not apply to the third of the Nimitz class or the fourth nuclear carrier.

Secretary RICHARDSON. Yes. Your assumption is correct, I am glad you asked that additional question. I would not, based on what I know, expect to ask the Committee to roll back or reverse its previous judgment based on the requests and the evidence previously presented to it.

Senator BYRD. Whatever doubts you have extend to construction of carriers over and above the three which are now under construction.

Secretary RICHARDSON. Yes, that is correct.

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Senator BYRD. Mr. Richardson, do you believe that the Trident submarine program should be accelerated or should we delay this program until after the SALT negotiations are completed?

Secretary RICHARDSON. That, I think, is a question that needs very careful study. I can only say at this point that I think that the development process should be pursued quite deliberately. I don't think it is a matter that needs to be undertaken with haste, and I think we seem to be, subject to possible eventual agreement in SALT, we seem to be moving forward purposefully on that program.

Senator BYRD. Do you believe that the departments will be capable of meeting manpower requirement, both numbers-wise and quality-wise, if we permit the induction authority to lapse after June 30, 1973?

Secretary RICHARDSON. I think from all I have heard that we have a very good chance of doing this. I think we need to try, and I think we will need some help from this Committee with respect to the kind of supporting incentives that we have touched on before, but I would be the first to come back to the Committee if it should turn out that our hopes are not realized.

Senator BYRD. You have no plans to seek extension of the induction authority which ends on June 30?

Secretary RICHARDSON. No, I don't, with the possible exception of the utilization of induction authority with respect to reserve forces, and that I would have to learn more about.

Senator BYRD. What is your timetable for the implementation of the Uniform Services Medical Academy, with particular reference to the utilization of the funds during the balance of Fiscal '73?

Secretary RICHARDSON. The first step, I think, needs to be the utilization of the funds available for planning, and then how far, how fast we proceed is going to have to be a matter of overall budgetary consideration, and I really can't forecast that.

Senator BYRD. What action has been taken to implement the scholarship program provided from the Uniform Services University of the Health Sciences Law?

Secretary RICHARDSON. I am not informed on that. I have heard a little bit from Dr. Wilbur but I don't have it well enough in mind to answer the question. I will be glad to supply this for the record.

Senator BYRD. You were nominated for this position several months ago, I believe.

Are you planning on making any changes in the systems analysis capability of the three services in the Department of Defense?

Secretary RICHARDSON. I have no plans on this score at all one way or the other.

Senator BYRD. Do you believe that the Military departments have a disciplinary problem?

Secretary RICHARDSON. I believe that it is a problem that should have very close scrutiny. I think that the only question I have really is as to the degree. I suppose the most direct answer is yes, but I am not sure how bad it is. In any event, I think it is a highly important problem that should have high priority attention, and I think that the result should be prompt action to correct whatever may be found to be deficient.

Senator BYRD. A House committee has been looking into the disciplinary problem particularly in connection with the Navy, and one of the members of that committee, the Congressman from Virginia, incidentally, made a statement the other day, that the greatest problem is that the Chief of Naval Operations refuses to recognize that there is a problem. I assume that you, as the Secretary-designate, even though you haven't taken office, that you do recognize that there is a problem.

Secretary RICHARDSON. Yes, as I say, but what I don't feel clear about is the extent and degree of it. In any event, I do believe that, as I said earlier in response to questions by the Chairman, the ingredient of discipline is so integral to the very concept of a military force that any doubts about the maintenance of it should be followed up, and to the extent necessary, corrective action should be taken.

Senator BYRD. The Senate and House, the Senate has approved and a House Armed Services Committee has strongly recommended against recomputation of military retired pay. Would you give the Committee your views on this subject?

Secretary RICHARDSON. This is a matter on which I have had some preliminary briefing, and I know that the problem essentially is one of a feeling on the part of many retired personnel that their retirement benefits should be calculated on the basis of current pay scales versus the very substantial costs that this would involve. I know that other thought has also been given to the retirement system generally, but I don't have a clear view on this.

The question of action in the next Congress and budget levels were, and have been among the questions that have had very considerable attention by Secretary Laird in the last few weeks, and I believe that the resolution of that deliberation will be reflected in the budget submitted by the President later this month.

Senator BYRD. Do you support a continuation of the B–1 bomber program particularly in view of the severe losses of our B–52s in Vietnam?

Secretary RICHARDSON. Based on what I now know, and again subject to the kind of thing we were talking about earlier, in the context of competing claims and trade-offs, I would; yes.

The losses, if we are talking in the context of strategic nuclear capability, the losses that have been experienced in North Vietnam have been such as to indicate that a very significant proportion of the bombers would get through and, of course, if we are talking about the delivery of nuclear weapons, the proportion could be very much lower than in fact it was in North Vietnam and you could still have an effective intercontinental strategic weapon.

Senator BYRD. Do you support the concept that our major combat and naval vessels should have nuclear propulsion plants?

Secretary RICHARDSON. This is a question, a point that was made a moment ago with respect to aircraft carriers by Senator Thurmond. I agree in general with the desirability of utilizing the most modern capabilities to propel ships as well as in other respects. I would want to, in terms of the broad extension of nuclear propulsion to the

Navy. I would have to look at considerations of cost, incremental contributions to speed, whether the factors are being freed from dependence on refueling, recognizing that the vessel or the fleet still requires resupply for some other purposes anyway, including ammunition and food, and so these are all things that again bring us back to the complicated problems of what we can afford and what are the trade-offs between a desired capability and cost.

Senator BYRD. What arrangements would you like to see worked out between the Executive and Legislative branches of Government to insure greater coordination and understanding in regard to the commitment of the United States troops to combat on foreign soil?

Secretary RICHARDSON. I am not prepared, Senator Byrd, to speak in terms of specific arrangements. In general, I think that there should be maximum consultation. I think that the history of the last several years have reinforced this feeling.

Senator BYRD. The Senate last year passed legislation, I assume it will be introduced again this year, specifying that if U.S. troops are used that they can only be used without the consent of Congress for 30 days. At the end of that time if Congress has not approved the use of the troops then they would be withdrawn. Would you favor legislation which would give the Congress the final say on any permanent, on any extended, disposition of troops; I am not speaking of an emergency matter, but I am speaking of any permanent use of troops or long term use of troops, I should say.

Secretary RICHARDSON. In principle I certainly would favor giving the Congress that kind of ultimate voice. I would want to look very closely at the language of any such legislation.

Senator BYRD. You would approve it in principle, however.

Secretary RICHARDSON. I approve in principle the point that where permanent commitments of U.S. forces is concerned, the Congress should be brought into the act and have an ultimate voice. But it is—you get into rather vague terms, and so I would have to look at the language.

Senator BYRD. I think you are quite right insofar as the details are concerned. I was trying to establish your view, however, as to a matter of principle.

Secretary RICHARDSON. Yes.

Senator BYRD. Not the detail of it but as a matter of principle.

Secretary RICHARDSON. And I think I have already said that as a matter of principle I do believe that the Congress should have a voice in the long term or permanent commitment of U.S. forces overseas. I want to be left a little room for the question of whether I think any given formulation is not, legislative formulation may not be more trouble than it is worth is what I mean. It may be, in other words, that I would conclude that the general proposition is one that while it should be obeyed is not readily capable of being embodied in legislation. That I am not clear about at this point.

Senator BYRD. I don't know what you mean by more trouble than it is worth. When we are dealing with the use of American manpower, trouble, on the part of us in the Congress and those of you in the Executive Branch, should be the least consideration, it seems to me.

Secretary RICHARDSON. Well, I meant by that in terms of the kinds of controversies that might arise out of its interpretation because I would have to look at the language to see if I thought it was clear enough to be applied in practice. I have seen—I think I had better stop there.

Senator BYRD. We have military base agreements with Spain and Bahrein, with Portugal, among others, and in the past all of these commitments, agreements—strike the word commitment, all of these agreements, have been made unilaterally without reference to the Congress.

In your judgment, as the prospective Secretary of Defense, should agreements such as we have with Spain and Bahrein and Portugal be referred to the Congress, the Senate, as a treaty or to the Congress for its approval?

Secretary RICHARDSON. Briefly, I don't believe that those agreements should be referred to the Congress as a treaty for formal ratification. I believe that the Congress should be informed.

The only one of those agreements that I had anything directly to do with was the recent extention of the Spanish bases agreement, and I recall touching on this question at the time with the—in testimony before the Committee on Foreign Relations, and in general, as I recall, we undertook to give the Committee full information about this, and to take into consideration the views of the Committee, but that if there were no commitment in the agreement to the use of U.S. forces or if there were no undertaking on the part of the United States to assist the country where the bases were located, that it would be inappropriate in the circumstances to classify the agreement as a treaty and thus make it subject to ratification.

Senator BYRD. You feel then that the Executive Branch, whether it be through the Department of Defense or the Department of State, as the case might be, or both, you feel that the Executive Branch should continue as they have in the past, to make whatever agreements they wish in regard to military bases without reference to a vote of the Congress.

Secretary RICHARDSON. Well, of course, there are votes of the Congress involved. There was a great deal of discussion and negotiation with the Committee on Foreign Relations with respect to the Spanish bases.

Senator BYRD. Let me interrupt you there for just a moment, if you will. Was the Committee on Foreign Relations satisfied with just to be briefed as you briefed them?

Secretary RICHARDSON. I believe they were satisfied in the end. I think Senator Fulbright personally opposed the continuation of any bases agreement but I think in general he felt that the Committee had had full opportunity to consider the matter, and that they had been fully informed and, of course, they would be involved in any event in Congressional action in regard to the support of the bases through appropriation and so on.

Senator BYRD. Yes, and that brings up the very important point. You are aware, of course, that the Senate passed a resolution requesting that the agreement with Bahrein and Portugal be submitted to the Congress. That was not done. Now the Senate, the Congress does have recourse, as you mentioned. It can cut off the funds but that is a very drastic action, it is a very drastic action.

I supported the proposal by Senator Case requesting the Administration, the Executive Branch, to submit those agreements to the Congress for consideration and approval. I thought that should be done. When it wasn't done, Senator Case then presented legislation in the Senate to cut off the funds. Well, I did not support that because I felt that the agreement had already been made, and the Case proposal was too drastic a step in my judgment at that point, to vote to cut off the funds.

I was hopeful that as a result of what the Senate did in passing the resolution urging the Executive Branch to submit these agreements to the Congress, that in the future they would do so. So I was willing to vote against Senator Case's proposal on cutting off funds but, as you say the Congress does have that right but it is a drastic right, it is a drastic step to take. It is a step that many of us, at least I, do not like to take, but I feel very strongly that the Executive Branch has got to get out of the idea one of these days that it can do whatever it wishes in regard to establishing agreements and bases and making commitments to other countries in the name of the American people without submitting that to the Congress. I wanted to get your view because you will play a very vital role in this thing. You will be Secretary of Defense, you will—the negotiators for the Spanish bases, for example, will be under your command or at least there is a general, I believe, who negotiated it before. So I am tremendously interested in your position on it and, as I take your position, you feel that none of these should be submitted to the Congress.

Secretary RICHARDSON. Well, I don't know—these might include some possible agreements that I would agree——

Senator BYRD. I am speaking of, you know what I am speaking about, bases like Spain, Bahrein, the Azores, matters of that type.

Secretary RICHARDSON. Let me read to you, Senator Byrd, what I said to Senator Fulbright who asked "Can you give to this Committee a positive statement of your position with regard to submitting an agreement or extension involving over $100 million to the Senate as a treaty? I suspect from what you say you do not have any intention to do so. All I want to do is make it clear, I would like a positive statement so that there is not any uncertainty about the position of the Administration on this. Could you do that?"'

I said: "Mr. Chairman, subject to consultation with Secretary Rogers and his possible desire to discuss the matter with the President I can only say this: We do not now propose to submit the extension of the agreement to the Senate for its advice and consent. We do not propose to do so because we do not consider that any element of the agreement would constitute a commitment on the part of the United States for the use of its military forces such as to be an appropriate subject for the advice and consent of the Senate.

"My own view is that if we were to submit it to the Senate for its advice and consent we would be, in effect, opening up a whole range of contractual arrangements between this government and other governments for ratification which we do not think belong in that category.

"My assurance further to you is that we do not intend to enter into any agreement of the character that would be appropriate for ratification. We do not intend to enter into any mutual security arrangements with Spain or to be obligated in any way to use our forces on behalf of Spain simply because we have extended our rights to use the bases. In order to satisfy you on that point we will be glad to show you the language that we will have negotiated before it is finally signed and made binding upon the United States."

Senator BYRD. Well, all you are saying is that you will make a decision as to what is appropriate and not appropriate to submit to the Congress. I happen to be a strong supporter of the Spanish base agreement. I supported it in 1954, I think that was the date it was originally enacted. I think it is very important in our military, in our defense structure.

But for the prospective Secretary of Defense to say to the Congress that he will make a judgment as to what should or should not be submitted, agreements are being made with foreign countries, we have a great many American military personnel in those areas.

We could very easily be involved in military activity. If civil war would break out in those areas, many things could happen, and I would think that you should re-examine your position in regard to this.

We all know the State Department does not want to do it. We all know that anyone in

the Executive Branch prefers to make their own decisions and not have to bother with anybody else. That is human nature, all of us want to do that.

But I don't see how we are going to have the proper relationship between the Executive Branch and the Congressional Branch, and each of us have the opportunity to adhere to our responsibilities, if in matters of this consequence, and I think they are matters of consequence, you, as the upcoming Secretary of Defense, state the position that you do on these treaties, on these agreements.

Secretary RICHARDSON. I can only say, Senator, that in my view the healthiest relationship between the Executive and legislative branches is maintained when each preserves the prerogatives and the jurisdiction accorded to it by the Constitution.

Senator BYRD. Amen.

Secretary RICHARDSON. The issue here is whether the agreement is an appropriate subject for advice and consent of the Senate. That, in turn, turns on whether or not it is or should be treated as a treaty, and I don't think that I would be serving my responsibilities in the Executive Branch, in effect, to sit here and say to you that I will give away centuries of, I mean decades of, negotiation between the Executive Branch and the Executive, and the Legislative Branch over issues of executive agreements and so on.

As the Senator knows better than I, this has been the subject of a great deal of discussion for as far back as the history of the Republic.

Senator BYRD. One reason that we have had such great difficulties in the last 10 years in Southeast Asia is that the Executive Branch has assumed too much authority or the Congress has on its own initiative given up too much of its own responsibilities.

What you are doing in your earlier statement that the Congress had recourse, what you are doing is inviting the members of the Congress or putting us into a position where the only thing we can do is to vote down the appropriations for these bases and I don't want to do that.

Secretary RICHARDSON. No, I don't quite wish to leave it on that footing, Senator Byrd, but what I was saying with respect to the Spanish bases is, what I was trying to say in the testimony that I read to you just now, and not only that but discussions with Senator Fulbright was "Mr. Chairman, we, representing the Executive Branch, do not believe that we should allow to be established as a precedent a requirement that this kind of agreement must be submitted for the advice and consent of the Senate."

That does not mean that we want to go ahead unilaterally in defiance of the views of the Senate.

Senator BYRD. That is what you have done.

Secretary RICHARDSON. I do not believe in the case of the Spanish bases agreement we did that. We consulted a great many people, and when the agreement was finally adopted, I am not sure whether there was some vote or other at that point, but at any rate when it was finally done it was on a footing which I think had satisfied Senator Fulbright, that was generally supported by the Congress.

And so what I am saying to you in effect is no, I don't think we ought to go barging in in disregard of congressional attitude in a matter of this kind. But, on the other hand, I don't think that we ought to lightly relax the lines that have been drawn historically as between what is and what is not classifiable as a treaty.

Senator BYRD. Well, you have been Under Secretary of State, and you are a very able lawyer, where do you draw a line between what should be a treaty and what should be an agreement. It is a matter of interpretation and judgment on the part of the Executive Branch, is it not?

Secretary RICHARDSON. In the first instance, if the Executive Branch concludes that an agreement is not a treaty because it does not embody the elements that have traditionally been considered to be earmarks of a treaty, then presumably we have to proceed on that basis. One could imagine various possible ways of challenging this but I think it is intrinsically the situation where we will have to make a call in the first instance.

Senator BYRD. This is a very healthy discussion today, at least it is enlightening to me. It certainly indicates that the new Secretary of Defense is not going to voluntarily submit any of these agreements to the Congress, and I think it is going to force the Congress to go to lengths that I would be very reluctant to see it go to and that is to cut off funds.

Now, what steps do you propose taking in the Department of Defense to reduce the possibility of overruns in military procurement contracts?

Secretary RICHARDSON. I would certainly, in the first instance, want to follow up the kinds of initiatives that were taken in the last two or three years by Secretary Laird and Secretary Packard. The most important of these, I think, was the decision to drop the package procurement approach, to insist upon adequate engineering tests, development of prototypes which could be tried out before a decision was made to proceed with large scale procurement.

This has, I think, proved to be a protection against overruns or excesses in cost beyond the terms of the contract in the case of recent major Air Force procurements particularly, and I believe from what I have learned so far that these are examples of where the reforms initiated by Secretary Laird and Secretary Packard have been most fully carried out.

I think we need also to take the approach of design-to-costs as a way of holding the line, and I think we need to follow such other measures or intensify them as were recommended by the Blue Ribbon Commission which included, for example, better trained, higher level project managers and, finally, I think we need as part of the means of reinforcing the integrity of the whole process, to stand firm on the enforcement of our contracts.

Senator BYRD. Mr. Chairman, I will be glad to yield some time to someone else. I have taken a lot of time.

The CHAIRMAN. I think I have some questions here, I don't know of any other questions, I think we will drive hard right on. Senator Hughes, do you have some more questions?

Senator HUGHES. I think Senator Byrd is thoroughly covering the field and I will just let him have the ball game.

The CHAIRMAN. That is what I am doing, he is doing a good job too.

Senator HUGHES. I was curious, Mr. Chairman, a newspaper reporter told me that a Grumman advance of $18 million by the Navy, they had asked for 10, and after they got the advance they paid a $8.5 million Christmas bonus to their employees. I haven't had a chance yet to check that out. I hope, sir, that you would check it out and see if somehow we are paying a Christmas bonus in advance on a contract or——

Secretary RICHARDSON. We have checked it out. I only know that the advance in question was one that covered work done by Grumman under the terms of the existing legislation permitting the Navy to do this. But I will certainly look into it.

Senator HUGHES. That is what I thought, too. I was surprised when I got that information. I don't know what the facts are.

Senator BYRD. I might say, if the Senator from Iowa would yield, I have a series of questions on that point that I eventually will get to.

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The CHAIRMAN. Senator Byrd.

Senator BYRD. Mr. Chairman, I think the distinguished Senator from Georgia has some questions.

The CHAIRMAN. All right.

Senator NUNN. Mr. Chairman, I just have one question.

Continuing the line of questioning that Senator Byrd was exploring a minute ago about the distinction between a treaty and an agreement, which is all important so far as the Congressional role and responsibility is concerned, you made reference, I believe, as I understood it, to at least a partial distinction being one of whether America was committed under the contract in question, whether it be a treaty or agreement, whether America is committed to support the particular party to the agreement with troops.

This may be a partial definition, but what I am asking is for you as a very distinguished attorney and graduate of Harvard law and also with considerable experience in the State Department to give us is your understanding of the legal distinction between a treaty and an agreement.

Secretary RICHARDSON. I appreciate the flattering preamble to that question, Senator Nunn, but I am too good a lawyer to try to give you an off-the-cuff answer. Let's say I am a good enough lawyer to know that I am not that good an international lawyer, and I would have to beg the indulgence of the Committee and seek the opportunity to supply the answer for the record.

Senator NUNN. Well, is one of the distinctions whether or not American troops are obligated under the particular contract in question, is that one of the distinctions as you see it?

Secretary RICHARDSON. Yes. And to put it the other way around, I think that a commitment by the United States to come to the assistance of another country under any other circumstances whatever is a commitment that ought to be subject to the advice and consent of the Senate under the treaty power.

Senator NUNN. If we have an obligation to come to the assistance of another country you would consider that to be a treaty. When you consider assistance, do you consider that economic assistance?

Secretary RICHARDSON. If it were an obligation, yes. In other words, if we had bound ourselves to provide assistance in the event of an attack on another country then I would say that that ought to be subject to treaty, whether the assistance took the form of economic aid, materiel or troops.

Senator NUNN. Would you be able to supply for the record a definition?

Secretary RICHARDSON. Yes, I would. If it doesn't turn into a text. I will try to get a reasonably succinct exposition on the point, for the record.

Senator NUNN. Mr. Chairman, I will yield to the Senator from Virginia.

The CHAIRMAN. All right, I recognize the Senator from Virginia. The Chair recognizes the Senator from Virginia.

Senator BYRD. I want to make just one comment and then I plan to yield to another distinguished Senator. I think the point raised by the, pursued by the, distinguished Senator from Georgia is a very important one, and I hope that and expect that the Secretary will submit to the Committee a definition giving a distinction between a treaty and an agreement so that the Committee will have some idea as to where we might stand on this very important matter. As I understand it, Mr. Richardson, you plan to do that.

Secretary RICHARDSON. Yes.

Senator BYRD. Thank you, sir.

The CHAIRMAN. All right, we recognize Senator Byrd.

Senator BYRD. Mr. Secretary, in view of the forthcoming mutual force reduction talks in Europe, what do you see as the basic intentions of the Soviet Union toward Western Europe?

Secretary RICHARDSON. I don't believe that I can adequately address the question of Soviet intentions at this stage, Senator Byrd. I think that from the perspective of the Department of Defense the crucial questions arising in the context of mutual and balanced force reductions would involve the actual capacity of Western forces in Central Europe, and I think our concern in the Defense Department must be with the assurance that if there are any negotiated withdrawals that these are truly reciprocal. We do not find ourselves at a disadvantage, and I can only infer that the Soviet Union at least sees the potential benefit to both sides of a reduction of our respective investments in maintaining present force levels.

Senator BYRD. You feel that our chief concern should be not with Soviet intentions but with Soviet capabilities?

Secretary RICHARDSON. Yes. I don't mean we should not be interested in Soviet intentions but obviously they are far more difficult to be sure about than their capabilities.

Senator BYRD. What is your view on the granting of amnesty to draft dodgers and deserters?

Secretary RICHARDSON. I would be opposed to it.

Senator BYRD. In light of the record of the Soviet Union for breaking international agreements and treaties how confident do you feel that the Soviet Union will abide by the terms of the SALT treaty and the related interim agreements.

Secretary RICHARDSON. I don't believe that we should proceed on the basis of optimistic trust that the agreements will be observed. I think we should not enter into any agreement in the area of strategic arms limitations as to which we do not have substantial ability to satisfy ourselves that the agreement is to be carried out.

Senator BYRD. Would it be accurate to say then that you do not have too much confidence in the Soviet Union abiding by the agreements?

Secretary RICHARDSON. I would rather not try to characterize my expectations toward Soviet actions. I think that the point is simply that I do not believe that we should prudently enter into an agreement whose execution depends wholly on optimism that the other side will choose to carry it out. I think we ought to be in a position, given the portentous risks involved in this context, of being confident that we have the means of informing ourselves as to the fulfillment of the agreement.

Senator BYRD. Yesterday, in reply to one of my questions, you identified the principal threat to U.S. security in the 1970's as being Communist Russia. Now, do you agree with the assertion that Russia is developing superiority in ICBM's?

Secretary RICHARDSON. They have certainly developed ICBM's with heavier warheads than any we have, but the question of superiority of ICBM's involves, as you are aware, a number of other variables and I am not clear enough at the moment about just what is on the public record on this subject to feel confident of going any further at this point. I would just leave it, I think, as a proposition that putting aside numbers, is the fact that the Soviet has bigger ICBM's does not in itself establish superiority.

Senator BYRD. The Blue Ribbon Defense Panel, the minority on that panel, made this assertion, "That there is convincing evidence that the Soviet Union seeks a pre-emptive first strike capability."

Do you agree with that statement?

Secretary RICHARDSON. I can't add to what we discussed on that point this morning when you referred, I think, to earlier statements by Secretary Laird. The minority views of the Blue Ribbon Panel were written before any SALT agreement, and they dealt, they state an ambiguity with respect to what the SS–9 development might portend.

Senator BYRD. You feel that the SALT agreement have changed the Soviet Union's capability for a first strike?

Secretary RICHARDSON. I think they have changed the basis on which to make an estimate of whether or not the Soviet Union was pursuing that capability. I think to put it another way, the willingness of the Soviet Union to enter into an agreement limiting numbers, so far as it goes, points in the direction away from the effort to seek a first strike capability. There are other things they might do in association with their large weapons systems that could point the other way. I think it is a matter that consequently we have to be very continually alert to.

Senator BYRD. But your own thinking is that there is not now convincing evidence that the Soviet Union seeks a pre-emptive first strike capability.

Secretary RICHARDSON. I think that puts it very well. I would say to that question the answer is yes.

Senator BYRD. It puts your views well.

Secretary RICHARDSON. Yes.

Senator BYRD. "The convergence of a number of trends indicates a significant shifting of the strategic military balance against the United States and in favor of the Soviet Union."

Do you concur in that statement?

Secretary RICHARDSON. Only if the statement is intended to refer to what would happen, the language I think you used was "indicates a shifting", there cetrainly has been a process of shifting. I don't think the process has gone as far as the question implies. It could happen, and this is one of the things that has to be looked at in SALT context and is obviously important in the context of the continuing investment of the United States in technological development, testing, and new weapons systems.

Senator BYRD. I would like to read that question again, which is this: "The convergence of a number of trends indicates a significant shifting," a significant shifting, "of the strategic military balance against the United States and in favor of the Soviet Union." And my question was, do you agree or disagree with that assertion?

Secretary RICHARDSON. Well, perhaps I have read it or listened to it too cautiously. If the question simply means have the Soviets been gaining relatively in strategic capability vis-a-vis the United States, the answer is yes.

Senator BYRD. Do you agree with the assertion that the Soviet—there has been a rapid expansion of Soviet naval capability?

Secretary RICHARDSON. Yes.

Senator BYRD. Could you give your own view of the—we hear a great deal these days about the, military-industrial complex, could give your own views as to your feeling in that regard?

Secretary RICHARDSON. There is, of course, a necessarily and desirable continuing relationship between the Defense establishment of the United States and those various suppliers who have to be called upon to produce the things that we need for our defense. I think we need to be vigilant that this continuing relationship not become an incestuous one. We need to keep constantly in view the overall interests of the people of the United States and the security of the United States, recognizing that the strength of our economy is an integral part of our national security. We need to have in view the considerations touched on earlier today with respect to civilian control of the military establishment. This means I think, that there must be exercised a kind of partnership between the Congress and the Executive Branch and in the latter, people who like myself or Secretary Laird, serve what is in a sense a tour of duty as civilian officers in the military establishment, to guard against the distortion of judgment that may come from people who because of their deep commitment to the military system or to a military production entity have—without charging any ill will to them, may nevertheless lack some degree of objectivity, and I think that these—I think it is important to keep a sharp eye on the situation.

Senator BYRD. You do not agree, I take it then, with the criticisms, speaking generally, the criticisms that have been made of the military-industrial complex?

Secretary RICHARDSON. I think they have been overstated. There is a conspiratorial implication in a lot of these criticisms. My view is that, in fact, both the military people involved and the industrial people involved are overwhelmingly people who are trying to do a job and who are patriotic citizens, and who are not trying to advance their own selfish interests at the expense of the public interest. If they do that at all, it is not willfully or through malice but because of the basic proposition that we refer to that in HEW as Mile's Law which goes, how you stand depends on where you sit.

Senator BYRD. The minority on the Blue Ribbon Panel said this:

"However one may view the balancing," or speaking now of the strategic forces, "no informed person now denies that the period of U.S. superiority has ended."

Do you agree or disagree with that?

Secretary RICHARDSON. I agree with that.

Senator BYRD. Do you think it is better that the superiority has ended?

Secretary RICHARDSON. I think that, I will put it this way, I think it is not all bad. So long as the United States had a decisive margin of superiority that could in itself contribute to international stability and I think it did. But I think it was intrinsically a situation that could not last forever. It seems to me that the Soviet Union, in the fact of that situation was bound in due course to seek to catch up, and if we had sought to maintain the margin of superiority had as of any given date, let us say, 1959 or '60 or '61, we wouldn't be, I think, having to spend vastly more on our weapons systems. We would be adding more and more ICBM launchers, and so on, without any proportional contribution to our national security.

I think what we are facing now is essentially a different era in which it has now become important to recognize that deterrent capability rests to a large degree upon the ability to deter a first strike and that it is in the interest of both sides to limit national investments in weaponry that simply adds an effect to a capacity for overkill.

Senator BYRD. Mr. Richardson, what is your philosophy toward loaning money to financially troubled defense contractors?

Secretary RICHARDSON. I believe that there are provisions of law that deal with this, and one is in the Defense Production Act and, in effect, directly deals with loans as such in the formal sense. I don't believe that this has been invoked much, if at all.

Then there is provision, at least in the case of ship construction, for the kind of—no, I guess it goes beyond ship construction, for advances under a contract. I think what this covers is a situation where progress payments might in the ordinary course amount to 80 percent of the value of the work done, and the other 20 percent is withheld. Under this advance authority the balance may be also in effect lent to the contractor subject to interest payment requirements and so on, in order to enable the contractor to keep the work going. So when you ask me what is my philosophy toward it, I would say I think

there might well be situations in which we should invoke the legal authority that does exist and I hope that this would be sparing, and in general, of course, I would far prefer to see us deal with suppliers who can finance construction or production through their own working capital.

Senator BYRD. Do you think there should be a limitation on the amount of loans that may be made to defense contractors?

Secretary RICHARDSON. I think there is a $20 million limit in the first act I referred to and, in the second instance, the amount of an advance would be limited inherently to 20 percent of the work done to date. I don't have any sufficient information to answer the question where there ought to be any further limitations beyond these.

Senator BYRD. Do you favor or oppose the Lockheed loan?

Secretary RICHARDSON. I don't know much about it. That was not, I believe, a loan in which the Defense Department was involved. The planes in question were civilian planes, and I don't really know.

Senator BYRD. What is your general philosophy on it, your general feeling about it?

Secretary RICHARDSON. My general feeling is that from the standpoint of defense procurement we should insist upon fulfillment of contracts and oppose bailouts of suppliers or contractors. I think we have a lot more riding on this in terms of confidence of the public and Congress in the procurement process generally than we are likely to gain by a bailout in any given case. Put it the other way around, I think we need to operate on the basis that makes clear that the terms of our contracts are to be carried out as far as we can have any power to require them.

Senator BYRD. Well, your general view is, your view is, then that the Defense Department should hold the defense contractors to the contracts they agreed to, is that it?

Secretary RICHARDSON. Yes. Definitely.

Senator BYRD. Do you plan to see that that is done when you become Secretary of Defense?

Secretary RICHARDSON. Yes. This is also a matter which you may wish to discuss with Mr. Clements when he appears before you. I think we see eye to eye on it.

Senator BYRD. Well, ultimately, of course, it is the Secretary of Defense who will make the ultimate decision.

Secretary RICHARDSON. Oh, yes——

Senator BYRD. I wanted to get the view of the Secretary of Defense.

Secretary RICHARDSON. I appreciate that. I feel that I have given it to you. But I just wanted to add the point that this is also the view of the deputy secretary, assuming we are both confirmed who will, because of the business expertise, that Senator Bensen referred to, be relied upon very extensively on my part for his contribution in this area.

Senator BYRD. Mr. Richardson, if you are confirmed as Secretary of Defense will you provide to the appropriate committees all information and data that the committees deem necessary to adequately evaluate the requirements and utilization of funds?

Secretary RICHARDSON. Yes.

Senator BYRD. That will be all information and data the committee deems necessary, not what the Defense Department might deem necessary.

Secretary RICHARDSON. Well, I suppose I ought to in the interests of caution enter a note that there may be, I suppose I might leave the reservation, that there might be, some argument over the scope of a requirement by the committee, but, in general, in terms of the burden on clerical work and so on, we might want to try to convince the committee that with the data in the form we have it was adequate for the purpose rather than producing it in a different way. But in general I would certainly agree.

Senator BYRD. You certainly may try to convince the committee. Let's assume you don't convince the committee.

Secretary RICHARDSON. Well, I think this is theoretical. My general approach is one in which I would want to be as cooperative as possible.

Senator BYRD. I don't think it is hypothetical at all. I am the only member of the Senate to serve on both the Armed Services Committee and the Finance Committee and I remember the Finance Committee had grave difficulty in getting some information from HEW when you were Secretary of HEW, so I do not think it is a hypothetical question.

I think the committee is entitled to know whether you will or will not submit to the committee information and data that the committee feels is necessary to do our duties.

Secretary RICHARDSON. Well, yes, the answer is yes.

Senator BYRD. Fine. Let it stand if you wish.

Secretary RICHARDSON. As to the Finance Committee and HEW, we never refused to provide any information, we were slow about it at times.

Senator BYRD. You just did not provide it.

Secretary RICHARDSON. I don't believe there is any case where we did not furnish any information.

Senator BYRD. I am reminded very specifically that Senator Ribicoff, I think it was six months or four months before he got it, and he didn't get what he wanted when he got it.

Secretary RICHARDSON. Well——

Senator BYRD. We will forget the Finance Committee and HEW.

Let me ask you this again: Mr. Richardson, will you, if confirmed as Secretary of Defense, provide to the appropriate committees all information and data that the committees deem necessary to adequately evaluate the requirements and utilization of funds?

Secretary RICHARDSON. Yes.

Senator BYRD. Do you feel, Mr. Richardson, that you would favor eliminating some lower priority programs entirely from the budget or would you be trying to stretch out many programs to meet the defense program?

Secretary RICHARDSON. I think we are going to have to make some eliminations and consolidations. As I said earlier, because of these hearings my general view is that we should try to maintain our existing military capability in general and we should try to keep it, taking into account technological change and so on, at least at its present level subject of course to any subsequent agreement, and to do that is going to take a lot of effort, I believe, to make more efficient use of our resources, including our manpower. And this I would expect will mean that we will get rid of some things in order to focus on higher priorities.

Senator BYRD. What is your personal opinion of an all-volunteer military force?

Secretary RICHARDSON. I think it is a valid objective. I think in a country of this size it would be virtually impossible in peacetime to administer a draft requirement to fill places in the Armed Services requiring quite high levels of skill. It is one thing to operate on an universal service requirement where the principal elements of the Armed Forces are relatively untrained ground troops, but in this country, in the foreseeable future, as we had a draft and continued to rely on it it seems to me it would almost inevitably be inequitable in application because a relatively small proportion of young men would be inducted, and so I think it is very important to seek to make the all-volunteer force work if we possibly can.

Sentor BYRD. Manpower costs broadly defined presently comprise approximately two-thirds of the entire U.S. defense budget. On the other hand, the Soviets spend 25 to 30 percent of their budget on manpower. How are we going to provide for the necessary weapons systems, tanks and guns, and what have you with such a high percentage of the budget going to personnel costs?

Secretary RICHARDSON. I can only say it is going to be very difficult, and this does mean that we, as I said earlier, have got to seek economies wherever possible in other directions including the use of manpower itself. It means that we may be able to, we should, seek some reductions in numbers of uniformed personnel where this can be done without reduction of combat effectiveness. I am sure a lot of effort has already gone into this and I don't want to seem to imply that we can squeeze out very large numbers of people in military superstructures or support units but I think we have got to look at that again and get out those we can, and I think we ought to continue the effort to identify functions that can be performed by civilians and I think we also need to make optimum use of technological means of labor saving, that kind of thing.

Senator BYRD. You have in mind, I take it, to perhaps reduce the number of military personnel which now stands, as I recall, at 2.4 million, and you are looking toward reducing that figure.

Secretary RICHARDSON. Yes, but as I have indicated at each point where this has come up, I would hope that this could be accomplished through the kind of means I have referred to, and not at the expense of combat capability. I would struggle very hard to find ways of reducing costs and reducing numbers.

To put it another way, I would be very reluctant to reduce manpower by eliminating divisions or by eliminating air squadrons entirely. As I have said earlier, I think we might. One of the directions I think it would be worthwhile to look into would be the possibility that some units would be maintained at less than full strength with designated reserve personnel slotted for positions that would bring them up to strength quickly. If that could be done to the extent that that is feasible, it would be an application of the total force concept that might allow us to rely to a somewhat greater extent on reserve personnel and to a somewhat lesser extent on regular personnel.

I am simply saying these are the kind of places that I would look to first rather than just chopping off combat units.

Senator BYRD. Well, are you concerned about the manpower costs in relation to the higher percentage of the defense dollar that it consumes?

Secretary RICHARDSON. Very much so.

Senator BYRD. You mentioned several times today that recommendations would be submitted to the Congress in regard to the all-volunteer force and at one point or several points I asked you if you mean in relation to money and, as I recall, you answered yes.

Now, if the defense dollar now takes two-thirds for manpower costs, and you have plans for additional expenditures along that line, won't that further shrink the amount of money which would be available for actual defense?

Secretary RICHARDSON. Yes. Well, I would hope we could stabilize the ratio of the defense dollar that goes into manpower at roughly its present level.

Senator BYRD. What you say is very high at its present level?

Secretary RICHARDSON. Well, I think we have got to fight hard to keep it from getting any higher. If we can reduce it so much the better, so then pursuing what I said this morning, if we are looking toward a period in which we have a relatively stable total dollar investment in military capability, then we can improve that capability or maintain it only through combining a whole series of measures that are designed to im-

prove effectiveness and reduce costs simultaneously.

I don't believe that it is likely to be any one thing. I think it is likely to be the result of, if we achieve this, of a whole series of measures, some of which I have touched on.

Senator BYRD. But you are concerned, as I understand it, you are concerned that manpower related costs take two-thirds of the defense dollar?

Secretary RICHARDSON. Yes.

Senator BYRD. General Bruce C. Clark made this statement, and it touches on the question by Senator Hughes earlier today, General Clark made this statement:

"To the best of my ability each member of my unit, regardless of race or other background, will receive promotions, assignments, awards and opportunities based solely on merit and ability."

Do you agree with that statement?

Secretary RICHARDSON. Yes. I do.

Senator BYRD. So do I.

Now, he made another statement, the second sentence of the first statement:

"Nothing will be denied because of race nor will anything not deserved be accorded because of race."

Do you agree with that?

Secretary RICHARDSON. Yes. I don't want to be understood as saying that I don't believe we should be doing some things that in a sense are deserved because of race; where, for example there has been discrimination, we should take steps to end it, where there is a need for assistance in developing better understanding between races, I think it is important to do that kind of thing, and I believe some very good things have been done along those lines.

Senator BYRD. I will read the statement again so we will understand it:

"Nothing will be denied because of race nor will anything not deserved be accorded because of race."

How do you answer that?

Secretary RICHARDSON. As I did before, I agree with it.

Senator BYRD. You agree with it, fine.

Secretary RICHARDSON. What I added is only by way of assuring that my answer would not be misunderstood.

Senator BYRD. I don't think your answer could be misunderstood if you answered it with the one word, yes, "nothing will be denied because of race nor will anything not deserved be accorded because of race."

Does that require qualification?

Secretary RICHARDSON. I don't know that it requires it. I felt that it would be useful for the record to supply it.

Senator BYRD. Well, put your qualification on it. If you don't agree with this assertion, what is your qualification?

Secretary RICHARDSON. It is not a qualification, Senator. I can't add to it—I think the record at this point is perfectly adequate on that.

NOMINATION OF ELLIOT L. RICHARDSON TO BE SECRETARY OF DEFENSE, JANUARY 11, 1973

The Committee met, pursuant to recess, at 10:05 o'clock a.m., in Room 318, Russell Senate Office Building, Senator John C. Stennis (Chairman), presiding.

Present: Senators Byrd of Virginia (presiding), Nunn, Tower, and Goldwater.

Also present: T. Edward Braswell, Jr., Chief Counsel and Staff Director; Nancy J. Bearg, Research Assistant; Doris E. Connor, Clerical Assistant; George H. Foster, Jr., Professional Staff Member; LaBre R. Garcia, Professional Staff Member; John A. Goldsmith, Professional Staff Member; Don L. Lynch, Professional Staff Member; Dorothy Pastis, John T. Ticer, Chief Clerk; and R. James Woolsey, General Counsel.

Senator BYRD. The Committee will come to order. The hearings will resume on the confirmation of the Honorable Elliot L. Richardson to be Secretary of Defense.

I yield to the distinguished Senator from Arizona.

Senator GOLDWATER. I am just here to listen.

Senator BYRD. I want to say, first, since I have been the member of the Committee to ask the most questions at this hearing, I want to say that it seems to me that it is very important that confirmation proceedings for these very high Government positions be more than perfunctory. That is why I prepared a number of questions for Mr. Richardson.

I want to say, too, to the nominee that I want to cooperate fully with you, I want to work with you and be helpful in any way that I can to you and to the Defense Department.

I believe in a strong national defense. I think it is vitally important. I am interested in the philosophy and the thinking and the judgment of the nominee.

I want to review one question, Mr. Richardson, the last one, I think, that we discussed yesterday before adjournment. I want to read two statements, one statement is this:

"To the best of my ability each member of my unit," this is from General Bruce C. Clark "regardless of race or other background will receive promotions, assignments, awards and opportunities based solely on merit and ability."

I agree thoroughly with that statement and I am wondering what your response is.

Secretary RICHARDSON. I also agree thoroughly with it, Senator Byrd.

Senator BYRD. Now, General Clark also said this, with which I agree thoroughly.

"Nothing will be denied because of race nor will anything not deserved be accorded because of race."

Would you comment on that?

Secretary RICHARDSON. I agree with that statement also. The only thing that I think got us into a little bit of supplementary colloquy on that point yesterday was not an attempt on my part in any way to qualify my agreement with the statement. I simply pointed out that to agree with the statement is not at all inconsistent, in my view, with those affirmative things that are done to overcome the problems of discrimination.

Senator BYRD. I agree with that, but the point I am trying to get clear is that you do not qualify the statement, that you agree with it without qualification.

Secretary RICHARDSON. That is correct, I agree with it without qualification.

Senator BYRD. I noted yesterday that the Navy, for the first time, assigned a woman to be trained as a pilot, and seven others have been selected for officer candidate school, and that brings to mind this question: What do you feel is a proper role of women in the armed forces?

Secretary RICHARDSON. I believe that women should be asked to serve in all capacities that they can fulfill, and the only question that could then arise might be with respect to the physical requirements of their particular role.

In general, I think that the move toward the recognition of opportunities for women in the armed services is a move that can help to strengthen the all-volunteer force. We will be, in effect, seeking the enlistment of women for roles that they have not heretofore played and this, of course, opens up a whole large potential number of recruits.

Senator BYRD. Do you feel that women, either pilots or otherwise, should serve in combat?

Secretary RICHARDSON. I would like to reserve on that. There are a good many problems involved in this. Women have, of course, served in combat effectively in the military forces of other countries, notably Israel, but there are a lot of problems associated with it and I would rather not try to reach a definitive judgment at this point.

Senator GOLDWATER. Would the Senator yield?

Senator BYRD. I yield to the Senator from Arizona.

Senator GOLDWATER. Just relative to the Navy selecting a woman cadet, in 1942 I had the first women serve in the Air Corps in my squadron and they did as good a job as the men, they were very fine pilots, their temperaments did not bother them, and strength is not a necessary factor in flying. I just wanted to mention that because I am not a women's lib but I would just as soon fly with them.

Senator BYRD. Thank you, Senator Goldwater.

Mr. Richardson, you mentioned Israel. It seems to me that is considerably different from the situation we face in our country. Israel is fighting for her life, and she requires all of the manpower and women power that can be made available. The United States has not been in that position.

Under the present law the Congress has the authority to recruit women for combat even when it becomes necessary. Under the constitutional amendment which the Senate approved, and which I voted for, it would appear to me to make it mandatory. I voted for amendments to make it clear that women would not necessarily be assigned to combat, 13 different amendments that Senator Ervin presented. I voted for every one of them and I think it would have been a much better piece of legislation had those amendments been adopted. But they were not adopted, and it occurs to me that the armed forces, if this constitutional amendment is subsequently approved by the States, and it may not be, will be presented with some very difficult situations.

Do you think there must be restrictions on their duty assignments?

Secretary RICHARDSON. I am sure there will need to be some restrictions. I agree with you that the adoption of the amendment will present a series of problems for the armed forces, and I think we, in anticipation of the possibility, even the likelihood that it will be ratified, I think we ought to be pursuing the question of what its implications are very diligently.

I have no doubt a good deal of work on it has been done already and I want to be assured that it is carried forward so we will be in as good a position as possible to answer these questions.

Senator BYRD. Representing a State heavily involved with the Navy—Norfolk and Newport News area, Hampton Roads area—I found that many of the Navy wives are not very happy about women being assigned to shipboard duty. I wonder if the incoming Secretary has a view in that regard.

Secretary RICHARDSON. My view is that I can certainly understand their feelings in the matter.

Senator BYRD. Well, I want to congratulate those eight young women who yesterday for the first time were selected for flight training.

Now, Mr. Secretary, to get back to another subject which we discussed yesterday somewhat briefly, which the Chairman later touched on and those are the questions relating to the war powers bill. As you are aware, the Senate passed the war powers bill during the last session which defines in general terms the duties and responsibilities of the Executive and Legislative Branches participating in the difficult job of deciding whether or not to commit U.S. forces to war.

My first question is whether you have any doubt that Congress has the power under the necessary and proper clause of the Constitution to pass legislation of this type.

Secretary RICHARDSON. I am not sure that I ought to be making pronouncements on constitutional law on a point that I have not given real study to, but I will offer this, at least, as an impression.

It would be my impression that the Congress does have power to enact such legis-

lation and that any constitutional issues that properly arise in the context of this legislation would arise in determining the line between the right of the President to make decisions as Commander-in-Chief and any restrictions in the bill. What I am saying in effect, is that there may be constitutional issues in application of the law but it would not seem to me, as a matter of first impression, that the law is unconstitutional on its face because the Congress does not have the power to enact it.

Senator BYRD. Generally, the theory of the bill is to recognize that the President has the authority to repel armed attacks upon the United States or U.S. forces and to protect U.S. citizens and nationals while evacuating them from dangerous situations abroad.

The bill would limit the President's authority under these emergency provisions to 30 days without Congressional authorization, but it provides for a prompt consideration by Congress. If the Executive Branch wishes to extend the period, for example, it is virtually impossible under the bill to delay consideration in committee or by debate on the floor for more than a few days.

Now, do you believe that the Executive Branch should be given the authority to commit United States forces to combat without Congressional authorization in circumstances other than those that I have just described?

Secretary RICHARDSON. As I said yesterday Senator Byrd, I agree in principle with the general purpose that the legislation seeks to accomplish, namely, to give the Congress an appropriate role in situations where the commitment of U.S. forces on a long-term basis is involved.

The problem I have with this at this stage is that what the bill undertakes to do in effect, is to codify a set of rules or conditions under which the President may do certain things for a certain period of time and then subject to various exceptions power to take further action expires. And the question really that I would need to have more opportuntiy to consider is whether it is wise, in effect, to try to codify by legislation in advance the rules governing this kind of situation. And as to that, as I said yesterday, I would need considerable opportunity to look at the language, and so on. I do not want to be understood as unsympathetic to the concern of Congress for the proper exercise of its role but what we have here is really the question of whether you can spell out in Black letter law the guidelines governing a constitutional relationship between co-equal branches of government.

Senator BYRD. In the light of what has happened in the last ten years, before that really but in the last ten years, do you think the Congress is justified in making an effort to, shall we say, recapture some of the responsibilities which have drifted for one reason or another to the Executive Branch?

Secretary RICHARDSON. If I were a member of Congress I would certainly be a participant in that effort.

Senator BYRD. As Secretary of Defense, how sympathetic would you be to that effort?

Secretary RICHARDSON. I really cannot add, I think, to the point I made earlier. I would be sympathetic as Secretary of Defense to an effort to observe due regard for the co-equal role of the Congress, particularly in matters involving the commitment of U.S. forces. I would, as a matter of conduct of relations between the Executive Branch and the Legislative Branch, try to behave in a way that exhibited full regard for the Congressional role.

The only reservation I have on this score is the one I mentioned a moment ago, namely, whether it is wise or desirable to try to spell out in specific legislative terms the rules governing the engagement of or disengagement of U.S. forces. The problem is the problem of imagining or trying to imagine in advance how things may happen and then spell out rules for them, and that is my only concern.

Senator BYRD. I will ask one more question and then I will yield to the distinguished Senator from Texas.

Mr. Richardson, do you believe that, in general, mutual security treaties with 44 nations of the world should be interpreted to permit the President to commit forces to combat under them without Congressional authorization?

Secretary RICHARDSON. Here, I think the problem is the one of the kind of line that is represented in the proposed legislation itself. I can conceive of some emergency situations where this might be a constitutional exercise of Presidential authority in his capacity as Commander-in-Chief. I, on the other hand, would certainly not propose that we could enter into a war in the sense of a declared war, without the involvement of the Congress, that is, a war on behalf of an ally pursuant to the terms of the treaty. In other words, I do not think the treaty would automatically commit the United States without the involvement of Congress to whatever we may define as a war.

Senator BYRD. Of course, that is exactly what the previous Administration did in regard to Vietnam, as I brought out yesterday. Secretary Rusk on dozens and dozens of occasions in his official testimony stated that it was the Southeast Asia Treaty that was primarily the cause or the instrument used for the United States to send ground troops to Asia.

Secretary RICHARDSON. Well, I would have to review that, Senator Byrd. I would suppose, though, that what he was saying was that the United States was justified in taking certain emergency actions in support of South Vietnam without formal action. The problem was that it started out in a very small way, and then there were gradual additions over time so that there was never a clear cut point at which the United States, in effect, entered a war. It became a war and so the reliance that Secretary Rusk may have placed on the SEATO Treaty in terms of what the United States initially undertook to do would not necessarily be a valid justification for a formal step of all-out engagement in war, I would have to look it up.

Senator BYRD. That emergency action has been going on for nine years.

Secretary RICHARDSON. No question that as of 1969, let us say, we were at war.

Senator BYRD. There was no question about 1965, was there?

Secretary RICHARDSON. Well, I am not so sure. I do not know when the point—where the threshold was crossed. In any event, the problem appears to have been a problem brought about by the fact that our involvement did come about so gradually.

Senator BYRD. In regard to the treaties, and we have 44, we have commitments with 44 different nations, we discussed this a little bit yesterday, and your position seems to me to be a little ambiguous and maybe we could attempt to clear it up, you say you feel there should be a continuing review, a continuing review of these commitments, but will you, as the new Secretary of Defense, initiate a review? Will you have procedures for a review?

Secretary RICHARDSON. I will have procedures for review. I do not expect it will be necessary for me to initiate them. I would be surprised to find if they were not already in 1 place.

Senator BYRD. But you will or you do feel it is wise to re-examine these many commitments, 44 different commitments, we do have? Do you feel it is wise to re-examine these commitments?

Secretary RICHARDSON. Yes, I think that the re-examination of these commitments should be part of a continuing process which includes overall strategic planning, planning for force levels, weapons systems, force structures. The commitments of the United States abroad obviously have a very critical part in the determination of what armed force capabilities we may need in a given contingency, and so——

Senator BYRD. Would it be——

Senator RICHARDSON. I am sorry.

Senator BYRD. Would it be reasonable to ask that at the end of, six months after you become Secretary of Defense, that you submit to the Committee the Department's reappraisal, review of these commitments and let the Committee know what the Department's judgment is as to the value of them and whether or not they should be continued?

Secretary RICHARDSON. I would be glad to do it on this understanding, Senator, that we would submit to the Committee any conclusion which suggests there should be some modification in an existing commitment.

Senator TOWER. Would the Senator yield?

Senator BYRD. I yield to the Senator.

Senator TOWER. This raises a jurisdictional question. It is not the jurisdiction of the Defense Department to make foreign policy except insofar as its advice and counsel is sought, it is the jurisdiction of the Department of Defense to implement foreign policy, if that foreign policy should be implemented by military men and, therefore, I would think you might be requesting the Secretary to do something that it is not within his jurisdiction or his line of authority to do.

Senator BYRD. The Secretary has already testified that he—it is his judgment that the Department was already reappraising, reexamining the policies and commitments. He testified to that yesterday and he testified to that again this morning.

Senator TOWER. I think that that should apply only to the extent to which the military is involved or the military can function under any given circumstance, to the extent that the military can respond to a policy decision.

Now, if it is to be suggested here today that foreign policy is going to be indeed formulated by the Department of Defense, I think we should call the Secretary of State to testify and see what his views on that are.

Senator BYRD. I would like to have the Secretary of State testify to that but, at the moment, we have the Secretary of Defense.

I do not claim that I know in detail all of the 44 commitments, but I have gone over most of them, and all of them have the potentiality of involving U.S. troops, every one of them has the potentiality of the United States becoming involved in a combat operation. So I think it is certainly logical that the Defense Department is involved in these treaties, and I accept the proposal made by the distinguished nominee that he feels that this should be constant review by the Defense Department.

He testified to that yesterday, and he testified to it today, and that at the end of six months after he assumes office if there are changes that he would recommend he will so inform the Committee, and in the absence of his recommendation I would assume that he feels that there should be no changes.

Secretary RICHARDSON. May I just say this: Senator Tower is clearly right in pointing out the role of the Department of State and the Secretary of State, the President in the area of foreign policy, and I think it is a helpful clarification that he intervened at that point.

I am glad to take advantage of the opportunity to say that the kind of re-examination the Department of Defense would, and I am sure does, continually perform involves the interrelationship between U.S. commitments, U.S. capabilities, and the armed serv-

ices' role in the fulfillment of a commitment under various potential situations.

The Office of International Security Affairs of the Department of Defense works continually and closely with the Department of State and, indeed, its function is to a very large degree to assure the clearest possible understandings between the scope of U.S. foreign policy commitments, on the one side, and the implications of these for armed services capabilities on the other, and when I said that if we had a conclusion, or reached a conclusion suggest the possible desirability of any modification of an existing commitment that this would be a conclusion reflecting the judgment of the Administration and not of the Department of Defense or myself alone.

Senator BYRD. Well, maybe no one is concerned about our country having commitments or treaties with 44 countries, but the Senator from Virginia is concerned.

I yield to the Senator from Texas.

Senator TOWER. Thank you, Mr. Chairman.

I think we should note that a treaty is a conduit through which constitutional authority flows. Treaties are made in pursuance of the Constitution of the United States, they are ratified by the Senate, and to the extent that they are ratified by the Senate, the Congress of the United States acquiesces, at least, in the conclusion of the treaty obligation.

I think that the wisdom of a number of our interlocking treaty organizations should, of course, be constantly under review but I still think that is primarily the function of the President, and of his foreign policy arm, the Department of State. The military, I think, should be considered as a precision instrument of diplomacy. That is not, of course, a new idea, it was articulated, I suppose first by Clausewitz. The military simply implements foreign policy when the makers of foreign policy have determined that that policy should and must be implemented by military means. In this century the United States has not resorted to the initiation of war as an instrument of national policy. I doubt that we ever will.

Treaties are subject to interpretation, and it is the function of the President to make a judgment as to what the obligations of the United States are pursuant to a treaty agreement. The United States was not obligated by treaty to go into South Vietnam. South Vietnam is not a signatory of the SEATO pact. It was apparently the judgment of Presidents Kennedy and Johnson that to fulfill our obligation to Thailand, Australia, New Zealand, the Philippines, other nations that are signatories, that we should engage in combat operations in South Vietnam because the incursion into South Vietnam and Laos, Cambodia constituted a threat to the territorial integrity of SEATO's signatories. That is a judgment decision, and I think reasonable men may debate whether the decision was right or the judgment was right or was wrong or was good or bad and indeed, reasonable men are debating it at this moment. But it is certainly not a function of the Department of Defense. And I would want to make it clear that this Committee is not suggesting that the Department of Defense should arrogate unto itself powers and responsibilities it does not have, that the Constitution nor the national legislature ever intended that it should have.

I should like to further say that I have never seen a man come before a Senate Committee in confirmation hearings better prepared to testify about the nature and responsibilities of a job that he has never held than Secretary Richardson, and my esteem for him has certainly soared over the last two or three days, and I am hopeful that we will not expect that he should be able to answer every question pertinent to the responsibility he is about to undertake. I do not think any department head fully knows his job until after he has been in it a while.

I do not think that any of us who entered the Senate on the first day understood entirely what our responsibilities, our prerogatives and duties were, I certainly did not myself, and I spent all of my adult life in the field of political science.

I do want to hear and now commend Secretary Richardson and express the firm conviction that he is going to be one of the best, if not the best, Secretary of Defense we have ever had.

Secretary RICHARDSON. Thank you very much, Senator Tower. I appreciate those very generous words.

Senator BYRD. Thank you, Senator Tower.

Senator Nunn.

Senator NUNN. I have no further questions.

Senator BYRD. Senator Goldwater.

Senator GOLDWATER. My question does not require an answer today but in view of the fact that Mr. Richardson is such a well-known scholar of the law, I would like to ask, if you ever have any spare time, that you pursue this subject of war powers. It has been a very intriguing subject to me, a non-lawyer.

I feel, for example, that the President is the only authority in this country in our government that can commit troops. The Congress has only the power of raising the militia, making rules for them, paying them, they have the power to declare war but not the power to send troops.

Now, this came about, according to my studies, because the Continental Congress made the mistake of allowing the Congress to control war and it nearly caused disaster with Washington. After this in the formulation of our Congress they took away the war-making powers and gave the power to declare only.

It is interesting to know we have been in about 192 different occasions where we used troops in the 200 year history of our country, and in only five of these have we ever declared war, and two of these declarations were in one war.

I know it is generally believed, it is a general concept, around the country that the Congress does have the power of war. I have yet to find an eminent scholar in the field, including both, the members of both parties who served in the Department of State and other high offices, who feel that we do have any other power than those I have mentioned or the power of the purse which, of course, we can exercise at any time.

It would be interesting to me to add your opinions of this, not for publication, but just to my collection of papers on the subject.

There has been very little written on it. The University of Virginia has published two excellent books on the subject, one of which has just come to my desk in the last few days.

I think if the Congress wants to act in this field that it will be forced to act with a constitutional amendment because the constitution clearly, very clearly, gives to the Commander-in-Chief the power of calling out troops, and I don't think there is any limitation on when he can do this. I think it is up to him to make up his own mind, and if we want to change that power then we are going to have to ask the people of the country to change it through an amendment.

I am sure when we get into debate on this bill, even if it happens to be passed, that it will be fought through the courts and a court decision will be, I am sure, in favor of the Constitution as it is written.

It is an interesting subject because today the people are clamoring that the Congress do something, and many members of Congress honestly feel that we can do something about going to war. But, in my opinion, we can't.

I would like to know sometime from you at your leisure, after you have had time to study it, what you think about this whole subject. I thank my friend from Virginia.

Secretary RICHARDSON. Thank you, Senator Goldwater. I will be—I certainly will want to study it and I look forward to a chance to discuss it with you further.

Senator BYRD. Thank you, Senator Goldwater.

Mr. Richardson, if confirmed, what would be some of your major goals as Secretary of Defense? Are there any priorities that you have set?

Secretary RICHARDSON. I cannot at this stage go beyond some very general propositions but I think, first of all, we need to take measures that will assure that in the recruitment of the all-volunteer force we have made the opportunity for military service attractive, respected, recognized as contributing to vital national purposes.

We need, second, in my view, to take measures, building upon what Secretary Laird has already done, to strengthen public confidence in the acquisition procedures, procurement processes of the Department of Defense.

Third, I would seek to try to assure, as I said yesterday, the maintenance of adequate military capability on a more economical basis, foreseeing that costs in some areas are bound to rise, that the competition for tax dollars is bound to increase, and that our armed strength will suffer unless we are able to maintain it on a basis absorbing proportionately fewer dollars.

Senator BYRD. In recent years, the political debate over domestic matters has tended to center on the claim that defense spending, defense spending has caused a starving of social programs.

Has your experience as Secretary of Health, Education and Welfare persuaded you that such claims are accurate?

Secretary RICHARDSON. On the contrary, as I am sure you know, Senator, the shift in the allocation of resources to the area of human needs and away from national security, including defense, has been a massive shift during the years of this Administration.

When President Nixon first took office the proportion of the national budget devoted broadly to defense or national security was about 44 percent, and the ratio devoted to human resources was about 32 percent. These proportions have been reversed, and the ratio of the budget now devoted to defense is at its lowest level since before the Korean war. So I think we can say with considerable force that there has been a continuing reallocation of priorities.

In fact, I do not oppose the shift, obviously having served at HEW and having been involved in initiatives that have to a degree brought it about. But, as I said on the opening day of these hearings, I have never believed that the shift should take place at a rate that might jeopardise the adequacy of our Armed Services. And while I would expect it to continue I would also, as Secretary of Defense, seek to assert the claims of adequate military capability so as to assure that it did not take place too rapidly, and that we continue to remain adequately strong.

Senator BYRD. In terms of total dollars HEW, I believe, will spend more money in this fiscal year than the Defense Department. Is that your recollection, is that your——

Secretary RICHARDSON. That is correct, and in fiscal '74 the proportion will grow wider even though there may be some increase in defense expenditures, depending upon Congressional action on the budget. But the HEW jump largely because of Social Security amendments will be much greater and, as long as we have in effect benefit programs that grow as a function of the increase in

the number of dependency sharing, old people, for example, grow also to match the pace of inflation, the Congress did provide for that last year, the total HEW outlays will presumably continue to go ahead.

Senator BYRD. Not in terms of percentage of the total budgetary expenditures but in actual dollars HEW is now spending more dollars in a given fiscal year than is the Defense Department.

Secretary RICHARDSON. That is correct.

Senator BYRD. Mr. Richardson, if a satisfactory cease fire agreement is reached with Hanoi but within a reasonable time it becomes apparent, do you believe we should use Naval—apparent it has been violated, do you believe we should use our Naval and Air Force contingents in the area to assist our South Vietnamese allies if they need and ask for air power?

Secretary RICHARDSON. The only thing I can properly say on that point at this stage, Senator Byrd, is there is an obvious need for very careful and comprehensive contingency planning to anticipate any of a broad spectrum of possible violations. We need to be ready to do whatever is appropriate for use. There may be situations, for example, involving some violation which can perfectly adequately be handled by the South Vietnamese or as the case may be Laotian or Cambodian forces without any participation by us. But I think we need to have thought about this since the time in which it would be necessary to react may be quite short.

Senator BYRD. What do you think should be done in connection with the security role that the United States has maintained in the far East, especially with reference to Taiwan and Japan?

Secretary RICHARDSON. On this score, again, I think my comment should be quite limited. We are also touching here, too, on the area that Senator Tower pointed out earlier of foreign policy, but I would just say this: that I think that the United States does have real and important national security interests in the far Pacific. We, as far as Taiwan is concerned, have made clear that we intend to honor our commitments, and I believe that our relationship with Japan is of key importance to the United States. I believe it is important that it not only should be maintained but strengthened.

Senator BYRD. If U.S. supreme interests should be jeopardized by a failure to agree on a second round of force reductions at SALT, does the Secretary-designate believe we can live with the present SALT Treaty and interim agreement for as long as five years?

Senator RICHARDSON. That is a question I would need to look at on a continuing basis in the light of whatever actions may be taken during that interval by the Soviet Union and in the light of the actions taken within the United States to support needed weapons system development and acquisition.

Senator BYRD. The Soviets refused to agree to any provision of the SALT Agreement which would ban deployment of mobile ICBM's. This being the case, should the United States take advantage of this loophole to lessen our vulnerability by placing some of our Minuteman missiles on mobile platforms?

Secretary RICHARDSON. That is an important question. I would want to have the advice of the Joint Chiefs of Staff before trying to reach any judgment about it.

Senator BYRD. How important, Mr. Richardson, do you believe, on-site inspection to be in any future arms limitations agreement with the Soviets?

Secretary RICHARDSON. This would depend on the terms of the agreement. There are some possible areas of agreement that could be monitored only by on-site inspection. There are, there remain, also significant areas of further agreeement that would not require on-site review.

Senator BYRD. When you were Secretary of HEW I heard considerable comment among the members of the Congress, many had considerable difficulty in getting replies from your office. My question to you today is, if you are confirmed as Secretary of Defense how responsive will you be to requests for information from members of the Congress and what machinery will you have in your office to accomplish this?

Secretary RICHARDSON. I will do the best I can. As a matter or fact, at HEW it was a source of continuing irritation from my point of view. I used to have, I resorted to various devices to try to goad the system into producing responses more quickly, to try putting up charts at staff meetings, sent out a lot of memoranda.

The Defense Department has in place, I know, a considerable process for answering Congressional requests and inquiries I would be interested to find out whether it is regarded as adequate by you and your colleagues. If you think it is I will simply make sure that it is kept in place.

Senator BYRD. I found the Department of Defense very responsive, I found the Department of Treasury very responsive, I have found the Justice Department very responsive, I have found every agency of government, almost, very responsive, except the one you happened to head. That is the only reason I am bringing this up.

Secretary RICHARDSON. I am certainly not going to do anything to weaken the effectness of the proceedings that are being carried out. On the contrary, if there can be any improvement I would like to make them. I really think that despite some bad experiences I know you have had with HEW, we have tried quite hard and, on the whole, I think we have made some improvements.

Senator BYRD. The New York Times of November 10 had this story.

"Admiral Elmo R. Zumwalt, Jr., the Chief of Naval Operations, using strong, brutally frank language, charged the Navy's senior commanders today with failures in leadership and with ignoring his directives on racial relations."

This was a public reprimand of the senior officers of the Navy.

In your judgment, is it wise for military personnel to be publicly reprimanded by their superiors?

Secretary RICHARDSON. I wouldn't want to try to make any general pronouncement on that, Senator Byrd.

Senator BYRD. You would not want to say whether or not it is wise or unwise to publicly reprimand a subordinate?

Secretary RICHARDSON. Not in the abstract, no, I would not.

Senator BYRD. You feel that discipline can be maintained under such conditions?

Secretary RICHARDSON. Again, I don't think it is a matter on which I would want to try to generalize.

Senator BYRD. I think you said yesterday that you do recognize that there is a disciplinary problem in the Armed Services.

Secretary RICHARDSON. Yes. I also said that I don't have enough information to know how serious it is in scope or degree, but that I would want to try to find that out, and that I would certainly want to take whatever corrective action seems indicated.

Senator BYRD. Senator Tower.

Senator TOWER. Mr. Chairman, I have no questions at the moment.

Senator BYRD. Senator Goldwater.

Senator GOLDWATER. I have no questions.

Senator BYRD. Mr. Richardson, on behalf of the Committee, I thank you for your time you have given us at this confirmation hearing. In the event of your confirmation, which I anticipate, I wish you the very best of luck in a very difficult and a very important assignment, and I want to cooperate with you fully in your heavy responsibilities.

Secretary RICHARDSON. Thank you very much, Senator.

May I just say that I appreciate the opportunity that has been afforded by this hearing to respond to questions touching on virtually all aspects of the operation of the Department of Defense and the needs and problems of our Armed Services.

I have welcomed the opportunity, and I have sought to respond as fully as I could to your questions, Senator Byrd, and the others that have been addressed to me. In some instances, I have said that I would need further information, in some cases I have undertaken to make additional responses to the Committee. In a good many cases, perhaps most, I have given immediate answers.

As to the first, I will, at whatever appropriate time, give the Committee my further views when I have had the opportunity to develop additional information.

As to the second, we will certainly furnish for you whatever I have undertaken to provide to the Committee.

In the third area, it may be that as I learn more I will change my views, and in that case, if the matter is a material one, I would also want to bring it to the attention of the Committee.

I take very seriously the importance of the collaborative role we play in national defense policy, and I would want to do whatever I can to assure that the Executive-Legislative relationship in this context is as strong as it can be made, and I feel from my point of view that this hearing has been a valuable and welcome opportunity to lay that kind of foundation.

Senator BYRD. I don't think anyone on the Committee would have expected you to answer all of the questions that have been put to you, certainly I would not have been that unreasonable. I think you have responded in an appropriate fashion. In some cases you have been quite frank.

I was astonished, I might say, that you would not express an opinion on one of the first questions which I put to you, and that is whether it was a grave error of judgment to send ground troops to Asia. But on another question you answered in one word, which is something that I have had great difficulty in seven years, that I have been asking the same question for six or seven years, and I have had difficulty in getting an answer in one word. Sometimes it has taken an hour to get an answer to it. Since I have asked it of every appointee who has come before this Committee for seven or more years, I will read it again: The United States has been involved in combat operations in Indochina for nearly ten years. In your judgment has this long U.S. involvement in Vietnam, utilizing two and one-half million American troops and hundreds of billions of dollars, been beneficial to the Soviet Union, and you answer that very forthrightly with one word, no.

That brings to mind that the only other individual who answered it that precisely and concisely was the assistant or Under Secretary of State, Mr. Eugene Restow in the Johnson Administration, he answered it the same way, as did virtually all of the appointees who came before this Committee in the middle and later 1960's.

What concerned me about that was that it led me to believe in 1966 and 1967 that if those in higher position, making policy, held such a view as that, that there was certainly no urgency in getting this war over with.

Mr. Richardson, if there are no further questions—Senator Tower, Senator Goldwater—if there is no further business, the Committee will stand in adjournment until 2:30—

ADDITIONAL STATEMENTS

TVA—THE BIG PAYOFF

Mr. SPARKMAN. Mr. President, the December 1972 edition of Farm Chemicals contains an editorial entitled "The Big Payoff." It refers to TVA and its accomplishments for the good of the whole area in which it operates and, indeed, for the whole country.

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 BIG PAY-OFF

Back in 1953 TVA began to bring us out of the "dark ages" of fertilizer production by holding its first technology demonstration for industry. From that discussion of the pilot-plant continuous ammoniator-granulator a *new era* of fertilizer production began.

TVA had a way of winning over the skeptics without anyone even realizing that a "conflict of ideas" was taking place. Remember the diammonium phosphate doubters? "It just can't be done," they said. Well, TVA helped DAP go on to become one of the world's leading fertilizer materials in a few years!

Then came superphosphoric acid with its fantastic effect on an "industry within an industry"—liquids.

There were even more skeptics on the subject of bulk blending. In fact, the discussions were actually held back for awhile, because the subject was *taboo!*

But TVA experts patiently explained the *benefits* and waited for tempers to cool.

There have been many other "surprises" but we can't enumerate them here. Perhaps even more significant than the technology itself, in many instances, was the fact that TVA had scored a *breakthrough in communications!* Fertilizer technology, such as it was, had been company secrets prior to 1953.

During the past 20 years, TVA has literally brought fertilizer production out of a "dirty, dusty past" to an efficient, "sanitized" era that would make the most ardent environmentalist drool. Some of our units are as clean as a bakery shop.

We've often wondered: Why don't we have TVA demonstration for the environmentalists? Why not invite consumer panels to TVA demonstrations and other meetings? They could not help but be impressed with the technology—and its effect on food production!

Not only would environmentalists and consumer groups hear it from TVA experts, but from dozens of experts from around the world who depend on TVA to keep their fertilizer plants running efficiently.

Several years ago, a certain Southern city was criticized on this page for its lackadaisical way of hosting a large TVA fertilizer conference which had drawn hundreds, *including 107 interesting personalities from 20 foreign countries.*

Its Chamber of Commerce had been asleep at the switch. The city news media never really bothered to give the man on the street any idea of the *real impact* of what this meeting would have on the world. Hunger was a strange word to them and they never asked: "What brought these people to our city?"

We were also amazed that they seemed completely unconcerned about the value of present and future public relations with these countries.

Little did any of us realize at that time the importance of public relations for our *own agricultural system!* TVA was taken for granted by all of us. We had no idea that we would be reading books such as "Hard Tomatoes; Hard Times" and "The Great American Grain Robbery."

All agricultural institutions, including TVA, are now suspect.

No doubt about it. Events such as "The Edwardsville Incident" (see page 60, January 1972), where TVA experts literally gave the nation's "No. 1 Environmentalist" (Barry Commoner) a fertilizer lesson, will make it harder for TVA. This was one of TVA's prouder episodes. Their branding of Commoner's methods of nitrogen-15 research as "unworkable" left no doubt in any one's minds where TVA stood. With the fertilizer industry!

But we can't afford to dwell on the past. We must think of the future. TVA research and development *must* go on if this nation is to remain on top of the heap. No nation can really be regarded as a "super power" if it does not have the capability of feeding and clothing itself. We are literally proving that the Soviet Union is not in our class, because we must supply them with grain that they are not capable of producing themselves. The alternative was hunger and strife—perhaps even war!

The public must understand the importance of the continuous flow of technology . . . from the laboratory bench to the farmer. Dry up this flow and everything suffers—business, agriculture, the consumer—the entire nation.

We must not allow the environmentalists to threaten agricultural research anymore than it already has. Somehow, in a hundred ways and a thousand places, we must drive home the salient point that the real impact of TVA is at the dinner table.

Even environmentalists have to eat!

WHEELCHAIR OPERATORS FACE CAMPUS BARRIERS

Mr. DOLE. Mr. President, I am concerned about the man-made barriers the handicapped face daily. The environment has natural barriers such as mountains, rivers, lakes, oceans, swamps, and jungles. The climate with extremes in temperatures and weather conditions impose certain barriers. Man created roads and tunnels to pass through mountains, bridges to cross rivers, ships to traverse lakes and oceans, and other modes to cope with swamps and jungles. We constructed buildings and homes for protection from adverse weather conditions.

If we have been so able to cope with these environmental barriers, we should now deal with the barriers that in turn were imposed on the handicapped. The handicapped are unable to use many facilities because they were constructed for the nonhandicapped. An article entitled "Wheelchair Operators Face Campus Barriers," written by Mike Lewis, was published in the University Daily Kansan December 8, 1972. It describes the barriers a person confined to a wheelchair faces. I ask unanimous consent the article be printed in the RECORD.

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

WHEELCHAIR OPERATORS FACE CAMPUS BARRIERS

(By Mike Lewis)

Whenever a bicycle rider or pedestrian uses one of the small ramps which have been built into curbs on campus, it supports the conviction of Robert Harris, Lawrence graduate student, who claims: "Environmental barriers are not just problems of people in wheelchairs, they're people problems."

Harris said that while the curb cuts, which were made last summer, were designed with wheelchairs in mind, the removal of the curb's architectural barrier was helping a much broad segment of the University community.

Harris said several myths surrounded persons confined to wheelchairs at KU.

"One is that people in wheelchairs are incompetent and have no effect on their environment," Harris said. "The other is that KU is architecturally free of barriers."

Harris, who spent four years in a wheelchair himself, surveyed 27 University buildings for the ability of a person in a wheelchair to approach the building, enter the building, enter rooms once inside the building, use the restroom facilities and reach other floors.

At the time of his survey during the last spring semester, he found 20 buildings were inaccessible because of the surrounding curbs, even with the construction of more than 35 curb cuts this summer, Harris' figures show that a person in a wheelchair still could not gain access to 11 buildings on campus because of impassable stairs or a door which he would not be able to open.

Those buildings mentioned in Harris' survey as having barriers in the approach to the outside doors were Carruth O'Leary Hall, the Museum of Natural History, Green Hall, Hoch Auditorium, Learned Hall, Lindley Hall, Mallot Hall, Marvin Hall, Murphy Hall, Spooner Art Museum and Watkins Hospital.

In some instances the barriers were one step.

Harris found a particular abundance of barriers in restrooms. Using a wheelchair 24 inches wide Harris found restrooms in only five of the 27 buildings surveyed had stalls wide enough to admit a wheelchair, and he expected the number to decrease.

"The only reason we could get into the stalls in Strong and Watson was that someone had jerked the doors off of them," Harris said.

Although total modification of the KU environment is unlikely in the near future, Allen Wiechert of the office of facilities, planning and operations said, the main interest of the University with regard to persons in wheelchairs is to determine the need for restroom facilities.

Wiechert said changes were still in the planning stages and actual work would not begin before July.

As is often the case, the problem of change is a problem of cost. As Keith Lawton, director of facilities, planning and operations said, "We have a lot of thoughts about the future but no money to perform them."

While Wescoe Hall and the new student health center are being built to accommodate wheelchairs as the result of a recently enacted state statute, Lawton said older buildings, which were without elevators and had prohibitive entries, could be dealt with only if and when finances permit.

Presently a study is underway by the University to pinpoint and analyze architectural barriers across the campus.

Harris said he undertook the investigation of building accessibility because those who were not confined to wheelchairs had a difficult time understanding wheelchair mobility.

"People who have not had previous experience with wheelchairs cannot learn what it's like to be confined to a wheelchair by riding around in it for one day," Harris said.

Harris said society's stereotype of the person in a wheelchair was that of one who was unable to help himself. He also protested use of the words invalid, disabled person and handicapped.

He said invalid in one sense implied a helpless person and in another sense meant void. There were shades of difference between disabled person and a person with a disability,

he said, with the latter representing a person but the former connoting something less than normal.

A person in a wheelchair would react to being called handicapped much the way a black would react to being called an Uncle Tom, Harris said.

Harris said persons with disabilities had been depicted as having little impact on their environment because of being weak and sickly.

It is not the incompetency of the person, Harris said, but the restrictive nature of his environment which made it hard for a person in a wheelchair.

Harris used the analogy of a janitor who was unable to put trash in a container taller than he. Harris said one would not call the janitor incompetent but put the blame on his environment which made it impossible for him to empty trash. In this sense calling a person in a wheelchair incompetent was like blaming the janitor for being too short, he said.

DEMOCRATIC CAUCUS VOTES COMMITTEE SESSIONS ANTI-SECRECY RESOLUTION

Mr. HUMPHREY. Mr. President, the action of the Democratic Conference yesterday in adopting its resolution on open hearing and committee sessions is encouraging indeed.

The majority leader, in particular, deserves the thanks of all those in the country who are seeking more open, accountable, and responsive government.

I ask unanimous consent that a news statement I issued today be printed in the RECORD.

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

HUMPHREY PRAISES SENATE DEMOCRATIC LEADERSHIP ON ANTI-SECRECY

WASHINGTON, D.C., January 12.—Senator Hubert H. Humphrey today praised the Senate Democratic Leadership and Caucus for "dramatic leadership on the question of removing secrecy in government."

Humphrey cited approval late yesterday by the Senate Democratic Caucus, of a resolution calling for open hearings and open mark-up sessions of Senate committees.

The resolution approved in the Caucus by the Democratic Majority reads:

1. "That the Senate Committees and the Senate should conduct their proceedings in open session in the absence of overriding reasons to the contrary;

2. "That whenever the doors of the Senate or of a Senate Committee are closed, a public explanation of the reasons therefor should be forthcoming, respectively, from the Joint Leadership or the Chairman of the Committee;"

A third paragraph in the original resolution had exempted mark-up sessions in committees from the anti-secrecy rule, but Senator Humphrey moved to strike this section and his motion was approved by the Caucus. The paragraph Humphrey moved to strike read:

3. "That this resolution is not to be construed as militating against conducting routine procedural business or the marking-up of legislation in Executive Session."

"This very firm action by the Caucus, especially the rejection of the specific exemption for mark-up sessions," Humphrey said, "greatly increased the chances that the Humphrey-Roth anti-secrecy rules change resolution can be passed early in the session." Humphrey said he would introduce the rules change resolution on Tuesday, January 16, if the Senate is in session and that he would seek immediate hearings by the Rules Committee.

Humphrey observed that "Senator Mansfield's initiative toward more open, accountable and responsive decisions within the Caucus are unparalleled in the last two decades of the Congress."

"In just a few short years, Senator Mansfield has guided the Democratic Caucus to support full information on Steering Committee decisions, full and free majority decision on committee assignments and committee chairmanships, guarantees that Senate Conferees will accurately reflect the will of the Senate, and elimination of unnecessary secrecy in committee hearings and mark-up sessions. I doubt that the country fully realizes the importance of these changes and I want to compliment all my Democratic colleagues on their actions."

Humphrey said the caucus action would give "strong impetus to enactment of an anti-secrecy rule in this session." He said enactment of the rule is still necessary to provide a uniform, Senate-wide anti-secrecy procedure and to specify clearly what exceptions are to be permitted to accommodate national security and personal rights exemptions.

COAL COULD SOLVE ENERGY CRISIS

Mr. ROBERT C. BYRD. Mr. President, an article in today's edition of the Washington Star-News reports that President Nixon's forthcoming energy message is likely to include a plan for converting some of the Nation's electric power-producing plants from oil-fired to coal-fired generating units.

This would be a welcome step for those of us who have maintained for several years that coal is the key to solving the Nation's energy crisis. And, as such, a greater emphasis should be placed on coal research than has been placed on it in the past.

The development of nuclear energy is maddeningly slow. Thus, at least for the foreseeable future, our Nation—and all the nations of the world are committed to the use of fossil fuels. Of these fuels—oil, gas, and coal—only coal can be found in sufficient quantities to turn back the energy crisis we are now facing. Each year, for instance, we become less of a supplier and more of a customer as far as oil is concerned.

Experts predict that, between now and 1983, more oil will be consumed than was consumed heretofore in the entire history of the world. And to finance oil's role in the energy picture between now and 1985, will require a new investment of between $500 million and $1 trillion. Nobody has yet found where this vast sum of money will come from. One thing we do know, however, is that if the United States imports 10 million barrels of oil daily—a reasonable estimate, according to experts—our balance of deficits for oil alone could exceed $20 billion annually.

Converting a large segment of the country's electric - power - producing plants from oil-fired to coal-fired generating units could, as the story in today's Star-News points out, overcome the major risks posed by increased use of imported oil. One of those risks is the inflationary impact of increasing the Nation's balance of payments deficit, and a second is the obvious security risk that comes with relying too heavily on foreign powers for our domestic energy needs.

According to the reported plan that will be included in the President's energy message, such a conversion "could result in a savings of 2.2 million barrels of oil a day that would otherwise be imported by 1980." And avoiding the need to import that oil would result in an annual import savings of $2.7 billion to the United States.

Mr. President, too often in the past, energy messages have come from the White House to the Congress containing few prospects for increased coal research. I am encouraged by the article in today's Star-News that the forthcoming energy message will give coal the high priority it deserves, and the high priority it needs if we are to overcome the energy crisis.

The article, written by Star-News staff writer John Fialka, is headlined "Oil-to-Coal Shift Urged for Power." 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:

OIL-TO-COAL SHIFT URGED FOR POWER

(By John Fialka)

A plan calling for the conversion of a large segment of the nation's electric power producing plants from oil-fired to coal-fired generating units is likely to be part of the President's forthcoming message on energy.

Proponents of the plan have reportedly convinced high Nixon administration officials that relying on the nation's massive coal reserves over the next 15 years to meet the growing shortage will best overcome two major risks posed by increased use of imported oil the inflationary impact of increasing the nation's balance of payments deficit; and the foreign powers for substantial energy needs.

The President, according to a variety of industry and government sources, is likely to call for incentives that would attract capital investment to revive two major ailing industries: coal mining and the railroads.

STOPGAP MEASURE

The energy message is to be delivered within the next few weeks, according to administration sources.

It is likely to meet with some opposition from environmentalists, however, because relaxation of air pollution controls will be required to permit coal burning on a larger scale. The plan will also spur the demand for more strip mining, a process which environmental groups are busy trying to outlaw.

Coal, according to the strategy, will fill the gap between now and 1985 when improved technology for atomic power plants, plants for converting coal to gas at the minesite and other processes now on the drawing boards will be ready for commercial use.

There are, reportedly, several coal-use plans under consideration. One of them was just finished by the President's Office of Emergency Preparedness and will soon be printed for official release.

The plan notes that "selective and temporary relaxation" of some state air pollution control standards to permit coal burning could result in a savings of 2.2 million barrels of oil a day that would otherwise be imported by 1980, an annual import savings of $2.7 billion.

FEASIBLE ALTERNATIVE

In a statement accompanying the report, the OEP insists that it represents no official position but is meant to be "thought provoking."

Relying on the nation's estimated 400 years of known coal reserves, it states, is the "only feasible" alternative to oil in the near future.

By using coal in all existing power plants equipped to burn it and requiring new nonatomic plants built after 1977 to have a coal burning capacity, the proportion of the nation's fossil-fueled (oil gas or coal-powered) stream generating units that use coal could be increased from a current 55 percent to 75 percent by 1985.

Reliance on coal might be necessary longer than that, the report adds, because "projections of the rate of nuclear power availability have already slipped compared to earlier estimates and might slip still further."

The study, directed by the OEP with assistance from the Departments of Commerce and Interior as well as the Environmental Protection Agency and the Federal Power Commission, notes that about half of the nation's power plants that have the ability to burn either coal or some other fuel are now burning oil or gas because air pollution controls "have now made oil and gas more attractive, even at higher costs."

It points out that some utility regulations that permit companies to pass on the higher fuel costs to consumers could be "modified" to permit the companies to pass on the cost of "scrubbers," or devices that remove sulfer oxides and ash from coal.

Secondary standards called for under state implementation plans now being prepared to meet the federal Clean Air Act of 1970 could be delayed, the study suggests, while the government offers "appropriate incentives" for utilities to install such control devices.

The 1970 law calls for states to establish two sets of standards. "Primary" standards are designed to protect public health. "Secondary" standards, generally tougher, are designed to prevent deterioration of masonry buildings, paint, automobile tires, clothing and farm crops.

The plan, it states, is "critically dependent upon success in reversing the current decline of the coal industry and related industries, particularly transportation."

"Coal mines have been closing at an alarming rate of one or two a week in recent months. High-sulfur coal regions are hard hit. Many new mines are not being opened as planned, largely because of investor uncertainly about government policy."

In order to move the coal, the government may have to find ways to attract as much as $36 billion in new investment money into the nation's sagging railroad system, the report says, adding:

"Many railroads are in serious financial trouble, eastern roads are rapidly deteriorating, skilled shop labor is not being replaced, and hopper car production lines are being closed or converted to other types of rolling stock."

Asked about the plan, one government source said "If we're going to attract all this money into coal and related things, we are going to have to act now, make a major commitment."

Another added, "As you might imagine, this plan is more politically saleable than importing more oil or buying, for instance, gas from Russia. In addition, developing a dual capability to burn either gas or oil to generate electricity gives us considerable leverage to use with oil-producing countries to encourage them to keep the price down."

HOSPITAL COSTS

Mr. RIBICOFF. Mr. President, at my request, the General Accounting Office has surveyed six representative areas of the Nation to examine the degree of coordination among Federal, State, and local agencies in reducing health care costs through planning and constructing acute-care hospitals and skilled-nursing-care facilities, as well as through the sharing of specialized medical services and equipment among hospitals.

The study reveals a disturbing pattern of over-construction and under-utilization which is out of step with actual community needs and out of line with what the average American can afford to pay.

In each of the six locations, the number of hospital and nursing-care beds that will be available by 1975 under ongoing construction programs was found to exceed the projected need for these beds as shown in State plans. Also, the sharing of such specialized services and equipment as cobalt therapy, open-heart surgery and obstetrical services was found to be so low that some individual units in all six locations were virtually unneeded in terms of actual community use.

The specific findings of poor planning and coordination will be of particular interest in those areas where the study was made: Baltimore, Cincinnati, Denver, Jacksonville, San Francisco, and Seattle. But the ramifications should be felt nationwide. The pattern is clear. The spiraling cost of hospital and convalescent care in large measure reflects the cost of unused beds and under-utilized special services that must be absorbed by the institutions and passed on to the consumer.

To the extent that these excessive costs result from poor coordination and planning, they represent a disgraceful failure of government at all levels to come to grips with the realities of the Nation's health care needs and of the average family budget.

The Federal Government must take the blame for the inadequate controls over the construction of medical facilities undertaken with financial assistance under the Hill-Burton and partnership for health programs. Excess construction in relation to demonstrated needs, as reflected in the State plans required by Hill-Burton, must be eliminated. I will offer legislation to meet that goal.

There is also a need for State and local health-planning agencies to establish effective controls over the construction of facilities that are privately funded and therefore not subject to controls under Federal programs.

Furthermore, State, and local agencies should establish controls over specialized services facilities to promote sharing and avoid wasteful and costly duplication. The GAO study found that in nearly all six locations studied, no authority existed for controlling the establishment of such services. Too often the decisions on whether services should be shared are based on questions of institutional autonomy and convenience of individual physicians rather than on total effectiveness for the whole community.

I support the report's conclusion that there is a need for better control over the planning for and construction of medical facilities and specialized medical services to provide greater assurance that the medical needs of communities are met in the most effective and economical manner. The report correctly declared:

> Overbuilding of medical facilities and excess capacity of specialized medical services contribute to increased health care costs.

These same factors were cited in a subsequent GAO report on the feasibility of reducing the cost of constructing health facilities. This nationwide survey, authorized by the Comprehensive Health Manpower Training Act of 1971, and issued last month, also recommended ways to reduce or eliminate the demand for hospital care. I delayed the release of the GAO report prepared for me in March so that it would be considered in the context of the later, more comprehensive report.

The multidimensional nature of the Nation's health care crisis was made clear in this report—findings of poor planning and coordination, overutilization of hospital care, underutilization of outpatient treatment and virtual neglect of preventive medicine. All of these factors were cited in the spiraling cost of the Nation's health care bill from $26 billion in 1960 to $75 billion last year and in the average cost of hospitalization from $32 a day in 1960 to $91 a day last year.

Several of the report's recommendations deserve close scrutiny by Congress as it begins serious consideration of a national health plan. Particularly noteworthy were recommendations for the pooling of hospital-planning information and the reuse of architectural designs; the wider use of prepaid group practice plans which were found to discourage inpatient hospital care; broadening the coverage of other health insurance plans to encourage outpatient care and shorter hospital stays; and, of course, imposing tighter construction controls and shared-services requirements.

Mr. President, I ask unanimous consent that the text of the GAO summary be printed in the RECORD.

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

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

The Honorable ABRAHAM A. RIBICOFF, *Chairman, Subcommittee on Executive Reorganization and Government Research Committee on Government Operations, U.S. Senate*

DEAR MR. CHAIRMAN: In accordance with your request, the General Accounting Office examined into the coordination among Federal and State agencies and local health organizations in planning and constructing acute-care hospitals and skilled-nursing-care facilities in certain metropolitan areas. We also reviewed the extent to which certain medical facilities and services were shared among hospitals.

Our reviews were made at Baltimore, Maryland; Cincinnati, Ohio; Denver, Colorado; Jacksonville, Florida; San Francisco, California; and Seattle, Washington. These areas were selected on the basis of geographic distribution and of levels of Federal financial participation in the construction of the facilities. We did not review the quality of care being provided by the hospitals and skilled-nursing-care facilities. Individual reports on the results of our reviews in these locations have been submitted to you.

This letter summarizes our findings in the

reports on the planning and construction of medical facilities and on the coordination among hospitals in planning and sharing specialized medical services. From our reviews we concluded that there was a need for better control over the planning for and construction of medical facilities and specialized medical services to provide greater assurance that the medical needs of communities are met in the most effective and economical manner.

BACKGROUND

Many Federal, State, and local health organizations participate in programs for the construction or modernization of hospitals and skilled-nursing-care facilities. Some Federal agencies construct and operate their own medical facilities; others provide financial assistance and/or guidance to facilities operated by States, counties, cities, public institutions, or proprietary groups.

Agencies which construct and operate their own hospitals include the Department of Defense; the Veterans Administration; and the Public Health Service (PHS) of the Department of Health, Education, and Welfare. PHS helps finance the construction of health facilities by others through grants made under title VI of the Public Health Service Act (42 U.S.C. 291), commonly known as the Hill-Burton program. The Federal Housing Administration, Department of Housing and Urban Development, and the Small Business Administration also provide financial assistance for the construction of medical facilities.

CONTROL OVER DEVELOPMENT OF MEDICAL FACILITIES

Until the advent of the Hill-Burton program, hospital and skilled-nursing-care facilities were developed without any restrictions being imposed on the basis of the needs of the community; that is, facilities could be constructed, even though they were not necessary to meet community needs. The Hill-Burton legislation developed a process for determining bed needs, to assist in the distribution of scarce Federal funds.

Hill-Burton grant funds would be provided for constructing medical facilities only when a demonstrated need for the facility was shown in a State plan. Recently the Federal Housing Administration and the Small Business Administration instituted procedures which stated that financial assistance would be provided for a proposed medical facility only when the State agency designated to administer the Hill-Burton program found a demonstrated need for the facility. In this way control to limit Federal financial assistance for excess medical facilities is maintained.

Also certain States recently have enacted or are planning to enact legislation which proposed privately financed medical facilities before licenses may be granted.

EFFORTS TO PROVIDE CONTROLS OVER DEVELOPMENT OF FACILITIES FINANCED WITH PRIVATE FUNDS

Public Law 89–749, approved November 3, 1966, created the Partnership for Health Program which introduced the concept of comprehensive health planning. Under this type of planning, it is envisioned that both providers and consumers of health services will participate in determining health needs and resources, establishing priorities, and recommending courses of action. The objectives of the Partnership for Health Program are centered on voluntary planning and on the development of a comprehensive health plan to reflect the needs and priorities of each State.

We noted that California and Maryland had enacted legislation requiring the review and approval of the need for proposed medical facility projects before licenses could be granted by the States. We noted also that State and local health-planning agencies in Colorado, Florida, Ohio, and Washington had no such requirements when Federal financing was not involved.

The California comprehensive health-planning law took effect January 1, 1970. This law, commonly referred to as State assembly bill 1340, requires the review and approval of the need for proposed health facility projects by the regional comprehensive health-planning agency before licenses to operate may be granted by the State Department of Public Health.

In 1968 Maryland enacted legislation, commonly known as the Maryland Certification and Licensure Program, which required, effective July 1, 1970, that the need for all hospitals and related nonprofit health facilities (i.e., nonprofit skilled-nursing-care facilities) to be constructed, expanded, altered, or relocated be reviewed, in accordance with prescribed guidelines, and be approved by an areawide comprehensive health-planning agency before a license to operate may be granted by the State Department of Health and Mental Hygiene.

In addition to California and Maryland, 13 States had enacted legislation relating to the control of the development of medical facilities. Further, at the time of our review, several other States were considering the passage of similar legislation.

CONSTRUCTION OF HOSPITALS

PHS, under the Hill-Burton program, requires that a single State agency be designated in each State to administer grants made under the program. The State agencies prepare annual State plans setting forth estimates of the number of acute-care hospital beds and skilled-nursing-care beds needed 5 years in the future. In our reviews we used the estimates of the future requirements for hospital and skilled-nursing-care beds as developed in the State plans as a basis for evaluating the need for existing and proposed bed facilities. Although we verified the mathematical accuracy of the computations of future bed needs, we did not evaluate the appropriateness of the methodology prescribed by PHS for use by the State planners in determining future bed needs. PHS guidelines do not require that Federal hospitals be considered in the planning process.

On the basis of bed needs shown in the State plans for the locations included in our reviews, we estimated that, in all six locations, the number of hospital beds that would be available would exceed the projected need for beds as shown in the State plans.

We estimated the number of hospital beds that would be available on the basis of (1) the number of beds in operation and under construction and (2) the planned changes in hospital capacity ascertained through discussions with hospital and local planning officials. The results of our review at each location are summarized in the schedule on page 5.

CONSTRUCTION OF SKILLED-NURSING-CARE FACILITIES

On the basis of bed needs shown in the State plans, we estimated that, at all six locations, the number of skilled-nursing-care beds that would be available would exceed the need for beds as shown in the State plans. The results of our review at each location are summarized in the schedule on page 6.

NUMBER OF HOSPITAL BEDS

Area	In operation or under construction as of Dec. 31, 1969 and Dec. 31, 1970	Projected need by 1974 and 1975	Estimated to be available by 1974 and 1975	Excess to projected need	Report references
Baltimore, Md.	[1] 7,318	[2] 7,361	[2] 7,497	136	Baltimore report, pp. 9 to 14
Cincinnati, Ohio	3,894	[2] 4,494	[2] 4,794	300	Cincinnati report, pp. 7 to 20.
Denver, Colo.	[1] 5,851	[2] 5,770	[2] 6,642	872	Denver report pp. 8 to 11.
Duval County, Fla.	1,873	2,510	2,510	([3])	Jacksonville report, pp. 8 to 21.
San Francisco Bay, Calif.	[4] 17,423	16,588	17,895	1,307	San Francisco report, pp. 10 to 14.
Seattle, Wash.	4,291	[2] 3,951	[2] 4,901	950	Seattle report, pp. 13 to 25

NUMBER OF SKILLED-NURSING-CARE BEDS

Area	In operation or under construction as of Dec. 31, 1969 and Dec. 31, 1970	Projected need by 1974 and 1975	Estimated to be available by 1974 and 1975	Excess to projected need	Report references
Baltimore, Md.	[1] 7,502	[2] 6,628	[2] 8,104	1,476	Baltimore report, pp. 15 and 16.
Cincinnati, Ohio	[3] 6,839	[2] 6,839	[2] 6,839	([5])	Cincinnati report, pp. 23 to 26.
Denver, Colo.	[1] 6,698	[2] 5,984	[2] 9,254	3,270	Denver report, pp. 12 and 13.
Duval County, Fla.	1,247	1,379	1,897	518	Jacksonville report, pp. 24 to 29.
San Francisco Bay, Calif.	[4] 28,828	21,861	28,828	6,967	San Francisco report, pp. 16 to 18.
Seattle, Wash.	6,785	[2] 7,109	[2] 9,409	2,300	Seattle report, pp. 26 to 29.

[1] As of Dec. 31, 1970.
[2] By 1975.
[3] Although the Florida State agency used the PHS formula in computing hospital bed needs, it made adjustments to its computations that were not in accordance with PHS regulations. Had the State computed its needs without these adjustments, the projected need by 1974 would have been 1,847 beds, which, compared with estimated number of beds available by 1974, would show that there would be 663 beds in excess of projected need.
[4] As of Jan. 31, 1971.
[5] We have some reservations as to the validity of the data in the State plan. In preparing the annual State plan, the State agency considered historical occupancy data of skilled-nursing-care facilities as a factor in estimating future demand for such care. We found that skilled-nursing-care facilities had not reported occupancy data in a consistent and reliable manner.

Because facilities that are excess to needs can lead to underutilization of such facilities which in turn, can result in higher patient-day costs, need for effective controls over the development of medical facilities appears to exist.

CONTROL OVER DEVELOPMENT OF SPECIALIZED MEDICAL SERVICES

A report [1] by the Advisory Committee to the Secretary of Health, Education, and Welfare on Hospital Effectiveness stated that the most promising opportunities for advances in hospital effectiveness might be expected to result from the combined efforts of health-care institutions, areawide planning agencies, and State licensing authorities to encourage—and, when necessary, demand—the development of cooperative programs among institutions.

This report also noted that planning agencies and licensing authorities must make decisions for shared services on the basis of total effectiveness for the whole population rather than on the basis of institutional autonomy or of the convenience of individual physicians. The sharing of medical services and equipment helps to reduce the cost of hospital services.

Numerous specialized services for the treatment of specific illnesses were offered by hospitals in the six areas included in our reviews. We obtained information on the utilization of such selected specialized services as cobalt therapy, open-heart surgery, and obstetrical services and on the extent to which these services were shared among medical facilities.

Even though the results of our fieldwork varied among locations, we found generally that, although there was some sharing of services, there was potential for more sharing.

At some locations certain specialized services were significantly underutilized. For example:

At one location five cobalt therapy units in area hospitals were being utilized at 45 percent of capacity; another unit, which was put in service during the time of our fieldwork, probably will lower further the overall utilization of cobalt therapy units in the area. (See Cincinnati report, pp. 28 and 29.)

At another location 11 hospitals had open-heart-surgery facilities which were used at about 63 percent of capacity. Utilization of individual facilities ranged from 38 percent to 100 percent of capacity. (See San Francisco report, pp. 26 to 29.)

At a third location 21 hospitals which offered obstetrical services had average occupancy rates of 53.4 percent for delivery beds and 47.4 percent for bassinets during 1968. Through cooperation and planning local officials initiated plans to consolidate obstetrical services in selected hospitals. It is anticipated that the first consolidated maternity unit, which was under development at the time of our fieldwork, will replace obstetrical services at six area hospitals. (See Seattle report, pp. 42 and 43.)

Many of the physicians, hospital administrators, and health planners we contacted during our review said that the establishment of unneeded specialized services in hospitals neither served the best needs of the community nor resulted in the best approach to good medical care.

Section 113 of Public Law 91–296 provides that a State is entitled to receive Hill-Burton grant funds up to 90 percent of a project's cost if the project offers potential for reducing health-care costs "through shared services among health care facilities" or "through interfacility cooperation." This legislation, which increases Federal financial participation in those projects which involve sharing, should provide hospitals seeking Federal grant funds with an incentive to share services.

[1] Secretary's Advisory Commission on Hospital Effectiveness Report, U.S. Government Printing Office (Washington: 1968), pp. 15 and 16.

We noted that, in nearly all locations, no authority existed for controlling the establishment of specialized medical services; consequently, a hospital could establish such services regardless of the potential for sharing existing facilities. To provide greater assurance that the medical needs of a community are met in the most economical and effective manner, controls should be established by State and local health-planning agencies over the specialized services facilities being developed in a community.

EFFORTS OF HEALTH-CARE FACILITIES TO REDUCE OPERATING COSTS THROUGH COOPERATIVE PROGRAMS

We noted that at some locations health-care facilities shared, or planned to share, certain medical and administrative services to reduce operating costs. At one location five hospitals and a rehabilitation facility formed an association to develop approaches to the problems of hospital cost containment while continuing to upgrade the quality of patient care. For example:

The association made the services of physical therapists and clinical personnel available to member hospitals.

Members shared an electronic data processing unit and a records-microfilming unit.

The association set up an office equipment repair team which served all member hospitals at a cost 25 percent less than that of commercial repair service. (See Denver report, pp. 23 and 24.)

At three locations we noted that groups of hospitals had joined together in an effort to reduce costs through group purchasing of goods and services. At the three locations hospital officials said that these cooperative efforts had produced substantial savings. (See Cincinnati report, pp. 29 and 30; Denver report, p. 25; and San Francisco report, pp. 35 and 36.)

CONCLUSIONS

It is generally recognized that one of the major problems facing health planners is control of the rising costs of health care. Overbuilding of medical facilities and excess capacity of specialized medical services contribute to increased health-care costs. The Federal Government, through the Partnership for Health Program, and several States, through various forms of legislation, have sought to ensure that only needed medical facilities are built.

Several agencies of the Federal Government that provide financial assistance for the construction of medical facilities have taken action to limit Federal assistance to those medical facilities which are considered not to be excess to needs. Many States have not taken action, however, to control the construction of privately funded medical facilities. Consequently the potential for overconstruction of medical facilities exists. We believe, therefore, that there is a need for State and local health-planning agencies to establish effective controls over the construction of privately funded facilities.

We found that there had been some sharing of specialized medical services and that hospitals had made efforts to reduce operating costs through cooperative programs. These actions were taken, for the most part, through the initiative of the hospitals concerned. We found also that there was a potential for more sharing and for more cooperative programs among hospitals. Therefore we believe that there is a need for State and local health-planning agencies to take a more active part in controlling the establishment of specialized medical facilities and in encouraging greater efforts by hospitals to establish cooperative programs.

We plan to make no further distribution of this report unless copies are specifically requested, and then we shall make distribution only after your agreement has been obtained.

Sincerely yours,

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

WHAT MAKES JIM FARLEY TICK

Mr. HASKELL. Mr. President, Denver, Colo., is a favorite city for many of us. One of the many Denver fans is James A. Farley, chairman of the board of the Coca-Cola Export Corp.

Jim Farley's name is almost legendary in Democratic politics. A recent article in the Rocky Mountain News gave me some further insight into what makes Jim Farley tick. I salute Mr. Farley for his many contributions to the Democratic Party and ask unanimous consent that the newspaper article about him be printed in the RECORD.

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

JIM FARLEY—GOING STRONG AT 84

(By Pasquale Marranzino)

That great political oracle, James A. Farley, is keeping his lip buttoned about the outcome of the presidential election.

He has his opinions but they will be guarded until after the election, for Genial Jim is the last of the stalwart Democrats—at 84 a legend in his own time—and believes that his predictions of what might happen might be misunderstood and that wouldn't help the party.

You can draw some inferences from his stance because Farley—the "kingmaker" and considered one of the most astute of American politicians—openly supported Ed Muskie and Henry Jackson for the team ticket before the Democratic National Convention.

The oracle believed that team could beat President Nixon. In a telephone conversation with him at his New York offices where he is chairman of the board of Coca-Cola Export Corp., Farley was his usual jovial self, but totally unwilling to discuss the campaign. He has contributed to the party but nobody on high has asked him to take the active hand that lifted Franklin Delano Roosevelt to the governor's chair at Albany and from there to the White House.

Attempts to draw a parallel between the Nixon-McGovern race and the 1936 debacle between FDR and Alf Landon struck out. It was in that election that Farley, then postmaster general and Democratic national chairman, predicted that Landon would carry only two states. Which he did.

Farley ran the party along with the Post-office Department for eight years under FDR. How many names can you recall in the FDR cabinet? Jim Farley's name is foremost.

We talked about his break with FDR. Jim was a stout believer in the Washingtonian premise that no man should be President more than two terms. So when FDR's second term was coming to a close he and Jim decided that Cordell Hull, that impressive secretary of state, should be the party's choice.

Then FDR pulled the rug from under Jim and Hull, he opted for an unprecedented third term and made it. That made the celebrated break between Farley and FDR.

The details of that break and the insides of the Horatio Alger story of Farley are being compiled by Jim for publication in a book to appear in 18 months.

"There are so many fascinating events in those fascinating times," he said, "that should be public property, a part of our history. I plan to tell it as it was. The only thing that makes politics noble and politicians credible is dependence on a man's word. I have strained always to level with people, to tell them the truth of what is going on. It is their right."

Somewhere in the back of the break with FDR is Jim's ambition that at one time he might have been President—the first Catholic President in history. But the third term option of FDR became a formidable obstacle and time did the rest.

Time seems more meaningless to Farley

than most men. He still puts in a full day at his offices on Madison Ave. This, despite the fact that he was bedridden for a while last summer with a heart aliment. Now, fully recovered, he is down 15 pounds to 187 and bouncy as ever.

"It's the banquets I must attend," he lamented. "I figured out last year I attended 178 banquets. Now I have cut them down, but there are still a couple a week."

Farley says he is hankering to get to Denver soon—one of his favorite cities. He has an added inducement since one of his granddaughters, Joan Murphy, lives here. Her husband, David, is a law student at the University of Denver.

MILTON LEWIS KAPLAN

Mr. HUMPHREY. Mr. President, a few days ago one of our Nation's most able and dedicated journalists prematurely died at the age of 52. I lost a good friend, and the country lost a responsible citizen.

Milton Kaplan began his career as a newspaperman with the Minneapolis Tribune in 1943, when I first ran for mayor of that city. His quiet and dedicated commitment to responsible journalism led to a speedy rise in his career. When he left Minneapolis to join the International News Service, he had become the assistant city editor of the Minneapolis Tribune with INS.

Later, as editor of Hearst Headline Service, as Washington bureau chief of the Hearst newspapers, as national editor of the Hearst newspapers, as executive assistant to William Randolph Hearst, Jr., and then as president of King Features, Mr. Kaplan's career was always characterized by his quiet leadership, an imaginative approach to problems, a thorough understanding of the democratic process, and an always awareness of the crucial role that the press played in making our system work. Freedom of the press was more than a freedom for the press to enjoy. It meant to Milton Kaplan a concomitant responsibility to the Nation which the press must exercise.

I know I speak for many Members of the Senate when I express my condolences to his lovely wife, Doris, who also served as a member of the press in Minneapolis, and to his children.

I ask unanimous consent to have printed in the RECORD an eloquent statement prepared by his colleague, Bob Considine.

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

KAPLAN

(By Bob Considine)

NEW YORK,—Milton Lewis Kaplan, president and general manager of King features syndicate, was the professional's professional in the tense arena of American journalism.

Dead at an inopportune 52, he was at the crest of a wave that began in Minneapolis during World War II. It carried him literally around the world in search of that indispensible need of man—the need for news. At the crest, Milt was in command of the appropriately named King, the largest features syndicate of them all. With his great gifts and sure touch he was in the course of expanding KFS into documentary films and extending its horizons at home and abroad.

Had Milt Kaplan been an actor, it is not unlikely that (Caps C,C) Central Casting would have sent him when the producers of "the front page" called for someone to play the role of managing editor Walter Burns or Reporter Hildy Johnson.

Milt never shouted. I knew him 25 years and never saw him wave an arm or lose his cool. He was one of the rare newsmen whose quiet voice somehow pierced the clamor that is a part of our craft, noises that in his particular case ranged through the hustle and bustle of the Minneapolis Tribune's city room, the organized chaos and clatter of international news service in London and New York, all the way to the aggressive bidding for the syndication rights to the Beatles' Yellow Submarine, and Sesame Street.

Lincoln Steffens once wrote that the suspense of a good reporter was an ingredient he described as a "studied ignorance." By that he meant a journalist who could face each day's work, each assignment, with a fresh and eager mind—no matter how many times he had been called upon in the past to confront these endless chores. Milt was the epitome of what Steffens had in mind. He never knew a jaded hour from the moment he first sensed the heady scent of printers ink.

Ours is not a craft or vocation specially known for its absence of petty jealousies and arrogant ambition. It is not true that every reporter—in his heart—wants to save enough money to buy a weekly newspaper and settle down. Almost every reporter, I've ever known wanted to become managing editor of his big daily, or news service, or his syndicate and fire the incumbent managing editor.

Not Milt. He was simply incapable of avarice. He was in the great tradition of such remarkable Hearst people as J. D. Gortatowsky and Frank Conniff. Milt could write like a streak, but if there was ever a choice of taking the top story himself or dealing it out to someone else who could handle it, he was always cheerful about being the runner-up. Among many other traits, he was extraordinarily skillful at finding young and intrepid news people and, having found them, extraordinarily generous in giving them the breaks they needed. I think now of outstanding talents such as Marianne Means, John Wallach, Pat Sloyan, Harry Kelly, Grace Bassett, Dave Barnett, Peter Andrews, Cassie Mackin, Leslie Whitten, Neil Freeman . . . so many others.

Hemingway once defined "class" as "grace" or "poise" under pressure. Milt was the East Coast distributor of Class. I saw him demonstrate it when our helicopter broke down in the Sinai Desert just after the Six-Day War . . . when any of us who worked for him got in trouble and needed a boost or a buck . . . and the day INS was engulfed by the United Press. Milt was running our shop in New York when, at the doom of noon, teletypes in our office and theirs a couple of blocks downtown simultaneously announced a merger, so-called.

Two strangers entered our newsroom where Milt was presiding at the News desk. One of them coughed apologetically. He was from UP, and would be there the rest of the day, he said. Milt said, "Then you will need a desk and a telephone," and he arranged for this. Milt looked at the other fellow and asked, "Are you also from UP?"

"No," the guy said, showing his Pinkerton badge. "I'm here to see that none of you guys steal nothing." Milt Kaplan, whose innate patience resembled Christ's rather than Job's, endured even that.

The poet Robert Hillyer anticipated Milt Kaplan's life and death when he sang:

"We whom life changes with its every whim
Remember now his steadfastness.
In Him was a perfection, and unconscious grace,
Life could not mar, and death cannot efface."

PHOSPHATE DETERGENTS IN INDIANA

Mr. HARTKE. Mr. President, the pollution of our Nation's waters is one of the foremost issues facing America today. If the degradation of our lakes and rivers continues at its current pace, we will not have enough drinkable water by the end of this century to meet the needs of the American people.

My own State of Indiana has been a leader in the battle to provide people with clean, safe drinking water. Recently, the State legislature adopted a "zero-phosphorous" law which requires that all detergents marketed after January 1, 1973, contain no phosphorous.

This is an outstanding example of progressive action on the State level to clean up our Nation's waters.

Mr. President, I ask unanimous consent that an article which appeared in the November 1972 issue of Outdoor America, a publication of the Izaak Walton League of America, be printed in the RECORD.

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

PHOSPHATE ISSUE BLOOMS IN INDIANA

Indiana Waltonians have found themselves unexpectedly allied with one of the nation's major detergent producers, as the battle of the phosphates opens for the third time in the Hoosier state. The "alliance" patched Lever Bros., Inc., with the League in opposition to delays in enforcing that state's zero-phosphorous law which the General Assembly legislated into effect for January 1, 1973.

Hoosier lawmakers' first action in 1971 would have limited detergent "phosphate" to 12 percent beginning the first of this year; but the state's Stream Pollution Control Board a year ago adopted a regulation delaying enforcement at the wholesale level until March 31 of this year, and at the retail level until June 30.

Indiana Waltonians actually supported the delay on the basis "it was a new law, and there was no need to penalize legally accumulated high phosphorous stocks just to pick up another 90 or 180 days in enforcement," state executive secretary Tom Dustin said.

But the grace period, instead of being used to "clear the pipeline", as Dustin put it, was used for a massive lobbying effort by the industry and prominent phosphate detergent users to get the law repealed before the postponed enforcement dates were reached.

The League, which last year had been admitted to Federal Court on its appeal to become a party defendant, and which had seen all the industry's contentions thrown out save the still-pending issue of interstate commerce restriction, successfully staved off the lobbying drive.

In fact, while the original 1972 requirement for 12 percent "phosphate" (about equivalent to 5 percent elemental phosphorous) was liberalized to 8.7 percent phosphorous, the legislature went all the way to zero for January 1, 1973.

Division attorneys and officers received assurances early this year that the Stream Pollution Control Board fully intended to enforce the zero requirement for all but certain exempted uses on schedule as enacted. The industry itself had been clearly instructed that it would be required on January 1 to market zero phosphorous detergents; and at least some segments of the industry took the Stream Board's instructions at face value.

Complying detergent producers and League officials were electrified in November when word leaked that the Stream Board meeting the 21st would vote on a staff recommendation that 1973 zero levels be postponed well into next year—thus exposing the legislature to another all-out lobbying effort to repeal the requirement before enforcement. They were especially dismayed because the question of delay had not been on the Board's agenda for the regulatory hearing held a month earlier.

The Board was again advancing the argument that the industry "needed time" to clear stocks of 8.7 percent phosphorous detergents. But the argument was dealt a potentially lethal blow when attorneys for Lever Bros. stated that their company was already in full compliance with the zero requirement, more than a month before the advertised deadline; and further, that the company would take back any of its phosphorous detergents that might remain on the grocery shelves after the zero date—thus eliminating any economic penalty wholesalers or retailers might suffer from unsold products.

Speaking before the Board for Indiana Waltonians, Dustin fully supported Lever. "While we may have continuing difference with the industry, if the Board reverses its clearly expressed intent to enforce this law, it will be penalizing good faith performance and rewarding those who would be in violation with an unjust competitive edge."

The Waltonian spokesman added that "most of the detergent producers have acknowledged the statutory and judicial facts of life in Indiana, and are moving toward timely compliance with the law.

"The political pressure for delays," he said, "is coming from special interest users who are resisting requirements for phosphorous removal prior to discharge from their facilities."

A number of industrial and institutional users, Dustin explained, remain exempt through April 30, 1973; "and there is no cause for upending the body of this statute in order to strengthen the bulwarks around these remaining enclaves."

Under fire from both conservationists and a major detergent producer, the state's Stream Pollution Control Board unanimously shelved the proposed delays for consideration again December 19. Indiana Waltonians were taking nothing for granted, and have instructed their attorneys to prepare for a possible Christmas lawsuit if the delay is resurrected. Several industrial representatives, however, privately conceded after the shelving that the action probably kills the proposal for delays, and that Indiana may become the first state requiring zero phosphorous detergents in the public marketplace.

DR. MARTIN LUTHER KING, JR.

Mr. HUMPHREY. Mr. President, I rise to remind the Nation of the great debt it owes the late Dr. Martin Luther King, Jr., who was born 44 years ago next Monday, January 15.

He was a great and noble teacher as well as a moving speaker.

Let the lessons that he taught us not soon be forgotten. For, over 4 years after his death, we are still engaged in the violent destruction of human life which he opposed. For, over 4 years after his death, we have yet to reach those goals of human dignity and equality for which he strove. And yet we are much richer for his leadership.

His leadership led to a dramatic and widespread, though long overdue, enjoyment of the bill of rights, for all Americans.

His wise leadership continues to exert an influence. It brings together blacks, Chicanos, Indians, and Puerto Ricans to struggle for equal opportunity.

Yet his leadership is and was of a type we all can follow. It shows the way to nonviolent social change. Through it the minority can become the majority necessary to overwhelm the forces of bigotry and oppression.

It is appropriate that we remember the birth of this Nobel Peace Prize winner today. But we must continue to remember it every day of our lives. It is only then that "we shall overcome."

Mr. President, I ask unanimous consent to have printed in the RECORD my letter to Mrs. King on the 44th anniversary of her husband's birth.

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

U.S. SENATE,
Washington, D.C., January 9, 1973.

Mrs. CORETTA SCOTT KING,
The Martin Luther King, Jr., Center for Social Change, Atlanta, Ga.

DEAR CORETTA: May I join your husband's many friends and admirers in celebrating the forty-fourth anniversary of his birth. The nation, as I myself, continue to feel his absence. Yet we are so much richer for the brief time he was here. Martin Luther King, Jr. was a leader among leaders.

Yet I am encouraged by the important work being done in Atlanta at The Martin Luther King, Jr. Center for Social Change. I am proud to be a trustee and will continue to support the Center's plans for expansion.

It seems most appropriate to me that Dr. King's birthday be celebrated first through a religious service at Ebenezer Baptist Church and then at a benefit for the Center. The combination of these events characterizes the moral-activist approach that Dr. King brought to the civil and human rights movement. He was a preacher who became a teacher for the whole nation.

Let us not soon forget the lessons that he taught. Let us use this event to celebrate his having been with us. However, more importantly, let us thank him for bringing us together as individuals that we might redouble our efforts to bring about human freedom and dignity.

With warm personal regards,
Sincerely,

HUBERT H. HUMPHREY.

ANTIBUSING AMENDMENT

Mr. BAKER. Mr. President, I am pleased to join with the Senator from Tennessee (Mr. BROCK) and other Senators in proposing a constitutional amendment designed to bring about a lasting remedy to the problem of the judicially ordered busing of schoolchildren.

There is no issue of greater importance to the people of Tennessee—and ultimately to all the people of our Nation—than ending the hardships imposed by the massive crosstown busing of children to achieve some sort of arbitrary racial balance. I have always been opposed to busing, and I will continue to work for an effective solution to this judicially contrived situation.

Although there have been some attempts to dismiss busing as a racial or regional issue, black and white parents from throughout the country who have personally experienced the family disruption brought about by busing rightly dispute that claim. It should by now be abundantly clear that to be against busing is not to be against a quality education for every child, black and white. To be against busing is to place a concern for orderly education above the caprice of transportation orders.

Perhaps no other State has suffered more from the abuses of judicially ordered busing than my home State of Tennessee. The people of Nashville have already experienced more than a year of disruption and discord as a result of a massive busing plan put into effect there. This month the people of Memphis will face the hardship of complying with a busing order in the middle of the school year.

The enormous dislocations of crosstown busing are especially grave because the burden falls hardest on the children themselves. They are the ones who are uprooted from their neighborhoods, forced to get up before daylight, and wait on street corners for buses to carry them to unfamiliar destinations.

I am convinced that our national goals of obtaining a good education for every child and assuring equal educational opportunities for all are not furthered by the judicial mischief of busing.

I continue to believe that this matter can be resolved through responsible legislative action. In a number of instances during the last Congress, we were narrowly prevented from achieving a lasting solution to the problem of busing.

The people of our Nation have overwhelmingly registered their opposition in public opinion polls and, even more convincingly, at the polls in State and National elections. This demonstration of the will of our citizens cannot be ignored or frustrated any longer, and I am hopeful that decisive legislative action will be taken now.

If this constitutional amendment proves necessary, however, I want to make it clear that I will work for its rapid approval. I commend Senator BROCK for his active leadership in seeking a workable solution to the busing problem, and implore other Senators to join in meeting this challenge.

THE NEED FOR A NATIONAL AVIATION PLAN

Mr. HARTKE. Mr. President, years ago the Congress wisely provided for a national highway system. Although we have lagged behind in building the roads promised by that program, the fact remains that thousands of miles of roadways have been constructed and highways have been made safer because of congressional foresight.

It is time that we applied the same principles to the Nation's civil aviation system. What we need is a major national effort to anticipate the needs of the future and to deal with them before they get out of hand.

Mr. President, the recently released report of the Aviation Advisory Commission deals with this need in a most admirable manner. I ask unanimous con-

sent that the transmittal letter accompanying the report be printed in the RECORD at this point.

Mr. President, the Advisory Commission's recommendations provide a sound basis for congressional discussion. I intend to examine them in depth and to offer legislation which meets the objectives outlined in the report.

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

AVIATION ADVISORY COMMISSION,
Washington, January 3, 1973.

The PRESIDENT,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: I am pleased to present to you as required by Public Law 91-258, the report of the Aviation Advisory Commission.

In our report you will find more than three score recommendations for meeting the long-range needs of aviation.

None of the recommendations are radical, nor do they require any basic change in the present way of regulating the aviation industry, or encouraging its growth.

Taken together, however, they constitute a major national effort to anticipate the problems of the future, and to deal with them now before they become so great as to impose their own solutions on the aviation industry.

The Commission, in its two years of study, reached the conclusion that the U.S. is facing the greatest combination of threats to its position of world preeminence in aviation since it established that position in the late forties.

In order to better mobilize our government resources to meet the challenges ahead, we have recommended that the federal role in aviation be consolidated and streamlined. This should be done by establishing, initially in the Department of Transportation, an Under Secretary for Civil Aviation (USCA).

One of his key responsibilities would be to prepare and keep current, a comprehensive ten-year National Aviation Plan for air service, airports, airways, air vehicles and ground access. We found to our dismay that no such plan now exists. In fact, there is not even an established requirement for one. This plan would be coordinated with other federal, state and local government agencies, and with industry and the public through an expanded National Aeronautics and Space Council.

Another responsibility of the Under Secretary would be to establish, when necessary, source selection procedures for civil transport aircraft, similar to those used in military aircraft procurement. Source selection would be used to reduce the enormous private risk which faces U.S. manufacturers, who must now compete with foreign government-supported enterprises in the development and production of new transport aircraft.

In order to be effective, the new Under Secretary must have not only the tools necessary for planning, but also those needed to see that the plans are carried out. We have, therefore, recommended that FAA, the civil aviation R&D functions of NASA, and certain other presently scattered federal activities in civil aviation, be placed under USCA.

In this connection we learned that as recently as three years ago the U.S. government contribution to civil aviation research and development was only 15.5 percent of the total, as compared with 73 percent by the Western European countries. The results—an attractive family of foreign civil aircraft, providing increasingly stiff competition in a market formerly dominated by American products.

You will recall that after responsibility for astronautics was assigned to the National Advisory Committee for Aeronautics, and it became NASA, both the quantity and quality of aeronautical research suffered.

In making our civil aviation R&D recommendation, we have been mindful of the fact that NASA's work on the Apollo program alone has set new standards in government for both technical and administrative competence.

Nevertheless, there is a fundamental difference between NASA's space and aeronautical activities in that NASA itself is the buyer of spacecraft and in consequence can be, and is, intimately involved in all important specifications and trade-off decisions. Except for a few research aircraft, the buyers of aircraft are airlines, private owners and the military services, so that NASA has little to say about requirements or trade-offs.

It has also been understandably difficult for NASA to give enough attention or priority to work in support of those other customers when so much was at stake in making its own projects successful. With the functions of aeronautics and astronautics separated, aeronautical research would, we believe, again receive the consideration it merits.

We also learned that there has been no overall planning for U.S. national and international air service which is the keystone of a civil aviation system. What has been done was on a purely case-by-case basis.

Our recommendation for such a planning responsibility in USCA does not in any way affect the present quasi-judicial functions of the independent Civil Aeronautics Board in route proceedings, the granting of certificates of convenience and necessity, or subsidy. We do suggest, however, that the CAB might more profitably utilize the economies and potential subsidy reductions demonstrated to be possible by the commuter airlines now serving many of our small communities.

We soon became aware of the adverse effect that jet noise and other environmental pollutants are having on the rational development of air transportation.

We have recommended a three-pronged attack on the noise problem where we think it will do the most good—at the source.

Altered flight procedures. These can be put into effect almost at once and can reduce the noise impacted ground area by nearly 20 percent.

Acoustical treatment of the JT3D and JT8D jet engines. Together with normal fleet attrition, this can by 1977, bring about a further reduction of over 30 percent in the area affected.

Development, by 1980, of the first of a family of quiet jet engines. When the entire fleet is powered by the new quiet jet engines, which could be by the late nineteen eighties, the noise impacted area will shrink to about three percent of what it is today.

To help rectify the other unwelcome side effects of airports, we have recommended mechanisms for early and better community and citizen involvement in the airport and ground access planning process. We also found that under today's rules important projects can be held up interminably, almost regardless of the merits of the objections. We have, therefore, recommended a companion mechanism for closing the loop—so that after all parties have been heard, there will be a prompt and final settlement of the issue.

At the beginning we set as our target the year 2000, and our goal was to describe the needs of aviation for the next twenty-seven years.

It soon became evident that there were many immediate problems, so pressing in nature that if they were not solved, there would be no long-range needs to worry about.

We also learned that nowhere in the government had even the full costs of the existing partial ten-year plan been added up, so we decided to limit our more precise projections and recommendations to a more manageable term than nearly three decades into the future.

Our report contains detailed, and I think reasonably complete, recommendations for the elements of an aviation system that should, to the year 1985, satisfy the reasonable demands of all users, be they travelers, shippers, airlines, or general aviation. We believe that the system will be technically, economically and politically sound, and that it can be operated in harmony with the environment.

We have computed the costs, in constant 1971 dollars, of the system we recommend. They will be high, but compared with the estimated cost of what we have come to call business-as-usual, i.e., the extension of present plans into the future, we estimate savings to the taxpayer of as much as $19 billion over the twelve-year period.

We have also suggested how these costs might be allocated among the federal government, the states and local communities, and the private sector.

As to the post-1985 period, the projections prepared for us indicate a very rapid increase in air passenger and air cargo demand. By the year 2000, for example, they predict a demand of 250 million air passengers in and out of the New York City area alone.

Will this be a reasonable need to provide for under the conditions that prevail at that time? Will national goals and priorities justify allocating the requisite portion of our limited resources of land and energy?

Regardless of how these questions are answered, our recommendations are all necessary concomitants of any future aviation system, no matter what its size, if it is to be fully responsive to the developing needs of the nation and its people. Furthermore, some of our recommendations—basic research, and land banking for possible post-1985 airport needs—are expressly aimed at keeping the nation's long-range options open.

Beyond this, we shall have to rely on the comprehensive and periodically updated National Aviation Plan which we have recommended for timely guidance to government and industry as we move into the long-range future.

Yours respectfully,

CROCKER SNOW,
Chairman.

A TENFOLD INCREASE IN MINORITY ENGINEERS—A CIVIL RIGHTS CHALLENGE FOR THE SEVENTIES

Mr. HUMPHREY. Mr. President, the Nation has made great progress in the area of civil rights in the last decade. And nowhere has that progress been more important or more dramatic than in the area of employment. Fighting economic discrimination is the sine qua non of progress in other areas of racial discrimination, for it is through decent jobs and incomes that individuals obtain the freedom to fully participate in other areas of society.

There is one area, however, in which progress in employment for minorities has been relatively slow. I refer to the professional and managerial area—the upper ranks of the employment ladder. This failure represents what we might call the prime second-generation civil rights problem of the 1970's. Unless it is addressed, inequality in our society will grow. For it is the professional, technical, and managerial jobs

that are growing fastest—and these are the very jobs which minority group members are failing to get.

In an address to the Engineering Education Conference at Crotonville, N.Y., on July 25, 1972, one of the top executives in American industry forthrightly calls for American educators and businessmen to recognize the dimensions of the problem. J. Stanford Smith, senior vice president of the General Electric Co., calls for a tenfold increase in minority engineering graduates as the only solution to this problem. He notes that people in the top ranks of American industry got there, by and large, through technical education. Of the people in the top 20 percent of the exempt salaried ranks in his own firm, more than 60 percent have a 4-year technical degree.

His point is clear and undebatable: General Electric and other publicly owned corporations of the Nation do not develop a managerial corps on the basis of parentage, or stock ownership or school tie—but on the basis of performance, based on technical education in engineering and other fields.

The failure of minority group members to choose engineering as an educational major—probably the key educational avenue to professional and technical jobs—must be remedied. Out of 230,000 students enrolled in engineering in 1970, only one out of a hundred were black. Thus, even if the number of freshman blacks enrolling in engineering increased by 15 percent every year, 50 years would be required to achieve proportionate representation in the Nation's engineering force.

We do not have 50 years. Time is running out.

I, therefore, fully support Mr. Smith's call for a nationwide effort, led by the business and educational communities, to increase the number of minority engineering graduates by a factor of ten- to fifteen-fold by the end of the decade. And I agree with him that the tremendous expansion of professional and technical jobs in our economy in the 1970's—resulting in a possible shortage of engineers in the late 1970's—provides a fortunate contingency. In his words:

> It will be truly unforgivable if, with this timely gap in the supply of engineers, we failed to fill a large part of it with minorities and women.

Mr. President, I ask unanimous consent that the complete text of Mr. Smith's address be printed in the RECORD.

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

NEEDED: A TEN-FOLD INCREASE IN MINORITY ENGINEERING GRADUATES

(By J. Stanford Smith, senior vice president, General Electric Co.)

"We hold these truths to be self-evident," said the Second Continental Congress, "that all men are created equal . . ."

What was self-evident to the Founding Fathers in Philadelphia did not apply to *all* men, let alone women. The first census of the United States, in 1790, revealed that 20% of the population of the new nation consisted of blacks, most of them slaves. They were not free and equal then, and on the bicentennial of the Declaration of Independence, just four years from now, they will still be struggling to achieve equality in national life.

As of today, about 11% of the U.S. population is Black American, 5% is Mexican-American or Puerto Rican, and less than 1% is American Indian and Oriental American. These 35 million people—seventeen percent of the present population—have every right to expect the same opportunity as their fellow-Americans. The degree to which that vision of equal opportunity is realized will be a measure of us all.

THE LONG STRUGGLE

It has been a long, slow, painful struggle for most of the two centuries since that day in 1776. Many minority groups have arrived in this country and won their way to participation in political and economic life. But racial barriers have proved to be more difficult than others, and only in the past two decades has there begun to be significant progress.

The Supreme Court decision against segregrated schools in 1954 . . . the flood of civil rights legislation . . . the breakdown of segregation in restaurants and other public facilities . . . the rise of blacks and other minorities in political power . . . the rise of minority representation on the campuses and in factories and offices . . . there is no need to rehearse here the rising fortunes of the racial minorities in the past fifteen or twenty years. They are on the march, and their fellow-citizens largely accept their right to move into the mainstream of American life.

BARRIERS DISAPPEARING

How are education and business responding to the challenge of equal opportunity? The barriers of prejudice which formerly stopped so many minority men and women at the point of entry have substantially disappeared. Educators and business managers have not merely opened the doors, but actually reached out to the ghettoes and brought people on board. Many people once considered uneducatable and unemployable are now getting the extra help they need to qualify for college life and industrial employment.

General Electric, for example, now has more than 26,000 minority employees. During 1971 we hired 40,000 employees—of which 19% were minority.

Figures like this are probably typical of most of industry. The percentage varies from location to location; as a goal, our managers make every effort to utilize minority people in their work forces in relation to their numbers in the respective communities.

MAKING NONDISCRIMINATION A REALITY

It is widely assumed that this changing picture in industry results entirely from the militancy of minorities and the strong hand of government. These have undoubtedly forced the pace of progress, but the struggle against discrimination in industry has a long history that helped to set the stage for the remarkable change of attitudes in the past few years. Consider the General Electric experience, for example.

Almost forty years ago, General Electric's President, Gerard Swope, issued a policy directive in writing, forbidding discrimination against any employee because of race or creed. Mr. Swope early understood the problems of prejudice. His policy of non-discrimination has been reaffirmed in many Company documents and in union agreements over the years.

The Company's next President, Charles E. Wilson, rose from the Hell's Kitchen area of New York to become Chief Executive Officer, and he too knew the importance of equal opportunity from his own experience. In 1946, when President Truman formed the President's Committee on Civil Rights, he called on Mr. Wilson to be its Chairman. It was in Mr. Wilson's administration that General Electric became the first company to send its recruiters regularly to the Negro colleges.

In 1952, our next President, Ralph Cordiner, arranged for representatives of the Urban League to visit our plants in many parts of the country—22 visits in all—to observe the situation at first hand, and help with our minority recruiting acitivities.

In the early 60's, when Fred Borch became the Company's Chief Executive Officer, he set in motion an all-out effort to remove any last additional barriers to our long-standing policy of non-discrimination. As Mr. Borch emphasized in a motion picture for all employees: "For as long as I can remember, General Electric has had a policy of equal employment opportunity . . . Let me make this unmistakably plain. *All* employees should *understand* and *cooperate* with the Company's efforts in accepting this responsibility."

We have been striving, in General Electric and in other large companies, to make the policy of non-discrimination a reality.

PROGRESS IN HOURLY RANKS

General Electric people are convinced not only that management meant what it says, but that this is the only right and fair thing to do. Our managers have specific targets and plans for affirmative action, and they are measured on their performance.

As a result, decided progress has been made. As I said, our Company has 26,000 minority employees, and 19% of our new hires in 1971 were minority. Other companies show similar results. In hourly paid assignments—which have relatively modest educational requirements—minority people are not only getting on the payroll, but they are qualifying for increasingly skilled and responsible assignments.

But progress is not coming nearly as fast in the exempt-salaried ranks. In the technical, professional, and managerial jobs, the minorities are sparsely represented. Furthermore, I am deeply concerned that our managers may not be able to reach their minority employment goals in these areas no matter how hard they try. Why is this?

A PROBLEM OF SUPPLY

Much of the rhetoric of militancy and government compliance still speaks about knocking down barriers and opening up jobs for blacks and other minorities in the upper levels of industry. But that is truly no longer the problem. I think the record will show that managements of the large companies, the big employers in the industrial field, have very thoroughly removed the formal and informal barriers and have demanded results—visible, working minority people on the payroll in professional and managerial positions. In fact, there is a very lively competition for qualified minority people, with the demand *far* exceeding the supply.

The willingness is there; the jobs are there to be filled by anyone who can qualify regardless of race, color, creed, or sex. But how do we develop the qualified minority candidates?

In the eagerness to remove the barriers of prejudice, this problem has been ignored, or perhaps deliberately swept under the rug. I repeat the real problem today, in professional and managerial levels, is not one of demand, but of supply.

NEED FOR PROFESSIONAL EDUCATION

Let's examine the problem.

It takes special education and special training to qualify for many positions in our highly complex industrial society. No matter how hard a man or woman may be willing to work, no matter what his native talents may be—he cannot do competent engineering work without a knowledge of engineering. He cannot do important financial work without the necessary education and financial training.

Persons with engineering or financial training provide the main volume streams of our professional employment. Until industry can get large numbers of qualified black engineers, blacks cannot become a significant element in top professional and managerial ranks. The same is true of women, and what I have to say also applies to the problem of upward mobility for women in industry.

Consider this: of the people in the top 20% of our exempt salaried ranks in General Electric, more than 60% have a four-year *technical* degree. These people with technical degrees work in virtually all the professional functions of the business—manufacturing, engineering, research and development, marketing, and relations work—and they provide a majority of our managerial leadership.

PERFORMANCE, NOT PARENTAGE

It's surprising how many minority people are skeptical of the need for professional education in modern industry. Many of them are convinced that moving into a position of leadership is primarily a matter of the right family, the right school, the right connections.

I have been told for example, that all we need to do to get the right proportion of blacks in our top management ranks is to set the pattern by appointing a few Jackie Robinsons. But Branch Rickey could not put Jackie Robinson in the lineup until he was sure that Robinson was truly a big-league ball player.

Listed in our 1971 Annual Report are the 102 top executives of the General Electric Company. Of these 102, 75 came to GE directly out of college, 10 came with us within five years of graduation, and the other 17 spent anywhere from 5 to 23 years with other companies. They represent a wide range of social, geographic, and economic backgrounds, and family connections are rare. They're from a wide range of schools; in fact, there are schools represented here that some of us never heard of.

My point is that General Electric, like most other publicly-owned corporations, has a tradition of people succeeding because of their performance, not their parentage, or their stock ownership, or their school tie. But a prerequisite for professional or managerial success in modern, technically-oriented companies is education suited to the requirements of the business, and these requirements dictate that the volume streams of opportunity require engineering or financial competence.

INDUSTRY WANTS GREATER MINORITY PARTICIPATION

Now, as a matter of fairness—social justice—public acceptance—a healthy society—we want to see minority faces emerging in the leadership of industry. We're not neutral about it; we're *eager* to get the job done.

In addition to the crucial reason of providing equal opportunity for all, there are added business reasons for wanting to recruit and develop black leadership. Many of our plants are located in major urban areas where a high percentage of the employees are black. Black participation in management in such locations will become increasingly important. Also, black consumers are an important market for GE consumer products. Black leadership in marketing as well as other functions is good customer relations. We are completely aware of the importance of accelerating progress in black leadership, and that's why we are emphasizing the need for a manyfold increase in minority engineering graduates.

A FORMULA FOR TRAGEDY

Of 43,000 engineers graduated in 1971, only 407 were black and a handful were other minorities or women. One percent. It takes about fifteen to twenty-five years for people to rise to top leadership positions in industry. So if industry is getting one percent minority engineers in 1972, that means that in 1990, that's about the proportion that will emerge from the competition to the top leadership positions in industry. Not five percent, or ten percent, or seventeen perecnt, but *one* percent.

Gentlemen, this is a formula for tragedy. Long before the year 1990, a lot of minority people are going to feel that they have been had. Already there are angry charges of discrimination with regard to upward mobility in industry, whereas the real problem, clearly visible today, is that there just aren't enough minority men and women who have taken the college training to qualify for professional and engineering work.

According to a study of blacks in engineering by Lucius Walker of Howard University, only one-half of one percent of the engineers in the nation were black in 1960—and that proportion did not increase at all by 1970! Out of 230,000 students enrolled in engineering in 1970, approximately one out of a hundred were black, with 70% of these enrolled in the predominantly black schools. The numbers of freshman blacks enrolling in engineering increased 19% in 1971, which is a good sign. But Mr. Walker points out that if the present number of blacks graduating from engineering schools is increased by 15% a year, fifty years would be required to achieve proportionate representation in the nation's engineering force—that is, a black for every nine whites. On the present lazy trajectory, we are postponing the arrival of significant numbers of blacks in the top ranks of industry until well into the Twenty-first Century.

NEEDED: TEN-FOLD INCREASE

To put the challenge bluntly, unless we can start producing not 400, but 4,000 to 6,000 minority engineers a year within the decade, industry will not be able to achieve its goals of equality, and the nation is going to face social problems of unmanageable dimensions.

What can be done?

There has been much talk of job restructuring. A certain amount of that can be done, and openings can be made for minority technicians without the full range of engineering education. But these jobs will not be a major source of professional and managerial leadership in the future, any more than they are today.

From time to time, one hears hints that we in industry might drop our standards, hire unqualified people, perhaps even call them "engineers". Then if they fail in the competition of leadership, that's their fault, not ours. What a sorry game!

First of all, it can't be done for competitive reasons. Our competitors here and abroad have first-rate engineers, and we can't compete with second-raters. The waste and inefficiency would knock us out of business. The United States is having trouble enough in international competition, without adding the problem of unqualified engineers.

NO DOUBLE STANDARDS

And furthermore, the blacks and other minorities would quickly see through the sham and resent it. Listen to the words of Dr. Kenneth B. Clark, distinguished Professor of Psychology and a member of the New York Board of Regents. Highly regarded as a black spokesman, Dr. Clark had this to say about industry standards of performance:

"I cannot express vehemently enough my abhorrence of sentimentalistic, seemingly compassionate programs of employment of Negroes which employ them on Jim Crow double standards or special standards for the Negro which are lower than those for whites. I think this is a perpetuation of racism, is interpreted by the Negro as condescension, and, as I told a group of psychologists and industrial leaders yesterday, will be exploited but will not contribute to any substantive, serious, non-racial integration of minorities into the productive economy of business."

Industry must maintain high standards of performance for *all* persons.

Perhaps it has crept into your mind that we might be able to get away with excuses. We in industry could prove that we are hiring our fair share of the available population of minority engineers, and pass the buck along to the engineering schools. You in turn could point to your programs to attract black enrollments, and demonstrate that the problem lies with the blacks: they just don't sign up for engineering. And the blacks would place the blame on a white society that they would believe discriminates against blacks in professional work. Then the situation would stand exactly where it is today, except by that time the blacks might dominate the civil service ranks of local, state and federal government, while the whites would hold the centers of technology, and that form of segregation could have disastrous consequences for all concerned.

ONLY ACCEPTABLE SOLUTION

The only acceptable solution is to take bold, innovative, all-out action to increase the supply of minority engineering graduates not by a few percentage points, but ten—or fifteen-fold, and to get it done within the decade. This is the only way we can expect to see acceptable proportions of minority men and women in the top ranks of industry by the end of the century.

MANY DIFFICULTIES

This will not be an easy task. We are all familiar with the formidable barriers that stand in the way of minority people getting to college for any course of study. The Ford Foundation study by Fred Crossland describes them well: the barriers of poor preparation; of poor motivation; of money and distance and prejudice on both sides.

But even if they do get to college—too few seem to have an interest in engineering. Many blacks today are eager to return to the black community and use their education to help their fellows. This is commendable, but it means that blacks turn to teaching, law, medicine, government service, and social work rather than engineering.

And if a black is persuaded to try engineering, he may start with an extra handicap because so many black students for a variety of reasons seem to be poorly prepared in math and science. Hence the need for painful and expensive remedial courses, and the embarrassment of playing catch-up ball through the early years of college.

Motivating disadvantaged minority students for engineering, and giving them the special preparation to enable them to succeed will take enormous amounts of time, extra manpower, and millions of dollars. And we can expect a backlash from some who resent such special treatment for others, as they have found at several universities.

In reciting these difficulties, I am merely scratching the surface of a situation most of you have experienced in all-too-familiar depth. As we know, the prime source of black engineers to date has been six predominantly black schools, and they will continue to play a key role in the future.

We're fortunate to have with us for today's discussion Dr. Pierre, of Howard; Dr. Greaux of Prairie View A&M; Professor Thurman of Southern University; Dr. Carter of Tennessee State; and Dr. Amory of North Carolina A&T. Dr. Dybczak of Tuskegee Institute is in Europe and could not be with us. These spokesmen for the predominantly black schools can give us much insight into the realities of producing black engineers.

But as they would readily agree, the task of producing the large number of additional minority engineers we'll need in this decade

will not be achieved without greatly expanded effort by *all* schools of engineering.

Carnegie-Mellon University, Jim Nixon tells me, has set itself some very ambitious goals in terms of producing black engineers, and I would hope that Dr. Toor could comment on this. Our General Electric people have been working with Drexel University on this problem, and perhaps Dr. Dieter could offer some thoughts. Dr. Stelson of the Georgia Institute of Technology may wish to comment on his ambitious program in cooperation with the Atlanta University Center to produce 60 black engineering graduates in 1976—up from three in 1972. And Dean Mark has had unusual experience with cooperative programs at Northeastern University. These are, I'm sure, just a few of the programs that are under way.

A NATIONWIDE EFFORT

But all our efforts to date, in education and in business support, have left us with too little too late. If we are serious about increasing the number of minority engineering graduates by a factor of ten or fifteen in a decade, we will have to enlist all the major institutions in the nation for a mighty effort.

The whole business community must join in this struggle, as well as the educational establishment—including the primary and secondary schools, where a lot of the present problem lies. Some forms of government support will be necessary. The armed forces, which operate quite an educational establishment themselves, might welcome tie-in opportunities. The professional societies can be of inestimable help, as can the foundations, with their demonstrated interest in pioneering education. And the minority organizations will be essential, since they play such an important role in the motivation and channelizing of black energies. Jim Nixon may want to report on his discussions with the NAACP, Urban League, Department of Labor, EEOC and OFCC.

SHORTAGE OF ENGINEERS ANTICIPATED

There is one fortunate circumstance that should play a large role in our thinking, strategically speaking. And that is the anticipated shortage of engineers in the late 1970's.

That may be hard to believe, after the painful adjustments of the past two years, particularly in the defensive-oriented industries. But on May 30, Andrew Brimmer of the Federal Reserve Board presented an authoritative study on "The Economic Outlook and the Demand for College Graduates" to the year 1980. One of his most important findings is that professional and technical occupations are expected to expand twice as fast as employment generally. There will be 50% more professional and technical jobs opening up, while total employment is expanding only 25%.

According to his data, the number of new engineers and scientists produced could fall as much as 36,000 short of need unless enrollments are increased. He also expects a shortage of business administration graduates—especially accounting majors. At the same time, there will be a big surplus of teachers, which should make it easier to steer women and blacks away from their traditional occupations into engineering, if we go after them.

It would be truly unforgivable if, with this timely gap in the supply of engineers, we failed to fill a large part of it with minorities and women.

A TASK AND A VISION

To return to the original thesis, in this business generation we are going to be called upon to demonstrate, in total sincerity and by visible results, that minorities and women can rise to any level of the enterprise, based on merit alone. Business is eager to be put to the test. It makes good moral sense, good social sense, good political sense, and good economic sense to bring aboard the talents of our minority people and the women who want a career in business. The doors are open and the channels of upward mobility have been cleared. Now it is truly a problem of supply.

What we need most, in terms of numbers, is qualified engineering graduates. Today, only one out of a hundred engineering graduates is black. That number must be increased ten- or fifteen-fold within the decade.

The people assembled here today, leaders of the leading Schools of Engineering, will probably have more to say than anyone else, as to how these challenges will be met.

I'm sure you will agree that what we are talking about is not business as usual, or education as usual. We are talking about an undertaking of staggering proportions that requires revolutionary action.

Perhaps the vision was most simply expressed by Martin Luther King when he said, in that momentous speech:

"I have a dream that one day this nation will rise up and live out the true meaning of its creed: 'We hold these truths to be self-evident, that all mean are created equal.' "

QUORUM CALL

Mr. HARRY F. BYRD, JR. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

SPECIAL COMMITTEE ON AGING—APPOINTMENTS BY THE VICE PRESIDENT

The PRESIDING OFFICER (Mr. McCLURE). The Chair, on behalf of the Vice President, pursuant to Senate Resolution 33, 87th Congress, as amended and supplemented, appoints the Senator from Maryland (Mr. BEALL) and the Senator from New Mexico (Mr. DOMENICI) to the Special Committee on Aging.

APPOINTMENTS TO JOINT COMMITTEE ON CONGRESSIONAL OPERATIONS

The PRESIDING OFFICER (Mr. McCLURE). The Chair, on behalf of the Vice President, pursuant to Public Law 91-510, appoints the Senator from Ohio (Mr. TAFT) and the Senator from Connecticut (Mr. WEICKER) to the Joint Committee on Congressional Operations, in lieu of the Senator from New Jersey (Mr. CASE) and the Senator from Pennsylvania (Mr. SCHWEIKER), resigned.

PROGRAM FOR TUESDAY, JANUARY 16, 1973

Mr. ROBERT C. BYRD. Mr. President, the program for Tuesday next is as follows:

The Senate will convene at 12 o'clock meridian. After the two leaders or their designees have been recognized under the standing order, the distinguished Senator from South Dakota (Mr. ABOUREZK) will be recognized for not to exceed 15 minutes, at the conclusion of which there will be a period for the transaction of routine morning business for not to exceed 30 minutes, with statements limited therein to 3 minutes. No rollcall votes are anticipated on Tuesday next.

At the conclusion of Senate business on Tuesday and prior to adjournment, the distinguished senior Senator from West Virginia (Mr. RANDOLPH) will be recognized for not to exceed 1 hour, at the conclusion of which there will be a resumption of routine morning business for not to exceed 15 minutes, with statements limited therein to 3 minutes, following which the motion to adjourn will be entered.

ADJOURNMENT UNTIL TUESDAY, JANUARY 16, 1973

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in adjournment until 12 o'clock meridian on Tuesday next.

The motion was agreed to; and at 2:33 p.m. the Senate adjourned until Tuesday January 16, 1973, at 12 o'clock meridian.

NOMINATIONS

Executive nominations received by the Senate, January 12, 1973:

DEPARTMENT OF STATE

U. Alexis Johnson, of California, a Foreign Service Officer of the class of Career Ambassador, to be Ambassador at Large.

DEPARTMENT OF AGRICULTURE

William W. Erwin, of Indiana, to be an Assistant Secretary of Agriculture; new position.

Clayton Yeutter, of Nebraska, to be an Assistant Secretary of Agriculture, vice Richard E. Lyng.

John A. Knebel, of Virginia, to be General Counsel of the Department of Agriculture, vice Edward M. Shulman.

DEPARTMENT OF JUSTICE

Robert G. Dixon, Jr., of Maryland, to be an Assistant Attorney General, vice Roger C. Cramton.

James D. McKevitt, of Colorado, to be an Assistant Attorney General, vice Dallas S. Townsend.

IN THE NAVY

Capt. Robin L. C. Quigley, U.S. Navy, for appointment to the grade of captain in the Navy while serving as commanding officer, Service School Command, San Diego, Calif., in accordance with article II, section 2, clause 2 of the Constitution.

IN THE COAST GUARD

The following-named commanders of the Coast Guard Reserve to be permanent commissioned officers in the Coast Guard Reserve in the grade of captain:

Leon A. Murphy	Siegurd E. Waldheim
John T. Williamson, Jr.	Olin A. Lively
	Edward G. Taylor
Clifford E. Donley	Bruce R. Condon
Carlton E. Russell	Thomas L. O'Hara, Jr.

DEPARTMENT OF JUSTICE

J. Stanley Pottinger, of California, to be an Assistant Attorney General, vice David L. Norman.