DELAWARE GENERAL ASSEMBLY SUPPORTS DU PONT LEGISLATION CONCERNING THE ENERGY PROBLEM

HON. PIERRE S. (PETE) du PONT

OF DELAWARE

IN THE HOUSE OF REPRESENTATIVES

Monday, May 21, 1973

Mr. DU PONT. Mr. Speaker, some months ago, I introduced H.R. 2920, to provide for a national energy council to coordinate our country's efforts to insure adequate energy supplies.

I was pleased to learn recently that the Delaware Legislature supports my legislation. I insert in the RECORD House Joint Resolution 2, passed by the Delaware General Assembly:

HOUSE JOINT RESOLUTION NO. 2

An act memorializing the Delaware Congressional Delegation to support House Resolution 2920 sponsored by Representative P. S. du Pont IV, dealing with the coordination of agencies, departments, and environmental factors concerned with the energy problem

Whereas, the joint committees of Public Safety and Community Affairs and Economic Development have studied the question of whether an immediate fuel crisis exists in Delaware; and

Whereas, hearings were held on January 18th and 24th in Dover and a meeting conducted with Getty Oil Company representatives on February 5th; and

Whereas, the committees have determined that there is no immediate fuel crisis and that the health and public safety of the citizens of Delaware will not be adversely affected; and

Whereas, it was pointed out that the reason there is not an immediate fuel crisis is due in part to the unusually mild winter on the east coast and the easing of the grain drying situation in the midwest; and

Whereas, it was concluded that Delaware and the United States do have a *potential* future energy crisis and steps must be taken now to cope with this possibility; and

Whereas, over the past ten years energy needs have been growing at an accelerated rate and demands for modern conveniences and the impact of environmental controls have combined to increase energy consumption; and

Whereas, many diverse opinions were expressed as to the cause of the potential energy crisis; and

Whereas, these explanations included the facts that government ceilings have been placed on the price of natural gas, diminishing the number of exploration wells in the country; the cost of drilling has increased and the incentive for exploration has disappeared; and that oil companies have run their plants to meet increasing gasoline needs; and

Whereas, it was revealed that is estimated that the United States has enough on-shore oil for the next ten years, natural gas for eleven years, shale oil for 35 years to 120 years and coal for the next 500 years.

Now, therefore:

Be it resolved by the House of Representatives of the State of Delaware, the Senate concurring therein, that the Delaware Congressional Delegation support Representative P. S. du Pont, IV's House Resolution 2920 which coordinates efforts at the Federal level, bringing together all agencies, departments and environmental factors into one strong unit, creating, in the Executive Office of the President, a Council on Energy.

Be it further resolved that a copy of this resolution be forwarded to the forty-nine state legislatures for their urgent consideration and support in an attempt to focus national attention on this potential fuel crisis.

Be it further resolved that copies of this resolution be sent to Senator William V. Roth, Senator Joseph R. Biden, Jr. and Rep. Pierre S. du Pont, IV, and that this resolution be incorporated into the Congressional Record.

SENATE—*Tuesday, May 22, 1973*

The Senate met at 12 o'clock noon and was called to order by Hon. FLOYD K. HASKELL, a Senator from the State of Colorado.

PRAYER

The Reverend Monsignor E. Robert Arthur, pastor, St. Patrick's Catholic Church, Washington, D.C., offered the following prayer:

God our Father: In You we live and move and have our being. Look with favor upon our Nation and its people. Show the light of Your truth to all who live in this favored land that we may be guided back to the path of justice from which we sometimes wander. Grant us the grace to love Your commandments. Make us see that our dedication to national ideals can find fulfillment only if we are no less dedicated to Your kingdom of justice, love, and peace.

Help, O Lord, with your gifts of knowledge, wisdom, and fortitude the Members of the Senate of the United States. The responsibility which they exercise in the service of their fellow citizens is not light. Give them, we pray You, a share of Your strength. Let their deliberations and their acts always be sanctified in the observance of Your law.

The kingdom, the power and the glory, O Lord, be ever Yours. 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., May 22, 1973.

To the Senate:

Being temporarily absent from the Senate on official duties, I appoint Hon. FLOYD K. HASKELL, a Senator from the State of Colorado, to perform the duties of the Chair during my absence.

JAMES O. EASTLAND,
President pro tempore.

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

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Hackney, one of its reading clerks, informed the Senate that, pursuant to the provisions of section 1, Public Law 86–420, the Speaker had appointed Mr. BROWN of Ohio and Mr. BURKE of Florida as members of the U.S. delegation of the Mexico-United States Interparliamentary Group, vice Mr. STEIGER of Arizona and Mr. STEELE, excused.

The message announced that the House had passed the following bills and joint resolution, in which it requested the concurrence of the Senate:

H.R. 6330. An act to amend section 8 of the Public Buildings Act of 1959, relating to the District of Columbia;

H.R. 6628. An act to amend section 101(b) of the Micronesian Claims Act of 1971 to enlarge the class of persons eligible to receive benefits under the claims program established by that act;

H.R. 7139. An act authorizing the Secretary of Defense to utilize Department of Defense resources for the purpose of providing medical emergency helicopter transportation services to civilians, and limiting individual liability incident to providing such services, and for other purposes; and

H.J. Res. 512. Joint resolution to extend the authority of the Secretary of Housing and Urban Development with respect to the insurance of loans and mortgages, to extend authorizations under laws relating to housing and urban development, and for other purposes.

HOUSE BILLS AND JOINT RESOLUTION REFERRED

The following bills and joint resolution were severally read twice by their titles and referred, as indicated:

H.R. 6330. An act to amend section 8 of the Public Buildings Act of 1959, relating to the District of Columbia; to the Committee on the District of Columbia.

H.R. 6628. An act to amend section 101(b) of the Micronesian Claims Act of 1971 to enlarge the class of persons eligible to receive benefits under the claims program established by that act; to the Committee on Interior and Insular Affairs.

H.R. 7139. An act authorizing the Secretary of Defense to utilize Department of Defense resources for the purpose of providing medical emergency helicopter transportation services to civilians, and limiting individual liability incident to providing such services, and for other purposes; to the Committee on Armed Services.

H.J. Res. 512. Joint resolution to extend the authority of the Secretary of Housing and Urban Development with respect to the insurance of loans and mortgages, to extend authorizations under laws relating to housing and urban development, and for other purposes; to the Committee on Banking, Housing and Urban Affairs.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Monday, May 21, 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 CALENDAR

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Nos. 157, 158, and 160.

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

PRESERVATION OF ADDITIONAL HISTORIC PROPERTIES

The Senate proceeded to consider the bill (S. 1201) to amend the act of October 15, 1966 (80 Stat. 915), as amended, establishing a program for the preservation of additional historic properties throughout the Nation, and for other purposes, which had been reported from the Committee on Interior and Insular Affairs with amendments, on page 1, line 7, after the word "appropriated", strike out "such sums as may be necessary to carry out the provisions of this title" and insert "not more than $15,000,000 annually for fiscal year 1974 and for each of the two succeeding fiscal years to carry out the provisions of this title"; on page 2, line 4, after the word "appropriated", strike out "such sums as may be necessary for the purposes of this section" and insert "not more than $100,000 annually for fiscal year 1974 and for each of the two succeeding fiscal years for the purposes of this section "; and, after line 7, insert:

(c) Section 201 is amended by inserting the following new subsection:

"(g) The Council shall continue in existence until December 31, 1985."

So as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act of October 15, 1966 (80 Stat. 915; 16 U.S.C. 470), as amended, is further amended as follows:

(a) Section 108 is amended by deleting the first sentence and inserting in lieu thereof the following: "There is authorized to be appropriated not more than $15,000,000 annually for fiscal year 1974 and for each of the two succeeding fiscal years to carry out the provisions of this title."

(b) Subsection (c) of section 206 is amended to read: "There is authorized to be appropriated not more than $100,000 annually for fiscal year 1974 and for each of the two succeeding fiscal years for the purposes of this section."

(c) Section 201 is amended by inserting the following new subsection:

"(g) The Council shall continue in existence until December 31, 1985".

The amendments were agreed to.

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

CONTINUANCE OF CIVIL GOVERNMENT FOR THE TRUST TERRITORY OF THE PACIFIC ISLANDS

The Senate proceeded to consider the bill (S. 1385) to amend section 2 of this act of June 30, 1954, as amended, providing for the continuance of civil government for the Trust Territory of the Pacific Islands, which had been reported from the Committee on Interior and Insular Affairs with an amendment, to strike out all after the enacting clause and insert:

That section 2 of the Act of June 30, 1954 (68 Stat. 330), as amended, is amended y deleting "for each for the fiscal years 1971, 1972, and 1973, $60,000,000" and inserting in lieu thereof "for fiscal year 1974, $60,000,000".

SEC. 2. The Act of June 30, 1954, as amended, is further amended by adding at the end thereof the following new section:

"SEC. 4. (a) The government comptroller for Guam appointed pursuant to the provisions of section 9–A of the Organic Act of Guam shall, in addition to the duties imposed on him by such Act, carry out, on and after the date of the enactment of this section, the duties set forth in this section with respect to the government of the Trust Territory of the Pacific Islands. In carrying out such duties, the comptroller shall be under the general supervision of the Secretary of the Interior and shall not be a part of any executive department in the government of the Trust Territory of the Pacific Islands. The salary and expenses of the comptroller's office shall, notwithstanding the provisions of subsection (a) of section 9–A of the Organic Act of Guam, be apportioned equitably by the Secretary of the Interior between Guam and the Trust Territory of the Pacific Islands from funds available to Guam and the trust territory.

"(b) The government comptroller shall audit all accounts and review and recommend adjudication of claims pertaining to the revenue and receipts of the government of the Trust Territory of the Pacific Islands and of funds derived from bond issues; and he shall audit, in accordance with law and administrative regulations, all expenditures of funds and property pertaining to the government of the Trust Territory of the Pacific Islands including those pertaining to trust funds held by such government.

"(c) It shall be the duty of the government comptroller to bring to the attention of the Secretary of the Interior and the High Commissioner of the Trust Territory of the Pacific Islands all failures to collect amounts due the government, and expenditures of funds or uses of property which are irregular or not pursuant to law. The audit activities of the government comptroller shall be directed so as to (1) improve the efficiency and economy of programs of the government of the Trust Territory of the Pacific Islands, and (2) discharge the responsibility incumbent upon the Congress to insure that the substantial Federal revenues which are covered into the treasury of such government are properly accounted for and audited.

"(d) The decisions of the government comptroller shall be final except that appeal therefrom may, with the concurrence of the High Commissioner, be taken by the party aggrieved or the head of the department concerned, within one year from the date of the decision, to the Secretary of the Interior, which appeal shall be in writing and shall specifically set forth the particular action of the government comptroller to which exception is taken, with the reasons and the authorities relied upon for reversing such decision.

"(e) If the High Commissioner does not concur in the taking of an appeal to the Secretary, the party aggrieved may seek relief by suit in the District Court of Guam, if the claim is otherwise within its jurisdiction. No later than thirty days following the date of the decision of the Secretary of the Interior, the party aggrieved or the High Commissioner, on behalf of the head of the department concerned, may seek relief by suit in the District Court of Guam, if the claim is otherwise within its jurisdiction.

"(f) The government comptroller is authorized to communicate directly with any person or with any department officer or person having official relation with his office. He may summon witnesses and administer oaths.

"(g) As soon after the close of each fiscal year as the accounts of said fiscal year may be examined and adjusted, the government comptroller shall submit to the High Commissioner and the Secretary of the Interior an annual report of the fiscal condition of the government, showing the receipts and disbursements of the various departments and agencies of the government. The Secretary of the Interior shall submit such report along with his comments and recommendations to the President of the Senate and the Speaker of the House of Representatives.

"(h) The government comptroller shall make such other reports as may be required by the High Commissioner, the Comptroller General of the United States, or the Secretary of the Interior.

"(i) The office and activities of the government comptroller pursuant to this section shall be subject to review by the Comptroller General of the United States, and reports thereon shall be made by him to the High Commissioner, the Secretary of the Interior, the President of the Senate and the Speaker of the House of Representatives.

"(j) All departments, agencies, and establishments shall furnish to the government comptroller such information regarding the powers, duties, activities, organization, financial transactions, and methods of business of their respective offices as he may from time to time require of them; and the government comptroller, or any of his assistants or employees, when duly authorized by him, shall, for the purpose of securing such information, have access to and the right to examine any books, documents, papers, or records of any such department, agency, or establishment."

The amendment was agreed to.

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

INDIAN JUDGMENT FUNDS DISTRIBUTION ACT OF 1973

The Senate proceeded to consider the bill (S. 1016) to provide a more democratic and effective method for the distribution of funds appropriated by the Congress to pay certain judgments of the Indian Claims Commission and the Court of Claims and for other purposes, which had been reported from the Committee on Interior and Insular Affairs with amendments, on page 2, line 2, after the word "are", strike out "cumbersome and--

"(1) infringe upon the full and free development of the unique relationship between the Indian people and the Federal Government;

"(2) inhibit democratic and effective expression of the desires and needs of the Indian people;

"(3) limit the opportunity for Indian people to participate in and exercise effective control over decisions which de-

termine their economic, social, and cultural well-being; and

"(4) reduce the time available to, and limit the ability of, Congress to effectively investigate and legislate in the areas of substantive Indian policy." and insert "cumbersome, and infringe upon the full and free development of the unique relationship between the Indian people and the Federal Government; and reduce the time available to, and limit the ability of, Congress to effectively investigate and legislate in the areas of substantive Indian policy."; on page 3, line 16, after the word "of", strike out "Indian" and insert "Indians, Indian"; in line 22, after "(a)", strike out "Within" and insert "Unless a request for an extension of time (i) is deemed necessary and is submitted by the Secretary or (ii) is made to the Secretary by the Indian tribe, band, group, pueblo, or community, which request shall be submitted to Congress by the Secretary within"; on page 4, line 7, after the word "the", strike out "Indian" and insert "Indians and Indian"; in line 8, after the word "community", strike out "in whose favor such judgment is rendered and such funds appropriated" and insert "which has been determined by the Secretary to be the present-day beneficiary or beneficiaries of the subject award and are entitled to participate in the distribution of the appropriated funds"; on page 5, line 10, after the word "those", insert "entities and"; in line 15, after the word "any", insert "affected"; in line 16, after the word "community", strike out "in whose favor the Indian judgment is rendered,"; in line 21, after the word "community", strike out "and any individual"; on page 7, line 2, and after the word "equal", strike out "protection: *Provided,* That this clause shall not be deemed to authorize the Secretary to either add persons to or remove persons from those who are clearly designated as recipients of such funds in the pertinent Indian judgment or appropriation Act;" and insert "protection;"; at the beginning of line 13, insert "afected"; at the beginning of line 14, strike out "in whose favor the judgement is rendered"; in line 20, after the word "calendar", strike out "days, exclusive of days when Congress is adjourned or in recess," and insert "days"; in line 22, after the word "plan", strike out "to" and insert "by"; on page 9, line 8, after the word "all", insert "entitles and"; in line 20, after "4", strike out "(c)" and insert "(d)"; in the same line, after the word "significant", strike out "portion of the net distributable funds" and insert "portion"; in line 24, after the word "or", strike out "community, or unless otherwise provided for in the pertinent judgment or appropriation Act" and insert "community"; and, on page 10, after line 2, insert a new section, as follows:

SEC. 9. None of the funds distributed per capita under the provisions of this Act shall be subject to Federal or State income taxes, and per capita payments less than $1,000 shall not be considered as income or resources when determining the extent of eligibility for assistance under the Social Security Act.

So as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Indian Judgment Funds Distribution Act of 1973".

STATEMENT OF FINDINGS AND PURPOSE

SEC. 2. (a) The Congress declares that a new method of distributing funds of Indian judgments must be established as the existing procedures for developing, approving, and enacting a distribution plan for each Indian judgment are cumbersome, and infringe upon the full and free development of the unique relationship between the Indian people and the Federal Government; and reduce the time available to, and limit the ability of, Congress to effectively investigate and legislate in the areas of substantive Indian policy.

(b) It is the purpose of this Act to declare a policy for the distribution of judgment funds to Indians; to delegate certain ministerial functions to, and establish specific guidelines and standards to be followed by, the Secretary of the Interior in the development of plans for the distribution of such funds; to provide maximum participation to Indian tribes, bands, groups, pueblos, or communities in determining the uses to be made of such funds; to protect the interests of any groups and individuals who are in a minority position but who are also entitled to receive such funds; to enhance the educational, social, and economic opportunities available to the Indian people; and to enable the committees of the Congress to dedicate the time and resources of their members more fully to substantive policy issues associated with the historic relationship between the Indian people and the United States Government and to the improvement of this relationship.

INDIAN JUDGMENTS

SEC. 3. Notwithstanding any other provision of law, from and after the date of enactment of this Act, all distributions of funds appropriated by the Congress to pay in favor of Indians, Indian tribes, bands, groups, pueblos, or communities judgments of the Indian Claims Commission and of the Court of Claims (hereinafter referred to as "Indian judgments" or "Indian judgment") shall be made pursuant to the provisions of this Act.

PLAN FOR DISTRIBUTION OF FUNDS OF INDIAN JUDGMENTS

SEC. 4. (a) Unless a request for an extension of time (i) is deemed necessary and is submitted by the Secretary or (ii) is made to the Secretary by the Indian tribe, band, group, pueblo, or community, which request shall be submitted to Congress by the Secretary within six months after the date of the appropriation of funds by the Congress to pay each Indian judgment, the Secretary of the Interior (hereinafter referred to as the "Secretary") shall prepare and submit to the Congress a recommended plan for the distribution of such funds (hereinafter referred to as a "plan") to the Indians and Indian tribe, band, group, pueblo, or community which has been determined by the Secretary to be the present-day beneficiary or beneficiaries of the subject award and are entitled to participate in the distribution of the appropriated funds. The Secretary shall also submit to the Congress with such plan—

(1) copies of the transcripts of hearings held by him concerning the Indian judgment pursuant to clause (2) of subsection (c) and all other papers and documents considered by him in the preparation of such plan, including any resolution, communication, or suggested distribution plan of the pertinent Indian tribe, band, group, pueblo, or community submitted pursuant to clause (1) of subsection (c); and

(2) a statement of the extent to which such plan reflects the desires of the tribe, band, group, pueblo, community, or individuals who are entitled to such funds, which statement shall specify the alternatives, if any, proposed by such tribe, band, group, pueblo, community, or individuals in lieu of such plan, together with an indication of the degree of support among the interested parties for each such alternative.

(b) The plan shall be prepared by the Secretary pursuant to the provisions of subsections (c) and (d) of this section and such rules and regulations as the Secretary may prescribe in accordance with section 7 of this Act.

(c) The Secretary shall prepare a plan which shall best serve the interests of all those entities and individuals entitled to receive the funds of each Indian judgment. Prior to final preparation of the plan, the Secretary shall—

(1) receive and consider any resolution or communication, together with any suggested distribution plan, which any affected Indian tribe, band, group, pueblo, or community may wish to submit to him; and

(2) hold a hearing or hearings of record, after appropriate public notice, to obtain the testimony of leaders and members of the Indian tribe, band, group, pueblo, or community who may receive any portion, or be affected by the distribution, of such funds. Such hearing or hearings shall be held in the area or areas in which such Indian tribe, band, group, pueblo, or community resides and at a time or times which shall best serve the convenience of eligible members thereof;

(d) In preparing a plan for the distribution of the funds of each Indian judgment, the Secretary shall, among other things, be assured that—

(1) legal, financial, and other expertise of the Department of the Interior has been made fully available in an advisory capacity to the Indian tribe, band, group, pueblo, or community which is entitled to such funds to assist it to develop and communicate to the Secretary pursuant to subsection (c) its own suggested plan for the distribution and use of such funds;

(2) the needs and desires of any groups or individuals who are in a minority position but who are also entitled to receive such funds have been fully considered;

(3) the interests of minors and others legally incompetent who are entitled to receive any portion of such funds and such portions as are subsequently distributed to them are and will be protected and preserved;

(4) the constitution, bylaws, rules, or procedures of such Indian tribe, band, group, pueblo, or community which relate to enrollment, eligibility to share in the distribution of such funds, and decisionmaking concerning the distribution of such funds accord with the principles of due process and equal *protection;*

(5) a significant portion, as defined in section 8 of this Act, of the net distributable funds shall be set aside and programed to serve common tribal, band, group, pueblo, or community needs, educational requirements, and such other purposes as the circumstances of the *affected* Indian tribe, band, group, pueblo, or community may justify; and

(6) methods exist and will be employed to insure the proper performance of the plan once it becomes effective pursuant to section 5 of this Act.

CONGRESSIONAL REVIEW

SEC. 5. (a) Congress shall have sixty calendar days from the date of submission of a plan by the Secretary in order to review such plan.

(b) Such plan shall become effective and the distribution of Indian judgment funds provided for by such plan shall be made by the Secretary upon the expiration of such sixty-day period.

(c) The full sixty-day period, or any portion thereof, may be waived by committee resolutions of the Committees on Interior and Insular Affairs of both the Senate and the House of Representatives. Such plan shall become effective and the distribution of such funds shall be made upon the effective date of the wiaver of the committees of the Congress.

(d) Such plan shall not become effective and no distribution of such funds shall be made if, within such sixty-day period, a committee resolution disapproving such plan is passed by either House of Congress.

(e) Within thirty calendar days of the date of passage of a committee resolution disapproving a plan, the Secretary shall propose legislation embodying such plan, together with whatever changes the Secretary deems appropriate.

PROCEDURES IN ABSENCE OF A PLAN

SEC. 6. Whenever the Secretary determines that circumstances do not permit the preparation of a plan for the distribution of funds of an Indian judgment which shall meet the policies or purposes of this Act or the requirements of section 4 or whenever he shall determine that a plan for the distribution of such funds reflects a new policy or purpose not contemplated by this Act, he shall submit to the Congress his recommendations, either in the form of a report or of proposed legislation, to effect the distribution of such funds.

RULES AND REGULATIONS

SEC. 7. (a) The Secretary shall promulgate rules and regulations to implement this Act no later than six months from the date of enactment of this Act. Among other things, such rules and regulations shall provide for adequate notice to all *entities and* persons who may receive funds under any Indian judgment of all relevant procedures pursuant to this Act concerning any such judgment.

(b) No later than sixty days prior to the promulgation of such rules and regulations the Secretary shall publish the proposed rules and regulations in the Federal Register.

(c) No later than thirty days prior to the promulgation of such rules and regulations, the Secretary shall provide, with adequate public notice, the opportunity for hearings on the proposed rules and regulations, once published, to all interested parties.

SEC. 8. For the purposes of clause (5) of subsection 4(d), "significant portion" means a portion of the net distributable funds of an Indian judgment which shall be no less than 20 per centum unless otherwise warranted by the particular circumstances of the pertinent Indian tribe, band, group, pueblo, or community.

SEC. 9. None of the funds distributed per capita under the provisions of this Act shall be subject to Federal or State income taxes, and per capita payments less than $1,000 shall not be considered as income or resources when determining the extent of eligibility for assistance under the Social Security Act.

The amendments were agreed to.

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

LEGAL SERVICES

Mr. MANSFIELD. Mr. President, last week, the administration submitted its message and draft bill on the so-called legal services issue. Prior to its submission the leadership had been advised—that is, the Democratic leadership—that a jurisdictional issue over the reference of the message may arise. It should be noted that the Senate Committee on Labor and Public Welfare has traditionally and consistently considered the question of legal services assistance for the poor since the inception of such a program.

Accordingly I instructed the policy committee staff to admonish the Senate Parliamentarian to retain this message at the desk pending the resolution of the possible jurisdictional problem.

It is my understanding that such a request was made but that the message was referred, not to the Committee on Labor and Public Welfare, but to the Committee on the Judiciary. I would note that after the reference, the policy committee staff was advised of the action taken—given the reason apparently that a legal services amendment had been introduced and sent to the Committee on Labor and Public Welfare. In my judgment the reference of the amendment did not resolve the jurisdictional question about the message and action should not have been undertaken without initial clearance through me or through the majority policy committee. I would stress that after-the-fact advice does not fall in this category.

It is against these facts that I ask unanimous consent that the Committee on the Judiciary be discharged from the message involving legal services and that the referral be vacated and instead that it be referred to the Labor Committee to preserve its jurisdictional integrity on the issue of legal services to the poor.

Mr. GRIFFIN. Mr. President, I reserve the right to object. I can understand the feelings and the dilemma of the distinguished majority leader, in view of his statements and understandings. On the other hand, I must say, representing the leadership on this side, that I had no prior knowledge or notice of the understanding.

I will say as a Senator who has served on the Committee on the Judiciary, and who is familiar generally with the legislation having to do with legal representation in the courts, that it seems altogether appropriate that such legislation would be considered by the Judiciary Committee, if not exclusively, then at least in addition to such consideration as might be given by the Committee on Labor and Public Welfare.

I might ask the distinguished majority leader if the request he is now making has been cleared with the ranking minority member of the Judiciary Committee or the chairman of the Judiciary Committee. I would feel constrained to object, at least temporarily, unless we did have consultation with those particular Senators.

Mr. MANSFIELD. I appreciate the remarks of the distinguished acting minority leader, but may I point out that one of the few prerogatives given to the majority leader is the one which he exercises at the request of Senators on either side of the aisle that messages or legislation be held at the desk pending settlement of the request involved. Such a request was made. The majority leader feels that he has kept his word. He is embarrassed by what has developed.

I would change my unanimous-consent request that the matter be rereferred from the Judiciary Committee and that it lie at the desk until the question is settled, and with the hope, furthermore, that once the request is made by a member of the policy committee or by the minority or majority leader, the desk would observe the request.

Mr. GRIFFIN. I would certainly say that that would be an agreeable unanimous-consent request: that the bill now go back to the desk and stay there until the question of jurisdiction is resolved. If the majority leader wishes to amend his unanimous consent in this respect, I would not object.

Mr. MANSFIELD. That is a fair solution. I make that request.

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

Mr. MANSFIELD. I thank the Chair and the activing Republican leader.

I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

Mr. MANSFIELD. Mr. President, I yield whatever part of my 5 minutes the distinguished Senator from Texas desires.

Mr. TOWER. I thank the distinguished Senator.

PRIVILEGE OF THE FLOOR

Mr. TOWER. Mr. President, I ask unanimous consent that during the consideration of S. 1798 and all amendments thereto, Michael Burns, the minority counsel for the Committee on Banking, Housing and Urban Affairs, and Joan Baldwin, a member of the staff of the Republican Policy Committee, be allowed to be present on the floor.

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

ORDER OF BUSINESS

Mr. TOWER. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The second legislative clerk proceeded to call the roll.

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

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

Mr. MANSFIELD. Mr. President, what is the situation at the present time?

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from West Virginia (Mr. ROBERT C. BYRD) will be recognized for not to exceed 15 minutes.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that there be a quorum call and that the time be taken out of the time of the assistant majority leader.

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

The second assistant legislative clerk proceeded to call the roll.

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

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

Mr. MANSFIELD. Mr. President, in the absence of the distinguished assistant majority leader, I yield myself 1 minute

The ACTING PRESIDENT pro tempore. The Senator is recognized.

PRESERVATION OF HISTORICAL AND ARCHEOLOGICAL DATA

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 156, S. 514.

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

The bill was read by title as follows:

A bill (S. 514) to amend the act of June 27, 1960 (74 Stat. 220), relating to the preservation of historical and archeological data.

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

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

Mr. MOSS. Mr. President, I rise to ask passage of S. 514, my bill which would provide for the protection and recovery of scientific, prehistorical, historical, and archeological data which might be affected through alteration of the terrain by any Federal or federally assisted activity or program.

The bill, which is cosponsored by 45 Members of the Senate, and which was unanimously reported by the Senate Interior and Insular Affairs Committee, is identical to S. 1245 which was passed by the Senate in the 92d Congress, but which died in the House. I am hopeful that the House will take final action on this measure in this Congress. By passing it this early in the session and referring it to the House, the Senate will give the other body ample time to consider it and get it through.

I hope, however, the House will move quickly. The Nation faces an archeological resource crisis. The land is being altered, and our archeological data is being destroyed at an alarming rate. We must assure that enough of the past is preserved to enable archeologists of the future to make adequate interpretations of it. This bill presents one last opportunity to meet this objective in an adequate way. It is, therefore, essentially a conservation measure.

Preserving the past through archeological data is, of course, not a Federal problem alone. The archeological profession, and the Federal, State, and private agencies through which they operate, must all develop approaches to protecting our archeological resources. But the Federal Government is in a preeminent position to take action, and this bill will assure that it does. Without it, a majority of our archeological sites will be damaged or destroyed within the next 25 years.

The bill has the strong support of the Society for American Archeology, the Committee for the Recovery of Archeological Remains, and of many other private and State archeological groups and individuals. It is the logical next step.

The National Park Service has maintained for more than 20 years a program of cooperative agreements with State and local institutions for recovery of archeological data about to be lost through flooding behind dams. The 1960 act—Public Law 86–523—required Federal agencies building dams or licensing the construction of dams to notify the Secretary of the Interior of such intentions and formalized the ongoing reservoir archeological salvage program.

Unfortunately, there has never been any provision for the recovery of archeological and historical data being lost as a result of Federal programs, other than dam construction. These losses far surpass those resulting from the building of dams.

This bill amends the 1960 act to extend coverage to all Federal and federally assisted or licensed programs which alter the terrain and thus potentially cause the loss of scientific, prehistorical, historical or archeological data. The program would be administered by the Secretary of the Interior, and financed through the transfer to the Secretary, by the Federal agency whose program is causing damage or destruction to archeological data, of not more than 1 percent of the program funds as a nonreimbursable item. These funds will be used to protect or recover such data prior to its loss.

On a program basis, the National Park Service spends approximately $1.2 million annually for salvage work on reservoir projects alone under the 1960 law. With the construction activities of other agencies included in the program, it is expected that the amount needed for this program would increase to about $6.5 million within 5 years.

Enactment of the bill would enable archeologists to select the sites upon which to concentrate their efforts on the basis of scientific need, rather than being restricted to sites which are being destroyed by dam construction or reservoir flooding. In the past much extremely valuable scientific data has been lost because there were no funds or personnel to be used at the critical time. By authorizing the transfer of the necessary funds from the program which threatens destruction at the time of the threat, it would be possible to tie in directly and immediately archeological skills and funds when they are needed.

Under the bill the responsibility for initiating action rests with the archeologists and the Federal agencies involved would not be burdened with unnecessary administrative problems or expense.

Mr. President, I ask that the bill (S. 514) be passed.

The ACTING PRESIDENT pro tempore. The bill is open to amendment. If there be no amendment to be proposed, the question is on the engrossment and third reading of the bill.

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

S. 514

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act entitled "An Act to provide for the preservation of historical and archeological data (including relics and specimens) which might otherwise be lost as the result of the construction of a dam", approved June 27, 1960 (74 Stat. 220), is amended to read as follows: "That it is the purpose of this Act to further the policy set forth in the Act entitled 'An Act to provide for the preservation of historic American sites, buildings, objects, and antiquities of national significance, and for other purposes', approved August 21, 1935 (16 U.S.C. 461–467), and the Act entitled 'An Act to establish a program for the preservation of additional historic properties throughout the Nation, and for other purposes', approved October 15, 1966 (80 Stat. 915), by specifically providing for the preservation of scientific, prehistorical, historical, and archeological data (including relics and specimens) which might otherwise be irreparably lost or destroyed as the result of (1) flooding, the building of access roads, the erection of workmen's communities, the relocation of railroads and highways, and other alterations of the terrain caused by the construction of a dam by any agency of the United States, or by any private person or corporation holding a license issued by any such agency; or (2) any alteration of the terrain caused as a result of any Federal, federally assisted, or federally licensed activity or program.

"SEC. 2. Before any agency of the United States shall undertake the construction of a dam, or issue a license to any private individual or corporation for the construction of a dam it shall give written notice to the Secretary of the Interior (hereinafter referred to as the 'Secretary') setting forth the site of the proposed dam and the approximate area to be flooded and otherwise changed if such construction is undertaken: *Provided,* That with respect to any floodwater retarding dam which provides less than five thousand acre-feet of detention capacity and with respect to any other type of dam which creates a reservoir of less than forty surface acres the provisions of this section shall apply only when the constructing agency, in its preliminary surveys, finds, or is presented with evidence that scientific, prehistorical, historical, or archeological data exist or may be present in the proposed reservoir area.

"SEC. 3. (a) Whenever any Federal agency finds, or is made aware by an appropriate historical or archeological authority, that its operation in connection with any Federal, federally assisted, or federally licensed project, activity, or program adversely affects or may adversely affect significant scientific, prehistorical, historical, or archeological data, such agency shall notify the Secretary, in writing, and shall provide the Secretary with appropriate information concerning the project, program, or activity. Such agency (1) may request the Secretary to undertake the recovery, protection, and preservation of such data (including preliminary survey, or other investigation as needed, and analysis and publication of the reports resulting from such investigation), or (2) may, with funds appropriated for such project, program, or activity, undertake the activities referred to in clause (1). Copies of reports of any investigations made pursuant to clause (2) shall be made available to the Secretary.

"(b) The Secretary, upon notification by any such agency or by any other Federal or State agency or appropriate historical or archeological authority that scientific, prehistorical, historical, or acheological data is or may be adversely affected by any Federal, federally assisted, or federally licensed project, activity, or program, shall, if he determines that such data is being or may be adversely affected, and after reasonable notice to the agency responsible for such project, activity, or program, conduct or cause to be conducted a survey and other investigation of the areas which are or may be affected and recover and preserve such data (including analysis and publication) which, in his opinion, are not being but should be recovered and preserved in the public interest. The Secretary shall initiate action within sixty days of notification to him by an agency pursuant to subsection (a), and within such time as may be agreed upon with the head of the responsible agency in all other cases. The responsible agency upon

request of the Secretary is hereby authorized to assist the Secretary and to transfer to the Secretary such funds as may be necessary, in an amount not to exceed 1 per centum of the total amount appropriated for such project, activity, or program, to enable the Secretary to conduct such survey or other investigation and recover and preserve such data (including analysis and publication) or, in the case of small projects which cause extensive scientific, prehistoric, historical, or archeological damage, such larger amount as may be mutually agreed upon by the Secretary and the responsible Federal agency as being necessary to effect adequate protection and recovery: *Provided*, That the costs of such survey, recovery, analysis, and publication shall be considered nonreimbursable project costs.

"(c) The Secretary shall keep the responsible agency notified at all times of the progress of any survey or other investigation made under this Act, or of any work undertaken as a result of such survey, in order that there will be as little disruption or delay as possible in the carrying out of the functions of such agency.

"(d) A survey or other investigation similar to that provided for by subsection (a) or (b) of this section and the work required to be performed as a result thereof shall so far as practicable also be undertaken in connection with any dam, project, activity, or program which has been heretofore authorized by any agency of the United States, by any private person or corporation holding a license issued by any such agency, or by Federal law.

"(e) The Secretary shall consult with any interested Federal and State agencies, educational and scientific organizations, and private institutions and qualified individuals, with a view to determining the ownership of and the most appropriate repository for any relics and specimens recovered as a result of any work performed as provided for in this section.

"SEC. 4. In the administration of this Act, the Secretary may—

"(1) accept and utilize funds transferred to him by any Federal agency pursuant to this Act;

"(2) enter into contracts or make cooperative agreements with any Federal or State agency, any educational or scientific organization, or any institution, corporation, association, or qualified individual;

"(3) obtain the services of experts and consultants or organizations thereof in accordance with section 3109 of title 5, United States Code; and

"(4) accept and utilize funds made available for salvage archeological purposes by any private person or corporation.

"SEC. 5. There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act."

QUORUM CALL

Mr. MOSS. Mr. President, I suggest the absence of a quorum, and I ask unanimous consent that the time be charged to the time of the distinguished Senator from West Virginia.

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

The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

Mr. MANSFIELD. Mr. President, I yield myself such time as I may desire, on the time of the distinguished assistant majority leader.

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

PRIVILEGE OF THE FLOOR FOR TWO EMPLOYEES OF JOINT COMMITTEE ON CONGRESSIONAL OPERATIONS

Mr. MANSFIELD. Mr. President, on March 22 unanimous consent was granted for access to the Senate floor to two employees of the Joint Committee on Congressional Operations to study the feasibility of producing a daily summary of chamber proceedings. The staff was not prepared to proceed at that time. Therefore, I ask unanimous consent that two employees of the Joint Committee on Congressional Operations be permitted access to the floor of the Senate for a 3-week period beginning immediately following the Memorial Day recess for the study.

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

MONTANA FIRM MAKES MEDALS FOR THE NATION

Mr. MANSFIELD. Mr. President, in the Rocky Mountain Informer, published at Kalispell in the Flathead country of western Montana, is a most interesting article on Roche Jaune, Inc.: "Making Medals for the Nation." It is a new national industry. I had the opportunity to meet with the officials connected with this organization some months ago, when they were bidding for the contract to create silver and bronze medals to commemorate the 100th anniversary of Yellowstone National Park and the park system as such.

They have done a remarkably effective job. Incidentally, they were successful, and, coming from the Flathead country, they had to be good to be successful in competition with the Eastern silversmiths. They have fulfilled all our expectations and that of the National Park Service. They have expanded their activities. They have a sizable investment in the Flathead country.

I ask unanimous consent that this story, covering the beginnings and the doings as well as the work of this new Montana concern, which is contained in the Rocky Mountain Informer under the date of May 5, be incorporated at this point in the RECORD.

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

ROCHE JAUNE, INC.: MAKING MEDALS FOR THE NATION

For several years, a Kalispell man named Frank Hagel worked in the advertising field in Detroit as an illustrator—where graphic arts is a glut on the market. A few years ago, he decided to cut his ties to that world and return to Kalispell to pursue his real interest—art.

His success story is legend even in the Flathead, where there probably are more Western artists per capita than anywhere else in the world. But his real success came fairly recently. He was selected as the sculptor for the National Park Centennial medals, which are produced by a local company—Roche Jaune, Inc.—that has a success story of its own.

Hagel, the son of Kalispell tanner Fred Hagel and Winona, lives on an isolated chunk of ground near the Flathead River with his wife, Rita, and three children. There, he produced the 36 medals which are being marketed around the nation, an issue of more than fifty thousand medallions in silver alone. Each one of them commemorates a national park.

The medals, which are marketed in both silver ($14.75) and bronze ($3.95), are on sale in every national park in the country this year. It represents an investment of $500,000 on the part of the 15 Montanans who are stockholders in the company. The gross since incorporation could reach as high as $1 million, and there is a 10-year contract period for the medals to be marketed.

Handling the nuts and bolts of the business is Robert Empie, one of the originators of the idea and now vice president in charge of operations. He works closely with Hagel, who spent most of last year working on the medal designs and sculpting.

Roche Jaune, Inc., started in February of 1970 when Empie and David "Moose" Miller were—as Empie puts it—"sitting around trying to figure out ways to make money."

They knew that the National Park Service Centennial was coming up in 1972 and that Yellowstone National Park's beginning in 1872 was where it started.

They sensed that visitors to the National Parks, some 55 million annually, wanted something lasting as a souvenir of their visit.

"We knew that the quality of merchandise left a lot to be desired," Empie said recently as he prepared a half-million printed cards to promote the medals. "You go into these beautiful areas and all you can buy are stuffed teddy bears, some kind of a rubber animal, or a T-shirt. That's where we started, and our research led to the medals and the 100th anniversary thing."

That first month, Empie, Miller, and Al Chandler took the matter to the National Park Service, working through Sen. Mike Mansfield and the rest of Montana's congressional delegation.

"Our approach was that historically, Montanans were responsible for development of the national park system, particularly Yellowstone," Empie said. "We reasoned with them that it was only fitting that Montanans be involved in the Centennial in this way."

The group struck two medals, neither officially sanctioned, to promote their plans. One was of John Colter, credited with being the first white man to visit what now is Yellowstone National Park. He left the Lewis and Clark Expedition when he heard tales of the phenomena which existed there.

The other was of George Catlin, a New York attorney who ditched his practice and spent his time painting Indians in their natural environment and proposed the establishment of a national park in the West. He died in 1872, the year the park was established.

Initially, there were 1,000 medals struck in silver of each one, and another 5,000 in bronze. All sold in 12 months.

Interest then gained in the Centennial—the Park Service suddenly realized there was something to be done. Roche Jaune, Inc., was ready and no one else really was. In April, 1971, a National Park Service committee met with the Kalispell group and said they wanted a complete series of medals—36 in all, one for each park.

"It was kind of like a dog chasing a car," said Empie. "The question becomes what in the hell do you do with it when you catch it?"

They signed the contract in August, six months before the initial order was due. Yellowstone's medal came on time, then seven others by the end of the summer. The remainder were to be done by the first of March, this year. The group had them on the last day of February.

'We sold stock in the company, and now have 15 stockholders," said Empie. "The four

of us who were intially involved received stock for the work we had done in the first phases."

Since then, the National Park Service has added two more parks—Capital Reef and the Arches in Utah. Both will be added to the medallion offerings.

Initial advertising on the project has come to $175,000 so far, with ads going to National Geographic, Sunset, the National Observer, and the Sierra Club publication, the Christian Science Monitor, Wall Street Journal, various numismatic publications (for coin collectors).

Each medal will have 15,000 in the silver series, along with perhaps five times that in bronze. They will be sold inside the parks through the official sanction of the National Park Service; Empie now is working with concessionaires around the nation to establish sales and promotional details.

"We've found that the further away from the parks you get, the more the interest drops," said Empie. "People want a lasting momento of their visit to the park, and this fills the bill.

"The important thing about this is that there is a lot more involved than the 38 national parks," he continued. "The National Park Service administers 300 different areas in the country; national battlefields, historic sites, everything. These will be future potential for medals, since we have a 10-year contract with the Park Foundation."

For instance, he said, the centennial for Custer's Massacre in 1976, and plans are underway right now for medals for the event. Roche Jaune, Inc., will be working on them, as well as others.

"It's been a lot of fun, working with something like this on a national scale," said Empie, who operated an advertising agency and local tourist stops with Chandler before leaving that for full-time work with Roche Jaune, Inc. Chandler still operates the tourist stops.

Doing the medals from Hagel's design is the Medallic Art Co. of Danbury, Conn., said to be the world's leading art medal firm. It has done many Presidential Inaugural medals and most of the territorial centennial medals for the past few decades.

Handouts promoting the medals are going to five different parks in the nation now on a test basis: Glacier, Yellowstone, Shenandoah, Yosemite, and Grand Canyon. If that works—and Empie is sure it will—another 15 million promotional pieces will be prepared for national coverage—at the Washington Monument, Statue of Liberty, in the Everglades, and so forth.

After that, who knows?

"Tanzaniya has expressed interest in medals for their national parks," said Empie "Maybe we'll look into that."

President of Roche Jaune, Inc., is L. R. Ostrom, a retired businessman, Francis Bitney, a local businessman and developer, is chairman of the board.

QUORUM CALL

Mr. MANSFIELD. Mr. President, again I suggest the absence of a quorum, with the time taken out of the allocation to the distinguished assistant majority leader.

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

The second assistant legislative clerk proceeded to call the roll.

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

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

PERIOD FOR 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 15 minutes, with statements therein limited to 3 minutes.

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

MESSAGES FROM THE PRESIDENT—APPROVAL OF A BILL

Messages in writing from the President of the United States were communicated to the Senate by Mr. Marks, one of his secretaries, and he announced that on May 18, 1973, the President had approved and signed the act (S. 1379) to authorize further appropriations for the Office of Environmental Quality, and for other purposes.

EXECUTIVE MESSAGES REFERRED

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

QUORUM CALL

The ACTING PRESIDENT pro tempore. Is there further morning business?

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

Mr. MANSFIELD. Mr. President, I ask that the unfinished business be laid before the Senate.

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

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

REPORT ON DISBURSEMENTS, SECRETARY OF DEFENSE

A letter from the Secretary of Defense, reporting, pursuant to law, on disbursements by that Department, for the quarter ended March 31, 1973. Referred to the Committee on Appropriations.

PROPOSED LEGISLATION BY DEPARTMENT OF DEFENSE

A letter from the General Counsel of the Department of Defense, transmitting drafts of two proposed bills (1) to amend section 715 of the Department of Defense Appropriation Act, 1973, to extend until December 31, 1973, the date after which members in the rank of colonel or equivalent or above (O–6) in noncombat assignments are no longer entitled to the flight pay prescribed under section 301 of title 37, United States Code; and (2) to amend section 301 of title 37, United States Code, relating to incentive pay, to attract and retain volunteers for aviation crewmember duties, and for other purposes (with accompanying papers). Referred to the Committee on Armed Services.

REPORT OF SECURITIES INVESTOR PROTECTION CORPORATION

A letter from the Senior Commissioner, Securities and Exchange Commission, transmitting, pursuant to law, a report of the Securities Investor Protection Corporation, for the year 1972 (with accompanying report). Referred to the Committee on Banking, Housing and Urban Affairs.

PROPOSED LEGISLATION FROM EXPORT-IMPORT BANK OF THE UNITED STATES

A letter from the President and Chairman Export-Import Bank of the United States, transmitting a draft of proposed legislation to amend the Export-Import Bank Act of 1945, as amended, to extend for four years the period within which the Bank is authorized to exercise its functions, to increase the Bank's loan, guarantee and insurance authority, to clarify its authority to maintain fractional reserves for insurance and guarantees, and to amend the National Bank Act to exclude from the limitations on outstanding indebtedness of national banks liabilities incurred in borrowing from the Bank, and for other purposes (with accompanying papers). Referred to the Committee on Banking, Housing and Urban Affairs.

REPORT OF NATIONAL RAILROAD PASSENGER CORPORATION

A letter from the Vice President, Public and Government Affairs, National Railroad Passenger Corporation (Amtrak), transmitting, pursuant to law, a report of that Corporation, for the month of January, 1973 (with an accompanying report). Referred to the Committee on Commerce.

PROPOSED LEGISLATION FROM THE SECRETARY OF TRANSPORTATION

A letter from the Acting Secretary of Transportation, transmitting a draft of proposed legislation to amend the Federal Aviation Act of 1958 to remove the criminal penalty from title XI, section 1101, Hazards to Air Commerce (with an accompanying paper). Referred to the Committee on Commerce.

PROPOSED LEGISLATION FROM THE GOVERNMENT OF THE DISTRICT OF COLUMBIA

A letter from the Mayor-Commissioner, Government of the District of Columbia, transmitting a draft of proposed legislation to amend the District of Columbia Stadium Act of 1957 to provide for a sharing of the financial obligations of such stadium, and for other purposes (with an accompanying paper). Referred to the Committee on the District of Columbia.

INTERNATIONAL AGREEMENTS ENTERED INTO BY THE UNITED STATES

A letter from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to law, international agreements entered into by the United States with the Kingdom of Saudi Arabia, the Republic of Korea, and Germany (with accom-

panying papers). Referred to the Committee on Foreign Relations.

A letter from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to law, international agreements entered into by the United States with Saudi Arabia (with accompanying papers). Referred to the Committee on Foreign Relations.

PROPOSED LEGISLATION FROM DEPARTMENT OF STATE

A letter from the Acting Assistant Secretary for Congressional Relations, Department of State, transmitting a draft of proposed legislation to enable the United States to contribute its share of the expenses of the International Commission of Control and Supervision as provided in Article 14 of the Protocol concerning the said Commission to the Agreement on Ending the War and Restoring Peace in Vietnam (with an accompanying paper). Referred to the Committee on Foreign Relations.

A letter from the Acting Assistant Secretary for Congressional Relations, Department of State, transmitting a draft of proposed legislation to provide for the establishment of the Board for International Broadcasting, to authorize the continuation of assistance to Radio Free Europe and Radio Liberty, and for other purposes (with an accompanying paper). Referred to the Committee on Foreign Relations.

REPORT OF COMPTROLLER GENERAL

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Audit of Payments From Special Bank Account to Lockheed Aircraft Corporation for the C–5A Aircraft Program During the Quarter Ended March 31, 1973", Department of Defense, dated May 17, 1973 (with an accompanying report). Referred to the Committee on Government Operations.

PROPOSED LEGISLATION FROM OFFICE OF MANAGEMENT AND BUDGET

A letter from the Director, Office of Management and Budget, Executive Office of the President, transmitting a draft of proposed legislation to extend the period within which the President may transmit to the Congress plans for the reorganization of agencies of the Executive Branch of the Government, and for other purposes (with an accompanying paper). Referred to the Committee on Government Operations.

PROCEEDINGS OF MEETING OF THE JUDICIAL CONFERENCE

A letter from the Chief Justice, Supreme Court of the United States, transmitting, pursuant to law, the proceedings of the meeting of the Judicial Conference held in Washington, D.C., on April 5 and 6, 1973 (with an accompanying document). Referred to the Committee on the Judiciary.

PROPOSED LEGISLATION FROM DEPARTMENT OF STATE

A letter from the Acting Assistant Secretary for Congressional Relations, Department of State, transmitting a draft of proposed legislation to implement the Convention on the Prohibition of the Development, Production, and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction (with accompanying papers). Referred to the Committee on the Judiciary.

PROGRESS REPORT ON THE 5-YEAR PLAN FOR FAMILY PLANNING SERVICES AND POPULATION RESEARCH

A letter from the Secretary of Health, Education, and Welfare, transmitting, pursuant to law, the second annual progress report on the Five-Year Plan for Family Planning Services and Population Research (with an accompanying report). Referred to the Committee on Labor and Public Welfare.

REPORT OF U.S. WATER RESOURCES COUNCIL

A letter from the Chairman, United States Water Resources Council, transmitting, pursuant to law, a report of that Council (with an accompanying report). Referred to the Committee on Public Works.

PETITIONS

Petitions were laid before the Senate and referred as indicated:

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

A resolution adopted by the County Legislature of Suffolk County, N.Y., praying for the restoration of certain funds. Referred to the Committee on Appropriations.

A report, in the nature of a petition, from the National Society of Professional Engineers, relating to the west central front of the United States Capitol. Ordered to lie on the table.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. FULBRIGHT, from the Committee on Foreign Relations, with an amendment:

S. 1317. A bill to authorize appropriations for the United States Information Agency (Rept. No. 93–168).

By Mr. BIBLE, from the Committee on Interior and Insular Affairs, without amendment:

S. 1384. A bill to authorize the Secretary of the Interior to transfer franchise fees received from certain concession operations at Glen Canyon National Recreation Area, in the States of Arizona and Utah, and for other purposes (Rept. No. 93–169).

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

S. 372. A bill to amend the Communications Act of 1934 to relieve broadcasters of the equal time requirement of section 315 with respect to presidential and vice presidential candidates and to amend the Campaign Communications Reform Act to provide a further limitation on expenditures in election campaigns for Federal elective office (Rept. No. 93–170). Under authority of the order of the Senate of January 23, 1973, the bill was referred to the Committee on Rules and Administration, to report no later than 30 days.

EXECUTIVE REPORTS OF COMMITTEES

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

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

William J. Deachman III, of New Hampshire, to be U.S. attorney for the District of New Hampshire;

Louis O. Aleksich, of Montana, to be U.S. marshal for the District of Montana;

Allen L. Donielson, of Iowa, to be U.S. attorney for the South District of Iowa;

V. DeVoe Heaton, of Nevada, to be U.S. attorney for the District of Nevada;

Benjamin F. Holman, of the District of Columbia, to be Director, Community Relations Service;

James L. Treece, of Colorado, to be U.S. attorney for the District of Colorado; and

Paul J. Curran, of New York, to be U.S. attorney for the Southern District of New York.

The above nominations were reported with the recommendation that they be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

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. GOLDWATER (for himself and Mr. FANNIN):

S. 1860. A bill to deem certain disabilities incurred pursuant to State National Guard service during World War I to be service-connected for purposes of chapter 11 of title 38, United States Code (relating to compensation for service-connected disabilities), and for other purposes. Referred to the Committee on Veterans' Affairs.

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

S. 1861. A bill to amend the Fair Labor Standards Act of 1938, as amended, to extend its protection to additional employees, to raise the minimum wage to $2.20 an hour, and for other purposes. Referred to the Committee on Labor and Public Welfare.

By Mr. SAXBE (for himself and Mr. TAFT):

S. 1862. A bill to provide for the establishment of the Cuyahoga Valley National Historical Park and Recreation Area. Referred to the Committee on Interior and Insular Affairs.

By Mr. HASKELL (for himself and Mr. DOMINICK):

S. 1863. A bill to designate the Weminuche Wilderness, Rio Grande and San Juan National Forests, in the State of Colorado; and

S. 1864. A bill to designate the Eagles Nest Wilderness, Arapaho and White River National Forests, in the State of Colorado. Referred to the Committee on Interior and Insular Affairs.

By Mr. BELLMON (for himself and Mr. BARTLETT, Mr. CANNON, Mr. DOLE, Mr. GURNEY, Mr. HASKELL, Mr. JACKSON, Mr. MANSFIELD, Mr. MCGEE, Mr. METCALF, and Mr. MOSS):

S. 1865. A bill to amend the National Environmental Policy Act of 1969 in order to encourage the establishment of, and to assist, State and regional environmental centers. Referred to the Committee on Interior and Insular Affairs.

By Mr. BURDICK:

S. 1866. A bill to provide increases in certain annuities payable under chapter 83 of title 5, United States Code, and for other purposes. Referred to the Committee on Post Office and Civil Service.

By Mr. HATHAWAY:

S. 1867. A bill to amend the Railroad Retirement Act of 1937 and the Railroad Retirement Tax Act to revise certain eligibility conditions for annuities; to change the railroad retirement tax rates; and to amend the Interstate Commerce Act in order to improve the procedures pertaining to certain rate adjustments for carriers subject to part I of such Act, and for other purposes. Referred to the Committees on Labor and Public Welfare, Commerce, and Finance, by unanimous consent.

By Mr. HUMPHREY (for himself, Mr. MCGEE, Mr. KENNEDY, Mr. CASE, Mr. JAVITS, Mr. BROOKE, Mr. ABOUREZK, Mr. BAYH, Mr. CRANSTON, Mr. EAGLETON, Mr. HART, Mr. HUGHES, Mr. INOUYE, Mr. JACKSON, Mr. MATHIAS, Mr. MCGOVERN, Mr. MONDALE, Mr. MOSS, Mr. MUSKIE, Mr. NELSON, Mr. PELL, Mr. STEVENSON, Mr. TUNNEY, and Mr. WILLIAMS):

S. 1868. A bill to amend the United Nations Participation Act of 1945 to halt the

importation of Rhodesian chrome and to restore the United States to its position as a law-abiding member of the international community. Referred to the Committee on Foreign Relations, by unanimous consent.

By Mr. LONG (for himself and Mr. JOHNSTON):

S. 1869. A bill to amend the Act of October 27, 1965, to change the procedure prescribed for local interests for making local contributions for the cost of the work and to amend the responsibility for operation and maintenance of the navigation structures required for the project for hurricane-flood protection on Lake Pontchartrain, La. Referred to the Committee on Public Works.

By Mr. BEALL:

S. 1870. A bill to amend the Communications Act of 1934 to provide that licenses for the operation of a broadcasting station shall be issued for a term of not to exceed 5 years. Referred to the Committee on Commerce.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

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

S. 1861. A bill to amend the Fair Labor Standards Act of 1938, as amended, to extend its protection to additional employees, to raise the minimum wage to $2.20 an hour, and for other purposes. Referred to the Committee on Labor and Public Welfare.

MINIMUM WAGE BILL

Mr. WILLIAMS. Mr. President, today I am introducing legislation to increase the Federal minimum wage and to expand coverage of workers under the Fair Labor Standards Act. The bill I am introducing is substantially similar to the one which passed this body last year.

I ask unanimous consent that the text of the bill be printed at the conclusion of my remarks.

Mr. President, I will be brief. The bill passed by the Senate last year was a good bill, it was a responsible bill. It would have enabled workers who toil at the minimum wage to secure for themselves and their families a minimum level of decency. But, almost a year has passed now since the Senate acted last year. The cost of living is spiralling upward at an even faster rate than it was last year. It is imperative that Congress act and that it act with dispatch.

Because of this need for prompt action, I have consciously chosen to recommend to the Senate, through this bill, the same action it approved by a vote for 65 to 27 last year.

Under this bill, workers covered by the 1966 amendments to the Fair Labor Standards Act or by these amendments—including agricultural workers—will get the same increases as provided by the Senate-passed bill last year. Of course, those increases will come 1 year later by virtue of the failure to enact the legislation last year.

For the bulk of the workers covered by the Fair Labor Standards Act—that is, those covered prior to the 1966 amendments—although the first increase to $2 an hour will be delayed by last year's inaction, the second increase to $2.20 will come at the same time as proposed in Senator PERCY's amendment, adopted on the floor of the Senate last year.

Specifically, if the Congress were to act before the August recess, workers covered prior to 1966 will get $2 an hour beginning October 1973—all dates are approximate—and $2.20 an hour beginning October, 1974. Workers—other than agricultural workers—covered by the 1966 amendments of this bill, will get $1.85 an hour in October 1973; $2 an hour in October 1974, and $2.20 an hour in October 1975. Agricultural workers will get $1.60 an hour in October 1973; $1.80 an hour in October 1974; $2 an hour in October 1975; and $2.20 an hour in October 1976.

Mr. President, I will not burden the Senate at this time with a lengthy statement. Rather, I ask unanimous consent to have placed in the RECORD, at the conclusion of my remarks, a comparison of this bill with the current law, the bill passed by the Senate last year and the bills introduced by the chairman and ranking minority members of the General Labor Subcommittee on the House Committee on Education and Labor, and a section-by-section analysis of last year's Senate bill and this bill.

Mr. President, we all recognize that a minimum wage increase is long overdue. I hope that we can act on this measure with dispatch.

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

S. 1861

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 "Fair Labor Standards Amendments of 1973".

DEFINITIONS AND APPLICABILITY TO PUERTO RICO AND THE VIRGIN ISLANDS

SEC. 2. (a) Section 3(d) of the Fair Labor Standards Act of 1938, as amended, is amended to read as follows:

"(d) 'Employer' includes any person acting directly or indirectly in the interest of an employer in relation to an employee, including the United States and any State or political subdivision of a State, but shall not include any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization."

(b) Section 3(e) of such Act is amended to read as follows:

"(e) 'Employee' means any individual employed by an employer, including any individual employed in domestic service (other than a babysitter), and in the case of any individual employed by the United States means any individual employed (1) as a civilian in the military departments as defined in section 102 of title 5, United States Code, (2) in executive agencies (other than the General Accounting Office) as defined in section 105 of title 5, United States Code (including employees who are paid from nonappropriated funds), (3) in the United States Postal Service and the Postal Rate Commission, (4) in those units of the government of the District of Columbia having positions in the competitive service, (5) in those units of the legislative and judicial branches of the Federal Government having positions in the competitive service, and (6) in the Library of Congress, and in the case of any individual employed by any State or a political subdivision of any State means any employee holding a position comparable to one of the positions enumerated for individuals employed by the United States, except that such term shall not, for the purposes of section 3(u) include any individual employed by an employer engaged in agriculture if such individual is the parent, spouse, child, or other member of the employer's immediate family.".

(c) Section 3(h) of such Act is amended to read as follows:

"(h) 'Industry' means a trade, business, industry, or other activity, or branch or group thereof, in which individuals are gainfully employed.".

(d) the last sentence of section 3(m) is amended to read as follows: "In determining the wage of a tipped employee, the amount paid such employee by his employer shall be deemed to be increased on account of tips by an amount determined by the employer, but not by an amount in excess of 50 per centum of the applicable minimum wage rate, except that the amount of the increase on account of tips determined by the employer may not exceed the value of tips actually received by the employee. The previous sentence shall not apply unless (1) the employer has informed each of his tipped employees of the provisions of this section, and (2) all tips received by any such employees have been retained by such tipped employees."

(e)(1) The first sentence of section 3(r) of such Act is amended by inserting after the word "whether", the words "public or private or conducted for profit or not for profit, or whether".

(2) The second sentence of such subsection is amended to read as follows: "For purposes of this subsection, the activities performed by any person or persons in connection with the activities of the Government of the United States or of any State or political subdivision of any State shall be deemed to be activities performed for a business purpose.".

(f)(1) The first sentence of section 3(s) of such Act is amended (A) by inserting after the words "means an enterprise", the parenthetical clause "(whether public or private or operated for profit or not for profit and including activities of the Govenment of the United States or of any State or political subdivision of any State)", (B) by striking the word "employees" the first two times it appears in such sentence, and inserting in lieu thereof the words "any employee".

(2) The last sentence of section 3(s) of such Act is amended to read as follows: "Any establishment which has as its only regular employee the owner thereof or the parent, spouse, child, or other member of the immediate family of such owner shall not be considered to be an enterprise engaged in commerce or in the production of goods for commerce or a part of such an enterprise.".

(g) Section 5 of such Act is amended by adding at the end thereof the following new subsections:

"(e) The provisions of this section and section 8 shall not apply with respect to the minimum wage rate of any employee in Puerto Rico or the Virgin Islands employed (1) by an establishment which is a hotel, motel, or restaurant, (2) by any other retail or service establishment if such employee is employed primarily in connection with the preparation or offering of food or beverages for human consumption, either on the premises, or by such services as catering, banquet, box lunch, or curb or counter service, to the public, to employees or to members or guests or members of clubs, or (3) by any employer which is a State or a political subdivision of any State. The minimum wage rate of such an employee shall be determined in accordance with sections 6 (a) or (b), 13, and 14 of this Act.

"(f) The provisions of this section and section 8 shall not operate to permit a wage order rate lower than that which would result under the provisions of section 6(c).".

MINIMUM WAGES

SEC. 3. (a) Section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, is amended to read as follows:

"(1)(A) not less than $2.00 an hour during the first year from the effective date of the

Fair Labor Standards Amendments of 1973, and

"(B) not less than $2.20 an hour thereafter."

(b) Section 6(a)(5) of such Act is amended to read as follows:

"(5) if such employee is employed in agriculture, not less than $1.60 an hour during the first year from the effective date of the Fair Labor Standards Amendments of 1973, not less than $1.80 an hour during the second year from such date, not less than $2.00 an hour during the third year from such date, and not less than $2.20 an hour thereafter."

(c) Section 6(b) of such Act is amended—

(1) by inserting after the words "Fair Labor Standards Amendments of 1966,", the words "or the Fair Labor Standards Amendments of 1973,";

(2) by striking out paragraphs (1) through (5) thereof and inserting in lieu thereof the following:

"(1) not less than $1.80 an hour during the first year from the effective date of the Fair Labor Standards Amendments of 1973;

"(2) not less than $2.00 an hour during the second year from such date; and

"(3) not less than $2.20 an hour thereafter.".

(d) Section 6(c) is amended by striking out paragraphs (2), (3), and (4) and inserting in lieu thereof the following:

"(2) In the case of any such employee who is covered by such a wage order to whom the rate or rates prescribed by subsection (a) or (b) would otherwise apply the following rates shall apply:

"(A) During the first year from the effective date of the Fair Labor Standards Amendments of 1973, for any employee whose highest rate is less than $0.80 an hour, such rate shall not be less than $1.00 an hour.

"(B) During the first year from the effective date of the Fair Labor Standards Amendments of 1973, for any employee whose highest rate is $0.80 an hour or more, such rate shall be the highest rate or rates in effect on or before such date under any wage order covering such employee, increased by $0.20.

"(C) During the second year from the effective date of the Fair Labor Standards Amendments of 1973, and in each year thereafter, the highest rate or rates (including any increase prescribed by this paragraph) in effect on or before such date, under any wage order covering such employee, increased by $0.20 in each such year.

"(D) Whenever the rates prescribed by subparagraph (C) would otherwise equal or exceed the rates prescribed in section 6(a), the provisions of such section shall apply thereafter.

"(3)(A) In the case of any such employee to whom this subsection was made applicable by the Fair Labor Standards Amendments of 1973, the Secretary shall, as soon as practicable after the date of enactment of such amendments, appoint a special industry committee in accordance with section 5. Such industry committee shall recommend a minimum wage rate of $1.60, unless there is substantial documentary evidence, including pertinent unabridged profit and loss statements and balance sheets for a representative period of years, in the record which establishes that the industry, or a predominant portion thereof, is unable to pay that wage. In no event shall any industry committee recommend a minimum wage rate less than the rate prescribed in paragraph 2 (A) of this subsection. Any rate recommended by the special industry committee within sixty days after the effective date of the Fair Labor Standards Amendments of 1973 shall be effective with respect to such employee upon the effective date of the wage order issued pursuant to such recommendation, but not before sixty days after the effective date of the Fair Labor Standards Amendments of 1973.

"(B) Upon the issuance of the wage order required by subparagraph (A) of this paragraph, the provisions of paragraph (2) shall apply.

"(4) In the case of any employee employed in agriculture who is covered by a wage order issued by the Secretary pursuant to the recommendations of a special industry committee appointed pursuant to section 5 and whose hourly wage is increased above the wage rate prescribed by such wage order by a subsidy (or income supplement) paid, in whole or in part, by the government of Puerto Rico, the following rates shall apply:

"(A) The rate or rates applicable under the most recent such wage order issued by the Secretary, increased by (i) the amount by which such employee's hourly wage is increased above such rate or rates by the subsidy (or other income supplement), and (ii) $0.20.

"(B) Beginning one year after the effective date of the Fair Labor Standards Amendments of 1973, the provisions of subparagraphs 2(C) and 2(D) of this subsection shall apply.".

(e) Section 6(e) is amended to read as follows:

"(e) Notwithstanding the provisions of section 13 of this Act (except subsections (a)(1) and (f) thereof), every employer providing any contract services under a contract with the United States or any subcontract thereunder shall pay to each of his employees whose rate of pay is not governed by the Service Contract Act of 1965 (41 U.S.C. 351–357), as amended, or to whom subsection (a) of this section is not applicable, wages at rates not less than the rates provided for in subsection (b) of this section.".

(f) Section 6 of such Act is amended by adding at the end thereof the following new subsection:

"(f) Every employer who in any workweek employs any employee in domestic service in a household shall pay such employee wages at a rate not less than the wage rate in effect under subsection (b) of this section, unless such employee's compensation for such service would not, as determined by the Secretary, constitute 'wages' under section 209 of the Social Security Act.".

MAXIMUM HOURS

SEC. 4. (a) Section 7 of the Fair Labor Standards Act of 1938, as amended, is amended by striking out subsections (a), (e), and (d) and inserting in lieu thereof the following new subsection (a):

"(a) No employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.".

(b)(1) Subsections (e), (f), (g), (h), (i), and (j) of section 7 of such Act, are redesignated as subsections (c), (d), (e), (f), (g), and (h), respectively.

(2) Subsection (e) (as redesignated by paragraph (1)) of section 7 of such Act is amended by striking out "(e)" in the text of such subsection (e) and inserting in lieu thereof "(c)".

(3) Subsection (f) (as redesignated by paragraph (1)) of section 7 of such Act is amended by striking out "(e)" in the text of such subsection (f) and inserting in lieu thereof "(c)".

(c) Section 7 of such Act is amended by adding at the end thereof the following new subsections:

"(i) No State or political subdivision of a State shall be deemed to have violated subsection (a) with regard to any employee engaged in fire protection or law enforcement activities (including security personnel in correctional institutions) if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, a work period of twenty-eight consecutive days is accepted in lieu of the workweek of seven consecutive days for purposes of overtime computation and if the employee receives compensation at a rate not less than one and one-half times the regular rate at which he is employed for his employment in excess of—

"(1) one hundred and ninety-two hours in each such twenty-eight-day period during the first year from the effective date of the Fair Labor Standards Amendments of 1973;

"(2) one hundred and eighty-four hours in each such twenty-eight-day period during the second year from such date;

"(3) one hundred and seventy-six hours in each such twenty-eight-day period during the third year from such date;

"(4) one hundred and sixty-eight hours in each such twenty-eight-day period during the fourth year from such date; and

"(5) one hundred and sixty hours in each such twenty-eight-day period thereafter.

"(j) In the case of an employee of an employer engaged in the business of operating a street, suburban or interurban electric railway, or local trolley, or motorbus carrier (regardless of whether or not such railway or carrier is public or private or operated for profit or not for profit) in determining the hours of employment of such an employee to which the rate prescribed by subsection (a) applies there shall be excluded the hours such employee was employed in charter activities by such employer if (1) the employee's employment in such activities was pursuant to an agreement or understanding with his employer arrived at before engaging in such employment, and (2) if employment in such activities is not part of such employee's regular employment.

PROOF OF AGE REQUIREMENT

SEC. 5. Section 12 of the Fair Labor Standards Act of 1938, as amended, is amended by adding at the end thereof the following new subsection:

"(d) In order to carry out the objectives of this section, the Secretary may by regulation require employers to obtain from any employee proof of age."

EXEMPTIONS

SEC. 6. (a)(1) Section 13(a)(1) of such Act is amended by striking out everything after the words "Administrative Procedure Act" and before "; or".

(2) Section 13(a)(2) of such Act is amended to read as follows:

"(2) any employee employed by any retail or service establishment (except an establishment or employee engaged in laundering, cleaning, or repairing clothing or fabrics or an establishment engaged in the operation of a hospital, institution, or school described in section 3(s)(4)), if more than 50 per centum of such establishment's annual dollar volume of sales of goods or services is made within the State in which the establishment is located, and such establishment is not in an enterprise described in section 3(s). A retail or service establishment means an establishment 75 per centum of whose annual dollar volume of sales of goods or services (or of both) is not for resale and is recognized as retail sales or services in the particular industry; or".

(3) Sections 13(a)(4), and 13(a)(11) of such Act, relating to employees employed by retail and service establishments, are hereby repealed.

(4) Section 13(a)(6) of such Act, relating to employees employed in agriculture, is amended (A) by striking out clause (C) thereof, (B) by striking out in clause (D) thereof "(other than an employee described in clause (C) of this subsection)", and (C) by redesignating clauses (D) and (E) thereof as clauses (C) and (D), respectively.

(5) Section 13(a)(9) of such Act, relating to employees employed by motion picture theater establishments, is hereby repealed.

(6) Section 13(a)(13) of such Act, relating to employees of logging and sawmill operations, is hereby repealed.

(7) Section 13(a)(14) of such Act, relating to agricultural employees, engaged in the harvesting and processing of shade-grown tobacco, is hereby repealed.

(8) Sections 13(a)(5), 13(a)(6), 13(a)(7), 13(a)(8), 13(a)10), and 13(a)(12) are redesignated as sections 13(a)(4), 13(a)(5), 13(a)(6), 13(a)(7), 13(a)(8), and 13(a)(9), respectively.

(9) Section 13(a)(9) (as redesignated by the preceding paragraph) is amended by striking out the semicolon and the word "or" and inserting in lieu thereof a period.

(b)(1) Section 13(b)(2) of such Act, relating to railroad and pipeline employees, is amended by inserting the words "engaged in the operation of a common carrier by rail and" following the word "employer".

(2) Section 13(b)(4) of such Act, relating to fish and seafood processing employees, is hereby repealed.

(3)(A) Effective sixty days after the date of enactment of the Fair Labor Standards Amendments of 1973, section 13(b)(7) of such Act, relating to employees of street, suburban or interurban electric railways, or local trolley or motorbus carriers, is amended by striking out ", if the rates and services of such railway or carrier are subject to regulation by a State or local agency" and inserting in lieu thereof the following: "(regardless of whether or not such railway or carrier is public or private or operated for profit or not for profit), and if such employee receives compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed".

(B) Effective one year after such date, such paragraph is amended by striking out "forty-eight hours" and inserting in lieu thereof "forty-four hours".

(C) Effective two years after such date, such paragraph is repealed.

(4) Section, 13(b)(8) of such Act, relating to employees employed by hotels, motels, restaurants, or nursing homes, is amended to read as follows:

"(8)(A) any employee who is employed by an establishment which is a hotel, motel, or restaurant and receives compensation at a rate not less than one and one-half times the regular rate at which he is employed for his employment in excess of (i) forty-eight hours in any workweek during the first year from the effective date of the Fair Labor Standards Amendments of 1973, and (ii) forty-six hours in any workweek thereafter; or (B) any employee who is employed by an establishment which is an institution (other than a hospital) primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises, and receives compensation at a rate not less than one and one-half times the regular rate at which he is employed for his employment in excess of (i) forty-eight hours in any workweek during the first year from the effective date of the Fair Labor Standards Amendments of 1973, (ii) forty-six hours in any workweek during the second year from the effective date of the Fair Labor Standards Amendments of 1973, and (iii) forty-four hours in any workweek thereafter; or"

(5) Section 13(b)(10) of such Act, relating to employees employed as salesmen, partsmen, or mechanics by automobile, trailer, truck, farm implement, or aircraft dealers, is amended to read as follows:

"(10) any salesman, partsman, or mechanic primarily engaged in selling or servicing farm implements or any salesman primarily engaged in selling automobiles, trailers, or trucks if employed by a non-manufacturing establishment primarily engaged in the business of selling such vehicles to ultimate purchasers; or".

(6) Section 13(b)(15) of such Act is amended to read as follows:

"(15) any employee engaged in the processing of maple sap into sugar (other than refined sugar) or syrup; or".

(7)(A) Effective sixty days after the date of enactment of the Fair Labor Standards Amendments of 1973, section 13(b)(18) of such Act, relating to employees of catering establishments, is amended by inserting immediately before the semicolon the following: "and receives compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed".

(B) Effective one year after such date such paragraph is amended by striking out "forty-eight hours" and inserting in lieu thereof "forty-four hours".

(C) Effective two years after such date such paragraph is repealed.

(8)(A) Effective one year after the effective date of the Fair Labor Standards Amendments of 1973, section 13(b)(19) of such Act, relating to employees of bowling establishments, is amended by striking out "forty-eight hours" and inserting in lieu thereof forty-four hours".

(B) Effective one year after such date such paragraph is repealed.

(9) Sections 13(b)(5), 13(b)(6), 13(b)(7), 13(b)(8), 13(b)(9), 13(b)(10), 13(b)(11), 13(b)(12), 13(b)(13), 13(b)(14), 13(b)(15), 13(b)(16), 13(b)(17), 13(b)(18), and 13(b)(19), are redesignated as sections 13(b)(4), 13(b)(5), 13(b)(6), 13(b)(7), 13(b)(8), 13(b)(9), 13(b)(10), 13(b)(11), 13(b)(12), 13(b)(13), 13(b)(14), 13(b)(15), 13(b)(16), 13(b)(17), and 13(b)(18), respectively.

(10) Section 13(b)(18) (as redesignated by the preceding paragraph) is amended by striking out the period and inserting in lieu thereof a semicolon and the word "or".

(11) Section 13(b) of such Act is amended by adding at the end thereof the following new paragraph:

"(19) any employee who in any workweek is employed in domestic service in a household; or

"(20) any employee employed in planting or tending trees, cruising, surveying, or felling timber, or in preparing or transporting logs or other forestry products to the mill, processing plant, railroad, or other tansportation terminal, if the number of employees employed by his employer in such forestry or lumbering operations does not exceed eight."

(c) Section 13(c)(1) of such Act is amended to read as follows:

"(c)(1) Except as provided in paragraph (2) the provisions of section 12 relating to child labor shall not apply to any employee employed in agriculture outside of school hours for the school district where such employee is living while he is so employed, if such employee—

"(A) is employed by his parent, or by a person standing in the place of his parent, on a farm owned or operated by such parent or person, or

"(B) is fourteen years of age or older, or

"(C) is twelve years of age or older, and (i) such employment is with the written consent of his parent or person standing in place of his parent, or (ii) his parent or person standing in place of his parent is employed on the same farm."

LEARNERS, APPRENTICES, STUDENTS, AND HANDICAPPED WORKERS

SEC. 7. Section 14(b) of the Fair Labor Standards Act of 1938, as amended, is amended (1) by inserting following the word "establishments" each time it appears, the words "or educational institutions" and by inserting following the word "establishment" each time it appears, the words "or educational institution", (2) by inserting following the words "Fair Labor Standard Amendments of 1966,", the words "and the Fair Labor Standards Amendments of 1973", and (3) by inserting, following the words "prior to such", the word "applicable".

PENALTIES

SEC. 8. The first two sentences of section 16(c) of the Fair Labor Standards Act of 1938, as amended, are amended to read as follows:

"The Secretary is authorized to supervise the payment of the unpaid minimum wages or the unpaid overtime compensation owing to any employee or employees under section 6 or 7 of this Act, and the agreement of any employee to accept such payment shall upon payment in full constitute a waiver by such employee of any right he may have under subsection (b) of this section to such unpaid minimum wages or unpaid overtime compensation and an additional equal amount as liquidated damages. The Secretary may bring an action in any court of competent jurisdiction to recover the amount of the unpaid minimum wages or overtime compensation and an equal amount as liquidated damages."

CIVIL PENALTY FOR CERTAIN CHILD LABOR VIOLATIONS

SEC. 9. Section 16 of the Fair Labor Standards Act of 1938, as amended, is amended by adding at the end thereof the following new subsection:

"(e) Any person who violates the provisions of section 12, relating to child labor, or any regulation issued under that section, shall be subject to a civil penalty of not to exceed $1,000 for each such violation. In determining the amount of such penalty, the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered. The amount of such penalty, when finally determined may be deducted from any sums owing by the United States to the person charged."

RELATION TO OTHER LAWS

SEC. 10. Section 18(b) of the Fair Labor Standards Act of 1938, as amended, is amended (1) by striking out "6(a)(1)" and inserting in lieu thereof "6(a)", and (2) by striking out "7(a)(1)" and inserting in lieu thereof "7(a)."

CONFORMING AMENDMENTS TO OTHER LAWS

SEC. 11. (a) Section 12(a)(2) of the Emergency Employment Act of 1971 (42 U.S.C. 4871) is amended by striking out "section 6(a)(1)" and inserting in lieu thereof "section 6".

(b) Section 9 of the Act entitled "An act to provide conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes," approved June 30, 1936 (41 U.S.C. 43) is amended by inserting immediately before the period at the end thereof the following: "or to certain transportation employees of private carriers of property by motor vehicle, as that term is defined in section 203(a)(17) and limited under section 203(c) of part II of the Interstate Commerce Act, where such employees are subject to regulation as to qualifications and hours of service pursuant to section 6(e)(6)(C) and 6(f)(2)(A) of the Department of Transportation Act of 1966".

NONDISCRIMINATION ON ACCOUNT OF AGE IN GOVERNMENT EMPLOYMENT

SEC. 12. (a) (1) The second sentence of section 11 (b) of the Age Discrimination in Employment Act of 1967 is amended to read as follows: "The term also means (1) any agent of such a person, and (2) a State or political subdivision of a State and any agency or instrumentality of a State or a political subdivision of a State, but such term does not include the United States, or a corporation wholly owned by the Government of the United States."

(2) Section 11(c) of such Act is amended by striking out ", or an agency of a State or political subdivision of a State, except that such term shall include the United States

Employment Service and the system of State and local employment services receiving Federal assistance".

(b)(1) The Age Discrimination in Employment Act of 1967 is amended by redesignating sections 15 and 16, and all references thereto, as section 16 and section 17, respectively.

(2) The Age Discrimination in Employment Act of 1967 is further amended by adding immediately after section 14 the following new section:

"NONDISCRIMINATION ON ACCOUNT OF AGE IN FEDERAL GOVERNMENT EMPLOYMENT"

"SEC. 15. (a) All personnel actions affecting employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) in military departments as defined in section 102 of title 5, United States Code, in executive agencies (other than the General Accounting Office) as defined in section 105 of title 5, United States Code (including employees and applicants for employment who are paid from nonappropriated funds), in the United States Postal Service and the Postal Rate Commission, in the Government of the District of Columbia having positions in the competitive service, and in those units of the legislative and judicial branches of the Federal Government having positions in the competitive service, and in the Library of Congress shall be made free from any discrimination based on age.

"(b) Except as otherwise provided in this subsection, the Civil Service Commission is authorized to enforce the provisions of subsection (a) through appropriate remedies, including reinstatement or hiring of employees with or without backpay, as will effectuate the policies of this section. The Civil Service Commission shall issue such rules, regulations, orders, and instructions as it deems necessary and appropriate to carry out its responsibilities under this section. The Civil Service Commission shall—

"(1) be responsible for the review and evaluation of the operation of all agency programs designed to carry out the policy of this section, periodically obtaining and publishing (on at least a semiannual basis) progress reports from each such department, agency, or unit; and

"(2) consult with and solicit the recommendations of interested individuals, groups, and organizations relating to nondiscrimination in employment on account of age.

The head of each such department, agency, or unit shall comply with such rules, regulations, orders, and instructions which shall include a provision that an employee or applicant for employment shall be notified of any final action taken on any complaint of discrimination filed by him thereunder. Reasonable exemptions to the provisions of this section may be established by the Commission but only when the Commission has established a maximum age requirement on the basis of a determination that age is a bona fide occupational qualification necessary to the performance of the duties of the position. With respect to employment in the Library of Congress, authorities granted in this subsection to the Civil Service Commission shall be exercised by the Librarian of Congress.

"(c) Any persons aggrieved may bring a civil action in any court of competent jurisdiction for such legal or equitable relief as will effectuate the purposes of this Act.

"(d) When the individual has not filed a complaint concerning age discrimination with the Commission, no civil action may be commenced by any individual under this section until the individual has given the Commission not less than thirty days' notice of an intent to file such action. Such notice shall be filed within one hundred and eighty days after the alleged unlawful practice occurred. Upon receiving a notice of intent to sue, the Commission shall promptly notify all persons named herein as propospective defendants in the action and take any appropriate action to assure the elimination of any unlawful practice.

"(e) Nothing contained in this section shall relieve any Government agency or official of the responsibility to assure nondiscrimination on account of age in employment as required under any provision of Federal law.".

EFFECTIVE DATE

SEC. 13. This Act shall become effective upon the expiration of sixty days after the date of its enactment.

SECTION-BY-SECTION ANALYSIS

SECTION 1. The popular name of this bill is the "Fair Labor Standards Amendments of 1973."

SEC. 2. Amends sections 3(d) and 3(c) of the Fair Labor Standards Act of 1938, as amended, to include under the definitions of "employer" and "employee" the United States and any State or political subdivision of a State. This will expand the coverage of the existing law to include agencies and activities of the United States (except the armed forces and certain employees not in the competitive service), and to similar employees in the States and their political subdivisions, not just hospitals, nursing homes, schools, and local transit as at present.

Amends section 3(e) to also include under the definition of "employee" any individual employed in domestic service, except babysitters. This amendment would add to coverage an estimated 1.2 million workers. In addition, section 3(e) is amended to include local seasonal hand harvest laborers in the man-day count for agricultural coverage and to define those government employees covered by the bill.

Amends section 3(h) to add the words "or other activity" to the definition of the word "Industry."

Amends section 3(m) to require that tipped employees retain all tips but not necessarily retained. At present, employers may include the value of tips actually received if employer is to utilize the 50 percent "tip-credit," in determining wages to be paid.

Amends section 3(r) to include under "enterprise" the activities of the United States Government or any State or political subdivision thereof. This amendment will broaden the effect of retaining the current coverage for schools and hospitals, whether operated for profit or not for profit, and for regulated public and private local transit whether operated for profit or not for profit.

Amends sections 5 and 8 by bringing under the mainland minimum wage the employees of hotels, motels, and restaurants in Puerto Rico and the Virgin Islands. At present these workers are covered by wage rates determined by specially convened industry committees. Also covered at the mainland minimum are employees of governmental units in Puerto Rico and the Virgin Islands. Section 5 is also amended to prohibit an industry committee from reducing the wage rate below the statutory minimum.

SEC. 3. Amends section 6(a) to establish, for employees in activities covered by the Act prior to the 1966 amendments, an hourly minimum of $2.00 during the first year from the effective date of the 1973 amendments, and $2.20 thereafter.

Amends section 6(a) to establish, for employees in agriculture, an hourly minimum of $1.60 during the first year from the effective date of the 1973 amendments, $1.80 during the second year from the effective date of the 1973 amendments, $2.00 during the third year from the effective date of the 1973 amendments, and $2.20 thereafter.

Amends section 6(a) to establish, for employees newly covered by the 1966 amendments and by the 1973 amendments, an hourly minimum of $1.80 during the first year from the effective date of the 1973 amendments, $2.00 during the second year from the effective date of the 1973 amendments, and $2.20 thereafter.

Amends section 6(c) to require that covered employees in Puerto Rico and the Virgin Islands making less than $0.80 per hour under the most recent wage order be paid not less than $1.00 sixty days after enactment. Thereafter, their wages are increased by $0.20 per hour each year until parity is achieved with the mainland minimum. Employees over $0.80 per hour are raised $0.20 per hour each year after enactment until parity is achieved. Each year, special industry committees may increase the $0.20 per hour raise, but they may not lower it. Provision is also made for newly covered employees.

Amends section 6(e) to eliminate clauses excluding certain linen supply establishments from full coverage.

SEC. 4. Amends section 7 to eliminate certain provisions which provide partial overtime exemptions, particularly in agricultural processing industries, and makes other conforming amendments.

Amends section 7 to provide for overtime averaging over a twenty-eight day period and a phase down from 48 to 40 hours per week without time-and-a-half penalty for state and local government employees engaged in fire protection and law enforcement activities, including security personnel in correctional institutions.

Amends section 7 to exempt voluntary charter activities from hours worked in local transit for purposes of calculating overtime.

SEC. 5. Amends section 12 to permit the Secretary to require employers to obtain proof of age from any employee in order to carry out the objectives of the child labor provisions of the Act.

SEC. 6(a). Retains minimum wage and overtime exemptions permitted by section 13(a) as follows:

13(a)(1) which describes any employee employed in a bona fide executive, administrative, or professional capacity, or in the capacity of outside salesman, but repeals the 40 percent tolerance for non-exempt activities;

13(a)(3) employees of seasonal amusement and recreational establishments;

13(a)(5) employees engaged in certain seafood harvesting and processing;

13(a)(6) employees in agriculture if employer uses 500 or fewer man days of hired labor during a peak quarter, but the provision exempting local seasonal hand harvest laborers regardless of the size of the farm on which they work is repealed;

13(a)(7) certain learners, apprentices, students, or handicapped workers;

13(a)(8) employees of small newspapers;

13(a)(10) switchboard employees of small telephone companies; and

13(a)(12) seamen on other than an American vessel.

Repeals minimum wage and overtime exemptions permitted by section 13(a) as follows:

13(a)(4) and (11) employees in certain retailing and service establishments;

13(a)(9) employees of motion picture theaters;

13(a)(14) agriculture employees engaged in growing and harvesting shade-grown tobacco.

Repeals section 13(a)(13) by removing minimum wage exemption for logging employees and retaining overtime exemption in new paragraph of section 13(b).

Amends section 13(a)(2) by eliminating the special dollar volume establishment test for retail and service enterprises. This amendment has the effect of covering most chain store operations not now covered.

Sec. (b). 6 Retains overtime exemptions permitted by section 13(b) as follows:

13(b)(1) employees for whom the Secretary of Transportation may establish qualifications and maximum hours of service;

13(b)(2) employees of railroads;

13(b)(3) employees of air carriers,
13(b)(5) outside buyers of dairy products;
13(b)(6) seamen;
13(b)(9) certain employees of small radio or television stations;
13(b)(10) employees employed as salesman by motor vehicle dealers, or as salesmen, partsmen or mechanics by farm implement dealers;
13(b)(11) local drivers and drivers' helpers;
13(b)(12) certain agricultural employees;
13(b)(13) employees engaged in livestock auction operations;
13(b)(14) employees of country elevators;
13(b)(16) employees engaged in transportation of fruits and vegetables; and
13(b)(17) taxicab drivers.

Repeals overtime exemptions permitted by section 13(b) as follows:
13(b)(2) employees of oil pipelines;
13(b)(4) employees of certain fish and aquatic forms of food processors;
13(b)(10) employees employed as partsmen or mechanics by motor vehicle dealers, or as salesmen, partsmen or mechanics by aircraft dealers;
13(b)(15) employees engaged in ginning of cotton, sugar beet or sugar cane processing, but the exemption for employees engaged in the processing of maple sap into syrup is retained;

Overtime standards for certain employees are improved in stages as follows:
13(b)(8) employees of nursing homes must be paid time-and-a-half after 48 hours first year (as in present law), after 46 hours second year, and after 44 hours thereafter;
13(b)(8) employees of hotels, motels, and restaurants must be paid time-and-a-half after 48 hours first year, and after 46 hours thereafter.

Overtime standards for certain employees are repealed in stages as follows:
13(b)(7) employees of street, suburban or interurban electric railways, or local trolley or motor bus carriers must be paid time-and-a-half after 48 hours first year, 44 hours second year, and the exemption is repealed thereafter (all hours exclusive of voluntary charter time);
13(b)(18) and 13(b)(19) employees of food service and catering establishments and bowling establishments must be paid time-and-a-half after 48 hours first year, 44 hours second year, and the exemptions are repealed thereafter.

Amends section 13(b) to provide new overtime exemptions for the following employees:
Domestic service employees.

SEC. 6(c). Amends the provisions relating to child labor in agriculture to prohibit certain employment outside of schools hours, principally for all children under the age of twelve, except on a farm owned or operated by a parent.

SEC. 7. Amends section 14(b) to prevent unwarranted displacement of full-time employees by student workers in retail and service establishments that are brought within the coverage of the FLSA by these amendments and to provide for student certificates for educational institutions.

SEC. 8. Amends section 16(c) to allow the Secretary of Labor to bring suit to recover unpaid minimum wages or overtime compensation and an equal amount of liquidated damages without requiring a written request from an employee. In addition, this amendment would allow the Secretary to bring such actions even though the suit might involve issues of law that have not been finally settled by the courts.

SEC. 9. Amends section 16 to provide for a civil penalty of up to $1000 for violation of the provisions of section 12, relating to child labor.

SEC. 10. Amends section 18(b) to conform with new amendments.

SEC. 11. Provides conforming amendments to other laws.

SEC. 12. Amends age discrimination in Employment Act of 1967 to cover employees of Federal, State, and local governments.

SEC. 13. Provides that the Fair Labor Standards Amendments of 1972 become effective 60 days after date of enactment.

PROPOSED FAIR LABOR STANDARDS AMENDMENTS OF 1973, 93D CONGRESS

[Comparison of principal provisions of S.—(identical, except as specifically noted to S. 1861 as passed by the Senate) with present law, H.R. 4757 and H.R. 2831]

I. MINIMUM HOURLY WAGE FOR MAINLAND EMPLOYEES

Present law	S.—(identical except as specifically noted to S. 1861, as passed (92d Cong.)) (Mr. Williams)	H.R. 4757 (Mr. Dent)	H.R. 2831 (Mr. Erlenborn)
(a) Nonagricultural workers:			
(1) Covered prior to 1966 amendments, $1.60.	$2 during 1st year; and $2.20 thereafter (also includes Federal employees covered by 1966 amendments).	$2 during 1st year; $2.20 thereafter (also includes Federal employees covered by the 1966 amendments and Federal employees at certain hospitals, institutions or schools).	$1.80 during 1st year; $2 during 2d year; $2.10 thereafter.
(2) Covered by the 1966 amendments, $1.60.	$1.80 during 1st year; $2 during 2d year; $2.20 thereafter (also includes employees covered by the 1973 amendments).	$1.80 during 1st year; $2 during 2d year; $2.20 thereafter (also includes employees covered by the 1973 amendments).	$1.70 during 1st year; $1.80 during 2d year; $2 during 3d year; $2.10 thereafter.
(b) Agricultural workers, $1.30	$1.60 during 1st year; $1.80 during 2d year; $2 during 3rd year; $2.20 thereafter.	$1.50 during 1st year; $1.70 during 2d year; $1.90 thereafter.	$1.50 during 1st year; $1.70 during 2d year; $1.80 thereafter.

II. OVERTIME PAY REQUIREMENTS

1½ times the regular rate for hours over 40 in any work week.	No change from present law	No change from present law	No change from present law.

III. MINIMUM HOURLY WAGE FOR EMPLOYEES IN PUERTO RICO AND VIRGIN ISLANDS

Determined by special industry committees, but not over $1.60.	Employees making less than $0.80 per hour under most recent wage order, raised to $1 during the 1st year from the effective date. Thereafter, their pay is increased by $0.20 per hour each year until parity is achieved. Employees over $0.80 per hour are raised $0.20 per hour each year on the effective date of the 1972 amendments and $0.20 until parity is achieved. Employees newly covered by the 1972 amendments will have minimums set (but not below $1 per hour) by newly appointed special industry committees. Upon the setting of such minimums, the raises for previously covered employees go into effect. Each year, special industry committees may increase the $0.20 per hour raise, but they may not lower it. Certain motel, hotel, restaurant, food service, and government employees are brought up to mainland minimums on the effective date of the amendments. Subsidized agricultural employees will have their increases applied to their wage rates as increased by the subsidy.	For hotel, motel, restaurant, food service, conglomerate, Federal employees and employees of the government of the Virgin Islands, minimum wages the same as those for counterpart mainland employees. For other employees presently covered by a wage order, percentage increases, as follows: For nonagricultural employees covered before 1966 amendments, 25-percent increased during 1st year and 12.5-percent increase during 2d year, For nonagricultural employees covered by 1966 amendments, 3 12.5-percent increases effective in each of the first 3 years, For agricultural employees, 3 15.4-percent increases effective in each of the first 3 years (subsidized agricultural employees will have their increases applied to their wage rates as increased by the subsidy). Such increases may be reviewed by industry committees appointed by the Secretary of Labor. Provides for special industry committees to recommend minimum rates for employees covered by 1973 amendments. Requires all industry committees to recommend the minimum rates applicable to counterpart mainland employees, except where substantial documentary evidence demonstrates inability to pay.	For nonagricultural employees covered prior to 1966 amendments, 2 12.5-percent increases, the 1st effective 60 days from effective date of the 1973 amendments or 1 year from the most recent wage order, the 2d effective 1 year later and 1 6.25-percent increase effective 1 year later. For nonagricultural employees covered by the 1966 amendments, 2 6.25-percent increases, the 1st effective 60 days from effective date of the 1973 amendments or 1 year from the most recent wage order, the 2d effective 1 year later, a 12.5-percent increase effective 1 year later and a 6.25 increase effective 1 year later. For agricultural employees 2, 15.4-percent increases and 1 7.7-percent increase with effective dates calculated the same way as for nonagricultural employees covered prior to 1966 amendments (Subsidized agricultural employees will have the percentage increase applied to their basic wage rate which will then be increased by the subsidy). Notwithstanding any other provisions, no minimum rate shall be less than 60 percent of the minimum applicable to counterpart mainland employees.

[Comparison of principal provisions of S.—(identical except as specifically noted to S. 1861 as passed by the Senate) with present law, H.R. 4757 and H.R. 2831]

Present law	S.—(identical except as specifically noted to S. 1861, as passed (92d Cong.)) (Mr. Williams)	H.R. 4757 (Mr. Dent)	H.R. 2831 (Mr. Erlenborn)
(a) Government employees: Limited coverage of some government employees (Federal wage board workers, government employees in State and local government operated schools, nursing institutions, hospitals, Federal hospitals not covered.)	Coverage for all Federal, State, and local government employees, except persons serving in the armed services and certain persons not in the competitive service. With regard to overtime, a special provision for a mutually agreed to 28-day work period is made for averaging overtime hours for State and local law enforcement (including security personnel in correctional institutions) and fire protection employees. Scales down the non-overtime work period during a 28-day work cycle from 192 hours to 160 hours over 4 years.	Coverage for all Federal, State and local government employees (such State and local government employees engaged in fire protection or law enforcement activities are exempt from overtime provisions).	No change from present law.
(b) Domestic service employees: No coverage	Coverage for minimum wage only included for domestic service employees, except baby-sitters.	Coverage for minimum wage and overtime for domestic service employees, except for such employees residing in their employers' households.	Do.
(c) Retail and service employees: No coverage if annual gross sales volume is below $250,000 (except for specifically listed establishments in "Enterprise" definition; laundering, cleaning, or repairing clothes or fabrics).	Coverage of retail and service establishment employees working in all stores in a large chain.	No change from present law	Do.
(d) Agricultural workers: No coverage unless the employer used more than 500 man-days of agricultural labor during peak quarter in the past calendar year. Local seasonal hand harvest laborers not counted for purposes of man-day test and excluded from minimum wage. Parents, spouse, child or other member of employer's immediate family are not covered employees in agriculture.	Minimum wage coverage expanded to include local seasonal hand harvest laborers. These are also included for purposes of calculating number of man-days of labor used by a farm. 500 man-day test retained for purposes of determining which farms are covered. No change from present law	Do	Do.
V. EXEMPTIONS			
(a) Minimum wage and overtime exemptions: Specified employment exempt from minimum wage and overtime requirements. Includes an establishment which has as its only regular employees the owner, or parent, spouse, child, or other member of the owner's immediate family.	Minimum wage and overtime exemption repealed for: Motion picture theater employees; Shade grown tobacco employees engaged in processing such tobacco; certain telegraph agency employees; certain employees of retail-manufacturing establishments. Minimum wage exemption only repealed for: Logging and sawmill employees.	Minimum wage and overtime exemption repealed for employees of conglomerates. Minimum wage and overtime exemption extended to resident house parents (husband and wife) of orphans residing in private nonprofit educational institutions, if couple earns at least $10,000 per year in salary from such employment.	Retains present exemptions and extends minimum wage and overtime exemptions to: Employees delivering shopping news including shopping guides, handbills, or other types of advertising material. Resident house parents (husband and wife) of orphans residing in private nonprofit educational institutions, if couple earns at least $10,000 per year in salary from such employment
(b) Overtime exemptions only: Specified employment exempt from overtime requirements only.	Overtime exemption repealed for: Agricultural, processing, seafood processing, oil pipeline, cotton ginning, and sugarcane and sugar beet processing employees, partsmen and mechanics in auto, truck, and trailer dealerships, and all employees in aircraft dealerships. Other overtime exemptions modified as follows: Local transit employees: 48 hours 1st year; 44 hours 2d year; 40 hours thereafter. Provides for an exemption for voluntary work performed by employees of a local transit company in nonregular charter activities which are covered by prior agreements. Hotel, motel, and restaurant employees: 48 hours 1st year; 46 hours thereafter. Nursing home employees: 48 hours 1st year; 46 hours 2d year; 44 hours thereafter. Catering and food service employees: 48 hours 1st year; 44 hours 2d year; 40 hours thereafter. Bowling employees: 48 hours retained for 1st year; 44 hours 2d year; 40 hours thereafter. Creates new overtime exemptions for: Domestic service employees. [1]	Repeals overtime exemptions for agricultural processing employees, in stages to 40 hours per week in 3d year— for local transit employees in stages as follows: 48 hours 1st year; 44 hours 2d year; 40 hours thereafter (provides for an exemption for voluntary work performed by employees of a local transit company in nonregular charter activities which are covered by prior agreements); for sugar processing employees; for maids and custodial employees of hotels and motels. Modifies current exemption for nursing home employees by requiring overtime pay for hours in excess of 80 in a 2-week period. Treats laundering and drycleaning establishments as service establishments as they involve the employment of outside salesmen or commission employees. Adds an overtime exemption for newly covered State and local government employees engaged in fire protection or law enforcement activities.	Retains present exemptions and extends partial overtime exemption to certain retail and service employees.

[1] S. 1861, as passed, provided for an exemption for resident employees in certain apartment buildings, and resident house parents in orphan homes.

VI. MISCELLANEOUS PROVISIONS

(a) Tips: Value of the tips may be included in determining wages to meet the minimum rate up to 50 percent of the minimum rate.	Tip credit to meet the minimum rate retained at 50 percent of the minimum rate. The employer must inform each of his tipped employees of the provisions of the law regarding tipping. All tips received must be retained by such tipped employees.	No change from present law	No change from present law.
(b) Child Labor: 16 years for most covered employment including agricultural workers during school hours or in occupations in hazardous agricultural work, No minimum age for children in nonhazardous agricultural work outside of school hours. 18 years for hazardous nonagricultural work. 14 years for specified employment outside school hours in nonmanufacturing and nonmining work for limited hours under specified work conditions.	Under 12, may not work in agriculture except on farms owned or operated by the parent. Between 12 and 14, may work on a farm only with consent of the parent. Between 12 and 16, may work in agriculture only during hours when school is not in session. Provides for a civil penalty of up to $1,000 for any violation of child labor provisions of the Fair Labor Standards Act. Authorizes the Secretary of Labor to issue regulations requiring employers to obtain proof of age from any employee.	Do	Provides a child labor exemption for employees delivering shopping news and advertising material.

PROPOSED FAIR LABOR STANDARDS AMENDMENTS OF 1973, 93D CONGRESS—Continued

Present law	S.—(identical except as specifically noted to S. 1861, as passed (92d Cong.) (Mr. Williams)	H.R. 4757 (Mr. Dent)	H.R. 2831 (Mr. Erlenborn)
(c) Youth employment: Provides for wage rates no less than 85 percent of the statutory minimums for: (a) Full-time students working part-time in retail or service establishments and agriculture. (b) Student-learners in vocational training programs. (c) Student workers receiving instructions in educational institutions and employed part-time in shops owned by the institutions. Student certificates are issued by the Secretary of Labor.	Retains present provisions of the Fair Labor Standards Act. Expands student certificate program to include students employed part-time by educational institutions and those employed full-time during school vacations by such institutions.	Provides for employment of full-time students (except in hazardous occupations) at wage rates not less than 85 percent of applicable minimum or $1.60 an hour ($1.30 an hour in agriculture), whichever is higher, pursuant to special certificates issued by the Secretary of Labor, for not more than 20 hours in any workweek except during vacation periods.	Provides for employment of youths under 18 (for not more than 180 days) and full-time students at wage rates not less than 80 percent of the applicable minimum or $1.60 per hour ($1.30 per hour in agriculture), whichever is higher. Such employment must be in accordance with applicable child labor laws and subject to standards set by the Secretary of Labor to ensure that employment does not create a substantial probability of reducing the full-time employment opportunities of other workers.
(d) Employment of illegal aliens: No provision in present law	No change from present law[1]	Provides for a criminal penalty for employers who knowingly employ aliens in violation of criminal laws.	No change from present law.
(e) Liquidated damages: Makes employers in violation of the Fair Labor Standards Act liable to affected employees in an amount equal to unpaid minimum wages plus an additional equal amount in liquidated damages unless the suit involves issues not finally settled by the courts. The Secretary of Labor may bring suit for back pay upon written request of the employee.	Allows the Secretary of Labor to bring suit to recover unpaid minimum wages or overtime compensation and an equal amount of liquidated damages without requiring written request of the employee and even though the suit might involve issues not finally settled by the courts.	No change from present law	Do.
(f) Canal Zone workers: Covered under the Fair Labor Standards Act.	No change from present law[2]	do	Higher minimum hourly wage rates established by this amendment shall not apply to Canal Zone employees.
(g) Age discrimination in Government employment: No coverage	Extends coverage of the Age Discrimination in Employment Act of 1967 to Federal, State, and local government employees. Gives the Federal Civil Service Commission enforcement power over discrimination for Federal employees.	do	Do.
(h) Public service employment agencies (no provisions in present law).	No change from present laws	Prohibits public employment service agencies from placing an individual with an employer who would pay such individual less than the minimum wage rate applicable under the law.	No change from present law.
VII. EFFECTIVE DATE			
	60 days after date of enactment	30 days after date of enactment	1st day of 2d full month after date of enactment.

[1] S. 1861, as passed, provided for a criminal penalty for employers who knowingly employ aliens in violation of immigration laws.

[2] S. 1861, as passed, provided that the amendments would not be applicable to the Canal Zone and that the minimum rate in the Canal Zone would be $1.70 after the 1st year.

Mr. GRIFFIN. Mr. President, on behalf of Mr. JAVITS, I ask unanimous consent that a statement by the Senator from New York (Mr. JAVITS) be printed in the RECORD.

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

STATEMENT BY SENATOR JAVITS

I am extremely pleased to join Senator Williams in introducing a minimum wage bill, which basically follows the bill passed by the Senate last year. I regard this as a top priority bill for consideration by the Labor and Public Welfare Committee. The last minimum wage increase was enacted in 1966 and because of our failure to act until now, millions of American workers are being paid minimum wages which will not even provide a standard of living above the poverty level as defined by the United States Government. Just to keep up with increases in the cost of living since the last time the minimum wage was increased would require a present minimum wage of $2.20 per hour. Today's bill does not go so far, so fast; rather it provides an immediate raise to $2 and a further increase to $2.20 one year after the effective date.

I recognize that the Administration has called for a graduated increase in the minimum wage going up to $2.30 in 1976. This bill does not provide any further increases above $2.20, but this is certainly one issue which I know the Committee will explore very thoroughly. In addition, I hope the Committee will also give close attention to the possibility of expanding coverage of the act to include more employees of small retail and service enterprises. Last year, the bill reported out by the Committee would have phased in expanded coverage in this area, but that part of the bill was deleted on the Senate floor in the desire to forge a broad consensus in the Senate on the bill. In this latter connection, I note that this bill does expand coverage to include state and local government employees and domestics.

I completely support such expanded coverage, but I also strongly believe that if we are to extend coverage to housewives employing domestics, we should also extend it to business concerns, no matter how small.

By Mr. SAXBE (for himself and Mr. TAFT):

S. 1862. A bill to provide for the establishment of the Cuyahoga Valley National Historical Park and Recreation Area. Referred to the Committee on Interior and Insular Affairs.

CUYAHOGA VALLEY NATIONAL HISTORICAL PARK AND RECREATION AREA

Mr. SAXBE. Mr. President, one of the most important and practical things that can be done to improve the quality of urban life at this time is to set aside open areas in or near cities for recreation. It is in this spirit that my colleague from Ohio, Senator TAFT, and I introduce a bill to provide for the creation of the Cuyahoga Valley National Historical Park and Recreation Area.

The bill would establish a 15,000-acre urban park and recreation area in the center of one of the Nation's most populous and industrialized centers. The new park would be near and serve the Cleveland, Akron, and Canton, Ohio, metropolitan adeas. Some 4 million people already live within a short drive of the proposed park area. The valley is the last remaining open space between Cleveland and Akron and is still untouched by urban development. Its potential for recreation has long been recognized by local and State officials. Preservation of the valley is the No. 1 recreation priority of both the Ohio Department of Natural Resources and the Cleveland and Akron Metropolitan Park Districts. Both have appropriated funds to acquire significant land in the valley. However, it is important that this land be purchased and reserved immediately or the pressures of development may make it impossible in the near future.

Federal funding is imperative to do this job.

The bill has broad support across the State. When it was first introduced in the last Congress, 13 members of the Ohio

delegation were cosponsors, as well as members from neighboring States. Since then, the National Park Service has conducted an intensive study of the valley and has prepared a favorable draft recommending inclusion of it in the Federal park system.

Ohio is the sixth largest State in the Nation in population and one of the most highly urbanized, yet it has not Federal parks or recreation areas. The Cuyahoga Valley represents the last chance to meet the recreation needs of this heavily populated and growing region. Creation of the Cuyahoga Valley Park would indeed be one step closer to fulfilling our national goal of "putting parks where the people are."

By Mr. HASKELL (for himself and Mr. DOMINICK):

S. 1863. A bill to designate the Weminuche Wilderness, Rio Grande and San Juan National Forests, in the State of Colorado; and

S. 1864. A bill to designate the Eagles Nest Wilderness, Arapaho and White River National Forests, in the State of Colorado. Referred to the Committee on Interior and Insular Affairs.

Mr. HASKELL. Mr. President, I take great pleasure in joining with my colleague the senior Senator from the State of Colorado (Mr. DOMINICK) in introducing two pieces of legislation to designate areas in Colorado as part of the National Wilderness Preservation System.

The first bill is a proposal to designate an area within the Rio Grande and San Juan National Forests as the Weminuche Wilderness. The second would set aside land within the Arapahoe and White River National Forests as the Eagles Nest Wilderness.

Senator DOMINICK and I both agree that these two areas deserve the protection of wilderness area designation.

The proposed Weminuche Wilderness is approximately 25 miles northeast of Durango, Colo., and 40 miles west of Monte Vista. The resources of the area are excellent for hunting, fishing, camping, hiking, and backpacking. The area is inhabited by elk, deer, black bear, bighorn sheep, coyote, bobcat, mountain lion, and smaller mammals and birds. In short it embodies all of the characteristics of a wilderness. Evidence of man's intrusion into the area is limited. The Weminuche Indian was the land's first human trespasser and modern day Coloradans follow the same trails the Indians used when trapping game.

The Eagle's Nest Wilderness location is even more accessible to a large portion of the State's population for a wilderness experience. It is approximately 60 miles west of Denver and 50 miles east of Glenwood Springs, Colo. Its location in one of the more rugged mountain ranges in Colorado makes it especially attractive to wilderness enthusiasts who enjoy particularly difficult mountain climbing activities. In the Gore Range there are 17 peaks over 13,000 feet and 33 over 12,000 feet—50 peaks over 2 miles high. The area is littered with lakes and streams, many of which are so remote they have not even been named.

Both Senator DOMINICK and I are enthusiastic supporters of protecting the area. My colleague is at home in Colorado and will be making a statement about the two bills upon his return.

Both the Forest Service and various wilderness advocates favor the designation of these two areas. There is some dispute over the size of the areas which should be designated. I hope that this dispute will be adequately aired in public hearings on the two bills so that we can proceed to protect these two sites in a way which will be best for all concerned.

I ask unanimous consent that the text of the two bills be printed in the RECORD at the conclusion of my remarks.

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

S. 1863

A bill to designate the Weminuche Wilderness, Rio Grande and San Juan National Forests, in the State of Colorado

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That in accordance with subsection 3(b) of the Wilderness Act (78 Stat. 891; 16 U.S.C. 1132(b)), the area classified as the San Juan and Upper Rio Grande Primitive Areas, with the proposed additions thereto and deletions therefrom, as generally depicted on a map entitled "Weminuche Wilderness—Proposed," dated May, 1973, which is on file and available for public inspection in the office of the Chief, Forest Service, Department of Agriculture, is hereby designated as the Weminuche Wilderness within and as part of the Rio Grande and San Juan National Forests comprising an area of approximately four hundred twenty-two thousand, eight hundred forty-two acres.

SEC. 2. As soon as practicable after this Act takes effect, the Secretary of Agriculture shall file a map and and a legal description of the Weminuche Wilderness with the Interior and Insular Affairs Committees of the United States Senate and the House of Representatives, and such description shall have the same force and effect as if included in this Act: *Provided, however,* That correction of clerical and typographical errors in such legal description and map may be made.

SEC. 3. The Weminuche Wilderness shall be administered by the Secretary of Agriculture in accordance with the provisions of the Wilderness Act governing areas designated by that Act as wilderness areas, except that any reference in such provisions to the effective date of the Wilderness Act shall be deemed to be a reference to the effective date of this Act.

SEC. 4. The previous classification of the San Juan and Upper Rio Grande Primitive Areas is hereby abolished.

S. 1864

A bill to designate the Eagles Nest Wilderness, Arapaho and White River National Forests, in the State of Colorado

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in accordance with subsection 3(b) of the Wilderness Act (78 Stat. 891; 16 U.S.C. 1132(b)), the area classified as the Gore Range-Eagles Nest Primitive Area, with the proposed additions thereto and deletions therefrom, as generally depicted on a map entitled "Eagles Nest Wilderness—Proposed," dated May, 1973, which is on file and available for public inspection in the office of the Chief, Forest Service, Department of Agriculture, is hereby designated as the Eagles Nest Wilderness within and as part of the Arapaho and White River National Forests comprising an area of approximately 125,000 acres.

SEC. 2. As soon as practicable after this Act takes effect, the Secretary of Agriculture shall file a map and a legal description of the Eagles Nest Wilderness with the Interior and Insular Affairs Committees of the United States Senate and House of Representatives, and such description shall have the same force and effect as if included in this Act: Provided, however, That correction of clerical and typographical errors in such legal description and map may be made.

SEC. 3. The Eagles Nest Wilderness shall be administered by the Secretary of Agriculture in accordance with the provisions of the Wilderness Act governing areas designated by that Act as wilderness areas, except that any reference in such provisions to the effective date of the Wilderness Act shall be deemed to be a reference to the effective date of this Act.

SEC. 4. The previous classification of the Gore Range-Eagles Nest Primitive Area is hereby abolished.

By Mr. BELLMON (for himself and Mr. BARTLETT, Mr. CANNON, Mr. DOLE, Mr. GURNEY, Mr. HASKELL, Mr. JACKSON, Mr. MANSFIELD, Mr. MCGEE, Mr. METCALF, and Mr. MOSS):

S. 1865. A bill to amend the National Environmental Policy Act of 1969 in order to encourage the establishment of, and to assist, State and regional environmental centers. Referred to the Committee on Interior and Insular Affairs.

Mr. BELLMON. Mr. President, I am introducing the Environmental Centers Act of 1973, a bill to authorize the establishment of centers for environmental research, education, data collection, and data analysis within the several States and regions of the Nation pursuant to the goals and policies of the National Environmental Policy Act of 1969. I ask that the bill be appropriately referred.

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

Mr. BELLMON. Mr. President, the Environmental Centers Act of 1973 is virtually identical to S. 681, which was passed by the Senate in the 92d Congress. It is also identical to title II of H.R. 56, which was enacted by the House and Senate last year, only to suffer a pocket veto by the President. The bill is being reintroduced, because I remain convinced there is great need for the legislation, perhaps greater today than ever before.

Our rapidly growing population coupled with the high rate of economic growth, which makes possible our high standard of living, places increasing demands upon the environment. The hope of the future lies in our ability to understand the potential consequences of our actions, to utilize our knowledge to repair the damage already done, and to prevent further deterioration of the environment.

Almost daily we are faced with seemingly conflicting national needs. How do we assure the Nation an adequate supply of energy without further pollution of the rivers and oceans? How do we provide for safe and economical transportation without further degradation of air quality? How do we provide adequate housing for a growing population

without needless loss of the diminishing open spaces?

The hope of the future rests squarely on our ability to find the means to sustain a healthy level of economic growth without impairment to the quality of our lives and our surroundings.

Congress has reacted to growing environmental awareness with the passage of a wide range of environmental legislation. Through these actions Congress has expressed its determination to put a stop to pollution and other forms of environmental degradation. Unfortunately, government has not yet backed up its determintaion with adequate funding, and has not yet provided the means to gather the necessary data, or to develop the necessary technological and monitoring capabilities to carry out its good intentions.

Congress has told the States, counties, and cities of the Nation they must meet rigorous standards of pollution control and environmental planning. But Congress has so far failed to provide these political entities with the means to research, understand, and solve their existing problems, or to prevent future recurrence.

Mr. President, the bill I am introducing is intended to provide us with both the data and the technological expertise needed to restore and maintain the quality of the environment through a series of environmental research centers. These centers will give to the States the assistance they need in solving their own local and State problems, and they will put to work great reservoirs of knowledge to solve the complex questions relating to economic growth and environmental quality.

Nearly 3 years ago, the Environmental Studies Board of the National Academy of Sciences and National Academy of Engineering published the findings of a special study group. This report is entitled "Institutions for Effective Management of the Environment." One of the major recommendations resulting from the study called for the establishment of environmental laboratories to carry out basic, applied and mission-oriented research programs, essential to the restoration and preservation of the environment.

Many Government agencies concerned with environmental matters conduct a variety of research programs, but with very special, limited aims and with almost no coordination among researchers. There is no Federal facility, and probably none outside the Government, which conducts broad spectrum, interdisciplinary research on the environment as a whole. Each agency studies its own particular problem or area of interest.

It was the finding of the Environmental Studies Board that all research efforts now going on at the Federal level are inadequate from an ecological point of view.

If Congress is to succeed in its dedication to restore and maintain a quality environment, we must provide the vehicle and the financing necessary for treating the environment as a total system, for thoroughly understanding our environment and the probable results of our environmental related actions, for developing reasonable and rational environmental standards, and for finding solutions to the complex questions for which we now have no answers.

The Environmental Centers Act will serve these purposes. It provides for the establishment of a qualified environmental center at an educational institution in each State; or at the option of the participating States, establishment of a regional center to serve a group of States. Second, it provides that each center shall combine and coordinate the interdisciplinary and interinstitutional research capabilities within its area and arrange for the conduct of competent research.

Public and private education and research institutions in all parts of the Nation collectively represent a substantial capability in the environmental sciences. The individual specialists within each institution are presently conducting significant research. But it is generally limited to narrow confines and there is little or no coordination of the various efforts and little means of consolidation or transfer of information.

This legislation will, for the first time, provide the means of marshaling the greatest talents and expertise available in every section of the Nation in the search for a quality existence. Each environmental center will be charged with the responsibility of seeking out the most knowledgeable persons in the public or private sector to form interdisciplinary teams and to create interinstitutional arrangements necessary for understanding, monitoring, and treating the total environment.

Each center will be able to direct and coordinate independent efforts; and will be able to bring together State and regional capabilities to solve problems peculiar to that region. Additionally, the State and regional organization structure will place the talents and expertise "on location" where environmental changes can be directly monitored and observed, and where informed, positive action can be initiated locally or regionally to enhance environmental conditions.

The Environmental Centers Act is patterned after the Hatch Act of March 2, 1887, Public Law 84–352, relating to the appropriation of Federal funds for State agriculture experiment stations, and the Water Resources Act of 1964, Public Law 88–379, relating to appropriation of Federal funds for State Water Resources Research Institutes. It provides that maximum responsibility be given to State environmental centers, and yet permits reasonable and responsible supervision by the Federal Government over expenditures of public moneys.

The establishment of agricultural experiment stations was a bold and forward looking program to improve capabilities to feed and clothe a nation. These joint State-Federal institutions have played a vital and highly successful role in making our Nation the best and most economically fed in the world. The same type of bold and progressive program is needed today to improve our capabilities to restore and enhance our national quality of life. I believe this can best be accomplished through a series of environmental research centers, managed on a Federal-State cooperative basis and operated with the greatest possible degree of independence.

The Federal role in environmental centers will be largely limited to coordination of effort and assistance in financing. Each center would be entitled to approximately one-half million dollars a year in Federal assistance provided the State met matching fund requirements. The decisions on how to spend the money would be largely based on needs and priorities of the States.

As clearly pointed out in the annual report of the Council on Environmental Quality, "the pressing need for tomorrow is to know more than we do today." This bill provides the means by which this environmental information gap may be filled.

The Congress, as well as State legislatures and other governmental bodies, is handicapped because we lack comprehensive, well organized scientific data about how natural forces work on our environment. We lack the devices to measure either improvement or deterioration in the environment. We lack the knowledge of the interrelationship of separate pollution problems. These deficiencies handicap our efforts to devise strategies for control of pollution.

This Nation is in desparate need of a foundation of information on the current and continuing status of the environment, on changes and trends in its condition, and on what those changes mean to man. Without such information we can only react to environmental problems after they become serious. The Nation needs a means to systematically and continuously accumulate the knowledge needed to develop long-term programs for environmental enhancement.

Passage of this bill will enable government at all levels to know when and where action is needed. The essential mechanism to develop this information is comprehensive nationwide environmental monitoring, collection, analysis, and effective use of the information. The Council on Environmental Quality considers development of this type information program a major national objective. But the Council further points out that even after the system for collecting and analyzing data is developed, we still must have additional knowledge to enable us to understand and interpret the data we get. Much more research is needed on how environmental systems operate—on how the environment affects man. Augmenting this type of research must take a high national priority. The Environmental Centers Act provides the means.

Mr. President, the National Environmental Policy Act clearly stresses the necessity of approaching environmental problems as a totality.

Passage of this legislation will meet that need. Moreover, it does so in the most effective manner by focusing the best available resources and expertise in every corner of the land on environmental concerns. It marshals both private and public resources and involves Americans at all levels of life in striving toward enhancement of our national quality of life.

Mr. President, I ask unanimous con-

sent that the full text of the bill be printed in the RECORD.

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

S. 1865

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) is amended by adding at the end thereof the following new title:

"TITLE III

"SHORT TITLE

"SEC. 301. This title may be cited as the 'Environmental Centers Act of 1973'.

"POLICY AND PURPOSES

"SEC. 302. (a) It is the policy of the Congress to support basic and applied research, planning, management, education, and other activities necessary to maintain and improve the quality of the environment through the establishment of environmental centers, in cooperation with and among the States, and thereby to achieve a more adequate program of environmental protection and improvement within the States, regions, and Nation pursuant to the policies and goals established in titles I and II of this Act. It is hereby recognized that research, planning, management, and education in environmental subjects are necessary to establish an environmental balance in local, State, and regional areas to assure the Nation of an adequate environment.

"(b) The purposes of this title are to stimulate, sponsor, provide for, and supplement existing programs for the conduct of basic and applied research, investigations, and experiments relating to the environment; to provide for concentrated study of environmental problems of particular importance to the several States; to provide for the widest dissemination of environmental information; to assist in the training of professionals in fields related to the protection and improvement of the Nation's environment; to provide for coordination thereof; and to authorize and direct the Administrator to cooperate with the several States for the purpose of encouraging and assisting them in carrying out the comprehensive environmental programs described above having due regard to the varying conditions and needs of the respective States.

"DEFINITIONS

"SEC. 303. As used in this title—

"(1) The term 'Administrator' means the Administrator of the Environmental Protection Agency.

"(2) The term 'educational institution' means a public or private institution of higher education, or a consortium of public or private, or public and private institutions of higher education.

"(3) The term 'environmental center' means a State environmental center or regional environmental center established pursuant to this title.

"(4) The term 'other research facilities' means the research facilities of (A) any educational institution in which a State environmental center is not located and which does not directly participate in a regional environmental center, (B) public or private foundations and other institutions, and (C) private industry.

"(5) The term 'regional environmental center' means an organization which, on an interstate basis, carries out research, training, information dissemination, and other functions described in section 306 of this title related to the protection and improvement of the environment.

"(6) The term 'State' means any State, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

"(7) The term 'State environmental center' means an organization which, on a statewide basis, carries out and coordinates research, training, information dissemination, and other functions described in section 306 of this Act related to the protection and improvement of the environment.

"DESIGNATION AND APPROVAL OF ENVIRONMENTAL CENTERS

"SEC. 304. (a) The Administrator may provide financial assistance under this title for the purpose of enabling any State, if such State does not participate in a regional environmental center receiving funds under this title, to establish and operate one State environmental center if—

"(1) such State environmental center is, or will be—

"(A) located at an educational institution within the State; and

"(B) administered by such educational institution;

"(2) such educational institution is designated by the Governor of the State; and

"(3) the Administrator determines that such State environmental center—

"(A) meets, or will meet, the requirements set forth in section 305 of this title; and

"(B) has, or will have, the capability to carry out the functions set forth in section 206 of this title.

"(b) The Administrator may provide financial assistance under this title for the purpose of enabling two or more States, if none of such States has a State environmental center assisted under this title, to establish and operate a regional environmental center if—

"(1) such regional environmental center is, or will be—

"(A) located at an education institution within one of such States or in educational institutions within two or more of such States if such institutions agree to operate jointly as the regional environmental center; and

"(B) administered by such educational institution or institutions;

"(2) such educational institution in each State is designated by the Governor of the State to participate in the regional environmental center; and

"(3) the Administrator determines that such regional environmental center—

"(A) meets, or will meet, the requirements set forth in section 305 of this title; and

"(B) has, or will have, the capability to carry out the functions set forth in section 306 of this title.

"(c) Each Governor, in designating an educational institution to be a State environmental center or to participate in a regional environmental center, shall take into account those institutions of higher education in the State which, at that time, are carrying out environmentally related research and education programs.

"ELIGIBILITY REQUIREMENTS FOR ENVIRONMENTAL CENTERS

"SEC. 305. Each State or regional environmental center shall—

"(1) be organized and operated so as to coordinate, support, augment, and implement programs contributing to the protection and improvement of the local, State, regional, and national environment;

"(2) have (A) a chief administrative officer, and (B) a treasurer who shall carry out the duties specified in section 311 of this title, each of whom shall be appointed by the chief executive officer of the educational institution concerned, in the case of a State environmental center, or jointly approved and appointed by the chief executive officers of the educational institutions concerned, in the case of a regional environmental center.

"(3) have a nucleus of administrative, professional, scientific, technical, and other personnel capable of planning, coordinating, and directing interdisciplinary programs related to the protection and improvement of the local, State, regional, and national environment;

"(4) be authorized to employ personnel to carry out appropriate research, planning, management, and education programs;

"(5) be authorized to make contracts and other financial arrangements necessary to implement section 306(b) of this title; and

"(6) make available to the public all data, publications, studies, reports, and other information which result from its programs and activities, except information relating to matters described in section 552(b)(4) of title 5, United States Code.

"FUNCTIONS OF ENVIRONMENTAL CENTERS

"SEC. 306. (a) Each State and regional environmental center shall be responsible for the following functions—

"(1) the planning and implementing of research, investigations, and experiments relating to the study and resolution of environmental pollution, natural resource management, and other local, State, and regional environmental problems and opportunities;

"(2) the training of environmental professionals through such research, investigations, and experiments, which training may include, but is not limited to, biological, ecological, geographic, geological, engineering, economic, legal, energy resource, natural resource and land use planning, social, recreational, and other aspects of enviromental problems;

"(3) the establishment, operation, and maintenance of a comprehensive environmental education program directed at the widest possible segment of the population, which program may include, but is not limited to, public school curriculums development, undergraduate degree programs, graduate programs, nondegree college level course work, professional training, short courses, workshops, and other educational activities directed toward professional training and general education;

"(4) the widest possible discrimination of useful and practical information on subjects relating to the protection and enhancement of the Nation's environment and the establishment and maintenance of a reference service to facilitate the rapid identification, acquisition, retrieval, dissemination, and use of such information; and

"(5) the coordination of effort in the several areas required to achieve the purposes and objectives of this title; and

"(6) the submission, on or before September one of each year, of a comprehensive report of its program and activities during the immediately preceding fiscal year to the Governors concerned, and the Administrator, and the Environmental Center Research Coordination Board established under section 309 of this title.

"(b)(1) Each State and regional environmental center is encouraged to contract with other regional environmental centers and with other research facilities for the carrying out of any function listed in subsection (a) of this section in order to achieve the most efficient and effective use of institutional, financial, and human resources.

"(2) Each State and regional environmental center may also make grants, contracts, and cooperative agreements on fund matching or other arrangements with—

"(A) other environmental centers, research facilities, and individuals the training, experience, and qualifications of which or whom are, in the judgment of the chief administrative officer of the environmental center, adequate for the conduct of specific projects to further the purposes of this title, and

"(B) local, State, and Federal agencies to undertake research, investigations, and experiments concerning any aspects of environmental problems related to the mis-

sion of the environmental center and the purposes of this title.

"(c) In the carrying out of the functions described in subsection (a) (3) and (4) of this section, the services of private enterprise firms active in the fields of information, publishing, multimedia materials, educational materials, and broadcasting are to be utilized whenever feasible so as to avoid creating government competition with private enterprise and to achieve the most efficient use of public funds invested in the fulfilling of the purposes of this title.

"AUTHORIZATION OF APPROPRIATIONS FOR PAYMENTS

"SEC. 307. (a) There is authorized to be appropriated $7,000,000 for the fiscal year ending June 30, 1974; $9,800,000 for the fiscal year ending June 30, 1975; and $14,000,000 for the fiscal year ending June 30, 1976. The sums authorized for appropriation pursuant to this subsection shall be disbursed in equal shares to the environmental centers by the Administrator, except that each regional environmental center shall receive the number of shares equal to the number of States participating in such regional environmental center.

"(b) In addition to the sums authorized by subsection (a) of this section, there is further authorized to be appropriated $10,000,000 for each of the three fiscal years ending June 30, 1974, June 30, 1975, and June 30, 1976, which shall be allocated by the Administrator, after consultation with the Environmental Centers Research Coordination Board, to the environmental centers on the following basis: one-fourth based on population using the most current decennial census; one-fourth based on the amount of each State's total land area; and one-half based on the assessment of the Administrator with respect to (1) the nature and relative severity of the environmental problems among the areas served by the several State and regional environmental centers, and (2) the ability and willingness of each center to address itself to such problems within its respective area; except that sums allocated under this subsection shall be made available only to those State and regional environmental centers for which the States concerned provide $1 for each $2 provided under this subsection.

"(c) In addition to the sums authorized to be appropriated under subsections (a) and (b) of this section, there is authorized to be appropriated for each of the three fiscal years ending June 30, 1974, June 30, 1975, and June 30, 1976, such sums as may be necessary to provide to each regional environmental center during each of such fiscal years an amount of money equal to 10 per centum of the funds which will be disbursed and allocated to such center during that fiscal year by the Administrator under such subsections (a) and (b).

"(d) Not less than 25 per centum of any sums allocated to an environmental center shall be expended only in support of work planned and conducted on interstate or regional programs.

"AUTHORIZATION OF APPROPRIATIONS FOR ADMINISTRATION

"SEC. 308. There is authorized to be appropriated $1,000,000 for each of the three fiscal years ending June 30, 1974, June 30, 1975, and June 30, 1976, to be used by the Administrator solely for the administration of this title and to carry out the purposes of section 309 of this title.

"ENVIRONMENTAL CENTERS RESEARCH COORDINATION BOARD

"SEC. 309. (a) There is established the Environmental Centers Research Coordination Board (hereinafter referred to in this section as the 'Board'), for the purposes of assisting the Administrator with program development and operation, consisting of the following nine members—

"(1) a Chairman, who shall be the Administrator;

"(2) one representative each from (A) the Council on Environmental Quality; (B) the National Science Foundation; (C) and the Smithsonian Institution.

"(3) five members, appointed by the Administrator, who shall be appointed on the basis of their ability to represent the views of (A) private industry; (B) not-for-profit organizations the primary objectives of which are for the purposes of improving environmental quality; (C) the public academic community; (D) the private academic community; and (E) the general public.

"(b) The Chairman of the Board may designate one of the members of the Board as Acting Chairman to act during his absence.

"(c) The Board shall undertake a continuing review of the programs and activities of all State and regional environmental centers assisted under this title and make such recommendations as it deems appropriate to the Administrator and the Governors concerned with respect to the improvement of the programs and activities of the several centers. The Board shall, in conducting its review, give particular attention to finding any unnecessary duplication of programs and activities among the several environmental centers and shall include in its recommendations suggestions for minimizing such duplications. The Board shall also coordinate its activities under this section with all appropriate Federal agencies and may coordinate such activities with such State and local agencies and private individuals, institutions, and firms as it deems appropriate.

"(d) Selection of Board members pursuant to subsection (a) (2) of this section shall be made by heads of the respective entities after consultation with the Administrator.

"(e) The Board shall meet at least four times each year. The members of the Board who are not regular full-time officers or employees of the United States shall, while carrying out their duties as members, be entitled to receive compensation at a rate fixed by the Administrator, but not exceeding $100 per diem, including travel-time, and, while away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence as authorized by law for persons intermittently employed in Government service.

"ENVIRONMENTAL CENTER ADVISORY BOARDS

"SEC. 310. (a) The Governor of each State having a State environmental center assisted under this title, and the Governors of the States participating in each regional environmental center assisted under this title, shall appoint, after consultation with the chief administrative officer of the environmental center concerned, an advisory board which shall—

"(1) advise such environmental center with respect to the activities and programs conducted by the center and the coordination of such activities and programs with the activities and programs of Federal, State, and local governments, of other educational institutions (whether or not directly participating in an environmental center assisted under this title), and of private industry related to the protection and enhancement of the quality of the environment; and

"(2) make such recommendations as it deems appropriate regarding—

"(A) the implementation and improvement of the research, investigations, experiments, training, environmental education program, information dissemination, and other activities and programs undertaken by the environmental center, and

"(B) new activities and programs which the environmental center should undertake or support.

All recommendations made by an advisory board pursuant to clause (2) of this subsection shall be promptly transmitted to the Governor or Governors concerned, the chief administrative officer of the environmental center, the chief executive officer of each educational institution in which the environmental center is located, and the Administrator.

"(b) (1) Each advisory board appointed pursuant to this section shall have not to exceed fifteen members consisting of representatives of—

"(A) the agencies of the State concerned which administer laws relating to environmental protection or enhancement;

"(B) the educational institution or institutions in which the environmental center is located;

"(C) the business and industrial community; and

"(D) not-for-profit organizations the primary objective of which is the improvement of environmental quality and other public interest groups.

The chief administrative officer of the environmental center shall be an ex officio member of the advisory board. Each advisory board shall elect a chairman from among its appointed members.

"(2) The term of office of each member appointed to any advisory board shall be for three years; except that of the members initially appointed to any advisory board, the term of office of one-third of the membership shall be for one year, the term of office of one-third of the membership shall be for two years, and the term of office of the remaining members shall be for three years.

"(c) Any recommendations made by an advisory board pursuant to subsection (a) (2) of this section shall be responded to, in writing, by the chief administrative officer of the environmental center within one hundred and twenty days after such recommendations are made. In any case in which any such recommendation is not followed or adopted by the chief administrative officer, such officer, in his response, shall state, in detail, the reason why the recommendation was not, or will not be, followed or adopted.

"(d) All recommendations made by an advisory board pursuant to subsection (a) (2) of this section, and all responses by the chief administrative officer thereto, shall be matters of public record and shall be available to the public at all reasonable times.

"(e) Each advisory board appointed pursuant to this section shall meet not less than once each year.

"(f) Funds provided under section 307 of this title may be used to pay the travel and such other related costs as shall be authorized by the chief administrative officer of the environmental center which are incurred by the members of each advisory board incident to their attendance at meetings of the advisory board; except that the amount of travel and related costs paid under this subsection to any member of an advisory board with respect to his attendance at any meeting of the advisory board may not exceed the amount which would be payable to such member if the law relating to travel expenses for persons intermittently employed in Government service applied to such member.

"MISCELLANEOUS

"SEC. 311. (a) Sums made available for allotment to the environmental centers under this title shall be paid at such time and in such amounts during each fiscal year as determined. Each treasurer appointed pursuant to section 305(2) of this title shall receive and account for all funds paid to the environmental center under the provisions of the title and shall transmit, with the approval of the chief administrative officer of the environmental center, to the Administrator on or before the first day of September of each year, a detailed statement of the

amount received under provisions of this title during the preceding fiscal year and its disbursement, on schedules prescribed by the Administrator. If any of the moneys received by the authorized receiving officer of the environmental center under the provisions of this title shall be found by the Administrator to have been improperly diminished, lost, or misapplied, it shall be replaced by the environmental center concerned and until so replaced no subsequent appropriations shall be allotted or paid pursuant to this title to that environmental center.

"(b) Moneys appropriated under this title, in addition to being available for expenses for research, investigations, experiments, education, and training conducted under authority of this title, shall also be available for printing and publishing of the results thereof.

"(c) Any environmental center which receives assistance under this title shall make available to the Administrator and the Comptroller General of the United States, or any of their authorized representatives, for purposes of audit and examination, any books, documents, papers, and records that are pertinent to the assistance received by such environmental center under this title.

"DUTIES OF ADMINISTRATOR

"SEC. 312. (a) The Administrator shall—

"(1) prescribe such rules and regulations as may be necessary to carry out the provisions and purposes of this title;

"(2) indicate the environmental centers from time to time such areas of research and investigation as to him seem most important, and encourage (specifically through the development of (A) interdisciplinary teams within each environmental center, which teams may be composed of competent persons from the environmental center, other educational institutions and research facilities, and private industry, and (B) interinstitutional arrangements among such educational institutions, private industry, and governmental agencies at all levels) and assist in the establishment and maintenance of cooperation among the several environmental centers;

"(3) report on or before January 1 of each year to the President and to Congress regarding the receipts and expenditures and work of all State and regional environmental centers assisted under the provisions of this title and also whether any portion of the appropriations available for allotment to any environmental center has been withheld, and, if so, the reason therefor; and

"(4) undertake a continuing survey, and report thereon to Congress on or before January 1 of each year, with respect to—

"(A) the interrelationship between the types of programs required to be implemented, and implemented, by environmental centers assisted under this title; and

"(B) ways in which the system provided for in this Act for improving the Nation's environment may be integrated with other environmentally related Federal programs.

The Administrator shall include in any report required under this paragraph any recommendations he deems appropriate to achieve the purposes of this title."

By Mr. BURDICK:

S. 1866. A bill to provide increases in certain annuities payable under chapter 83 of title 5, United States Code, and for other purposes. Referred to the Committee on Post Office and Civil Service.

Mr. BURDICK. Mr. President, today I am introducing for appropriate reference a bill designed to bring equitable treatment to thousands of Federal retirees, dependents, and survivors who are now facing a day-to-day struggle for existence. The legislation would raise the civil service retirement minimum payment to the minimum floor one would receive if he were covered under the Social Security Act. This minimum would apply to retired employees, to surviving widows and widowers and to dependents. However, those receiving social security would be excluded from the bill. The main purpose of this legislation is to remedy that class of dedicated retirees who receive their civil service retirement check and are not covered by social security. Also, the bill would automatically trigger an increase in the civil service annuity floor whenever the social security minimum changes.

Second, my bill would grant an across-the-board increase of $20 to all annuitants retiring prior to October 1, 1969. That was the date of enactment of the high three average annuity computation formula instead of the high five, which has resulted in higher annuities for those retiring after October 1, 1969. This would be a small gesture to a group financially distressed.

There have been other bills introduced by my colleagues which in one way or another will make everyday life much easier for senior citizens who qualify for civil service annuities. Last year my Subcommittee on Compensation and Employment Benefits held hearings on similar bills. It is my intention that we will do the same thing this year, but hopefully we will go one step further and have a bill enacted into law.

By Mr. HATHAWAY:

S. 1867. A bill to amend the Railroad Retirement Act of 1937 and the Railroad Retirement Tax Act to revise certain eligibility conditions for annuities; to change the railroad retirement tax rates; and to amend the Interstate Commerce Act in order to improve the procedures pertaining to certain rate adjustments for carriers subject to part I of such Act, and for other purposes. Referred to the Committees on Labor and Public Welfare, Commerce, and Finance, by unanimous consent.

Mr. HATHAWAY. Mr. President, I ask unanimous consent that the bill I am now introducing be referred to the Committee on Labor and Public Welfare for consideration of titles I and III, to the Committee on Commerce for consideration of titles II and III, and to the Committee on Finance for the consideration of such matters as are within its jurisdiction.

Mr. TOWER. Mr. President, has the Senator's request been cleared with the leadership?

Mr. HATHAWAY. Yes; it has been cleared by the leadership, as well as with the leadership of each of the committees involved, on both sides of the aisle.

Mr. TOWER. I do not object.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. HATHAWAY. Mr. President, I further ask unanimous consent that when the bill has been reported to the Senate by one of the foregoing committees, each of the other named committees will file its report no more than 10 calendar days thereafter, not including Saturday or Sunday, and that in the event either or both such reports are not filed prior to the expiration of the stated period, the bill will at that time be placed on the Senate Calendar.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. HATHAWAY. Mr. President, in addition, I ask unanimous consent that when H.R. 7200, the railroad retirement measure now under consideration in the House of Representatives, comes over to the Senate it will be referred in the same manner and under the same conditions as the bill I am now introducing.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

RAILROAD RETIREMENT BILL

Mr. HATHAWAY. Mr. President, I am today introducing a bill which I hope will be a positive step toward putting the railroad retirement system on a sound financial basis. The bill substantially carries out the terms of an agreement reached through nationwide collective bargaining between representatives of most major railroads in the United States and unions representing their employees. In many respects, the bill is identical with H.R. 7200, the railroad retirement bill reported out by the House Commerce Committee, which is due for consideration in that body today. But there are differences between the two bills, and it is to those differences that I would like to address my remarks today.

At this point, I ask unanimous consent that a section-by-section analysis of my bill be printed in the RECORD.

(Title II of the bill, which deals with expedited rate increase consideration by the Interstate Commerce Commission when such increases are based on cost increases incurred by the carriers under this bill, is outside the jurisdiction of my subcommittee. Consideration of this section of the bill will be handled by the Committee on Commerce.)

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

SECTION-BY-SECTION ANALYSIS OF SENATOR HATHAWAY'S RAILROAD RETIREMENT BILL—S. 1867

A DESCRIPTION OF THE PROVISIONS

S. 1867 is divided into three titles; title I of the bill contains provisions which would amend the Railroad Retirement Act, title II would amend the Interstate Commerce Act, and title III contains a separability provision. Title I of the bill is further divided into three parts, only two of which are substantive; part A contains provisions which would be in effect until the end of 1974, while part B contains provisions which would become effective after 1974.

TITLE I—RAILROAD RETIREMENT ACT AMENDMENTS

PART A—TEMPORARY PROVISIONS

Early retirement for men

Section 101—Would permit men to retire on full railroad annuities at age 60 provided that they had at least 30 years of railroad employment. Under the present law, men who retire between ages 60 and 65 receive reduced annuities, while women of the same age who have at least 30 years of railroad employment are paid full annuities. The provision would

become effective on July 1, 1973, and cease to apply after December 1973.

The section is identical to a provision in House-reported H.R. 7200, except that under the House bill the provision would continue in effect after 1974.

Change in railroad retirement tax rates

Section 102—Would reduce railroad retirement taxes paid by employees by 4.75 percent, from 10.6 percent of wages to 5.85 percent (the rate paid by employees under the social security program). Employer taxes would be increased by an identical 4.75 percent of wages, from 10.6 percent to 15.75 percent. The new tax rates would be effective generally for wages paid after September 1973 and before January 1975.

The section is identical to a provision in House-reported H.R. 7200, except that under the House bill the new rates would continue to apply after 1974.

Extension of temporary increases in annuities

Section 103—Would extend until December 31, 1974, the 15 percent increase in annuities which became effective in 1970, the 10 percent increase in annuities which became effective in 1971, and the 20 percent increase in annuities which became effective in 1972.

The section is identical to a provision in House-reported H.R. 7200.

Increases in railroad annuities when social security benefits are increased

Sections 104, 105 and 106—Would provide automatic increases in railroad annuities if social security benefits are increased after June 1973 and before January 1975. If social security benefits are increased in this period, the increase in individual annuities would be the same dollar amount that would have been provided had the individual been receiving a social security benefit based on similar earnings covered under social security.

The section is identical to a provision in House-reported H.R. 7200.

Labor-Management Committee

Section 107—Calls on representatives of employees and retirees and representatives of railroad employers to create a joint committee to recommend changes in the railroad retirement program which will assure the long-range actuarial soundness of the program. The committee would notify Congress within 30 days after the bill is enacted of the names and positions of the members of the committee. In preparing its report, the committee would meet at least once a month, keep formal minutes of each meeting, and furnish Congress with interim progress reports. The interim reports would be submitted on September 1, 1973, November 1, 1973, and January 1, 1974. The final report would be submitted to Congress no later than March 1, 1974. The recommendations for restructuring the railroad retirement program should take into account the recommendations of the Commission on Railroad Retirement and that the recommendations should be specific and in a form suitable for legislative action.

The section is a revision of a provision in House-reported H.R. 7200.

Effective dates

Section 108—Would provide the effective dates shown above for each of the other sections in this part. Included in the section is an exception for certain railroads and dock companies from the change in tax rates provided under section 102 of the bill. Under the exception, the new tax rates would not apply to the so-called "Steel Roads" until the earliest of (a) the expiration of their current labor contracts, (b) the contracts are renegotiated or (c) they agree to pay taxes at the new rates. This exception is identical to a provision in House-reported H.R. 7200.

PART B—PERMANENT PROVISIONS

Early Retirement and Benefit Rates

Section 120—Would provide that the temporary early retirement provision for men authorized by section 101 of the bill would become permanent on January 1, 1975. The temporary benefit increases of 15, 10 and 20 percent which section 103 of the bill authorizes through December 31, 1974, would also become permanent on January 1, 1975.

There is no similar provision in House-reported H.R. 7200.

Tax Rate Increases

Section 121—Would provide for increases in employee and employer railroad retirement taxes starting January 1, 1975. Under the bill, employee taxes would rise from 5.85 percent of wages to 9.6 percent, and employer taxes would rise from 15.75 percent of wages to 19.5 percent. It is estimated that these rates would finance the program on a sound actuarial basis over the long-run future.

There is no similar provision in House-reported H.R. 7200.

PART C—MISCELLANEOUS

Section 130—Would provide a short title "Railroad Retirement Amendments of 1973" for title I of the bill.

TITLE II—INTERSTATE COMMERCE ACT AMENDMENTS

Title II of the bill provides for expedited consideration of railroad rate increases requests prompted by increases in expenses related to certain sections of the Railroad Retirement Amendments in Title I. Section 201(a) directs the Commission by rule to prescribe the form and content of a petition for such rate increase. Thus the Commission would be able to obtain from the railroads at the time of the petition necessary information in useable form. Section 201(b) requires the Commission to act upon any petition for a rate increase based upon the retirement fund increases within 60 days of the receipt of such petition.

TITLE III—SEPARABILITY

Section 301—Would provide that should any part of the bill be held invalid, the remainder of the bill would not be affected.

An identical provision is contained in House-reported H.R. 7200.

Mr. HATHAWAY. Mr. President, the first important feature to note is that this bill, like H.R. 7200, calls for the extension of the temporary benefit increases granted by the Congress over the last 3 years. The present annuitants are concerned, and rightly so, that these increases not lapse on June 30 of this year, as they would under present law.

The second important point is that the bill carries out all the provisions of the recent industrywide contract. Although there are differences between my bill and H.R. 7200, these differences in no material way affect the terms of that contract, as I understand it.

The changes I am proposing in H.R. 7200 are, basically, twofold: First, clear-cut and substantial pressure is put on the parties directly involved in this matter—that is, the representatives of the railroads and the representatives of the affected unions—to consider in earnest the problems of the Railroad Retirement system and propose, within a reasonable time, a detailed legislative solution which is mutually acceptable to both sides. Second, my bill provides a solution to the problem, effective January 1, 1975, if the parties are unable to suggest a better alternative.

The problem with the system, as everyone knows by now, is money. Because of the decline in railroad employment, there are now more people drawing annuities than are working for the railroads. The payments into the fund have not and do not take account of this situation with the result that the Railroad Retirement fund is being depleted at the rate of almost $500 million a year. Current estimates are that, without a funding increase, the system will be broke by some time in the mid-1980s. The disastrous results of this, for all those drawing annuities at that point and all those still working for the railroads expecting their annuities, are obvious. The pressure for public funding of the system will be tremendous. If this is to be avoided, the Congress must act decisively now, while there is still time to give all the alternatives due consideration. Thus, the provisions of my bill.

Representatives of the railroad industries and railroad unions have testified to their intention and ability to work out this problem between themselves within a year. I have confidence that they can. But I also feel that we in the Congress have a responsibility to present and future retirees, as well as the American taxpayers, to see that the parties get on with it.

As to the length of time allotted for these negotiations, I am proposing shortening it from 1 year to 9 months—or 10 months if they start now—for a very practical reason. I want the Congress to have the opportunity to examine the proposals of the parties in a calm and unhurried atmosphere. My experience indicates that the late summer and fall of 1974—or any other even numbered year—will not be conducive to such deliberate consideration. Additionally, the various reporting provisions in the bill are clearly intended to provide assurance to the Congress that the parties are, in fact, at work on the problem.

Finally, my bill adds a new tax provision, which would apportion the payroll tax necessary to make the fund actuarially sound equally between employees and the industry, effective January 1, 1975. This is, admittedly, a rough solution to the problem, but it is a solution nonetheless, and it puts the parties on notice that this is their last chance to design their own solution. If the parties want to eliminate the burden on the fund created by so-called "dual beneficiaries," fine. If they feel that a case can be made for public assumption of some part of the deficit, then let them come to Congress and make their case. But let them do it by next March, not at some indefinite time in the future.

My feeling is that Congress should not be in the railroad retirement business at all and that some type of social-security-private supplemental system should be worked out. But for the present, we are involved in railroad retirement and are, in a sense, the fiduciaries of the system. To participate, with the parties, in the raiding of the fund is a breach of this responsibility, and could, ironically, become a principal argument for an eventual public bailout of the system.

I hope that the provisions of this bill

are not taken as a reflection upon the parties involved in this problem. I have met with many of the individuals concerned during my investigation of the situation and have been impressed by their cooperativeness and sincere dedication to finding a viable solution. But I realize that the negotiations mandated both under my bill and H.R. 7200 will be difficult and there will be situations where concessions will have to be made by both sides, concessions which may not be very palatable to the respective constituencies involved. So my bill is directed as much to these constituencies—to the railroads and their individual employees—as much as to their representatives, to put them on notice that Congress has put its foot down and that some sacrifices will be necessary.

Hearings by the Subcommittee on Railroad Retirement on this bill and H.R. 7200 will be held on May 30 and 31. I am hopeful that the subcommittee will be able to report a bill shortly thereafter which will begin the end of the railroad retirement problem.

Needless to say, the counsel and comments of my colleagues are earnestly sought in connection with this matter. I now request unanimous consent that the text of the bill be printed at this point in the RECORD.

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

S. 1867

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—RAILROAD RETIREMENT ACT AMENDMENTS

PART A—TEMPORARY PROVISIONS

SEC. 101. Section 2(a) of the Railroad Retirement Act of 1937 is amended—

(1) by striking out "Women" in paragraph (2) and inserting in lieu thereof "individuals";

(2) by striking out "Men who will have attained the age of sixty and will have completed thirty years of service, or individuals" in paragraph 3 and inserting in lieu thereof "Individuals"; and

(3) by striking out "such men or" in paragraph 3 thereof.

SEC. 102. (a) Section 3201 of the Internal Revenue Code of 1954 (relating to the rate of tax on employees under the Railroad Retirement Tax Act) is amended by striking out all that appears therein and inserting in lieu thereof the following:

"In addition to other taxes, there is hereby imposed on the income of every employee a tax equal to the rate of the tax imposed with respect to wages by section 3101(a) of the Internal Revenue Code of 1954 plus the rate imposed by section 3101(b) of such Code of so much of the compensation paid to such employee for services rendered by him after September 30, 1973, as is not in excess of an amount equal to one-twelfth of the current maximum annual taxable 'wages' as defined in section 3121 of the Internal Revenue Code of 1954 for any month after September 30, 1973."

(b) Section 3202(a) of such Code is amended—

(1) by striking out "1965" wherever it appears in the second sentence thereof and inserting in lieu thereof "1973";

(2) by striking out "(i) $450, or (ii)" wherever it appears in the second sentence thereof; and

(3) by striking out ", whichever is greater," wherever it appears in the second sentence thereof.

(c) Section 3211(a) of such Code (relating to the rate of tax on employee representatives under the Railroad Retirement Tax Act) is amended by striking out all that appears therein and inserting in lieu thereof the following:

"In addition to other taxes, there is hereby imposed on the income of each employee representative a tax equal to 9.5 percent plus the sum of the rates of tax imposed with respect to wages by sections 3101(a), 3101(b), 3111(a), and 3111(b) of the Internal Revenue Code of 1954 of so much of the compensation paid to such employee representative for services rendered by him after September 30, 1973, as is not in excess of an amount equal to one-twelfth of the current maximum annual taxable 'wages' as defined in section 3121 of the Internal Revenue Code of 1954 for any month after September 30, 1973."

(d) Section 3221(a) of such Code (relating to the rate of tax on employers under the Railroad Retirement Tax Act) is amended by striking out "In addition to other taxes" and all that follows to "except that" and inserting in lieu thereof the following:

"In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to 9.5 percent of so much of the compensation paid by such employer for services rendered to him after September 30, 1973, as is, with respect to any employee for any calendar month, not in excess of an amount equal to one-twelfth of the current maximum annual taxable 'wages' as defined in section 3121 of the Internal Revenue Code of 1954 for any month after September 30, 1973;".

(e) Section 3221(a) of such Code, as amended by section 102(d) of this Act is further amended—

(1) by striking out "1965" wherever it appears in the first sentence thereof and inserting in lieu thereof "1973";

(2) by striking out "(i) $450, or (ii)" wherever it appears in the first sentence thereof; and

(3 by striking out ", whichever is greater," wherever it appears in the first sentence thereof.

(f) Section 3221(b) of such Code is amended by striking out all that appears therein and inserting in lieu thereof the following;

"The rate of tax imposed by subsection (a) shall be increased, with respect to compensation paid for services rendered after September 30, 1973, by the rate of tax imposed with respect to wages by section 3111(a) of the Internal Revenue Code of 194 plus the rate imposed by section 3111(b) of such Code."

SEC. 103. (a) Section 6 of Public Law 91–377, as amended by section 8(c) of Public Law 92–46, is further amended by striking out "June 30, 1973" each time that date appears and inserting in lieu thereof "December 31, 1974".

(b) Section 8(b) of Public Law 92–46 is amended by striking out "June 30, 1973" each time that date appears and inserting in lieu thereof "December 31, 1974".

(c) Section 5(b) of Public Law 92–460 is amended by striking out "June 30, 1973" each time that date appears and inserting in lieu thereof "December 31, 1974".

SEC. 104. (a) Section 3(a) of the Railroad Retirement Act of 1937 is amended by inserting at the end thereof the following new paragraph:

"(6) If title II of the Social Security is amended to provide an increase in benefits payable thereunder at any time during the period July 1, 1973, through December 31, 1974, the individual's annuity computed under the preceding provisions of this subsection and that part of subsection (e) of this section which precedes the first proviso shall be increased in an amount equal to the difference between (i) the amount (before any reduction on account of age) which would be payable to such individual under the then current law if his or her annuity were computed under the first proviso of section 3(e) of this Act, without regard to the words 'plus 10 per centum of such total amount' contained therein; and (ii) the amount (before any reduction on account of age) which would have been payable to such individual under the law as in effect prior to July 1, 1973, if his or her annuity had been computed under such first proviso of section 3 (e) of this Act, without regard to the words 'plus 10 per centum of such total amount' contained therein (assuming for this purpose that the eligibility conditions and the proportions of the primary insurance amounts payable under the then current Social Security Act had been in effect prior to July 1, 1973): *Provided, however,* That in computing such amount, only the social security benefits which would have been payable to the individual whose annuity is being computed under this Act shall be taken into account: *Provided further,* That if an annuity accrues to an individual for a part of a month the added amount payable for such part of a month under this section shall be one-thirtieth of the added amount payable under this section for an entire month, multiplied by the number of days in such part of a month. If wages or compensation prior to 1951 are used in making any computation required by this paragraph, the Railroad Retirement Board shall have the authority to approximate the primary insurance amount to be utilized in making such computation. In making any computation required by this paragraph, any benefit to which an individual may be entitled under title II of the Social Security Act shall be disregarded. For purposes of this paragraph, individuals entitled to an annuity under section 2(a)(2) of this Act shall be deemed to be age 65, and individuals entitled to an annuity under section 2(a)(3) of this Act who have not attained age 62 shall be deemed to be age 62. Individuals entitled to annuities under section 2(a)(4) or 2(a)(5) of this Act for whom no disability freeze has been granted shall be treated in the same manner for purposes of this paragraph, individuals entitled to annuities under section 2(a)(4) or 2(a)(5) for whom a disability freeze has been granted. In the case of an individual who is entitled to an annuity under this Act but whose annuity is based on insufficient quarters of coverage to have a benefit computed, either actually or potentially, under the first proviso of section 3(e) of this Act, the average monthly wage to be used in determining the amount to be added to the annuity of such individual shall be equal to the average monthly compensation or the average monthly earnings, whichever is applicable, used to enter the table in section 3(a)(2) of such Act for purposes of computing other portions of such individual's annuity."

(b) Section 2(e) of the Railroad Retirement Act of 1937 is amended—

(1) by striking out "section 3(a) (3), (4), or (5) of this Act" and inserting in lieu thereof "section 3(a) (3), (4), (5), or (6) of this Act";

(2) by striking out the second sentence of the last paragraph; and

(3) by adding at the end thereof the following new paragraph:

"The spouse's annuity computed under the other provisions of this section shall (before any reduction on account of age) be increased in an amount determined by the method of computing increases set forth in subsection (a)(6) of section 3. The pre-

ceding sentence and the other provisions of this subsection shall not operate to increase the annuity of a spouse (before any reduction on account of age) to an amount in excess of the maximum amount of a spouse's annuity as provided in the first sentence of this subsection. This paragraph shall be disregarded in the application of the preceding three paragraphs."

(c) Section 2(1) of the Railroad Retirement Act of 1937 is amended by striking out "the last paragraph plus the two preceding paragraphs" and inserting in lieu thereof "the last paragraph plus the three preceding paragraphs".

(d) Section 5 of the Railroad Retirement Act of 1937 is amended by inserting at the end thereof the following new subsection:

"(q) A survivor's annuity computed under the preceding provisions of this section shall be increased in an amount determined by the method of computing increases set forth in subsection (a)(6) of section 3: *Provided, however,* That in computing such an amount for an individual entitled to an annuity under subsection 5(a)(2), the 90.75 per centum figure appearing in the third paragraph of section 3(e) of this Act shall be deemed to be 82.5 per centum."

SEC. 105. If title II of the Social Security Act is amended to provide an increase in benefits payable thereunder at any time during the period July 1, 1973, through December 31, 1974, the pension of each individual under section 6 of the Railroad Retirement Act of 1937 and the annuity of each individual under the Railroad Retirement Act of 1935 shall be increased in an amount determined by the method of computing increases set forth in subsection (a) of section 104 of this Act, deeming for this purpose the average monthly earnings (in the case of a pension) or the average monthly compensation (in the case of an annuity under the Railroad Retirement Act of 1935) which would be used to compute the basic amount if the individual were to die to be the average monthly wage.

SEC. 106. All recertifications required by reason of the amendments made by sections 104 and 105 of this Act shall be made by the Railroad Retirement Board without application therefor.

SEC. 107. (a) For the purpose of preparing and submitting the report provided for in subsection (c), it shall be the duty and responsibility of representatives of employees and retirees to designate (within the 30-day period commencing on the date of enactment of this Act) and notify the Congress of the identity (by name and position) of the labor members, and of representatives of carriers to designate (within such 30-day period) and notify the Congress of the identity (by name and position) of the management members, who shall compose the group authorized to prepare, in their behalf, the report provided for in subsection (c).

(b) The group so authorized to prepare the report provided for in subsection (c) shall—

(1) hold such meetings (which shall not be less often than once each month) as may be necessary to assure that such report will be submitted within the time provided, and contain the material prescribed under, subsection (c), and keep formal minutes of each meeting held by such group; and

(2) submit to the Congress, on September 1, 1973, November 1, 1973, and January 1, 1974, interim reports as to the progress being made toward completion of the report provided for in subsection (c); except that no such interim report shall be submitted after the submission of the report provided for in subsection (c).

(c)(1) Not later than March 1, 1974, representatives of employees and retirees and representatives of carriers, acting through the group designated by them pursuant to subsection (a), shall submit to the Congress a report containing their joint recommendations for restructuring the railroad retirement system in a manner which will assure the long-term actuarial soundness of such system, which recommendations shall take into account the specific recommendations of the Commission on Railroad Retirement.

(2) The joint recommendations contained in such report shall be specific and shall be presented in the form of a draft of a bill suitable for introduction in the Congress.

(3) There shall be included in the report a copy of the minutes of each meeting held by the group designated pursuant to subsection (a).

SEC. 108. (a) The amendments made by section 101 of this Act shall become effective on July 1, 1974: *Provided, however,* That those amendments shall not apply to individuals whose annuities began to accrue prior to that date. The amendments made by such section 101 shall cease to apply as of the close of December 31, 1974.

(b) The amendments made by section 102 of this Act shall become effective on October 1, 1973, and shall apply only with respect to compensation paid for services rendered on or after that date: *Provided, however,* That such amendments shall not be applicable to any dock company or common carrier railroad with respect to those of its employees covered as of October 1, 1973, by a private supplemental pension plan established through collective bargaining, where a moratorium in an agreement made on or before March 8, 1973, is applicable to changes in rates of pay contained in the current collective-bargaining agreement covering such employees, until the earlier of (1) the date as of which such moratorium expires, or (2) the date as of which such dock company or common carrier railroad agrees through collective bargaining to make the provisions of such amendments applicable.

(c) The amendments made by sections 103, 104, 105, 106, and 107 of this Act shall be effective on the enactment date of this Act: *Provided, however,* That any increases in annuities or pensions resulting from the provisions of sections 104 and 105 of this Act shall be effective on the same date or dates as the benefit increases under title II of the Social Security Act which gave rise to such annuity or pension increases are effective.

PART B—PERMANENT PROVISIONS

SEC. 120. (a) Effective January 1, 1975, section 108(a) of this Act is amended by striking out the second sentence thereof.

(b) Effective January 1, 1975, section 6 of Public Law 91-377 (as amended) is hereby repealed.

(c) Effective January 1, 1975, section 8(b) of Public Law 92-46 (as amended) is hereby repealed.

(d) Effective January 1, 1975, section 5(b) of Public Law 92-460 (as amended) is hereby repealed.

SEC. 121. (a) Section 3201 of the Internal Revenue Code of 1954 (relating to the rate of tax on employees under the Railroad Retirement Tax Act), as amended by section 102(a) of this Act, is further amended to read as follows:

"In addition to other taxes, there is hereby imposed on the income of every employee a tax equal to 3.75 percent plus the sum of the rates of tax imposed with respect to wages by sections 3101(a) and 3101(b) of the Internal Revenue Code of 1954 of so much of the compensation paid to such employee for services rendered by him after December 31, 1974, as is not in excess of an amount equal to one-twelfth of the current maximum annual taxable 'wages' as defined in section 3121 of the Internal Revenue Code of 1954 for any month after December 31, 1974."

(b) Section 3202(a) of such Code is amended by striking out, each place it appears, "September 30, 1973" and inserting in lieu thereof "December 31, 1974."

(c) Section 3211(a) of such Code (relating to the rate of tax on employee representatives under the Railroad Retirement Tax Act), as amended by section 102(c) of this Act, is further amended—

(1) by striking out "9.5 percent" and inserting in lieu thereof "17.0 percent", and

(2) by striking out, each place it appears, "September 30, 1973" and inserting in lieu thereof "December 31, 1974".

(d) Section 3221(a) of such Code (relating to the rate of tax on employers under the Railroad Retirement Tax Act), as amended by section 102(d) of this Act, is further amended by—

(1) striking out "9.5 percent" and inserting in lieu thereof "13.25 percent", and

(2) striking out, each place it appears, "September 30, 1973" and inserting in lieu thereof "December 31, 1974".

(e) The amendments made by the preceding provisions of this section shall become effective January 1, 1975, and shall apply only with respect to compensation paid for services rendered on or after that date.

PART C—MISCELLANEOUS

SEC. 130. This title may be cited as the "Railroad Retirement Amendments of 1973".

TITLE II—INTERSTATE COMMERCE ACT AMENDMENTS

SEC. 201. Section 15a of the Interstate Commerce Act (49 U.S.C. 15a) is amended by adding at the end thereof the following new subsection:

"(4)(a) The Commission shall by rule establish within 90 days after the date of enactment of this Act requirements for petitions for adjustment of interstate and intrastate rates of common carrier by railroad based upon increases in expenses of such carriers pursuant to section 102 of the Railroad Retirement Amendments of 1973. Such requirements established pursuant to section 553 of title 5, United States Code shall be designed to facilitate fair and expeditious action on any such petition as required in paragraph (b) of this subsection by disclosing such information as the amount needed in rate increases to offset such increases in expenses and the availability of means other than a rate increase by which the carrier might absorb or offset such increases in expenses.

"(b)(1) The Commission shall, within sixty days of the filing of a verified petition by any carrier or group of carriers in accordance with rules promulgated under paragraph (a) of this subsection, act upon said petition.

(2) Prior to action upon any provision in a verified petition which relates to intrastate rates, the Commission shall request from any State authority having jurisdiction over any such rates within ten days from the filing of such petition, a recommendation as to the action the Commission should take. The Commission shall give due regard to any such recommendation received within forty-five days from the date of request.

SEC. 202. This title may be cited as the "Railroad Rate Adjustment Act of 1973".

TITLE III—SEPARABILITY

SEC. 301. If any provision of this Act or the application thereof to any person or circumstances should be held invalid, the remainder of such Act or the application of such provision to other persons or circumstances shall not be affected thereby.

By Mr. HUMPHREY (for himself, Mr. MCGEE, Mr. KENNEDY, Mr. CASE, Mr. JAVITS, Mr. BROOKE, Mr. ABOUREZK, Mr. BAYH, Mr. CRANSTON, Mr. EAGLETON, Mr. HART, Mr. HUGHES, Mr. INOUYE,

Mr. JACKSON, Mr. MATHIAS, Mr. McGOVERN, Mr. MONDALE, Mr. MOSS, Mr. MUSKIE, Mr. NELSON, Mr. PELL, Mr. STEVENSON, Mr. TUNNEY, and Mr. WILLIAMS):

S. 1868. A bill to amend the United Nations Participation Act of 1945 to halt the importation of Rhodesian chrome and to restore the United States to its position as a law-abiding member of the international community. Referred to the Committee on Foreign Relations, by unanimous consent.

Mr. HUMPHREY. Mr. President, I am today introducing for appropriate reference a bill to end the violation by the United States of international sanctions against Rhodesia. Joining me in this important effort as principal cosponsors are Senators McGEE, KENNEDY, CASE, JAVITS, and BROOKE. An additional 18 Senators have also agreed to cosponsor this legislation because they believe that the time has come for the United States to correct its violation of international law.

Mr. President, I ask unanimous consent that the text of this bill, along with the complete list of cosponsors, 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. 1868

A bill to amend the United Nations Participation Act of 1945 to halt the importation of Rhodesian chrome and to restore the United States to its position as a law-abiding member of the international community

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 5(a) of the United Nations Participation Act of 1945 (22 U.S.C. 287c(a)) is amended by adding at the end thereof the following new sentence: "Section 10 of the Strategic and Critical Materials Stock Piling Act (60 Stat. 596; 50 U.S.C. 98–98h) shall not apply to prohibitions or regulations established under the authority of this section."

LIST OF COSPONSORS

Mr. HUMPHREY (for himself, Mr. McGEE, Mr. KENNEDY, Mr. CASE, Mr. JAVITS, Mr. BROOKE, Mr. ABOUREZK, Mr. BAYH, Mr. CRANSTON, Mr. EAGLETON, Mr. HART, Mr. HUGHES, Mr. INOUYE, Mr. JACKSON, Mr. MATHIAS, Mr. McGOVERN, Mr. MONDALE, Mr. MOSS, Mr. MUSKIE, Mr. NELSON, Mr. PELL, Mr. STEVENSON, Mr. TUNNEY, and Mr. WILLIAMS introduced the bill; which was read twice and referred to the Committee on Foreign Relations.

Mr. HUMPHREY. Mr. President, at the outset I would like to state that I have inherited the leadership in this critical endeavor from Senator GALE McGEE. I have recently assumed chairmanship of the African Affairs Subcommittee of the Foreign Relations Committee. It was while he was chairman of this same subcommittee that Senator McGEE worked so diligently on this matter. Without his past leadership, it would not be possible to launch a new effort today to bring the United States back into compliance with United Nations sanctions against Rhodesia.

I also want to inform my colleagues that Members of the House of Representatives led by Congressmen FRASER and DIGGS are today launching a similar effort. I am confident that with all of us working together and with the help of many outside groups and organizations we will be successful.

The United States strongly supported the imposition of sanctions against Rhodesia in 1967. In January of that year, President Johnson issued Executive Order No. 11322 implementing the mandatory sanctions resolution in the United States. He did this under the authority of the United Nations Participation Act of 1945 as amended.

On October 6, 1971, the Senate voted to import "strategic materials" from Rhodesia by a vote of 44 to 38. On January 1, 1972, the United States became the only nation in the world to formally violate U.N. sanctions.

In allowing imports from Rhodesia, we have sacrificed basic principles of U.S. foreign policy for the dubious short-term objective of diversifying our sources of "strategic materials."

One principle sacrificed was the defense of human rights and self-determination. This is one of the keystones of American foreign policy. While other nations only speak of these ideals, we hold that they are the foundation of legitimate government.

Yet when the world community has taken a strong stand in support of human rights and self-determination, the United States has turned out to be not the international leader but a nation only paying lipservice to international political agreements which it originally endorsed.

In Rhodesia today, 95 percent of the people have no voice in their government. Sanctions were imposed to let Ian Smith know that his nation would not be recognized as a member of the world community until these people had a share in determining how they were governed.

White supremacy in Rhodesia was selected by the international community as a particularly intolerable form of oppression for good reason. The many nations that have thrown off the yoke of colonial domination and proven their ability to govern themselves see Rhodesia as an offensive anachronism. They feel a deep sympathy and concern for the plight of their brothers who still live under racial domination.

It will be argued that other nations are violating sanctions, are betraying the cause of human rights and self-determination. Some people will say that the United States in importing only chrome and nickel is no worse than most and better than many. Some 70 items can be imported under wording of section 503 of the Military Procurement Act of 1972. However, I would argue that the United States has a unique responsibility to uphold the world position on this issue—and a unique vested interest in doing so.

In power, in prestige, in influence, we are not just one among many nations. We are the leading Western power. Many developing nations question whether the West has really given up white supremacy. They want proof that we are serious about replacing colonialism with real self-determination. They have to be assured that we do not want to substitute economic exploitation for political domination.

We have a constantly growing interest in keeping the trust of these nations. We will want more and more in the future to work with them as equal partners in the development of their vast natural and human resources. We will want to help build their industries. We will want to supply their markets.

These countries carefully watch our behavior in relations with the developing nations. To us, issues like racial oppression in Rhodesia may be peripheral. To them, they are indicators of how serious the United States—and the West as a whole—are in our claim that we will respect and support self-determination throughout the world.

Ian Smith also watches the United States as a powerful force in the making of world opinion. When Congress opened a crack in the wall of legal economic sanctions, we gave him great cause for hope. We showed that we were not serious enough about self-determination to uphold sanctions; perhaps, if he just held out long enough, we would grow tired of the sanctions game completely, and much of the rest of the world would follow.

It was also significant that, unlike the nations which upheld sanctions legally and carried on covert trade, the United States made it part of our law to violate sanctions. As one observer put it, "Outside of South Africa and Portugal, the United States is the only friend white Rhodesia has." We must recognize that our friendship carries great political weight. And we must choose our friends more carefully.

Our role as a great Western power is not the only reason we must take the leadership in this international defense of human rights. We are also one of the world's largest multiracial states. There are more people of African descent living in the United States than any other country in the world outside Nigeria. Our struggle to assure equality of opportunity, to make good our commitment to human rights, is not over. But we realize it must be made, that all races will benefit when it is finally won.

An increasingly interdependent multiracial world looks to us as a test case to see whether the races can live and work together as equals. Whenever our commitment to racial equality sags, at home or abroad, those who are committed to interracial cooperation feel the blow. And those who are committed to apartheid feel their case is strengthened—the races will forever remain unequal and apart.

We have sacrificed a second basic principle in breaking sanctions: Our commitment to the nonviolent resolution of conflict. In the post-Vietnam world, we are determined to identify areas of potential major power conflict before they become battlegrounds. We are committed to seeing crises resolved at the conference table rather than in long and tragic wars. We believe that all the nations of the world, despite ideological differences, must work together toward this end.

Assistant Secretary of State for African Affairs David Newsom has stated:

With regard to Rhodesia, the U.S. Government has sought to support U.N. economic sanctions as an alternative to a violent solution and as a form of pressure on the Ian Smith regime to negotiate a new basis for independence.

Rhodesia is an area of potential major conflict, closer now to open and protracted warfare than it was when sanctions were imposed—or when the United States decided to break them. In the past several months, an increasing number of whites have been killed by liberation movements; and increasing numbers of blacks have been killed by government troops. Rhodesians and Zambians have been killed by land mine explosions along both sides of the mutual border.

The Ian Smith regime has used increasingly repressive measures against the African population. These measures have made open, nonviolent activity almost impossible for the Africans. At the same time, they have made the present government more intolerable.

The government has instituted South African-type "pass laws," requiring every African over 16 to carry identification documents at all times and not to leave assigned areas without permission.

"Vagrancy" laws prohibit Africans from going to the cities to look for jobs at a time when unemployment has risen by hundreds of thousands.

Public meetings cannot be held in African areas without special permission.

The independence of mission-run schools has been undermined by the requirement that non-African personnel must have government permission to be in tribal areas, and schools must be registered with the government to teach Africans.

The Secretary of Internal Affairs may ban anyone from tribal areas—and has banned Bishop Muzorewa, head of the African National Council.

Provincial Commissioners have ordered the forfeiture of goods and imprisoned members of communities suspected of endangering security without trial or evidence.

Businesses, mills, schools, and hospitals have been arbitrarily closed by the government.

These measures bring Rhodesia very close to the situation in South Africa, where there is no freedom, only government-imposed "order." Alan Paton recently wrote of this situation:

The tendency to deny the existence of social injustices and to extol the virtues of government is a distinguishing mark of the authoritarian personality; it leads its possessor to the disastrous belief that peace can be maintained by force, that law is the equivalent of justice and that order is to be preferred above freedom . . . The truth is that order and freedom are not separable; they are aspects of something much more fundamental, and that is life.

Faced with increasingly unjust laws and increasing limits on their freedom, the African population is bound to turn to violence as the only means left open to them to attain liberty and justice.

If Rhodesia does become the scene of violent race conflict, there is little hope that that violence will be contained. Already Zambian civilians have been killed by Rhodesian land mines. South African soldiers, in Rhodesia to help maintain order, have been killed by liberation movement mines. Many African and non-African nations are giving military support to the liberation movements. South Africa is giving military support to Rhodesia. At an embryonic stage, this is not an isolated conflict. If it grows, it has the potential of directly involving the rest of Africa and much of the rest of the world.

There is still hope that this crisis will be resolved through peaceful negotiations. There has never been more pressure on the white regime to reach a settlement with African leaders. The British Government recently announced that it would not negotiate a recognition of Rhodesian independence until after there was, according to Mr. Heath, "an agreement between the races in Rhodesia on the basis for a settlement."

Due to the closing of the Zambian border, foreign exchange reserves are lower than ever. The shortage of currency for the purchase of manufacturing imports has hurt Rhodesia's industry. The worst drought in living memory has hurt her agricultural production.

The Africans, once viewed by whites as apolitical, tribal peoples, have made clear their political commitments. In January 1972, the British Peace Commission went to Rhodesia to test African opinion on a constitution that would legitimize white rule. For 2 months, it became legal to express political opinions that had been kept underground. The constitution was discussed in African homes throughout the country. Wherever the commission went, African protest meetings were held; and the proposal was rejected by the British Government on the grounds that it was against the interests of the majority of the population.

Out of this reawakening of political participation grew a new African party. This new party, the ANC, has broad support among the people and is pressuring the white regime to negotiate a settlement which will assure eventual majority rule and human rights.

Africans have also expressed their political commitments by housing and feeding freedom fighters, at great risk to themselves. This support for liberation movements by the population and the recent increase in violence is another factor pressuring the whites to reach an agreement.

But, as we know too well, violence alone does not bring early negotiations. I believe that the United States restoring sanctions—and backing the U.N. efforts to enforce more strictly existing sanctions—could at this crucial time tip the scales in favor of a peaceful settlement.

Our breaking sanctions has put us on the wrong side of this conflict. In the eyes of the rest of the world, it has put us on the side of white supremacy. This side is bound to lose in the long run. And our accepting it is bound to lose us the trust of not only the future leaders of Rhodesia, but of the entire third world. It has also put us on the side of violence rather than peace. For the knowledge that the greatest Western power has given an inch and might in the future give a mile encourages the whites to continue their struggle.

The Rhodesian chrome amendment has not accomplished what its proponents claimed it would.

It has not contributed to national security. Advocates of chrome imports from Rhodesia expressed concern over the percentage of U.S. chrome imports coming from the Soviet Union—about 58 percent. They said that this represented a dangerous dependence on a Communist power for a strategic material. In 1972, after the breaking of sanctions, Russia's share of the market for chrome was the same as it had been before—about 58 percent. Only our chrome imports from Turkey, which is an ally, have decreased as a result of this "diversification" of our sources of a strategic material.

It was also assumed that our importing chrome from the Soviet Union put us in danger of running short of chrome in a crisis. Yet the Office of Emergency Preparedness felt we had an overabundance of chrome stockpiled to meet any conceivable emergency. Before the Rhodesian chrome amendment was passed, they had asked that 1.3 million tons of chrome be released from the stockpiles. This release was passed by the Senate shortly after the Rhodesian chrome amendment. There is still an overabundance of chrome in our stockpiles. The new Stockpile Disposal Act of 1973 calls for the sale of 4,662,800 tons of chromite and 766,100 tons of ferrochrome.

At a time when we are expanding commercial relations with the Soviet Union on all fronts, this fear of trading with the Russians is an anachronism. The argument itself seems like an effort to turn back the clock to Cold War isolation.

The import of chrome from Rhodesia was also supposed to save American jobs. This argument was used without the blessing of the labor unions. However, they are among the oldest and most vocal opponents of Southern African white supremacy. As I. W. Abel, president of the United Steelworkers, stated:

The price of human dignity should not be measured in terms of the cost of chromite in the United States market.

Rhodesian chrome advocates assumed that the "price of human dignity" would be the loss of American jobs in the specialty steel industry if we did not find a lower-cost source of chrome. The steelworkers themselves countered this with the argument that it was the import of specialty steels, not that of Russian chrome, that was endangering American jobs. They added that the voluntary restrictions on the export of chrome to the United States from Japan and Western Europe had somewhat eased this situation.

It appears that the import of Rhodesian chrome may, indeed, have cost Americans jobs. American ferrochrome producers are being forced out of business by foreign competition. Much of that competition comes from Southern

Africa—Rhodesian and South African-processed Rhodesian chrome. Largely because of imports from these areas—accounting for 25 percent of the U.S. domestic market—total imports of ferrochrome have risen to 40 percent of the domestic market, from 17 percent only 2 years ago. Ironically, the first plant that closed as a result of this competition was the same plant that received the first shipment of chrome from Rhodesia—the plant in Steubenville, Ohio. Another plant in Brilliant, Ohio is closing. This has resulted in the loss of 758 American jobs so far. And the entire U.S. ferroalloy industry is being threatened, in large part due to the slave labor practices in Rhodesia and South Africa.

Thus, the import of chrome from Rhodesia has seriously hurt our position on two key long-term objectives of international relations—the support of human rights and self-determination and the peaceful resolution of conflicts. It has not achieved any of the short-term goals for which these principles were sacrificed.

To once again become an international leader in the struggle for human rights and self-determination.

To keep the faith of the developing countries of the world.

To stand by our ally, Great Britain, in her effort to undo the injustices of her empire.

To make credible our assertions that the United States stands for freedom and equality.

To prove that we are willing to join with other nations of the world to assure peaceful resolutions of conflicts.

We must restore full sanctions against Rhodesia.

Mr. President, I ask unanimous consent to have referred to the Committee on Foreign Relations the bill to amend the United Nations Participation Act of 1945 regarding the importation of Rhodesian chrome.

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

By Mr. LONG (for himself and Mr. JOHNSTON):

S. 1869. A bill to amend the act of October 27, 1965, to change the procedure prescribed for local interests for making local contributions for the cost of the work and to amend the responsibility for operation and maintenance of the navigation structures required for the project for hurricane-flood protection on Lake Pontchartrain, La. Referred to the Committee on Public Works.

Mr. LONG. Mr. President, I am introducing a bill that will assist local assuring interests in paying their part toward the construction of needed projects for flood control and river and harbors matters. In this particular case, the work involved is hurricane protection.

The PRESIDING OFFICER (Mr. JOHNSTON). Without objection, the bill will be received and appropriately referred.

Mr. LONG. Mr. President, the parishes of St. Charles, Jefferson, Orleans, and St. Bernard are still suffering the effects of two disastrous hurricanes in the last decade. A lot was done by the Federal Government in connection with the two hurricanes, such as authorizing disaster loans at reasonable interest rates on repairing homes and businesses and granting forgiveness of a portion of that loan. We have also made some progress in providing insurance against this type of disaster and hope that we can make such insurance more and more available at reasonable prices for the people who live in the areas most susceptible to hurricanes and the attendant tidal waves.

One big item needs to be done which is underway at this time. This item is actually providing protection against future hurricanes and preventing the damage from happening. I have always felt that Federal money spent in protective work of this nature is far better than Federal money spent in repairing damages because the area was not suitably protected.

The four parishes to which I made reference will be adequately protected in time by the hurricane plan entitled, "Lake Pontchartrain and Vicinity." The Corps of Engineers is proceeding as rapidly as possible with this project operating on the basis that every year brings a new possibility of a hurricane. It seems that in recent years these visitations are more frequent and in greater intensity. The Congress has been doing all it could to provide the necessary funds to meet the full capabilities of the Corps of Engineers, but we have run another problem.

When the Lake Pontchartrain project was approved the law provided that local interest—represented by the levee districts of the affected parishes—would bear 30 percent of the first cost of the project, and furnish necessary real estate rights of way and relocations.

Local interests are willing to meet these terms and pay their part for the construction of the project but they need more time to do so. The length of time involved in the project actually becoming a reality has seen a greater increase in construction costs until the local authorities feel that they do not have the capability to provide their part of the money as soon as the law requires. It has always been the policy that these funds would be provided as the project is constructed.

This bill which is cosponsored by my colleague, Senator J. BENNETT JOHNSTON, proposed that the local contribution during the period of construction be reduced to one-third during the construction period and the remaining two-third's be paid to the Federal Government in the years following completion of construction at the same rate contributions were paid during construction.

Mr. President, this bill merely gives the local assuring interests more time to raise the necessary funds to pay their part of the contributions required by the law. I feel this is reasonable and I feel that it is good business. Certainly we would not want to face the possibility of the work being held up due to the absence of the local contributions at the same time that we are faced with the threat of another hurricane.

ORDER FOR STAR PRINT OF S. 854

Mr. STEVENSON. Mr. President, I ask unanimous consent that a star print be ordered for S. 854, a bill to improve planning and management processes in States, regions, and localities.

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

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

S. 125

At the request of Mr. INOUYE, the Senator from Washington (Mr. JACKSON) was added as a cosponsor of S. 125, to amend title 37, United States Code, to provide for the procurement and retention of judge advocates and law specialist officers for the Armed Forces.

S. 287

At the request of Mr. SCOTT of Virginia, the Senator from North Carolina (Mr. HELMS) was added as a cosponsor of S. 287, to clarify the jurisdiction of certain Federal courts with respect to public schools and to confer such jurisdiction upon certain other courts.

S. 423

At the request of Mr. RIBICOFF, the Senator from Missouri (Mr. EAGLETON) was added as a cosponsor of S. 423, a bill to establish a Department of Health.

S. 1082

At the request of Mr. WEICKEFR, for the Senator from Indiana (Mr. BAYH), the Senator from New Hampshire (Mr. MCINTYRE), and the Senator from Connecticut (Mr. RIBICOFF) were added as sponsors of S. 1082, "The Bread Tax Repeal Act of 1973."

S. 1218

At the request of Mr. GRAVEL, the Senator from New York (Mr. JAVITS) was added as a cosponsor of S. 1218, to amend title II of the Communications Act of 1934 to authorize common carriers subject to such title to provide certain free or reduced rate service for individuals who are deaf or hard of hearing.

S. 1527

At the request of Mr. WEICKER, the Senator from Massachusetts (Mr. BROOKE), the Senator from Iowa (Mr. HUGHES) and the Senator from Washington (Mr. MAGNUSON) were added as cosponsors of S. 1527, "The Lobster Conservation and Control Act of 1973."

S. 1625

At the request of Mr. TAFT, the Senator from Iowa (Mr. CLARK), the Senator from Tennessee (Mr. BROCK), the Senator from Indiana (Mr. HARTKE), and the Senator from Virginia (Mr. SCOTT) were added as cosponsors of S. 1625, to extend until November 1, 1978, the existing exemption of the steamboat *Delta Queen* from certain vessel laws.

S. 1637

At the request of Mr. BAYH, the Senator from Rhode Island (Mr. PASTORE) was added as a cosponsor of S. 1637, to discourage the use of painful devices in the trapping of animals and birds.

S. 1730

At the request of Mr. RIBICOFF, the Senator from New Mexico (Mr. MONTOYA) was added as a cosponsor of S. 1730 to amend the Public Health Service Act to provide physician's services in physician-shortage areas through the establishment of a physicians' community service program.

SENATE JOINT RESOLUTION 84

At the request of Mr. SCHWEIKER, the the Senator from Wyoming (Mr. HANSEN), and the Senator from Alaska (Mr. GRAVEL) were added as cosponsors of Senate Joint Resolution 84, the school prayer amendment.

FURNISHING OF DEFENSE ARTICLES AND SERVICES TO FOREIGN COUNTRIES AND INTERNATIONAL ORGANIZATIONS—AMENDMENTS

AMENDMENT NO. 144

(Ordered to be printed, and referred to the Committee on Foreign Relations.)

Mr. HATHAWAY submitted amendments, intended to be proposed by him, to the bill (S. 1443) to authorize the furnishing of defense articles and services to foreign countries and international organizations.

ANNOUNCEMENT OF HEARINGS BY SUBCOMMITTEE ON INDIAN AFFAIRS

Mr. JACKSON. Mr. President, I want to announce to the Members of Congress, the Indian people, and the general public two hearings before the Subcommittee on Indian Affairs on legislation that is important to the Indian community.

On May 31, 1973, the subcommittee will consider S. 1013, credit and financing for Indian economic development; S. 1015, Indian business development program; and S. 1341, financing and economic development for Indian organizations. These measures hold potential for providing new sources of credit and financing to Indian tribal groups and individual Indians to assist them in economic development and establishment of various business enterprises in the Indian community. The three bills are variations of the President's Indian legislative package.

On June 1 and 4, 1973, the subcommittee will consider S. 1017, the Indian Self-determination and Educational Reform Act of 1973; S. 1340, detail of civil service employees to tribal groups; S. 1342, Johnson-O'Malley contracts and detail of commissioned officers to tribal groups; and S. 1343, Indian takeover of Federal programs. The first of these four measures provides a liberalized contracting authority to permit Indian tribal groups to assume control and management of designated Federal Indian service programs; and, in addition, the measure authorizes new programs and funds to enhance educational opportunities for Indian youth and adults. This measure was introduced in the Senate by myself and the distinguished chairman of the Subcommittee on Indian Affairs, Senator JAMES ABOUREZK. The latter three bills are administration proposals related to self-determination and Indian assumption of control of Federal Indian service programs.

The hearings for each of the 3 days will commence at 9 a.m. in room 3110 of the Dirksen Office Building.

NOTICE OF HEARINGS ON PENSION LEGISLATION

Mr. NELSON. Mr. President, the Finance Subcommittee on Private Pension Plans, will hold 2 days of panel discussions on May 31 and June 4 on selected issues of pension legislation. The panel discussions are designed to present a full and objective review of the pertinent legislative issues involving qualified pension plans and the tax treatment for retirement savings. The panelists, who are recognized experts in the pension plan area, will present a variety of viewpoints in regard to these issues.

The session will begin at 10 a.m. on both May 31 and June 4 in room 2221 Dirksen Senate Office Building. The participants in these panel discussions include only those persons who have been specially invited by the subcommittee, but the hearing room will be open for anyone who may wish to attend.

Following is a list of the panelists and the subjects to be covered on the particular days.

MAY 31

This panel will consider first the question of whether it is better for the vesting, funding and any other similar provisions to be enforced by the Department of Labor, as proposed by S. 4. or whether it would be better for them to be enforced through the Treasury Department, as provided by Senator BENTSEN'S bill (S. 1179) and Senator CURTIS' bill—S. 1631, the administration proposal. In addition, the administration proposal contains certain provisions relating to limitations with respect to self employed plans and also makes allowances for those covered by pension plans to provide some coverage on their own behalf. The second question will be: Should limitations on benefits and contributions be provided for self-employed plans, should they also be provided for professional corporations and closely held corporations, and possibly also for large company plans as well, and if limitations are to be provided, what should they be?

The panelists will be:

Paul Berger: Is a member of the Washington, D.C., law firm of Arnold and Porter. He has been involved in the tax aspects of health, welfare and pension plans, particularly those established under collective-bargaining agreements. He serves as special tax counsel for the AFL–CIO.

Daniel Halperin: Professor of law at the University of Pennsylvania Law School, teaches courses on taxation and tax policy. He is a consultant to the Treasury Department, and also lectures extensively at tax institutes. From 1969–1970 was deputy tax legislative counsel to the Treasury Department.

Converse Murdoch: Is president of the Wilmington, Del., law firm of Murdoch, Longobardi, Schwartz, and Walsh. He is a former special attorney for the Interpretive Division, Office of Chief Counsel at the Bureau of Internal Revenue; former special assistant to the Chief Counsel, Bureau of Internal Revenue; former member of the legal advisory staff of the Treasury Department. Since 1954, he has been in private practice and is a tax specialist.

John Nolan: Is a partner in the Washington, D.C., law firm of Miller and Chevalier. He is a former Deputy Assistant Secretary of Treasury for Tax Policy, and was responsible for developing the administration's legislative program for pensions. As an attorney in private practice, he does extensive work in the area of pensions and profit sharing.

Carroll Savage: Is a partner in the Washington, D.C., law firm of Ivins, Phillips and Barker, specializing in tax and employee benefits.

Harold T. Swartz: Member of the staff of the Washington, D.C., accounting firm of Coopers and Lybrand. He is a retired Assistant Commissioner, technical, of the Internal Revenue Service, in charge of issuing rulings and technical advice in the area of pension and profit-sharing plans. He is the author of several articles on corporate taxes, tax aspects of pension plans and ruling procedures. He is a former Assistant Deputy Commissioner and Director of Tax Rulings Division, and former Acting Commissioner and Acting Deputy Commissioner of the Internal Revenue Service.

JUNE 4

This panel will discuss the vesting and funding provisions in S. 4, S. 1179, and S. 1631, and the provisions in some of those bills for termination insurance, portability, and fiduciary standards.

The panelists are:

Merton Bernstein: Is a professor of law at Ohio State University Law School. He was counsel to the Labor Subcommittee and Subcommittee on Railroad Retirement. He is a member of the American Pension Conference and the American Risk and Insurance Association. He is the author of "The Future of Private Pensions" which received Elizar Wright Award for "the most significant contribution to the literature of insurance" in 1965.

Herman Biegel: Is a partner in the Washington, D.C., law firm of Lee, Toomey and Kent, and formerly with the Chief Counsel's Office of the Internal Revenue Service. He has been in private practice of law since 1937 and a member of the Pension Research Council, Wharton School of Finance. He is legal counsel to the Profit Sharing Council of America.

Edwin S. Cohen: Is a counsel to the Washington, D.C., law firm of Covington and Burling. He is also Joseph M. Hartfield professor of law at the University of Virginia. He was recently Under Secretary for Taxation for the U.S. Treasury Department.

Frank Cummings: Is a partner in the Washington, D.C., law firm of Gall, Lane, Powell and Kilcullen, and a lecturer at Columbia Law School, Columbia University, New York City. He was formerly minority general counsel of the Senate

Labor and Public Welfare Committee. He is also a public member of the U.S. Labor Department's Advisory Council on Employee Welfare and Pension Benefit Plans.

Leonard Lesser: Is presently general counsel of the Center for Community Change in Washington, D.C. Formerly general counsel and director of social security activities, industrial union department, AFL–CIO, and legal counsel to the social security department of the United Auto Workers.

ADDITIONAL STATEMENTS

PITFALLS OF HEARSAY

Mr. SCOTT of Pennsylvania. Mr. President, hearsay, its use and its validity, has become a matter of increasing importance as the Senate Watergate hearings progress. The Saturday evening editorial in the Evening Star-News puts all the discussion of hearsay in perspective. I offer this editorial for the interest of my colleagues and ask unanimous consent that it be printed in the RECORD.

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

PITFALLS OF HEARSAY

Senator Ervin and his Senate select committee are showing only elementary prudence and fairness in warning that guilt cannot be established by hearsay. There are other things that should not be accepted on hearsay, too—such as orders or instructions allegedly from the President of the United States. The nation would have been spared much of its current agony if all Administration officials had shown similar prudence.

A common thread in the internal espionage disclosures lumped together under the name "Watergate" is that supposedly responsible persons acted close to the edge of the law—or even across it—just because of telephone calls from White House functionaries who claimed to be acting for the President. Not only were James W. McCord and the other Watergate participants prodded into action on the hearsay that the President or Attorney General sought their cooperation. It is more ominous that senior public servants holding offices of high trust in different Government departments were ready to act on hearing the simple words "The President wants. . . ."

The press and the public are rightly cautioned to treat hearsay disclosure with the utmost caution. It is ironic that some of those now protected by this reserve were perfectly willing to use the impact of hearsay for their own convenience on earlier regrettable occasions.

AFL–CIO SUPPORT FOR TRANS-ALASKA PIPELINE

Mr. GRAVEL. Mr. President, during the last century organized labor has been the moving force in insuring and protecting the welfare of the American laboring man, and a powerful exponent of the interests of this Nation. The interests of the citizen and the Nation are inseparable, and the labor movement has done more to make this Nation great than any other single movement.

It is not surprising, therefore, that the AFL–CIO Executive Council has issued a statement on May 9, 1973, in support of construction of the trans-Alaska pipeline. The council lists the major concerns—the Nation's energy shortage and the balance of payments problem; the interest of the Nation in building an all-American pipeline; and jobs for American workers.

I ask unanimous consent to have the AFL–CIO Executive Council's statement printed in the RECORD. The council's reasons for early construction of the trans-Alaska pipeline are compelling—and I appeal to my colleagues to consider them.

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

STATEMENT BY THE AFL-CIO EXECUTIVE COUNCIL ON PIPELINE

It is tragic that while the United States is facing an energy crisis, including shortages of petroleum products, one of the largest reserves of petroleum—Alaska's North Slope—remains undeveloped.

At a time when the U.S. is forced to increasingly rely on oil imports—with resultant loss in American jobs, damage to this country's balance of trade and potential threat to national security—development of Alaskan oil reserves is blocked by outdated right-of-way requirements and environmental concerns, some real and some imagined.

The fastest, most economically feasible and most secure method of transporting Alaskan oil to the burgeoning American markets is by pipeline to Valdez and by tanker to West Coast ports.

Jobs for American workers would be generated not only in building the pipeline and related plant construction, but also in maintaining it and in manning the transshipment facility at Valdez. Approximately 33 new U.S.-flag tankers would be needed to carry the oil, thus stimulating employment in U.S. shipyards and for U.S. shipboard workers.

However, the key to transshipment is construction of the Alaskan pipeline, and construction of the pipeline depends on Congressional action to give the Secretary of the Interior legal authority to grant the right-of-way.

Congressional action is also necessary to legalize many oil and gas pipelines in all regions of the country which, as a result of a recent court decision, are technically illegal. Unless legal remedy is provided, these pipelines could be enjoined and the jobs of many workers endangered.

Senator Henry M. Jackson, chairman of the Senate Interior Committee, has sponsored legislation (S. 1081) that would solve the right-of-way program while providing very tough environmental safeguards and stringent liability requirements for damages caused by the pipeline. Additionally, the bill would insure that the Alaskan oil reserves are used in America's domestic markets. We urge immediate enactment of S. 1081 to eliminate a legal obstacle to construction of the Alaskan pipeline which we wholeheartedly favor.

Enactment of the Jackson bill would leave one hurdle to construction of the pipeline—a court challenge to the environmental impact study conducted by the U.S. Department of Interior in accordance with the National Environmental Policy Act. This question now properly reverts to the courts where a decision should be rendered without delay.

Various routes through Canada to the Midwest have been proposed as alternatives to the Alaskan pipeline. But this is not an "either . . . or" question—both an Alaskan and a Canadian route will be needed. But a Canadian route is considered by experts to be at least 10 years away from construction, and time is of the essence. We believe a study of a Canadian route has merit, because the resources in the Alaskan and Canadian Arctic will eventually require two or more pipelines.

Therefore, we support the provision in S. 1081 that establishes proper procedures for negotiations with the Canadian government leading to construction of a second, later route.

We recognize that full development of Alaskan oil reserves will not solve America's larger energy crisis. The future stability of this country's economy requires immediate measures to insure America's self-sufficiency in all forms of energy.

To meet this long-range need, we support S. 1283, introduced by Senator Jackson and 27 other Senators, that would mobilize the nation's scientific and technological resources for a 10-year, $20 billion crash program to develop alternative energy sources.

If America does not solve its immediate and long-range energy needs, this country will be forced to depend largely on foreign sources with political, economic and national security hazards.

Without sufficient energy resources America will not be able to meet its economic and social goals, but if the Congress acts now it can assure Americans both a better environment and a better life for everyone.

A BILL OF RIGHTS FOR THE HANDICAPPED

Mr. DOLE. Mr. President, not long ago, the United Cerebral Palsy Association held its annual conference here in Washington for the organizations' volunteer and professional staffs representing more than 300 State and local United Cerebral Palsy affiliates. The condition known as cerebral palsy is usually acquired at birth and the affected individual must learn to compensate for his developmental disabilities over a long period. Many cerebral palsied are able to minimize the effects of brain damage but require some form of life-long care. One goal set by United Cerebral Palsy in cooperation with government is to help the developmentally disabled find a measure of their own potential.

In connection with this goal and the conference, UCP delegates signed what I consider an important document entitled "A Bill of Rights for the Handicapped."

Were the concepts expressed in this bill of rights realized, millions of Americans could lead totally new lives—many of the same Americans who are now unable to find appropriate jobs, adequate transportation, or suitable housing. The bill of rights reads:

A BILL OF RIGHTS FOR THE HANDICAPPED

PREAMBLE

"We hold these Truths to be self-evident that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, and that among these are Life, Liberty and the Pursuit of Happiness."

The rights of the individual begin with the inherent right to be born with the capacity to grow and develop fully and to have this birthright insured by services which protect the embryonic environment and the entry of the individual into the world.

Those who are denied this birthright or who are handicapped by other causes have the right to be assured the means of achieving maximum growth and development and to enjoy the dignity, respect and opportunities accorded all men by the freedoms and privileges enumerated in the Constitution of the United States.

For the handicapped who cannot obtain the rights of first-class citizenship for themselves, society must provide, preserve and protect the means whereby these rights are assured from earliest infancy throughout life. These means form a particular "Bill of Rights for the Handicapped."

RIGHTS OF THE HANDICAPPED

The handicapped individual has the right to:

I. Prevention of Disability insofar as possible through early detection of abnormalities in infancy, immediate and continuing family guidance, and comprehensive habilitative services until maximum potential is achieved.

II. Health Services and Medical Care for the protection of his general well-being and such additional special services as are required because of his handicap.

III. Education to the fullest extent to which he is intellectually capable, provided through the regular channels of American education.

IV. Training for vocational and avocational pursuits as dictated by his talents and capabilities.

V. Work at any occupation for which he has the qualifications and preparation.

VI. An Income sufficient to maintain a lifestyle comparable to his non-handicapped peers.

VII. Live How and Where He Chooses and to enjoy residential accommodations which meet his needs if he cannot function in conventional housing.

VIII. Barrier Free Public Facilities which include buildings, mass or subsidized alternative transportation services and social, recreational and entertainment facilities.

IX. Function Independently in any way in which he is able to act on his own and to obtain the assistance he may need to assure mobility, communication and daily living activities.

X. Petition social institutions and the courts to gain such opportunities as may be enjoyed by others but denied the handicapped because of oversight, public apathy or discrimination.

UNITED CEREBRAL PALSY ASSOCIATIONS, INC.

UCPA delegates spent some of their time here on Capitol Hill talking with many of us about the problems they know on a very personal level. In many instances their own children are cerebral palsied and their experiences with them provide meaningful insights for all the handicapped, including those who have come back from Vietnam.

During one UCPA session, representatives from Senators RANDOLPH, CRANSTON, WILLIAMS, KENNEDY, STAFFORD, and TAFT's offices participated in a simulated congressional hearing, which considered many of the issues set forth in the "Handicapped Bill of Rights."

Testifying for UCPA was Mrs. Frank Church, Senator CHURCH's wife, who is a member-at-large of the UCPA Women's Committee. With her were Mr. Frances P. Connor, chairman, department of special education, Teachers College, Columbia University, New York; Ms. Sondra Diamond and Ms. Diana Kenderian, who are both handicapped and have worked with UCPA; and Mrs. Martin Eaton, a UCPA vice-president. A second session following the same thematic materials included several staff members from divisions of the Department of Health, Education, and Welfare.

Secretary Caspar W. Weinberger of Health, Education, and Welfare opened the conference during the Dr. Meyer Perlstein Memorial Session where he stressed the need for strong voluntary participation as exemplified by UCPA rather than an overreliance on governmental services.

I also had the privilege of meeting with a group of young handicapped persons who held an all-night vigil at the Lincoln Memorial. One apparent problem, of course, was their inability to visit the Lincoln Memorial in wheelchairs—a condition which could be solved with the addition of a passenger elevator in one of the Memorial's north chambers. Their stay at the Memorial was organized by Disabled In Action, a group that now includes Vietnam veterans.

I commend the work of both the United Cerebral Palsy Associations and Disabled In Action, although separate organizations, for helping the developmentally disabled find a measure of their potential.

Mr. President, I ask unanimous consent to have printed in the RECORD a list of those who received special recognition from UCPA for their work in 1972 on behalf of the disabled, and second, a list of those organizations which joined Disabled in Action during their Washington vigil on May 3, 1973.

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

Those honored by United Cerebral Palsy Associations:

Dr. Harry M. Zimmerman—recipient of the UCPA-Max Weinstein Award for contributions to the research and clinical aspects of cerebral palsy.

George J. Schweizer, Jr., out-going national president, who served UCPA with distinction for many years.

Colonel Dale N. Engstrom, presidential award, for outstanding service to UCP of Chattanooga, Tenn.

Senator Bob Dole, governmental activities award, for his active voice on behalf of the developmentally disabled.

Wendell J. Brown, the Roger S. Firestone Award, for his life-long contributions to UCPA of Iowa and the national organization, where he has served as president.

Ray Bluth, professional bowler, who contributed his time and talent to the National Competitive Bowling Tournament for the Handicapped.

Dr. Verda Heisler, a child psychologist, for her contributions to the understanding and treatment of those with cerebral palsy.

Those organizations which participated in the Disabled In Action vigil:

Massachusetts Council of Organizations of the Handicapped.

National Association of the Physically Handicapped.

Epilepsy Foundation of America.

National Association of the Deaf.

Council of Organizations Serving the Deaf.

United Cerebral Palsy Associations, Inc.

Association for Children with Learning Disabilities.

National Association of Collegiate Veterans.

Spina Bifada Association of Greater New York.

Physically Handicapped Association of Dayton, Inc.

Butler County National Association of the Physically Handicapped.

Disabled In Action.

AMERICAN FOLKLIFE FOUNDATION ACT

Mr. CRANSTON. Mr. President, on May 17 I cosponsored—with Senators ABOUREZK, BROCK, CASE, COOK, FULBRIGHT, PERCY, and RANDOLPH—the American Folklife Preservation Act. The bill is similar to S. 1930, which I cosponsored in the 92d Congress.

The act would establish an American Folklife Center in the Library of Congress, to promote studies, exhibitions, and performances in the field of American folklife.

I believe we need a comprehensive program of Federal assistance for the folk arts—a vibrant set of experiences and expressions that are basic to who we are, what we do, and why.

A few years ago, the Smithsonian Institution brought to Washington a Festival of American Folklife. It is now an annual event. Those that have been to the festival know it as a thing of magic, a blend of bluegrass musicians and Indian sandpainters and Ozark woodcarvers, the major arts of the common man brought together in the Nation's Capital.

The festival is made up of people, sights, and sounds seldom found at the core of a large city, and gradually disappearing from the face of America. This must not be allowed to happen.

We have done much for the arts in America, but not nearly enough. We must recognize and act to preserve and develop the full spectrum of the resources open to us.

There are musicians at home in our mountain valleys, miles from our major symphonies.

There are painters at work in American towns, a long way from the great urban galleries.

There are singers and dancers and actors, legions of them, who will never play Kennedy Center.

That is why I think the American Folklife Preservation Act is so important. It is a simple, inexpensive "home remedy" for an ailing folk tradition.

SENATOR STEVENSON'S STATEMENT ON EXECUTIVE PRIVILEGE BEFORE SUBCOMMITTEES OF THE COMMITTEES ON GOVERNMENT OPERATIONS

Mr. STEVENSON. Mr. President, executive privilege is a tangled and timely subject. On April 11, I expressed some views on executive privilege before joint hearings of three subcommittees—the Separation of Powers and Administrative Practice and Procedures Subcommittees of the Committee on the Judiciary and the Subcommittee on Intergovernmental Relations of the Committee on Government Operations.

My basic conclusions about this so-called doctrine are that:

The Presidential right to "executive privilege," insofar as it exists at all, is by no means so deeply rooted in law and precedent as we have been led to believe.

Congress, in any case, has a broad power supported by the Constitution, by law and precedent, to obtain information from the Executive.

Congress should define "executive privilege," suggest when it might be used legitimately by the Executive, and provide procedural and substantive remedies should the Executive abuse the privilege.

I ask unanimous consent that my testimony be printed in the RECORD. I also ask unanimous consent that the memorandum referred to in the testimony, entitled "The Doctrine of Executive Privilege" be printed in the RECORD after my testimony.

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

EXECUTIVE PRIVILEGE

Statement by Senator Stevenson before the Subcommittees on Separation of Powers and Administrative Practice and Procedure, Committee on the Judiciary, and the Subcommittee on Intergovernmental Relations, Committee on Government Operations

I intend no pun when I say it is a privilege to appear before you this morning. The subject "executive privilege", tangled and timely as it is, deserves our earnest attention.

I request that an exhaustively researched memorandum on the Doctrine of Executive Privilege, prepared at my request in 1971, be inserted in the record of these hearings at an appropriate point. I hope that this memorandum—and my briefer testimony—will help to clear away the tangle of myth and outright misrepresentation which obscures the facts about the so-called Doctrine of Executive Privilege.

It is President Nixon's extraordinary reliance on the doctrine that makes the question of Executive Privilege timely.

Last March 12, the President told reporters that "there were only three occasions during the first terms of my Administration when Executive Privilege was invoked anywhere in the Executive Branch in response to a Congressional request for information."

In fact, according to the Library of Congress, the Administration in its first term invoked Executive Privilege nineteen times—and four of those claims were made by the President himself.

But President Nixon seeks not only to invoke the doctrine more often; he is bidding to expand it far beyond its former meaning. He claimed recently that not only present, but former members of his staff "shall follow the well-established precedent and decline a request for formal appearance before a Committee of the Congress."

What is this "well-established precedent"?

Is "Executive Privilege" well-established doctrine, or ill-supported dogma? Is it part of our Constitutional and legal fabric—or a phenomenon more akin to the Emperor's new clothes?

My exploration into the background of the doctrine yields up numerous facts which fly in the face of the President's claims. Let me offer the committee some of those facts, in the form of answers to three basic questions:

First, what do the Constitution and Constitutional history tell us about Executive Privilege?

In English and American colonial practice before the adoption of our Constitution, legislative bodies expected and received most if not all the information they requested. In the English experience, Parliament received what information it asked for; colonial legislatures and those of the new states under the Articles of Confederation functioned as investigative as well as legislative bodies.

They saw their investigative role as an important check on uncontrolled Executive power—the very evil which played such a large part in the desire of the colonies to break away from English domination.

When the Constitution was adopted, it said nothing explicit that would give the Executive an absolute right to withhold information from Congress. The Constitution assigned to Congress "all legislative powers". It admonished that the President should "take care that the laws be faithfully executed." Beyond that the Constitution delegated to the President only certain specific enumerated powers, which certainly did not include any power to withhold information from the Legislative.

Neither pre-Constitutional history, therefore, nor the explicit language of the Constitution, can be relied on as granting the Executive any explicit power to withhold information.

What about the implicit meaning of the Constitution—the "Separation of Powers" doctrine implied by the differing Constitutional functions of Congress and the Executive?

I would be the last to deny the validity of this doctrine—indeed, I would be among the first to assert that the Executive has for some time been treading rather heavily on the powers granted to the Congress under the Constitution.

But proponents of absolute or near-absolute "Executive Privilege" stretch the separation doctrine too far. They interpret it to mean that Congress cannot require the Executive to produce documents and information it requests. They argue, that where dispute exists, the Executive shall have wide, if not absolute, power to decide what shall be withheld and what shall be disclosed.

This is a weighty interpretation to hang on few crypti-Constitutional phrases. It is, in effect, merely a claim—a claim which has never been sustained; it finds no backing in Constitutional history or the Constitution itself; it has never been ratified by statute, nor by judicial declaration.

President Nixon and Attorney General Kleindienst are, in fact, torturing the doctrine of separation of powers into a doctrine of uncontrolled power for one branch of government—power to decide for itself what shall be disclosed and what shall be withheld. They would do well to recall the words of Madison in the 49th Federalist Paper, that none of the branches of government "can pretend to an exclusive or superior right of settling the boundaries between their respective powers."

In fact, if Constitutional history and the Constitution itself point in any direction, it is toward the right of Congress to receive information from the Executive. The Constitution obliges the President "from time to time (to) give Congress information of the State of the Union. . ." Justice Story read those phrases as a clear requirement upon the President "to lay before Congress all facts and information which may assist their deliberation. . ."

Second, if the Constitution provides no firm basis for the doctrine of executive privilege, what is its basis in judicial precedent and statute law?

The memorandum which accompanies my testimony disposes of this question in considerable—and convincing—detail.

Let us simply note that the Supreme Court has never yet been confronted with a conflict between Congress and the Executive concerning "executive privilege."

In fact, the cases most often cited to support a claim of Executive Privilege—*Boske v Comingore and U.S. ex rel. Touhy v Ragen*—do not constitute authority for the proposition that the Executive has authority—either absolute or discretionary—to withhold information from Congress. The two cases are simply not on point.

What about the various statutes relied upon by advocates of Executive Privilege such as 5 U.S.C. 22 and the Administrative Procedure Act? Not only do these statutes not vest uncontrolled discretion in the Executive to withhold information—they have nothing at all to do with the question of Executive Privilege.

In short, the legal precedents usually cited by defenders of Executive Privilege as foundations for their claims actually provide no such foundation.

Third: If the Constitution, the courts and the statutes provide no firm basis for a doctrine of executive privilege, what about the precedents of history?

Proponents of executive privilege are fond of relying upon historical precedents to support their position.

In his March 12 policy statement on Executive Privilege, for example, President Nixon proclaimed that "The doctrine of Executive Privilege is well-established. It was first invoked by President Washington, and it has been recognized and utilized by our Presidents for almost 200 years since that time. . ."

There are two main instances to which Mr. Nixon may be referring. In the first, in 1792, the House of Representatives requested information about the abortive St. Clair expedition. A Cabinet meeting was called to consider the request, and in the privacy of the meeting, according to Thomas Jefferson, who took the minutes, it was agreed that the Executive ". . . . ought to refuse those (papers) the disclosure of which would injure the public."

But the advocates of Executive Privilege who cite this incident, including the Attorney General yesterday, fail to tell the whole story. In actuality, President Washington never made any public assertion of uncontrolled discretion to withhold documents; and indeed, in the instance in question, all documents were turned over to the House, including those most damaging to the Army's reputation.

The second instance in the Washington years seems equally irrelevant. The House asked for papers relating to the Jay Treaty. Washington declined to send them on the ground that the constitutional role in the treaty-making process belonged to the Senate, not the House. In any event, he declared, the papers had already gone to the Senate.

In neither case did Washington withhold information from Congress, and in neither instance did he invoke something which could later be called "Executive Privilege."

Those who cite "history" in their argument for Executive Privilege it seems have read history rather carelessly—as carelessly as they seem to have read the Constitution, judicial decisions and the statutes.

In fact, the very phrase "Executive Privilege" is not rooted in history; it is a recent invention. Historians are hard put to find its use by any President or Attorney General prior to the Eisenhower Administration—and even within that Administration the first use of the phrase may be discerned in about 1958. It seems to be a phrase created out of whole cloth to give a semantically respectable name to the withholding of information.

In 1954 Mr. Eisenhower asserted in a letter to Congress the right flatly to prohibit all executive employees from testifying or producing documents, in the interest of "efficient and effective administration . . ." He was, to be sure, provoked by the persistent demagoguery of Senator Joe McCarthy, and we who are skeptics about Executive Privilege must face responsibly the question such demagoguery raises.

Such Executive statements, including opinions of Attorneys General, cannot be considered a basis for the validity of the doctrine; such statements constitute no more than the self-serving assertion of one's own claim in a dispute. Mr. Nixon's statement (and Mr. Kleindienst's yesterday) are but the latest in a long line of self-serving statements. They claim a great deal—but they establish nothing.

In sum, Mr. Chairman, the main body of support for Executive Privilege consists not in the law or history, but in mere claims by Presidents and their appointees that such a privilege exists. It is, in short, a doctrine

created not so much by legal or judicial deliberation, as by executive wishing, conjurings and speechmaking.

All this, Mr. Chairman, leads me to two conclusions:

The Presidential right to "Executive Privilege," insofar as it exists at all, is by no means so deeply rooted in law and precedent as we have been led to believe.

Congress, in any case, has a broad power supported by the Constitution, by law and precedent, to obtain information from the Executive.

That Congressional power exists to be exercised. Like other constitutional powers, it can hardly be said to be "absolute"; certainly whatever information Congress seeks from the Executive must somehow relate to the legislative process, whether the subject be new legislation or the President's conduct as he "faithfully executes the Law." But Congress has a broad and clear power to obtain "necessary" information.

Until now there has never been an overwhelming need to define legislatively the concept of Executive Privilege. Even in the worst of previous confrontations, the Executive and the Congress have managed to accommodate their differences. In every confrontation since President Washington's time, the issue has been compromised—or one side has been persuaded to back off, perhaps under pressure of public opinion. George Washington, for example, can be said to have backed off during the investigation of the St. Clair expedition; perhaps Congress backed off during the Eisenhower years.

But the situation now is changing. Confrontations in which Executive Privilege is invoked have been growing in frequency and intensity. During the Eisenhower Administration, as we have seen, Executive Privilege was invoked no less than 34 times to withhold information. Perhaps in those instances the provocation was intense: President Eisenhower was struggling to resist assaults by a Senatorial demagogue in the Army-McCarthy hearings and their unhappy aftermath.

There were fewer invocations of the doctrine during the Kennedy and Johnson years, although President Kennedy did claim the privilege at least once. But with the first Nixon Administration there has come massive reexpansion of the use of the privilege—and now a bold effort by President Nixon to broaden its accepted meaning.

It is my judgment that these increasingly frequent and bitter confrontations over Executive Privilege make it essential that Congress act to clarify and define the doctrine.

To do so would be not only wise but Constitutionally proper, for Congress is clearly commissioned by the Constitution to "make all laws necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States. . ."

Congress can choose, as a matter of policy, to legislate on Executive Privilege—to define the doctrine more clearly, and to specify the procedures which should govern its operation.

It is high time we did so. I say that not because I seek government by confrontation—but because I seek to avoid it. If the privilege is carefully and Constitutionally defined, the confusion which now invites conflict between branches uncertain of their powers will diminish. And if the Congress by claiming its power re-establishes itself as an equal branch of the government, such disputes will more likely be resolved reasonably and amicably between equals.

In politics as in physics, nature abhors a vacuum. In the absence of a clear and precise legal definition of Executive Privilege, we may expect the President to rush in with tangled and self-serving uses of it. If we ignore our power to define the concept and its proper limits, we can only blame ourselves if the Executive acts as though the privilege has no limits.

In short, Congress should define "Executive Privilege", suggest when it might be used legitimately by the Executive, and provide procedural and substantive remedies should the Executive abuse the definition in any instance.

First of all, I would suggest that the preamble or policy section of such a bill should establish in the broadest terms Congress' power to obtain information from the Executive. Later on in the bill, narrower limits might be defined. But Congress should be wary of giving away any of its legitimate Constitutional power. The present bills on this subject do not make sufficiently clear Congress' broad power, they tend to sanctify a right to Executive Privilege, without stating clearly and forthrightly Congress' concomitant right to obtain information.

The bill should so state that, as a general policy, the Executive—to the greatest extent possible—should cooperate with Congress by giving Congress the information it seeks. Similarly, it should also express, as policy, that Congress will not meddle unnecessarily with the Executive, but will seek only information which legitimately relates to the legislative process.

Second, as in Senator Fulbright's bill and in Congressman Erlenborn's bill—and unlike Senator Ervin's resolution—no one in the Executive branch should be given a blanket exemption from appearing before Congress.

Of course, Congress must use discretion in calling White House members; certainly it must protect the Executive against the depredations of demagogues. But blanket exemptions in the law would give too much discretion to the Executive.

Third, unlike Senator Fulbright's bill (S. 828) and Senator Ervin's resolution (S.J. Res. 72), I suggest that Congress should try to define those instances in which Executive Privilege might properly be invoked.

It is not enough merely to allow the Executive to claim the privilege and then give Congress a procedural mechanism to overcome the Executive should it not agree with the President's claim. Congress—or the Judiciary—may someday have to decide whether the privilege is being properly invoked; we should provide Congress and the Judiciary with a clear standard by which to make those judgments.

I therefore would suggest that direct communications between the President and anyone in the Executive branch should be protected . . . if the matters in discussion legitimately relate to aspects of public policy. Thus, if there were questions in a Committee hearing about illegal activities by members of the Executive branch, or questions about campaign activities not related to governmental business, this information would still be obtainable by Congress—even if the information were contained in a memo to or from the President. I can think of no reason why such information, particularly information concerning possible crimes, should be kept from an investigating Congress and hence from the public.

What about other communications within the Executive branch on matters legitimately relating to public policy—communications between Administration members that do not include the President, for example? First of all, a *sine qua non* to the invocation of Executive Privilege should be that the information is protected from disclosure under other Acts such as the Freedom of Information Act or the Budget and Accounting Act. Then, where the information is so protected, the President himself should certify the "right to withhold" information in these cases. And this certification from the President should set out the President's reasons for withholding the information.

Fourth, we should include procedures for dealing with impasses over Executive Privilege:

What happens in the case of a breakdown? Suppose a Committee Chairman believes, despite a plausible and seemingly legitimate claim of Executive Privilege by the President, that his Committee simply must have the requested information if Congress is to fulfill its legislative function?

In such cases, the Committee Chairman should submit on the floor of his House of Congress, after a majority vote of his Committee, a resolution aimed at breaking the impasse. The resolution would state that it is the sense of the Senate—or House—that the information requested is essential to the conduct of the Senate's (or House's) legislative or investigative business. If the Senate (or House) should not agree with the Committee and should defeat the resolution the matter would be ended. If it should uphold the Committee, however, Congress would be acting in its clear right to obtain information as set forth in the preamble or policy section of the bill.

What happens if a witness from the Executive branch refuses to present himself to Congress when called, even after service of a Congressional subpoena? Or if the questions posed of a present witness by a Committee are answered by a claim of Executive Privilege which appears to be insufficiently related to a matter of public policy? Or what happens when, even after a full-fledged floor resolution demanding information, the witness refuses to answer on a claim of Executive Privilege? What would be Congress's remedies?

Some, including Senator Ervin and Senator Kennedy, have suggested that Congress resort to its own remedies—the contempt power; that Congress send the Sergeant-at-Arms out to place the individual in custody, arraign him, and try him—or have the Courts try him—for contempt of Congress.

This has never been done. And I would suggest that these remedies are unnecessarily contentious and possibly futile.

Instead, I would suggest that Congress enlist the Federal Courts. An order or a contempt citation from an impartial third branch would certainly lend legitimacy to the claims of Congress. And certainly no Executive is eager to disobey orders of Courts and defy what would then likely be an aroused public opinion.

I suggest that instead of starting its own contempt proceedings, the respective House of Congress could do one of two things:

(1) it could appoint its own "special prosecutor;" or,

(2) Congress might delegate, perhaps to the Chief Justice of the Supreme Court, the power to appoint a prosecutor for purposes of enforcing the law. Some authority for this course appears to reside in Article II, Section 2 of the Constitution.

If the witness still refused after the Courts ordered him to appear before Congress or to present certain information—he would then be in contempt of Court. And if the witness then dared the Supreme Court to enforce its order, then indeed we will have reached the ultimate breakdown of our government of laws—and the ultimate in lawlessness by the Executive.

We are dealing, Mr. Chairman, with eventualities which we hope will never occur. But they could occur—and the mere hope that they will not is no reason not to prepare for them. Indeed, such a procedure as I have outlined is intended to head off such eventualities.

In his testimony yesterday, Mr. Kleindienst expressed the hope that "mutual restraint" on both sides of this question is vital if we are to avoid disastrous confrontations over Executive Privilege.

I agree. But I must point out that the lack of restraint which has now inflamed the issue is not that of Congress, but of the Pres-

ident. He has sought to claim the privilege with unprecedented frequency and to stretch the meaning of the doctrine beyond all past understanding. He has repeatedly exceeded his own stated guidelines.

President Nixon once claimed that he would never use the privilege "as a shield to prevent embarrassing information from being made available." He would invoke it, he said, "only in those instances in which disclosure would harm the public interest."

Yet repeatedly he has used the privilege—or threatened to use it—in ways that contradict his words.

In the case of Mr. Peter Flanigan's appearance before the Judiciary Committee during the confirmation hearings of Attorney General Kleindienst;

In the dismissal of A. Ernest Fitzgerald from his position in the Pentagon;

In the refusal by the White House to disclose information about political flights of Presidential appointees at government expense;

And most recently in the refusal of the President to let his staff tell what they know about the growing Watergate scandal.

What, in each of these cases, was the purpose of evading testimony before Congress except to avoid embarrassment? Where, in these refusals to disclose information, is any overriding concern for the public interest?

Some time ago, Mr. Chairman, one of President Nixon's closest friends and cabinet officers, then Attorney General Mitchell, admonished critics of the Administration to watch, "what we do, not what we say."

Mr. Chairman, I have done so. And what I see convinces me that those who truly care about the responsible use of Executive Privilege, the public's right to know and the preservation of our form of government are at this end of Pennsylvania Avenue.

The Doctrine of Executive Privilege

The doctrine of executive privilege has surfaced at the height of several national controversies, either explicity or implicitly, on a number of occasions in the past months. Few people, it can easily be assumed, understand what it is. What is at issue, however, has great significance to insuring accountability of the President and the entire Executive branch to the Congress and, ultimately, to fulfilling the People's "right to know."

A. What is the doctrine of executive privilege?

Executive privilege referred to the right of the Executive to withhold information from others. It is most frequently thought of in the context of withholding information from the Congress. The privilege has been asserted directly by the President to prevent information in the form of documents from being disclosed or on behalf of individuals within the executive branch to prevent them from testifying or being questioned. The privilege has also been asserted by other members of the executive branch on behalf of themselves or subordinates.

Executive privilege has also been referred to as executive immunity or executive secrecy, although it is not entirely clear whether the users of these other expressions have in all cases intended the same meaning as executive privilege. The evidentiary privilege of the Executive to withhold documents in judicial proceedings involving private parties should not be confused with the doctrine of executive privilege. Nevertheless, the reasons underlying the rule of evidentiary privilege may be useful in establishing the scope of executive privilege since they raise analogous (albeit perhaps of different magnitude) problems and considerations for the courts in determining whether information in the control of the Executive should be revealed to the public.

B. What are the legal and historical bases of executive privilege?

1. Constitutional bases

The Constitution contains no explicit statement giving the Executive an absolute right to withhold information from the Congress nor giving Congress an absolute right to obtain information from the Executive. The Constitution gives to the Congress the general power to legislate, and to the President the power to ". . . take care that the Laws be faithfully executed." (Article II, section 3.) Based on this allocation of functions, proponents of executive privilege frequently argue that since the Constitution provides a system of "separation of powers," it necessarily follows that neither branch may interfere in the internal workings of the other and that therefore the Congress may not at will require the Executive to produce any and all documents and to furnish information it desires. Such proponents then conclude that the Executive has absolute discretion to determine what information and documents will be released to Congress. As we shall see, this conclusion is supported neither by the Constitution, constitutional history, statutory provisions nor judicial declarations but only by self-serving statements issuing from the Executive itself and the precedents they have established.

When the Constitution itself is silent on a matter such as this, resort must be had to constitutional history to determine what was intended. A review of English and American colonial practice prior to the adoption of the Constitution clearly indicates that legislative bodies expected and were accustomed to receiving most, if not all, the information they requested. Legislatures were regarded as holding investigative as well as law-making functions. Parliament especially considered itself entitled to information concerning any area of executive activity, notably including foreign relations, and in practice it did in fact receive what it asked for. Modeled after the English experience, colonial legislatures and those of the new states under the articles of confederation also functioned as investigative bodies, as a check on uncontrolled executive power which had in large part been responsible for the desire to break away from English control. On the basis of such history immediately preceding the Constitutional Convention in 1789, it has been persuasively argued by Professor Berger that Congress has the express power to act as the "Grand Inquest," that is, to investigate the operations of the Executive in executing the laws.

Constitutional history also reveals that the Executive, prior to the adoption of the Constitution, did *not* have the power to determine what information could be kept secret from the legislative bodies. Since the Constitution only delegated to the Executive certain specific, *enumerated* powers, which did not include the power to withhold information from the legislature, and since the Executive did not have such power prior to the adoption of the Constitution, then neither constitutional history nor the Constitution itself can be relied upon as granting the Executive the power to withhold. In fact, constitutional history might be relied upon as confirming an absolute right in Congress to information from the Executive.

The proposition that the Congress has a right to receive information from the Executive finds expression in the Constitutional obligation of the President ". . . from time to time (to) give to the Congress Information of the State of the Union . . ." (Article II, section 3). Of course, the key question is how much information does this provision entitle the Congress to receive. It has been argued that the President's annual state of the union message fulfills this constitutional obligation. However, some commentators, including Mr. Justice Story, believe otherwise. Justice Story, for example, read that part of the Constitution to require the President ". . . to lay before Congress all facts and information which may assist their deliberation, . . ." Professor Berger also argues in favor of a broad interpretation of this requirement as at least a reasonable and necessary part of Congress investigative function.

2. Judicial precedents

The United States Supreme Court has not yet been directly confronted with a conflict between Congress and the Executive concerning a denial of access to information. However, several cases are cited by advocates of both sides of the conflict as authority for their respective positions. The two cases most often cited in support of a claim of privilege are *Boske* v. *Comingore*, 177 U.S. 459 (1900), and *U.S. ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1950). These cases, in fact, do not constitute authority for the proposition that the Executive has either absolute or any discretion to withhold information from Congress. The *Boske* case held no more than that regulations promulgated by a department head pursuant to 5 U.S.C. § 22 (basically a housekeeping statute, discussed below) prohibiting employees from releasing certain types of information were a housekeeping statute, discussed below) valid because the statute on which they were based was valid. The *Touhy* case is the latest important case dealing with the question of withholding information. It holds no more than did the *Boske* case. In fact, the court explicitly stated that it was not passing on the question of what privilege the department head—in that case the Attorney General—might claim *in a judicial proceeding*; and did not even refer to Congressional proceedings. Subsequent to the *Touhy* case, the Supreme Court decided *U.S.* v. *Reynolds*, 345 U.S. 1 (1952), which held that a department head cannot conclusively assert privileges to withhold documents but rather it is for the court to determine whether the desired documents ought or ought not to be produced. These and other cases cited in support of broad executive discretion involved requests for documents in court proceedings involving private litigants. They indicate that in such proceedings, executive authority to withhold information is based on federal law, that is, 5 U.S.C. § 22, and not on the proposition urged on the Court in the *Reynolds* case of "an inherent executive power which is protected in the constitutional system of separation of power."

3. Statutory authority

Until 1958, Executive refusals to provide information to Congressmen or committees were not infrequently based on one of several statutes, usually section 22 of Title 5 U.S.C. It provided:

"The head of each department is authorized to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it."

Both the *Touhy* and *Boske* cases discussed earlier hold that the statute is a housekeeping measure; that is, its purpose was to permit centralization of discretion with respect to decision making concerning requests for documents. Nevertheless, executive departments continued to rely on that statute in refusing information to Congress. The holdings of the *Touhy* and *Boske* cases do not support such a conclusion. Indeed it seems bizarre to rely on a statute passed *by Congress* as authority for denying Congress access to departmental records. There is nothing in the legislative history of that act or of any other in this field which indicates an intention on the part of Congress to yield

any right in it to demand information from the departments.

In order to clarify its position, Congress added the following sentence in 1958: "This section does not authorize withholding information from the public or limiting the availability of records to the public." This amendment makes even more clear the lack of Congressional intent to promulgate a statute designed to act as a shield against inquiry. Certainly if the general public is not to be denied information on the basis of the statute, neither should be the Congress. It is difficult to avoid the conclusion that the statute has nothing to do with the question of executive privilege, let alone that it does not vest uncontrolled discretion in the Executive to withhold information. The same must be said of the Administrative Procedure Act and other statutes relied upon by advocates of executive privilege.

4. Historical precedents

Proponents of a substantial right of executive privilege also rely upon historical precedents to support their position. They cite incident of executive refusals to yield information to Congress or of firm statements by Presidents, supported by opinions of Attorneys General, which purport to set forth the extent of the doctrine. These are weak bases for their position. In some instances, the statements relied on have frequently been taken out of context, either textual or historical, and consequently overemphasize the extent of the conflict at hand or the extent of the claim. For example, President Washington is usually considered to have early and clearly asserted the right of the Executive to withhold information, based on notes taken by Jefferson of a Cabinet meeting called to discuss the request of the House of Representatives for information relating to the abortive St. Clair Expedition. In those notes Jefferson indicates that it was agreed that the Executive ". . . ought to refuse those (papers) the disclosure of which would injure the public." However, it is seldom revealed by advocates of the privilege that Washington made no public assertion of uncontrolled discretion to withhold documents, and indeed, in the instance in question, all documents were turned over to the House, including those most damaging to the Army's reputation. In other instances in which the privilege has been asserted, careful research by Professor Berger has shown that peculiar circumstances were involved which weaken the validity of citing such instances as support for the doctrine.

Perhaps the most absolute assertion of the privilege made by a President was contained in a letter from Eisenhower to Congress in 1954. He asserted the right flatly to prohibit all executive employees from testifying or producing documents, in the interests of ". . . efficient and effective administration . . ." This is a long leap from the necessity to guard only the most secret or confidential papers if the public interest so required. It is necessary to recall, however, the circumstances under which Eisenhower made this assertion. Eisenhower sent this message to Congress at the height of the Army-McCarthy conflict (a topic which must be faced squarely by opponents of executive privilege in answering arguments of the possibility of abuse of uncontrolled Congressional powers of inquiry) after a long period of silence on the subject prior thereto.

Furthermore, Executive statements, including opinions of Attorneys General, cannot justifiably be considered as a basis for asserting the validity of the doctrine since they constitute no more than the self-serving statement of one's claim in a dispute. It is, of course, not surprising to find that the Department of Justice invariably supports the broadest claim of privilege asserted at any given period. The most noteworthy opinion is the Memorandum written by Attorney General Rogers during the Eisenhower Administration, a work remarkable apparently for the amount of incorrect research relied on to reach insupportable conclusions.

In recent years, the doctrine of executive privilege has been asserted sparingly. In fact, President Kennedy drastically curtailed the assertion of the privilege and issued a statement to the Executive branch to the effect that he would allow its assertion only in one instance.

President Johnson similarly announced that he would "not permit subordinates to claim executive privilege to withhold government information from the Congress" but that the claim would "continue to be made only by the President."

Although it is perhaps too early to draw a comparison, it would appear that, whereas under Kennedy and Johnson the doctrine of executive privilege may have been on the wane, it appears with Nixon to be waxing again.

In summary, there appears to be little, if any, constitutional, judicial or statutory basis for the doctrine of executive privilege. Why then has the doctrine emerged and continued to have vitality? In part, it is undoubtedly due to the fact of its continued occasional assertion by the Executive and the unwillingness of the Congress to confront the Executive by challenging such assertion. The mere assertion of the privilege, of course, does not make it legally justified. However, the more one hears a statement and the longer such statement continues to go unchallenged, the more likely is one to believe that such statement is valid. So it appears to be with executive privilege. In addition to the bare assertion of the doctrine, from time to time self-serving statements have been issued by the Executive, for example, the opinions of Attorneys General. Not surprisingly, if these statements or opinions, however ill-founded they may be, are not effectively challenged, they will inevitably lend further support to the acceptance of the doctrine and will become part of a folklore which is ultimately accepted as truth.

In part, the doctrine may also continue to have vitality by reason of its acceptance by some Congressmen as a sound doctrine. There are no doubt many Congressmen who believe that the Executive should have the right to deprive them of information and, therefore, ultimately deny the public of the "right to know." To what extent this attitude might be mixed or confused with the erroneous belief that the President *does* have this right rather than *should* have this right is, of course, impossible to say.

C. SHOULD THERE BE A DOCTRINE OF EXECUTIVE PRIVILEGE?

Assuming that there is no legally compelling basis for the doctrine of executive privilege, nevertheless *should* there be a doctrine on grounds of policy or practical considerations and, if so, what should its scope be?

1. Policy considerations

Congress has a rather clear constitutional "right to know", and it has an even clearer "need to know" much information to which only the Executive has access if Congress is to fulfill its constitutionally established responsibilities.

Unlimited or even significant executive discretion to withhold information from the Congress hinders its ability to carry out its constitutionally delegated powers, particularly those of enacting laws and controlling appropriations. Without accurate and complete information concerning the administration of the laws it has passed, Congress would be unable properly to assess their effectiveness in accomplishing the desired goals. Executive branch abuses in administration could be and in fact have been covered up—for example, the Teapot Dome scandal, discovery of which interested persons in the executive branch successfully resisted for several years. In addition, the location of power over the purse strings was deliberately placed in a branch other than that which was to spend funds, in order again to minimize abuse and indiscretion.

Congress should be fully informed of the manner of execution of the laws. It should therefore have access to information and documents in the possession of the executive, whether secret or not. The mere classification of a document as "confidential" or "classified" by some lower echelon executive official should not affect the right of Congress to be informed. Certainly the collective responsibility of Congress in running the government requires that it be informed. Therefore, the ultimate decision concerning Congressional access to information should not be vested in the executive branch.

If the Executive is entitled to withhold information from the Congress and as a result the Congress is not fully informed as to the actions and plans of the Executive, the dangers of increasing concentration of governmental power within the executive branch becomes significant. It was precisely this type of concentration which drafters of the Constitution feared and sought to prevent through the establishment of a Congress sufficiently empowered by the Constitution to check such power. Of course, history has seen the enormous growth of the executive branch, both in size and power, with little or no parallel growth in the Congress. Even within the executive branch there has occurred an extraordinary concentration of policy making within the White House staff itself. In the meantime, the Congress has assumed an increasingly less significant role in determining the destiny of this country. This trend is inevitable if Congress is denied the necessary information it needs to effectively participate in national policy-making.

One glaring consequence of this development is our present deep military and economic involvement in Southeast Asia, expanded and administered largely without giving full information to Congress, in spite of frequent demands by it to be informed in order to be able competently to exercise its power to raise and maintain an army and to declare war.

The recent revelations concerning the "Pentagon Papers" underscore the enormity of consequences to the nation of a decision which, in fact, was made by a very limited group of people who were apparently the only ones with access to the available information. The fortuitous circumstances surrounding the publication of the "Pentagon Papers" highlights the need for the Congress to have a clearly established right to such information. The access of the Congress (and ultimately that of the people) should not depend on the right of freedom of speech and of the press alone. Such rights, as the recent incident showed, can only be of value if some individual gains access to such information and is able to publish it. To ensure that the public's "right to know" and the Congress' "right to know" (which of course is even more compelling than the public's) do not depend upon such fortuities, Congress' right to obtain information from the Executive must be firmly established.

2. Practical Considerations

A number of practical considerations have been raised by advocates of executive privilege to support the denial of access of the Congress to certain information. It has been argued that to make information of a "top secret" nature pertaining to military or diplomatic decisions or plans available to the Congress is tantamount to broadcasting it to the world, it being assumed that there are Congressmen more interested in promoting their careers than in promoting the national welfare. This is possible, but it is perhaps equally possible that certain employees of

the executive branch also cannot be trusted with information crucial to the national security. Furthermore, practical experience in Great Britain shows that legislative bodies *are* capable of keeping secret information secret (although one does have the feeling that the British are still a little bit more civilized than we Americans). It has also been argued that permitting the Congress access to information from the executive as well as the opportunity to require members of the executive branch to give testimony and answer questions will lead to inefficiencies in the operation of the Executive. This argument, needless to say, is without much merit considering the policy considerations involved. Finally, it has been argued that members of the executive branch and its advisors will be reluctant in the future to express their views freely to the President and to put them in writing for fear of having to make these views available to the Congress and possibly the public. It would seem that any person who is reluctant to have his views bear the scrutiny of the Congress or, perhaps subsequently, the public, perhaps has not sufficiently considered and substantiated his views to justify any audience whatsoever, much less that of the President who might make a major policy decision based on such views.

3. Proper scope of executive privilege

Policy considerations based upon the national security arguably justify some limitations on the public's access to information from the Executive and, conceivably, the Congress' access. The enunciation of a limitation based on such a policy consideration was attempted by certain members of the Supreme Court in the recent New York Times decision. A similar formulation is perhaps justified in imposing limitations on the public's right to information.

Whether an analogous formulation to limit Congress' right to information, albeit more limited in scope, can be justified is a difficult question. Assuming that there is some justification based on national security considerations, perhaps these can best be satisfied by imposing no limitation on the Congress' ultimate access to information, but rather, as has been suggested by some, merely limiting such access to a selected group of members of the Congress with respect to matters of "top secrecy".

Senator Fulbright's bill concerning executive privilege sets very little limitation on the Executive's power to assert the privilege. The bill grants to the President the absolute power to assert executive privilege on behalf of a member of the executive branch with the only limitation that he do so personally and in writing. This bill would prevent members of the Executive branch other than the President from asserting the privilege on their own behalf or on behalf of others and thereby would eliminate indiscriminate and frequent resort to the privilege. In practical terms, the President is apt to be reluctant to permit use of the privilege if he knows he must bear personal responsibility before Congress for such assertions. However, it would probably not reduce significantly the "chilling" effect which the threat of the President's assertion's of the privilege at any time will have on the Congress' eagerness to request information. Furthermore, this bill would merely, in effect, codify the practice of self-restraint which had been adopted at least by President Kennedy and perhaps by President Johnson and in no way would limit the absolute discretion which the President now exercises over withholding information. At the very least, the bill should seek to reduce this unfettered discretion by limiting the President's privilege to withhold only information which, to use a phrase adopted by several of the Justices in the recent New York Times case, if released would present "a direct, immediate and irreparable damage to our nation or its people." (Justice Stewart) The most serious defect of Fulbright's bill is that it would clearly establish by statute the right of executive privilege and, in so doing, would legitimate a right which, as indicated earlier, it is not at all clear the President ever had.

Perhaps the best solution of the executive privilege problem could be outlined as follows:

(a) The Executive and the Congress should be made fully aware of the fact that the doctrine of executive privilege has questionable legal bases.

(b) Such an awareness would hopefully lead to elimination of the above described "chilling" effect upon the Congress' eagerness to seek information and would reduce substantially the Executive's unwillingness to provide such information.

(c) Accordingly, both the Executive and individual members of the Congress would be inclined to be taken into each other's confidences on an informal basis and the necessary flow of information could be established.

(d) In this way, direct confrontations between the Congress and the Executive could be avoided and the necessity of "floodlighted" Congressional hearings would be reduced. The result would be a much more meaningful exchange of information than is ever likely to occur in the highly charged and less than candid atmosphere of Congressional hearings.

APPENDIX

Articles

Bishop, "The Executive's Right of Privacy: An Unresolved Constitutional Question," 66 YALE L. J. 477 (1957).

Kramer and Marcuse, "Executive Privilege—A Study of the Period 1953–1960," (pts. 1–2), 29 GEO. WASH. L. REV. 623, 829 (1961).

Mitchell, "Government Secrecy in Theory and Practice: Rules and Regulations as an Autonomous Screen," 58 COLUM. L. REV. 199 (1958).

Schwartz, "Executive Privilege and Congressional Inquiry Power," 47 CALIF. L. REV. 3 (1959).

Wolkinson, "Demands of Congressional Committees for Executive Papers," 10 FED. B. J. 103 (1949).

Yainger, "Congressional Investigation and Executive Secrecy a Study in the Separation of Powers," 20 v. PITT L. REV. 755 (1959).

Government Documents

"Memorandum for the President from the Attorney General", [The Brownell Memorandum], 100 Cong. Rec. 6621 (1954).

"The Right of Congress to Obtain Information from the Executive and from Other Agencies of the Federal Government," Committee Print, Senate Committee on Government Operations, 84th Congress (1956).

HEALTH CARE AND THE PRESIDENT'S BUDGET

Mr. STEVENSON. Mr. President, I am distressed to note that health research, health care and health manpower development programs do not now have the high priority they had 5 years ago. This fact is clear to anyone who examines the Federal budget and sees the curtailment or severe reduction of Federal support for manpower development or other categorical programs. It becomes even more glaring when one reads the mail sent to Members of Congress each day by constituents who will be affected by the cuts proposed by President Nixon for fiscal year 1974.

The Nixon administration has pointed to a $3 billion increase in total health spending in next year's budget—as if to refute those who warn of massive cutbacks. That claim is highly misleading. What increases there will be, virtually all of them, are increases in medicare and medicaid—increases passed by Congress over the President's protests. These increases are financed out of trust funds—not general revenues.

The truth is that the administration is seeking cutbacks, not expansions, in health care, health research, and health education.

The administration asserts that its proposed changes in health programs will result in efficiency, rationality and better management across the board. I have my doubts.

If that were true, all of us certainly would welcome the idea. Surely it is true that the multiplicity of programs in the last decade brought confusion. Certainly there have been cases of mismanagement. You will find nowhere in the Congress—in either party—any champions of mismanagement and waste. But we must recognize all these claims about efficiency and rationality for what they are: Promises and pretenses.

It seems likely to me, as I survey administration proposals for program transfers, for wholesale cuts in some programs, for starvation funding of others and total wipeouts of still others, that all these changes could result in a period of major uncertainty and confusion—even chaos. Waste and inefficiency can result not only from building programs up too rapidly—but from tearing them down with too much haste. I would be more sanguine about the administration's plans in the health field if I saw more evidence of the scalpel—and less of the wrecking ball.

What is at stake, quite beyond grants and programs, is a fundamental idea that is now under attack. It is the idea that decent health care should be a right for all, and not a privilege for the few.

I am not talking about socialized medicine, or nationalizing dental care or some such utopian scheme. I am talking simply about the idea which undergirded every major piece of health legislation that has been written and enacted in recent years, an idea that grows quite naturally out of our fundamental American belief in equality of opportunity and a decent life for all.

To many of us, that seems almost a self-evident proposition—especially in a land as rich and capable as ours. Yet, among the political ideas we live by, the proposition is only a fledgling. It was first stated with true regularity and real conviction only in the past decade, when a committed President and a willing Congress started clearing away the unfinished agenda of the New Deal.

It was only in the past decade that the idea of decent health care and dental care as a right—and health education and manpower programs to guarantee that right—received solid support from President, Congress, and the Federal Government alike.

The emergence of that idea, and of Federal support for it, did not happen by coincidence—and could not. They happened because the American people

accepted and believed and were willing to support that idea. I believe the American people still accept and believe in and support that idea.

But for the time being, their leaders in the White House and the Federal departments do not give that idea very high priority.

They may pay lipservice to it. They may make perfunctory, political nods in the direction of that idea. But nothing in their actions or their programs gives reason to believe that they put a very high priority on the idea of good health as a right—or on health care, health research, or health manpower development to guarantee that right.

The funds obligated for mental health training in fiscal year 1973 were approximately $99 million; the estimated obligations for fiscal year 1974 are $72.4 million. The total mental health care outlays, including expenditures for the expiring community mental health centers, was $377.1 million in fiscal year 1973, and will be $307.5 million in fiscal year 1974.

Grants for research and training at the National Institutes of Health have also been subjected to the hatchet. NIH research fellowships received $37 million in fiscal year 1973, and the 1974 estimates are $32.1 million. In NIH training programs, the cuts are more substantial—from $112.8 million in fiscal year 1973 to $99.9 million in fiscal year 1974. Funding for nursing programs is expected to drop from $115 million in fiscal year 1973 to $47 million in fiscal year 1974. Finally, I note there will be no categorical funding whatsoever for programs in allied health professions and public health training.

Mr. President, administrators of graduate schools, faculty members of health institutions and health service consumers of all ages have expressed to me their concerns about the adverse effects of these cuts.

In July 1969, President Nixon told a news conference that the Nation faced a massive crisis in health care and that unless we did something in the next 2 or 3 years, we would have a breakdown of our medical care system. Those 3 years are now over, and we can see no evidence that the President is trying to alleviate the crisis. We must investigate not only the causes and cures of diseases, but also the means for getting those cures to the people. We must not appropriate money for research without increasing the funds for training in the health professions and improving our facilities for delivery of health care.

Mr. President, the elderly are expected to bear a greater share of the costs of their hospital bills; podiatrists see their profession's Federal grants cut to a greater extent than other health professions. Many others fear the deemphasis of Federal assistance for health. Members of my staff and I have met with representatives of mental health programs, hospitals, nursing schools, medical schools and schools of public health. In their behalf, and most of all, in behalf of the sick. I deplore the President's brutal budget for fiscal year 1974.

CAMPAIGN FINANCING REFORM

Mr. SCOTT of Pennsylvania. Mr. President, the Senate Commerce Committee has ordered reported a bill to set overall spending limits for Federal election campaigns. Attached to that bill is an amendment to create an independent Federal Elections Commission to not only monitor campaign spending, but to enforce the law as well. I am delighted that the text of this amendment substantially tracks the language of my own bill to create such a Commission, S. 1094.

WMAL Radio, here in Washington, recently endorsed this proposal. I ask unanimous consent to have the editorial printed in the RECORD.

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

CAMPAIGN FINANCING REFORM

Aroused by the Watergate scandal, Congress appears to be in a mood to enact tougher campaign spending legislation.

A host of reform bills has been introduced. We look with favor on one sponsored by Republican Senators Hugh Scott of Pennsylvania and Charles Mathias of Maryland.

It would create a blue-ribbon federal elections commission empowered to investigate, subpoena, and prosecute. It would also establish a central place where financial campaign disclosure reports could be sent, thus eliminating the present procedure whereby reports can be filed in numerous places.

No one underestimates the difficulties involved in getting campaign reforms instituted.

Indeed, before April 7, 1972, the effective date of a strict new federal law, the only related law on the books was one dating to 1925.

Susan King, of an independent citizens' group that lobbied for three years to get the 1972 reforms enacted, thinks the climate is right this year for further reforms.

She said, "It's discouraging that it takes a scandal to produce reform, but that's a healthy sign—it means the system does react to abuse."

Americans should insist that Congress tighten controls over campaign spending. In so doing, Congress can help mend the fabric of trust in government, which has been so ruthlessly torn by events surrounding Watergate.

SENATOR STEVENS SPEAKS OUT FOR NO FAULT INSURANCE

Mr. MOSS. Mr. President, recently my able colleague Senator TED STEVENS of Alaska spoke about the merits of S. 354, the National No-Fault Motor Vehicle Act, before 750 Avis representatives at their 1973 international meeting in San Diego. Senator STEVENS has long been the leading proponent on his side of the aisle of S. 354 and its predecessor in the 92d Congress; in fact it is Senator STEVENS who first publicly advocated the Federal standards approach to bring about reform of the present auto insurance tort system mess. Senator STEVENS' remarks before the Avis people are most worthy of our consideration as we go into the final days of no-fault hearings before the Senate Commerce Committee; I ask unanimous consent that they be printed at this point.

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

ANNUAL AVIS LICENSEE MEETING, SAN DIEGO, CALIF., APRIL 30, 1973—TED STEVENS, U.S. SENATOR FOR ALASKA

It is a pleasure to be with you and thank you for extending to me the opportunity to comment upon the very current and important issue of no-fault motor vehicle insurance. Since I am an Alaskan Senator, I hope you will not object if I also comment on the energy situation in the United States.

My cosponsorship of S. 354, the National No-Fault Motor Vehicle Insurance Act, and my co-chairmanship of the Advisory Council of the National Committee for Effective No-Fault, make it clear that I support the position that the time for enactment of sound no-fault legislation has come.

The fact that Avis, Inc. has taken a supportive position for this legislation and through its representatives in Washington, D.C. has actively worked for the passage of S. 354 is most commendable. This is further evidence of the responsible positions that Avis takes in the national business community. Bud Morrow having been at Harvard Law School when I was there, and knowing Bill McPike's service in the Eisenhower Administration, I know they are providing Avis with superior leadership, as your company moves into a stronger position in the automobile rental and leasing industry.

In March 1971, the Department of Transportation, at the direction of the congress pursuant to Public Law 90–313, published the results of its comprehensive study and investigation of the existing compensation system for auto accident losses. The perspective of the study was a national one, concerned with the nationwide system of auto accident compensation and its performance. As you may know, the study conclusions point out that the existing system of accident reparations is costly, inequitable, irrational and slow to those who have the misfortune to necessarily make use of it.

It is *costly*, returning less than fifty cents of every insurance premium dollar to injured persons. It is *inequitable*, denying recovery to two out of three accident victims. It is *irrational* in its distribution of benefits to those eligible for them, overpaying those with losses of less than $500 by an average of 4½ times actual loss while underpaying those with losses of more than $25,000 by an average ⅔ actual loss. It is *slow*, forcing the average claimant to wait 16 months for his compensation.

The tort liability insurance system compensates only those completely free from "fault" in auto accidents. Determining fault is a time-consuming process that eats up 25 cents of your auto insurance premium dollar in investigative and legal costs, and wastes an average of 17 percent of our civil court judges' time. Automobile accident cases in some jurisdictions take almost six years to come to trial. The dilemma which faced the Congress in light of the conclusions of the Department of Transportation study has resulted in S. 354, a bill which would provide the American citizen the guarantee of faster compensation for injuries incurred, more complete benefits for insurance dollars expended, and a uniformity of coverage for those who travel throughout the United States by motor vehicle.

Avis representatives know national interstate automobile travel is increasing to the point where every automobile owner and driver and passengers must be concerned with the type and amount of protection which will be provided them if they are involved in a serious automobile collision and injuries, particularly in a state other than their own. S. 354 establishes minimum federal standards for state legislation so that a motor vehicle accident victim may be adequately compensated for his injuries and not be forced to accept inadequate settle-

ments, inconsistent state tort remedies, and unreasonable expense and delay in securing benefits for injuries incurred.

My contribution to S. 354 was the section on minimum federal standards. I believe, basically, that the states can, and will enact responsible no fault legislation when state legislators realize that we *will* act if they do not.

The intent of S. 354 is to delegate the task of insurance regulation to the individual states rather than the federal government, so that additions to these minimum standards may be tailored in the most effective way possible to the needs of the various states. By providing for this type of creative interaction between state governments and the federal government, the massive auto accident reparations problem which presently faces auto accident victims throughout the United States will be afforded a dual solution by state legislation consistent with an overall national plan to improve the safety, protection, and recovery by all motor vehicle accident victims.

There are aspects of this legislation with which I hope you are familiar. S. 354 provides for payment to accident victims by the victim's own insurance company without regard to fault for unlimited reasonable medical care and other reasonable direct remedial treatment. It provides for the reimbursement of loss of earned income up to $1000 per month to a minimum total of $25,000, and covers replacement services subject to such reasonable limits as a State might impose.

A rather controversial aspect of this legislation is the provision for the abolition of tort liability *except* in situations where an 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. In these situations, damages for non-economic detriment, such as pain and suffering or loss of companionship, would be recoverable.

As I stated, I have consistently favored the principle that the individual states are more appropriately able to govern their affairs than the federal government, but in the area of attempting to solve the national no-fault insurance problem, state legislatures, to date, have failed to act as we in Congress felt they would.

To date 17 states have enacted some form of auto insurance legislation. Ten state legislatures, Mass., Florida, Connecticut, N.J., Michigan, New York, Kansas, Utah, Nevada, and Hawaii, have adopted no fault laws which meet, in whole or in part, all of the elements of the guidelines suggested in the Final Report of the Department of Transportation. Michigan and New York have approved effective no-fault laws which significantly respond to the needs of the seriously injured by virtue of their high medical benefit provisions. The Michigan law, subject to technical modifications, is the only one which meets all of the national standards set forth in S. 354. S. 354 is Congress' reaction to this inaction by the states.

The basic national problem of motor vehicle accident reparations relates to the fact that no-fault legislation changes a concept of liability for injuries—one we received from the common law—that the party at fault was liable for damage he caused. As we change that concept to one of no-fault with a motorist insuring his car and its occupants, we contemplate that a no-fault system will apportion the insurance proceeds now dedicated to the adjudication of fault to those who are not covered under the fault concept. The results should be less crowded courts and less burden upon the welfare and public assistance rolls because of catastrophic injuries beyond the ability of auto accident victims to finance when they were at fault.

As a former trial lawyer, I have heard the opposition of members of my profession—but I cannot support the position which holds that litigation when no one really wins is in the public interest. Where significant liability exists litigation for liability in excess of the minimum payments required would be in order under S. 354. But, our goal must be for the automotive transportation system to provide reparations to anyone injured thru its use—when that occurs, and I believe it will through responsible state action which meets federal standards, we will have arrived at a new milestone in legislative achievement.

Another national problem presently which is coming into focus is that of our dwindling supply of energy in the United States. President Nixon delivered his Message on Energy to the Congress on April 17. His Message acknowledges that America is presently facing a vitally important energy challenge which could, if present trends continue, develop into a serious energy crisis. To me the present energy crisis is critical, now and many of us in Congress feel that the United States must turn to its domestic sources of energy to preserve the security which we presently hold in the world of international affairs.

This year you will witness the beginning of our energy crisis as automobile consumers, including Avis, face gasoline shortages. The shortages you will hear about this year will occur because of a shortage in refinery capacity. No new refineries have been built in the United States in five years. It would take a long time to detail the reasons for those shortages, but basically they relate to the tax advantages involved and to the environmental delays—and in some cases—absolute opposition to refinery construction. Domestic consumption of oil is now about 16 million barrels per day. Domestic production is 11 million barrels per day. Obviously we require the importation of 5 million barrels per day and demand is doubling every seven years, but our production is not. It is becoming increasingly clear that domestic production of available oil under current policies is not able to keep pace with demands. Alaska has about half of the potential oil reserves and 60% of the potential gas deposits of the United States.

The most significant source of domestic oil which exists in the U.S. is on the North Slope of Alaska—and it could be developed in about three years. As you may know, the Trans-Alaska Pipeline System is being delayed by a suit brought by several environmental groups. In that case, the Court of Appeals in Washington, D.C. has delayed ruling upon the environmental challenges until Congress changes an old law regarding the right-of-way width for the pipeline.

Legislation to remedy this legal restriction is being considered by the Senate Interior and Insular Affairs Committee this week. Now, you may be saying, what has this to do with us—a good question.

As our nation becomes increasingly aware that we are too dependent on foreign sources of petroleum resources, it will look to domestic potential. The North Slope is but the first major deposit to be proven in Alaska. We have significant potential in 13 other sedimentary basins—most of which are at tidewater or offshore Alaska. This potential will be most readily available to American markets if the Trans-Alaska Pipeline is built now. This pipeline will deliver our North Slope oil to Valdez for transshipment to U.S. ports by U.S. super tankers. Those tankers will also be required for transportation of Alaska's future oil discoveries. Many argue that our oil should be carried through Canada by pipeline to the Midwest. If that route were used, we would not develop the super tanker fleet now that we will need for future oil deliveries. Furthermore, the gas from Alaska's North Slope *will* go through Canada to the Midwest—but, that gas cannot be developed until the oil is utilized because it is soluble gas which will be produced with the oil. In other words, North Slope gas, which the Midwest needs to maintain its industrial base, will be seriously delayed if the oil pipeline goes through Canada—at least four years delayed.

Alaska has the capability to supply oil to the Southern 48 states to prevent an unreasonable reliance on foreign sources—in time, we will look to coal gasification, oil shale, the tar sands, geothermal energy and, of course, nuclear energy to meet our increased demands. As of today, however, only one new source of energy is readily available—that is from our 49th State—my home—Alaska.

With your support of S. 354, Avis will have the opportunity to try harder because auto accident victims will not be forced out of the automobile market because they recover less than the benefits they should be receiving for their insurance premium dollar. We in Alaska, are now required to try harder to convince the rest of the United States that we know how to recover and transport our oil and gas resources without injury to our environment. In time, hopefully, we will both be Number One—you in your field—and Alaska in producing energy resources to meet America's needs.

RETAILING AND GOVERNMENT

Mr. SCOTT of Pennsylvania. Mr. President, I have recently had called to my attention an address entitled "Retailing and Government in the Seventies," which was given earlier this month to the American Retail Federation's annual meeting here in Washington.

The speaker was Mr. Edward S. Donnell, president and chief executive officer of Montgomery Ward and a former member of the federation's board of directors. Drawing on that background, he urged retailers to adopt consumer advocacy policies so that they, as businessmen, could play an increasingly important role in helping to solve the economic, social, and political issues of our entire environment.

I believe many of my colleagues will find the approach outlined by Mr. Donnell to be of significant interest. Therefore, I ask unanimous consent to have printed in the RECORD excerpts from the address "Retailing and Government in the Seventies":

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

RETAILING AND GOVERNMENT IN THE 1970's

(By Edward S. Donnell)

I've been asked to talk with you tonight about government and retailing in the 70's. My remarks are addressed to the interrelationships of government and retailing, first, with regard to consumerism, and second with regard to certain broader issues our society faces.

No industry is in a better position to exert the kind of responsible business leadership that is needed to cope with these issues than we are. We are a $180 billion dollar a year industry, making up 38.9% of the gross national product. We have 1,763,000 retail outlets dispersed in every city, town, and hamlet in the country and points in between.

We employ 11,400,000 people. We are closer to the people of the country than any other industry. We are tuned to their needs, wants, problems, fears, and hopes. No other group is as sensitive as we are to developments affecting broad segments of the population.

Within a matter of hours, we can get a rundown on the economics of the smallest and most remote areas of the country. Through customer contact, through computers, through telephone surveys, we can keep our finger on customer buying by the week, or by the day. Or, if we deem it necessary, by the last two hours.

As we entered the late sixties, we suddenly found people's expectations were exceeding our performance capability. The consumer bill of rights—to be informed—to be safe—to choose and to be heard—became a reality.

Most of us became fully aware that our business can only be as good as the environment in which we operate, and I mean total environment—economic, social, and political as well as physical and ecological.

With regard to consumerism and the explosion of government legislation, regulation, investigation and litigation that has hit us to date, if past is prologue, we're in trouble for the rest of the 70's.

And past is prologue and we are in trouble for the rest of the 70's. However, the quantity and quality of that trouble, and the degree to which we can convert trouble into opportunity will be largely up to us.

The April issue of Fortune indicates the depth of the problem in an article entitled "The Legal Explosion has Left Business Shell-Shocked." This article covers the geometrically exploding, often conflicting. State, county and municipal regulations we all must comply with. It also covers the resulting rapid rise in litigation that has driven legal expenses and exposures right through the ceiling.

In the Securities regulation field, lawsuits filed in the past 6 years in Federal district courts have increased 400%, reaching 2,000 in 1972 alone. During the 70's we may expect that security regulation standards will be more demanding and that legal expenses for compliance, and damages and other penalties for non-compliance will be more costly.

Lawsuits on environmental issues have doubled in the recent past to 268 cases in 1972. In our industry the International Council of Shopping Centers recently called a special session to discuss possible effects of pollution controls on future expansions.

Lawsuits on Fair Employment practices have begun to mushroom—over 1,000 in 1972 alone. Settlements with the Equal Opportunity Commission in cases charging discrimination against women and minorities has important implications for retailing in the 70's. It is a fact that labor intensive retailing has historically been one of the better providers of job opportunities, training and advancement for minorities and other disadvantaged persons. Despite this I can offer no more useful advice to anyone tonight than to make certain that our own houses are completely in order. Equal employment opportunity for *all* Americans is so vitally important to our achieving a cohesive society that we must give this matter the highest priority.

Truth in Lending legislation and regulations put us all on one fair and reasonable standard in keeping our customers accurately informed as to the terms of consumer credit.

I can only hope that those few states which have imposed credit rate ceilings below the roughly break-even monthly service charge rate of 1½% will soon realize that to drive credit rates to an uneconomic level makes it very difficult to extend credit to those who need it most. In addition, it often forces retailers to raise the cash price of some merchandise to help absorb credit costs, an increase which hurts all citizens of those States. We expect consumer credit issues will continue with us on the Federal and State level the remainder of the 70's.

Product safety is now covered in a new Federal law and the new commission and staff are a reality. Thus, greater effective emphasis will be put on product safety for the rest of the 70's.

Advertising substantiation has become a major focus of consumerism in the recent past and will be receiving even greater attention during the rest of this decade. Growing emphasis on warranties-guarantees indicates this activity also is likely to be the subject of required, fuller, more uniform disclosure in the near future.

If we can take a leaf from Europe's recent experience, perhaps the most important change we will see during the next 8 years will be the extent to which government tries to impose rising standards of clear information disclosure on product performance, product life and even product content.

How, the nature, extent and fairness to all concerned of these rising standards of consumer service is in significant part up to us. Past is prologue in this realm, too. We have learned that where we simply oppose in toto a new consumer bill or regulation our impact on its final content, its degree of reasonableness for all concerned, its degree of practicality, is usually very limited. We have also learned that where we actively participate in the digging and dialogue that must go into the creation of an effective, truly useful new law or regulation, our impact is far more constructive.

For business to always oppose whatever consumers or their representatives propose, strains the credibility of our public statements that for us the consumer always comes first. Selective, well reasoned support for certain consumer legislation proposals, even if not ideal, will do much to enhance our prospects for fair and reasonable government regulations during the rest of the 70's, as well as the prospects for eliminating altogether the need for further regulations in certain areas.

We have not only the opportunity but the legislation to demonstrate the leadership that we're capable of in the area of consumerism. All of us here tonight have been and can increasingly become consumer advocates. For 32 years in retailing I've regarded the customer as my real "boss," and I know you feel you have the same boss. Or, here in Washington, we might say the same constituency.

We are a highly competitive industry. All of us have been observing and evaluating the same trends, the same forces, in the same marketplace. Consequently, I know we agree that in this fast-moving industry, the retailer who is not a sincere practitioner of consumerism simply is not going to survive. We are the most knowledgeable and demanding customers in history. In fact all of us here tonight have had a great deal to do with educating them and raising their expectations over the years.

If you will forgive one note of American History close to home, it was, I believe, the need for consumer protection that prompted Aaron Montgomery Ward, a century ago, to break the back of "Caveat Emptor"—"Buyer Beware"—with his new promise to America's consumers—"Satisfaction Guaranteed or Your Money Back." Today, you can see consumer advocacy in action as American retailers and our suppliers expend billions of dollars in market research, product development, quality control, product safety, protective packaging, informative labeling and computerized merchandising distribution systems. We are providing the American public with the most efficient, responsible and protective marketing system in the world.

Yet, we believe it can be further improved.

Because of this belief we have supported such consumer legislation, as the Consumer Protection Agency Bill, truth-in-lending, Warranty/Guarantee, and, of course, The Uniform Consumer Credit Code which we all support.

But far more important than this is retailing's overall commitment to the protection of the rights of the consumer to be informed, to be safe, to choose and to be heard through our industry's support of the President's National Business Council for Consumer Affairs.

The Council, chaired and co-chaired by Tom Brooker, Chairman of Wards Executive Committee and Don Perkins of Jewel Tea has been the work of over 100 Chief Executive officers of the nation's leading companies. Their unstinting dedication has produced council guidelines covering these key areas—Packaging and Labeling, Product Safety, Advertising and Promotion, Guarantees and Warranties, Tire Inflation and the Consumer, Credit and Related Terms of Sale, and Consumer Complaints and Remedies.

The guidelines are tough, but we all can and should live by them because they encompass the specific consumer protection principles to which we all subscribe.

However, because voluntary guidelines can be, and sometimes are, ignored by a few companies to the detriment of all the others, there is a move afoot to recommend that the Federal Trade Commission hold public hearings on those parts of the guidelines which are suitable as substantive rules. This would be a prelude to their adoption—after all the responsible inputs have been received—as official FTC standards. Such standards will be more comprehensive, effective, and fair and reasonable to all concerned, than many government regulations currently in effect or under consideration.

Moreover, they will give the force of law to the voluntary product of thoughtful and committed business, government and consumer leaders at a time when our nation badly needs to develop a positive consensus for the benefit of all our people. We therefore support this move.

Consumerism is only one phase of the total environment that determines the overall health of our national economy and society. Let's look for a moment at some of the broader issues,

President Nixon has sent a new international trade bill to Congress. He has asked for the authority over the next five years to negotiate new trade agreements including authority to decrease or increase tariffs on a reciprocal basis with other nations. Where required to protect the U.S. national interest, U.S. tariffs can be raised. Where appropriate, U.S. tariffs can also be lowered in order to get similar tariff reductions from other nations in order to boost job-creating U.S. exports. Such reductions would be phased over a period of years.

The bill also recognizes the need to have the tools with which to cope with the problems of severe market disruption stemming from rapid increases of imports. Of special importance it recognizes the need to provide more extensive and effective adjustment assistance than heretofore to American workers when imports become a substantial cause of unemployment. It is not fair for a relatively small number of American workers to bear the cost of the substantial benefits derived by the vast majority of Americans from maintaining an open world economy. And, properly legislated and administered, adjustment assistance can be of far greater benefit to American workers than higher tariffs or more quotas.

We must do everything possible to fight inflation which particularly taxes the American worker—our customer. The President's new trade bill is aimed at helping with this vital fight by assuring that American business stays strong and vigorous. It deserves our strong support. We believe fair competition from abroad will keep us on our toes and also provide our customers with the broadest possible choice of goods from anywhere in the world—a responsibility retailing has historically carried out.

On the inflation front our role as mass

merchandisers is to provide goods and services to the public at the lowest possible cost. This we will continue to do to the best of our abilities. The fact that we are one of the most competitive sectors in the entire U.S. economy guarantees that we will not fail to do our share.

I am optimistic about the overall health of our economy through 1974 and anticipate that the retail industry will establish record sales and profits in both of these years, by providing our customers with better quality goods and services representing better values.

I would like to turn now to another environmental area that affects us. That is the matter of social concern. Retailers must do their part to help in solving the problems of the inner city, of minorities, of poverty, of unemployment, etc. Now, that's quite a big order even for retailing.

Nevertheless, retailing is in an especially good position to help. The successful retailer of the future must be as adept in helping to find solutions to these problems—as he is at providing goods and services. We in retailing obviously have neither the resources nor the talents to be the sociological fixers of the future. However, we can lend a strong helping hand. As I said earlier we are one of the best, most labor-intensive sources of employment, training and advancement for minorities and other disadvantaged persons in the country. And we constantly strive and often succeed at finding new less expensive ways of getting quality goods and services to the public—a thrust of special importance to lower income persons and families.

It is in the field of energy, however, that I feel we may have our gravest long-term problem—and retailing right now has the greatest opportunity to help cope with this growing national crisis.

The nation's demand for energy is exceeding our present resources. Although there is and will be continuing debate as to how best to cope with this crisis, there is no doubt that not only are the days of flagrant disregard for use of our energy resources gone, but that we had better begin approaching this matter on a basis not dissimilar to a war-time footing. And I am not known as an alarmist. But this time, the numbers—known to all of you—speak for themselves.

As you know, the energy problem has a direct bearing on our balances of trade. Official estimates are that the $7 billion a year we are now paying for overseas oil will rise to $25 billion by 1985 and further compound this growing problem of balance of payments deficit.

Consumption of energy is a national problem that cannot be solved by government regulation alone. Voluntary action through education and cooperation is central to any successful effort. Again, we in retailing are in an ideal position to exert the kind of leadership with manufacturers and consumers that will get the job done. I urge all of us in retailing to undertake a major effort to give more information to consumers about comparative efficiencies of various appliances in terms of energy consumption and dollar savings. It's up to the manufacturers and retailers to get the job done starting right now, before it's too late. And I repeat, the analogy to wartime is not misplaced.

We must be seen and heard more often as advocates, trying to convert into workable reality what otherwise would be impractical dreams. We should do our best to see that other businessmen, including our own suppliers, live up to their promises and take full responsibility for the consequences of their actions.

In closing, may I suggest that it is time we assumed a leadership role in helping meet the total needs of our customers. They are looking to us for more than goods and services. They want help with their economic well being, with their life styles, with wise use of the national resources that are important to future generations.

I submit to you that we can help our customers and in doing so further strengthen the competitive marketplace that is so vital to the American way of life.

Retailers thrive on challenges. I'm optimistic we will respond effectively to these problems.

TAXATION WITH REPRESENTATION ANALYSES—THE PETROLEUM INDUSTRY'S TAX BURDEN

Mr. PROXMIRE. Mr. President, back in October 1971, I inserted into the CONGRESSIONAL RECORD some information on the Federal income taxes paid by the major oil companies. This information, which had been reported in the publication, U.S. Oil Week, showed that the average Federal income tax paid by these companies in 1970 was 8.7 percent of their net income. Shockingly low as this figure was, it exceeded the tax rates paid in prior years, which sometimes were as low as 4 percent.

Not surprisingly, the major oil companies were not entirely happy with the publicity given to this information concerning their taxes. In the hope of refuting the information reported by U.S. Oil Week, the American Petroleum Institute sponsored two different studies of the petroleum industry's tax burden. Imagine the dismay that must have been felt in the corporate board rooms when it was discovered that these studies sponsored by the industry itself actually confirmed the information reported in U.S. Oil Week. Indeed, the studies showed that Federal taxes as a percent of the major oil companies total net income were not 8.7 percent in 1970, but only 8.3 percent.

Undaunted by the facts, however, the American Petroleum Institute sent every Member of Congress a letter describing their studies in such a way as to give the impression that the U.S. Oil Week findings had been refuted.

Fortunately for the public interest, these various estimates of the oil industry tax burden have now been exhaustively analyzed in a compendium of economic studies published by Taxation with Representation. What do these expert studies show?

First, they show that, by the oil industry's own estimates, the Federal income taxes paid by 18 major oil companies averaged only 8.3 percent of their total net income in 1970.

Second, the studies show that in 1970 Federal income taxes averaged 14.7 percent of the U.S. domestic income of these same 18 companies. Thus, even on the domestic portion of their income, these companies paid taxes at a rate equal to only about one-third of the average rate paid by all corporations in the United States.

Third, the studies show that as part of its effort to exaggerate the tax burden of the petroleum industry, the American Petroleum Institute included such things as the 4 cents per gallon gasoline excise tax in its estimate of the $21.9 billion in "total worldwide taxes" paid by the major oil companies in 1970. The gasoline excise tax, as every consumer well knows, is a sales tax borne directly by the consumer. It has no place in a calculation of the petroleum industry's tax burden.

Fourth, these studies assemble extremely valuable information on why the petroleum industry's tax burden is so much lower than that of other industries. In 1970, the foreign tax credit accounted for a 15-percent point reduction in the oil companies tax rate and the depletion allowance for another 14.5 percentage point reduction. Thus, these two provisions alone accounted for a reduction in tax burden from the legal rate of 48 percent down to 18.5 percent. A variety of other special tax provisions—special depreciation, intangible drilling deduction, and others—further reduced the tax burden to 8.3 percent.

As these studies stress, there is no doubt that the oil industry tax burden is below that of other industries. The important question to ask is whether these costly special tax provisions are justified. To my knowledge it has never been demonstrated that either the foreign tax credit or the percentage depletion allowance are at all effective in encouraging the production of adequate domestic supplies of oil and gas.

The taxation with representation compendium is extremely valuable, because it settles the statistical question. We can now stop playing the numbers game. We know how much—or how little—the major oil companies are paying in taxes. We can now go on to discuss the more important questions of tax equity and tax efficiency. Does the oil industry pay its fair share? Is the oil industry taxed in a manner which helps produce the economic results we all desire? These are the questions which deserve debate.

I ask unanimous consent that a summary of the compendium, "the petroleum industry's tax burden," which appeared in the April issue of the taxation wtih representation newsletter be printed in the RECORD.

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

ANALYSIS CONFIRMS LOW PETROLEUM INDUSTRY TAX BURDEN FIGURES

Is the petroleum industry's tax burden heavy or light? What are appropriate ways to measure "tax burden"? And what difference does it make how one answers these questions?

These issues have been the subject of an extended, behind-the-scenes debate involving Senator William Proxmire (D-Wis.), *U.S. Oil Week* magazine, the accounting firm of Price Waterhouse & Company, the Petroleum Industry Research Foundation, the American Petroleum Institute, and individual members of Congress. The latest contribution to the debate is Taxation with Representation's compendium of testimony entitled "The Petroleum Industry's Tax Burden".

ORIGIN OF THE CURRENT CONTROVERSY

The current controversy began in late 1971, when Senator Proxmire placed in the Congressional Record an article from *U.S. Oil Week* which indicated that the petroleum industry's 1970 federal tax burden was only 8.7% of "net income before tax". Senator Proxmire described these figures as "a disgrace" and asked how members of Congress could "call upon individuals to pay more in taxes when the oil companies continue to escape".

In mid-1972, the American Petroleum Institute responded to these figures by preparing some statistical studies of its own. The first of these was a compilation of tax accounting data by Price Waterhouse & Company, drafted in accordance with directions drawn up by the American Petroleum Institute. This compilation detailed the tax payments during 1970 by 18 major petroleum companies, and calculated their tax burden as 21.8%, rather than 8.7% as determined by *U.S. Oil Week*.

The second API study was done by the Petroleum Industry Research Foundation, Inc. (PIRINC). It set out to prove that the burden on the petroleum industry was actually higher in 1970 than the tax burden on U.S. business corporations generally.

The Price Waterhouse data compilation and the PIRINC statistical study were forwarded in June 1972 to each member of Congress under cover of a personal letter from Frank N. Ikard, President of the American Petroleum Institute. In his letter, Ikard condemned the figures compiled by *U.S. Oil Week* and published by Senator Proxmire. Those figures, he said were "totally misleading". He also declared that "Congress and the public are entitled to have accurate and factual information on which to make informed judgments."

In view of the important and highly technical nature of this controversy, Taxation with Representation requested several knowledgeable economists and lawyers to comment on both the *U.S. Oil Week* statistics and the American Petroleum Institute's presentations. The result is a 66 page compendium of statements containing a highly sophisticated economic analysis of the petroleum industry's contentions. Contributors include James C. Cox and Arthur W. Wright of the University of Massachusetts and Edward W. Erickson of the University of North Carolina.

The compendium makes the following major points:

Before debating the petroleum industry's tax burden it is first necessary to decide on the "measure" to be used to calculate tax burden. Among the acceptable measures are the "tax neutrality measure", used by Price Waterhouse, and the "cost effectiveness measure" used by *U.S. Oil Week*. The principal difference is that the tax neutrality measure concentrates only on domestic U.S. income, whereas the cost effectiveness measure looks at the total tax base, including both foreign and domestic income.

The American Petroleum Institute's letter to members of Congress talks nonsense when it attempts to use the Price Waterhouse figures (compiled by use of the tax neutrality measure of tax burden) to refute the *U.S. Oil Week* figures (compiled by use of the cost effectiveness measure). Professors Wright and Cox state that this is "like asserting that 'lettuce is greener than carrots are orange' ".

The PIRINC tax burden "study" is worthless and misleading. PIRINC, said Wright and Cox, is "playing a meaningless numbers game designed to persuade the unwary reader that the oil industry does not receive special tax treatment". "We conclude," they continue, "that the PIRINC pamphlet, aside from the useful raw data it presents, is of little use and some possible mischief to enlightened public discussion of the tax burden issue."

The Price Waterhouse data overstate the petroleum industry's tax payments with respect to the year 1970 by almost one third. This result is achieved by using a "cash flow basis" of accounting for 1970 taxes rather than the standard accrual basis of accounting. As a result, 1970 tax "payments" include not only taxes paid in 1970 with respect to that year, but also taxes paid in 1970 *with respect to other years*. After allowance is made for this factor, the petroleum industry's 1970 tax payments fall from $971.9 million to $654.7 million. Except for this possibly unintentional aberration, however, the Price Waterhouse data are of "high quality" and, in the words of Wright and Cox, the API has made "a signal contribution to improving the level of public discussion" by releasing that data.

The petroleum industry tax burden figure computed by *U.S. Oil Week* correlates exceedingly well with Wright and Cox's own calculations making use of a cost effectiveness measure of tax burden and the Price Waterhouse data supplied by API. The *U.S. Oil Week* figure, based on SEC data, showed a tax burden of 8.7+%. The corresponding Wright-Cox figure, based on the API's Price Waterhouse data, is 8.3%.

The most significant factors reducing the petroleum industry's tax burden are the foreign tax credit (which accounts for a 15 percentage point reduction in burden), and percentage depletion (which accounts for a further 14.5 point reduction). The intangible drilling deduction accounts for only a 2.1 point reduction in burden. Other provisions of the tax law account for the remaining difference between the industry's actual 8.3% burden (using API figures) and the nominal 48% corporate tax rate.

The witnesses' summaries of their statements follow:

James C. Cox and Arthur W. Wright, University of Massachusetts, Amherst:

Interest in the oil industry's tax burden derives from its possible relevance to public policy. Thus the tax burden issue involves three distinct questions: (1) Given some specified objectives of public policy, what is the relevant measure of tax burden? (2) Given the relevant tax burden measure, what are the actual tax burdens on oil and other industries? (3) Given the actual tax burdens, is the present tax policy (which gives rise to the actual burdens) the best policy for achieving the given policy objectives?

Failure to distinguish among these three questions can create confusion on the tax burden issue. Indeed, the primary reason for the high ratio of heat to light in the controversy over oil's tax burden is precisely a failure to distinguish between questions 2 and 3. It is frequently argued by oil industry critics that, because oil's tax burden is low relative to the average for all industries (question 2), the present special tax treatment of oil which gives rise to the low tax burden should be changed since it is not "in the public interest" (question 3). The industry implicitly accepts this logic when it counters by arguing that oil's tax burden is really not so low as the industry's critics claim. Neither side stops to ask what the "public interest" is or how oil's tax burden is related to it.

In our statement, we evaluate the contributions towards answering each of these questions made by three documents which have figured most recently in the controversy: (a) an article from *United States Oil Week* magazine, reporting data which show a very "low" tax burden on major oil companies; (b) a report by Price Waterhouse & Co. to the American Petroleum Institute containing data which show a not so "low" tax burden on major oil companies; and (c) a pamphlet published by the Petroleum Industry Research Foundation, Inc. (PIRINC), presenting data which show quite "high" tax burdens on oil corporations.

We find (a) and (b) to be helpful steps toward improved public discussion of the issue of oil's tax burden—*provided* the data they report are interpreted in a suitable public policy framework, something neither (a) nor (b) does. The third document, (c) does contain useful data, but it is otherwise merely a deliberate attempt to confuse the issue and mislead the public in a self-serving manner.

Edward W. Erickson and David N. Hyman, North Carolina State University; Robert M. Spann, Virginia Polytechnic Institute; and Stephen W. Millsaps, Appalachian State University:

There is a critical trade-off between petroleum tax policy, domestic petroleum prices and import controls. A recent report by the Petroleum Industry Research Foundation, Inc. (PIRINC), while factual and well documented, does not help in assessing this trade-off. Nor does the PIRINC study discuss the critical relation between petroleum industry taxes and petroleum industry net income. In addition, by implicitly recommending that Federal tax policy should adjust for inter-industry differences in state and local taxes, PIRINC is recommending a policy which redistributes income from citizens of states without large oil and gas industries to citizens of states with large oil and gas industries.

"Agricola" (An attorney whose employment made it awkward to submit a statement in his own name):

The American Petroleum Institute's recent letter to members of Congress is misleading in several respects. First, it includes excise taxes—which are virtually never absorbed by the manufacturer—as part of the industry's tax burden. Second, and more important, the institute's presentation contains a built-in bias in favor of showing a relatively higher direct tax burden for the firms included in the Institute's study. Finally, there is a transcription error in the Institute's presentation which results in an overstatement of its tax rates.

DIOXIN CONTAMINATION IN VIETNAMESE FOOD CHAIN

Mr. NELSON. Mr. President, scientists have recently reported new evidence that dioxin in 2,4,5–T, a herbicide used in defoliating South Vietnam and presently in use on agriculture land in this country, has contaminated the Vietnamese food chain.

Over the years, I have argued that 2,4,5–T, which contains dioxin, the most deadly synthetic substance known to man, should be banned from any domestic use until adequate safety studies are completed. And, I have stated, bioaccumulation is an important question requiring further study.

The report of Dr. Matthew Meselson and Robert Baughman, of Harvard University to the National Institute of Environmental Health Sciences Conference, reveals the results of a recent study that suggests that dioxin in 2,4,5–T "may have accumulated to biologically significant levels in the food chain in some areas of South Vietnam exposed to herbicide spraying."

This new information seems to support findings from a preliminary USDA study of bioaccumulation of dioxin, which I discussed in a January speech to the Wisconsin Pesticide Conference in Madison, Wis.

Mr. President, I request unanimous consent to have printed in the RECORD a report by Morton Mintz of the Washington Post that "Scientists Bare Perilous Chemical in Vietnam Defoliant."

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

SCIENTISTS BARE PERILOUS CHEMICAL IN VIETNAM DEFOLIANT

(By Morton Mintz)

Defoliation in South Vietnam has contaminated the food chain with a chemical that causes birth defects in animals, two Harvard University scientists have disclosed.

They said that, by using a sensitive new method, they detected the chemical in shrimp

and in five species of fish taken from four widely separated sites in South Vietnam.

The chemical, dioxin, is almost unrivaled in its power to deform the offspring of animals that ingest it in even tiny amounts. Its most common effects are cleft palate and kidney defects. But studies of a possible link between defoliation and human birth deformities of any kind have been inconclusive.

Dioxin is always present as a contaminant of 2,4,5-T, a herbicide that, in turn, is an ingredient of a defoliant know as Agent Orange.

In South Vietnam between 1962 and 1970, military pilots—most Americans, but including some South Vietnamese—sprayed nearly 5 million acres with Agent Orange containing about 90 million pounds of 2,4,5-T.

In the United States, 2,4,5-T, Silvex and other herbicides contaminated by dioxin are widely used to clear brush and weeds for rice and other food crops and for cattle grazing.

The Harvard scientists, Robert Baughman, a chemist and Matthew Meselson, a geneticist, reported Tuesday in Research Triangle Park, N.C., that their new detection method finds dioxin in ratios as low as one part per trillion parts of body weight.

Using this method, Baughman and Meselson told a conference sponsored by the National Institute of Environmental Health Sciences, they examined samples of catfish, croaker, carp, sculpin, crayfish and shrimp.

They said they picked up dioxin at levels up to 814 parts per trillion (ppt). A guinea pig swallowing 600 ppt, has been shown to have only a 50-50 chance of surviving. Rats ingesting 125 to 500 ppt in daily oral doses produced offspring with deformities and intestinal hemorrhages.

These results led Meselson and Baughman to suggest that dioxin "may have accumulated to biologically significant levels in food chains in some areas of South Vietnam exposed to herbicide spraying."

Yesterday, the Environmental Protection Agency was requested to suspend domestic usage of 2,4,5-T until it sets up a monitoring program that determines "the extent, if any," of dioxin-contaminated food chains in the United States.

The request came from Harrison Wellford of Ralph Nader's Center for Study of Responsive Law and Dr. Samuel S. Epstein, a physician and environmental toxicologist at Case Western Reserve University in Cleveland, Ohio.

The EPA already has before it a petition for a suspension filed by the Environmental Defense Fund and Wellford, a pioneer campaigner for restrictions on 2,4,5–T.

Legally, a suspension would accomplish an end run around an injunction just as an injunction that has thwarted efforts to limit use of 2,4,5–T. The injunction was obtained last June by Dow Chemical Co., the leading producer, and EPA is seeking to overturn it in an appeals court.

The agency should give the court "the dramatic new data from Baughman and Meselson," Epstein and Wellford said in a letter to EPA Administrator William D. Ruckelshaus.

Turning to the question of whether dioxin could cause birth defects in humans, they pointed out that thalidomide—the sedative that caused the birth of thousands of limbless infants—was found to be 60 times more dangerous to humans than it was to mice, and 700 times more dangerous to humans than hamsters.

Dioxin, which accumulates in the body rather than being excreted, occurs at a rate of between 100,000 and 500,000 ppt, in commercial 2,4,5–T on sale today, Wellford and Epstein told Ruckelshaus.

They urged the American and South Vietnamese governments to make immediate studies among pregnant women in the areas where the fish were found—in the Dongnai and Saigon rivers and in coastal areas near Cangio village.

In addition, they asked Ruckelshaus to reject a U.S. Air Force application to register most of its remaining supply of Agent Orange for domestic use.

A rejection would block proposed sales of the defoliants to Brazil which was alleged to be "carrying out a major paramilitary campaign against native peoples in the Amazon Basin."

MARITIME DAY IN ALASKA

Mr. GRAVEL. Mr. President, today is a very symbolic one for those of us from Alaska. The Honorable William A. Egan, Governor of the State, has proclaimed it Maritime Day to recognize the important role which the maritime industry plays in the lives of Alaskans. And, while the day itself commemorates the anniversary of the first trans-Atlantic voyage by a steamship, it acknowledges the significance which we, from the 49th State, attribute to our American Merchant Marine. Therefore, I ask unanimous consent that Governor Egan's proclamation be printed in the RECORD.

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

PROCLAMATION: MARITIME DAY

We in Alaska recognize that a strong American merchant marine is essential to the Nation's economic prosperity and military security.

To remind us of the important role which the merchant marine plays in our lives, the Congress in 1933 designated the anniversary of the first trans-Atlantic voyage by a steamship, the SS *Savannah*, on May 22, 1819, as National Maritime Day.

The Merchant Marine Act of 1970 is playing an important part in moving the Nation's maritime industry forward with the task of rebuilding our merchant marine fleet, improving the competitive position of our shipbuilding industry, and restoring the United States to its rightful proud position in the shipping lanes of the world.

In the 49th State we have just recently launched a new $19.5 million ocean-going ferry liner which will become the flagship of the Alaska Marine Highway System. The Alaska Marine Highway, which carries passengers, vehicles, and cargo has this year completed a decade of service. The system today extends over 2,200 miles, joining some 17 communities throughout Alaska as well as connecting the 49th State to Seattle and to British Columbia, Canada. During the past year, 200,000 passengers traveled on the 7 vessels of the fleet and nearly 50,000 vehicles were hauled. Revenue for the year approached $10 million, making the system about 66 per cent self-sustaining. When we consider what the costs would be for constructing and maintaining land highways over a similar distance, the marine highway must be rated a definite dollar-and-cents success.

As the Alaska Marine Highway continues to expand and improve service during its second decade of operation, we will continue to see increased economic benefits accruing from it to both Alaska and the Pacific Northwest. Maritime tonnage during 1972 between the two areas reached the 1 million ton mark and cargo hauled by the marine highway accounted for a substantial part of that.

Therefore, I, William A. Egan, Governor of Alaska, proclaim May 22, 1973, as Maritime Day in Alaska and urge the people of Alaska to honor our American merchant marine by displaying the flags of the United States and Alaska at their homes and other suitable places.

Dated this 7th day of May, 1973.

THE GENOCIDE CONVENTION: CONSISTENT WITH THE TREATYMAKING POWER OF THE UNITED STATES

Mr. PROXMIRE. Mr. President, some critics of the Genocide Convention have expressed the concern that this treaty does not fall within the limitations of the treatymaking power of the United States. This argument is usually based on the decision of the Supreme Court in the case of Geofrey against Riggs, where it was stated:

The treaty power, as expressed in the Constitution, is in terms unlimited except by those restraints which are found in that instrument against the action of the Government or of its departments, and those arising from the nature of the Government itself and of that of the States. It would not be contended that it extends so far as to authorize what the Constitution forbids, or a change in the character of the Government or in that of one of the States, or a cession of any portion of the territory of the latter without its consent. . . . But with these exceptions, it is not perceived that there is any limit to the questions which can be adjusted touching any matter which is properly the subject of negotiations with a foreign country.

These limitations are not extensive, and may have been reduced further in the case of Asakuras against Seattle, when the Court held:

The treaty-making power of the United States is not limited by any express provision of the Constitution, and, though it does not extend so far as to authorize what the Constitution forbids, it does extend to all proper subjects of negotiations between our government and other nations.

The only question, then, is whether genocide is a proper subject of negotiations between our Government and foreign powers. In this regard former Solicitor General Philip B. Perlman has said:

That genocide is a subject appropriate for action under the treaty-making power seems to us an inescapable conclusion. The historical background of the Genocide Convention indicates the view of the representatives in international affairs of practically all the governments of the world on the appropriateness and desirability of an international agreement to outlaw the world-shocking crime of genocide. This government has shared in this view.

Mr. President, there appears to be no basis for doubt that the convention would be consistent with the treatymaking power. I urge the Senate to act without further delay to ratify the Genocide Convention.

INSPECTION OF U.S. FOREIGN ASSISTANCE PROGRAM

Mr. INOUYE. Mr. President, in January of this year, I was privileged to lead a delegation of five distinguished members of the Senate Appropriations Committee on an inspection of the U.S. foreign assistance program in the Philippines, Indonesia, Thailand, Laos, Cambodia, Vietnam, and Taiwan.

A comprehensive and detailed 226-page classified report of the delegation's activities, observations, and recommendations was released last week. The introduction and general recommendations, however, were unclassified and I ask unanimous consent that this portion of the report be printed in the RECORD.

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

INTRODUCTION

Upon my appointment as Chairman of the Senate Appropriations Committee's Subcommittee on Foreign Operations, I set out to read and study some fifty-five pounds of budget justifications, hearing documents, and supporting data which were prepared by the agencies and activities funded through the appropriation bill handled by this Subcommittee and for which the President requested $5.2 billion in fiscal year 1973 (budget estimate for fiscal year 1974, $4.2 billion).* When I completed this laborious undertaking, I was left with the feeling that I still knew little of what United States foreign assistance was about—what its goals were—or how it measured its successes or corrected its shortcomings and learned from its failures.

Neither did I gain the slightest understanding of the economic and political benefits of a continued aid program to the United States which in my opinion was an essential prerequisite for justifying continuation of the program.

As Chairman of the Subcommittee, it became my responsibility to try to understand and evaluate the foreign assistance program and its justification for continued claim on high priority tax dollars. I determined that this job could not be done to my satisfaction from Washington alone, and thereupon I proposed a series of comprehensive on-site inspection trips to the major areas receiving assistance. (My request was outlined in the following letter to Chairman John L. McClellan:)

U.S. SENATE,
Washington, D.C., September 11, 1972.

Hon. JOHN L. MCCLELLAN,
U.S. Senate, Washington, D.C.
Chairman, Committee on Appropriations,

DEAR MR. CHAIRMAN: It seems abundantly clear that the United States Foreign Assistance Program must be substantially overhauled and redirected if it is to make a maximum contribution to the underprivileged peoples of the world and receive the public and congressional support which it needs to exist. I am mindful of the challenge this presents to the Foreign Operations Subcommittee and to me as its Chairman. Nevertheless, I am anxious to see what can be done and pledge my best effort to report a well constructed and responsible bill next year.

I am firmly of the opinion that the basis for the success or failure of this program—past or future—is not in Washington but in the field. In this regard, I recommend that the Subcommittee undertake an on-site review of operating programs funded by the bill at the earliest practical time.

Asia is in a period of transition and turmoil unequaled in modern times, and in my opinion should be the point of our beginning. I therefore propose that the Subcommittee visit the Far East during the period of January 6 to 28, 1973. I would contemplate future on-site inspection trips to South America in August of next year, to be followed by visits to the Near East and Africa in late 1973 and early 1974. Such a schedule would permit us to cover most of the more significant programs over the next two calendar years.

I would, of course, be glad to have the benefit of your own views and suggestions as to this undertaking and if you agree with my recommendations, I would appreciate your making the necessary authorizations for travel and other arrangments.

Sincerely,

DANIEL K. INOUYE,
Chairman, Subcommittee on Foreign Operations.

In approving the request, Chairman McClellan called upon the Department of State and the Department of Defense to render every assistance to the mission. On polling the Committee I was gratified that four distinguished and highly respected members who shared my concerns regarding the foreign assistance program were able to set aside three weeks to accompany me on one of the most taxing and heavily scheduled overseas trips ever undertaken by a congressional committee. They were Senator Joseph M. Montoya of New Mexico, Senator Ernest F. Hollings of South Carolina, Senator Birch Bayh of Indiana, and Senator Ted Stevens of Alaska.

At the outset of this report I would like to acknowledge with appreciation the support which I received for this mission from Chairman McClellan, other members of the Committee who for various reasons were unable to accompany us, and especially my fellow travelers who undertook a most demanding and rigorous schedule involving over 21,000 miles of travel and over 62 hours of flying time. The original schedule called for official visits to nine Asian nations in a period of 21 days. The country itinerary was as follows:

ITINERARY OF FOREIGN OPERATIONS SUBCOMMITTEE, JANUARY 6–28, 1973

(Times in local)

January 6 (Saturday): 0900, departed Washington, D.C.; 1420, arrived Honolulu.

January 7 (Sunday): 1000, departed Honolulu.

January 8 (Monday): 1500, arrived Manila.

January 11 (Thursday): 1000, departed Manila; 1220, arrived Jakarta.

January 13 (Saturday): 1000, departed Jakarta; 1300, arrived Bangkok.

January 15 (Monday): 0900, departed Bangkok; 1045, arrived Udorn; 1500, departed Udorn; 1520, arrived Vientiane.

January 16 (Tuesday): 1400, departed Vientiane; 1645, arrived Phnom Penh.

January 17 (Wednesday): 1430, departed Phnom Penh; 1530, arrived Saigon.

January 20 (Saturday): 0800, departed Saigon; 1140, arrived Hong Kong.

January 22 (Monday): 1000, departed Hong Kong; 1240, arrived Taipei.

January 24 (Wednesday): 0900, departed Taipei; 1515, arrived Seoul.

January 26 (Friday): 0900, departed Seoul; 1200, arrived Tokyo.

January 28 (Sunday): 1000, departed Tokyo; arrived Washington, D.C.

Senator Ted Stevens of Alaska, who joined the Delegation in Jakarta, was unable to participate in the visit to the Philippines because of his attendance at memorial services in Alaska for former Congressman Nick Begich of that State. Unfortunately, due to the sudden death of his brother, Senator Joseph M. Montoya left the group at Udorn, Thailand.

The untimely death of former President Lyndon B. Johnson, a dear friend and former colleague of members of the group, necessitated cutting short our trip at Taipei, Formosa, and we were thus denied the opportunity of visiting Korea and Japan as originally planned.

This report, while reflecting in large measure the views, comments and recommendations of the Delegation which visited the Far East, has been adopted by the Subcommittee on Foreign Operations and is issued as a report of the Subcommittee.

Prior to the departure of the Delegation I requested from the Administrator of the Agency for International Development a statement in justification of the United States' bilateral assistance program. This statement is attached to this report as Appendix I. A similar statement from the Department of the Treasury justifying our multilateral assistance program is attached as Appendix II.

In an effort to secure a frank and candid expression of views from United States Mission personnel, private business interests, and others with whom the Committee met, they were assured that the Committee's report would be a classified one. This report, therefore, bears an overall classification of "Secret" because of inclusion of material identified as such by executive agencies. If not otherwise identified the remainder of the material is classified as "Confidential."

DANIEL K. INOUYE,
Chairman, Subcommittee on Foreign Operations.

GENERAL OBSERVATIONS AND RECOMMENDATIONS

Acting on the report of its Delegation visiting the Far East, the Senate Appropriations Subcommittee on Foreign Operations wishes to go on record with several observations and recommendations which it feels are generally applicable to all programs of United States foreign assistance. Observations and recommendations to specific countries or group of countries are contained under appropriate country headings.

(1) The Subcommittee supports the view that United States foreign assistance projects should be designed for and weighed in favor of those nations and individuals demonstrating a willingness and ability to help themselves. One measure of this commitment is the willingness to provide local support needed to make project assistance effective. In the opinion of the Committee, every effort should be made to give the recipient a stake in the success of the project by obtaining maximum local contributions. In this regard, all future presentations and reports to the Committee on individual projects should reflect the amount and type of local participation.

(2) United States foreign assistance should be responsive to humanitarian concerns and development goals. It should deal directly and visibly with problems of concern to the common man—unemployment, education, health, etc. It should be supplied in a manner which is, to the maximum extent possible, supportive of United States trade objectives and export expansion.

(3) The Committee reiterates its support for a broad extension of the cost reimbursable concept of dispensing United States foreign assistance. This concept, recently developed and tried in the Philippines with encouraging results, increases the effectiveness of the United States contributions and develops the managerial capability of the participating government.

(4) Corruption may be tolerated and even accepted in some societies, but it is not acceptable to the United States to have its foreign aid funds diverted from their intended purpose. The Committee feels that the burden of this problem rests squarely on the local host governments. They must be made to understand that failure to deal forthrightly with the problem will further erode confidence and strengthen the hand of those who would like to terminate all foreign assistance.

(5) The Committee supports the international consultative group mechanism as a device to persuade countries to follow sound

*It is an interesting aside to note that in the embassies and missions visited there was practically no knowledge of the views and concerns of the Senate Appropriations Committee. Only one embassy visited possessed a copy of the Committee's fiscal year 1973 report (107 pages) issued as a public document three months previously.

development policies and to serve as catalyst for increased aid contributions by other countries.

(6) The Committee reiterates its support for increasing the proportion of AID funds allocated to education, whether carried out in the United States or abroad. United States representatives to international financial organizations also should urge increased educational programs on their part.

(7) The Committee continues to be concerned even about the limited use of Agency for International Development positions as a cover for intelligence activities. It also reaffirms the position taken by the Senate twice within the past fourteen months that overseas public safety programs should be wholly funded by the governments which they serve and not by the Agency for International Development. Projects which improve public safety, but have primarily developmental or humanitarian goals, can be undertaken with regular program funds.

(8) As a matter of general policy, the Committee recommends that individuals responsible for allocating or dispensing United States assistance should be limited to a maximum of four years service in any one country or regional program in which that country is located.

(9) The conclusion of United States military involvement in Southeast Asia has freed stock of new and used excess equipment for possible adaptation to developmental uses. The Committee is concerned that eligibility priorities established for the distribution of these stocks to friendly foreign countries may be distorting the distribution and use of this equipment. This topic is addressed in further detail under appropriate country headings.

(10) The Delegation recognizes that security assistance is designed to buttress a country's efforts to deal effectively with internal as well as external threats. However, it wishes to go on record in favor of phasing out these programs and moving into developmental programs at the very earliest possible time.

(11) The issue of postwar assistance to Southeast Asia was raised by the Delegation both before its departure from Washington and at Bangkok, Vientiane, Phnom Penh and Saigon. Unfortunately, no more information was available in the field than in Washington. Only vague generalizations without definition or quantification were put forward in answer to the questions raised. Thus it is that as of this writing (April 16, 1973) the Subcommittee, and the Congress for that matter, has not received any definitive proposal or meaningful cost projections on this program which is speculated to have an overall price tag of $7.5 billion. Moreover, the Subcommittee believes it is absolutely essential that United States postwar commitment to existing governments in Southeast Asia be redefined and restated firmly and unequivocally as a condition precedent to consideration of any postwar assistance to that area.

AN ABOMINATION—ATOM BOMBING FOR GAS IN COLORADO

Mr. GRAVEL. Mr. President, on May 17, the Atomic Energy Commission performed its second atom bombing in Colorado.

Three bombs with the combined power of about 5 Hiroshima bombs were detonated underground to fracture rock around a natural gas well about 50 miles north of Grand Junction.

This atomic "Plowshare" experiment, which is called Project Rio Blanco, is a follow-on to the 1969 Project Rulison, which was the underground explosion of a single nuclear bomb about 35 miles distant from the Rio Blanco site.

How many bombs altogether are in store for our Rocky Mountains?

28,000 ATOMIC BOMBS FOR THE ROCKIES?

The AEC estimates that about 300 trillion standard cubic feet—scf—of natural gas in the Rockies are potentially recoverable by nuclear stimulation between now and the year 2060. To extract it all, says an AEC paper,[1] would require about 5,600 wells each stimulated by 4 to 6 bombs, or about 28,000 atom bombs, altogether.

The AEC calls that "full field development." I call it an abomination. Rio Blanco is just the tip of a very big iceberg. Therefore, I commend my colleague from the State of Colorado, Mr. HASKELL, for opposing the detonations on May 17.

I would like to make only three points at this time about my opposition to Project Rio Blanco in Colorado, to Project Wagon Wheel in Wyoming, and to other nuclear gas-stimulation schemes.

IS THERE A BETTER WAY?

First, nuclear technology is unnecessary to get gas. Even Rocky Mountain gas may be obtainable by the use of hydrofracturing. But there is an even simpler, gentler way to get the same amount of gas—grow it.

I am referring to the use of solar encrops which can be fermented into meergy to cultivate algae and other plant thane—which would not be radioactive.

How much land would it take to grow the equivalent of all the gas in the Rockies—300 trillion standard cubic feet?

If we assume that the Rockies might be drained over a period of 30 years instead of 80, that would be an average production rate of 10 trillion standard cubic feet of gas per year. At 1,000 B.t.u. per cubic foot, the raw energy obtained would be 10×10^{15} B.t.u. per year.

According to the NSF/NASA report, "Solar Energy as a National Resource," December 1972, the amount of land required to grow the same amount of gas—at 2 percent efficiency of solar energy conversion—would be about 1½ percent of the lower 48 States, or about 45,000 square miles of good cropland which the U.S. Department of Agriculture kept idle in 1972 as part of its set-aside and other farm subsidy programs.

If we use the AEC's 80-year figure for extracting all the gas instead of 30 years, then the land figure falls even lower—to the vicinity of about 20,000 square miles per years.

There are additional solar-energy technologies, which I have previously described in the RECORD, which also could do the job. In short, atom bombing for gas is unnecessary.

SOONER OR LATER—POISONED WATER?

The second point is that, sooner or later, 28,000 radioactive cavities in the Rockies are probably going to contaminate water systems; even two radioactive cavities there are cause for the creeps.

After all, the Rockies are not the Nevada test site, which is located in a desert. The AEC has detonated a few hundred atom bombs at the Nevada test site since the atmospheric Test Ban Treaty of 1963, plus a few before the treaty. In other words, 10 years is about the maximum observation period for underground migration of radioactive substances which will remain dangerous for periods of 120 to 400 years and longer. About half of the Nevada cavities must be only 5 years old, or less.

There is far more theory than observation behind the AEC's claim that atom bombing will not ruin Rocky Mountain water, and the rivers it feeds. The uncertainty among experts about the speed of underground water migration has been revealed in the two Alaska bomb tests, Milrow in 1969 and Cannikin in 1971.

The AEC admits that both cavities will discharge radioactive hydrogen and other substances into the ocean. The question is, how soon?

For the Milrow test, the hydrogen estimates varied from 6 years to 100 years. For the Cannikin test, they vary from 1½ years to 125 years. These estimates are called, respectively, the "conservative" and the "probable" estimates.

According to AEC advisers just after the Milrow test, radioactive hydrogen from Milrow could reach the ocean by 1975, and continue discharging for the subsequent 66 years at levels up to 300 times the maximum permissible concentration; the source is a report written by Teledyne Isotopes for the AEC in March 1970 called "Radioactivity in Water; Project Milrow."

The point is that the very best experts money can buy are quite uncertain about the speed of underground water migration.

THE LOW-DOSE HOAX

My third point concerns the sale and use of radioactive gas in homes and industry.

The AEC may dilute the radioactive gas with uncontaminated gas from somewhere else, so that the radiation dose per person will be low.

I say this is a disgraceful trick on the American people, and the explanation is pretty simple.

Suppose you have a well which is full of radioactive gas. If you sell it all in one city of 100,000 people, let us say the dose is very high, and every year 1,000 people die from it. Right now, this is a purely imaginary figure.

Of course, the public would not accept 1,000 deaths, but you are determined to sell the gas you "stimulated." So you take the same amount of radioactive gas, and by diluting it with uncontaminated gas, you can distribute it among 1,000,000 people in 10 cities instead of 100,000 people in one city.

Obviously the amount of radioactivity per person becomes much lower that way. On the other hand, many more people are getting exposed. The result will be as follows: instead of 1 person out of 100 dying, only 1 person out of 1,000 exposed dies—but you are still killing 1,000 humans per year to sell your gas—exactly the same number whether the gas was diluted or not.

It can be put another way. Whether two people each get 5 units of radioactiv-

[1] "AEC Comments on Statement by David Evans in Opposition to Project Rio Blanco," Apr. 27, 1973.

ity, or five people each get 2 units, the health consequences are the same. Two times five equals 10, but so does 5 times 2. What matters is the 10 units of radioactivity reaching pepole.

One thousand deaths per year was, I repeat, an imaginary figure. the actual figure from radioactive gas could be much lower or much higher. The figure will be determined by the amount of radioactivity which leaves the gas wells and intersects with people. The more bombs, the more radioactivity.

The only way to prevent deaths from radioactive gas is not to sell it. Dilution is a vicious hoax.

MAKING MURDER A COST-BENEFIT MATTER

I would like to quote Dr. John W. Gofman at the University of California, Berkeley, on this subject because he clarifies the undeniable moral issue in atom bombing for gas:

The use of gas stimulated by nuclear explosions inevitably means increasing the radiation dose to the public.

It is a travesty upon rational thinking for anyone to hide behind the claim that the amount of radiation exposure will be 'small'. Particularly fraudulent is the effort to compare such ostensibly 'small' exposures with natural background radiation.

All this is fraudulent because all responsible authoritative bodies, including the BEIR Committee of the National Academy of Sciences in November 1972, are on public record as stating that there is no evidence for *any* safe threshold of ionizing radiation exposure.

Therefore, the so-called 'small' radiation exposure from the Rio Blanco test and from the entire Plowshare gas stimulation program will undoubtedly cause increased leukemia and cancer deaths plus deaths and deformities by gene mutation. No authority will contest this statement.

I know of no Congressional authorization to either the Interior Department or the Atomic Energy Commission willfully to take action to cause the murder of *any* citizens of the United States or to any descendants of present citizens of the United States.

Over and above the violation of the "consistent with public health and safety" features of the Atomic Energy Act, there is the very serious question concerning" criminal charges that should be appropriately placed against any officials of the A.E.C. and the Interior Department for willfully participating in an act of human murder.

A person would recoil if he were promised natural gas for the Nation plus his own safety, provided he would personally help strangle or electrocute just 100 innocent people per year. Unthinkable. Yet few people recoil when a bureaucrat makes a cold-blooded cost-benefit judgment requiring a comparable or much larger number of human sacrifices.

INTERVIEW WITH SENATOR MONDALE

Mr. NELSON. Mr. President, the May 19 issue of the New Yorker magazine contains an interview with the senior Senator from Minnesota, Mr. MONDALE.

In the article Senator MONDALE ably articulates the need for positive and humane leadership in a wide range of domestic areas. In addition, he offers valuable insights into a number of issues ranging from the congressional-executive relationship to the role of the American family.

Mr. President, I ask unanimous consent that this interview by Elizabeth Drew be printed in the RECORD.

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

A REPORTER AT LARGE—CONVERSATION WITH A SENATOR

Walter Frederick Mondale, a forty-five-year-old Democrat from Minnesota, is an increasingly important member of the United States Senate—one of the second tier of leaders (the first is made up of those whose power lies in their seniority), who define the issues and get them on the agenda, and occasionally even win acceptance of their ideas. He is a liberal in the Minnesota Democratic-Farmer-Labor tradition. A protege of Hubert Humphrey, he became Attorney General of the state at thirty-two and was appointed to fill Humphrey's Senate seat when Humphrey was elected Vice-President in 1964. Mondale was returned to the Senate in 1966, and again in 1972. Despite Mr. Nixon's overwhelming victory last year, Mondale won reelection then by fifty-seven per cent, and his efforts on behalf of Senator McGovern are credited with reducing Mr. Nixon's victory margin in Minnesota to only six percentage points. Mondale has established credentials with both the center and the left of the Democratic Party, and has a growing reputation among members of the press and others in Washington who observe, and can affect, politicians' careers. He was comanager of Humphrey's 1968 Presidential campaign. He supported the war in Vietnam longer than many of his Democratic colleagues did. He has also fought for the powerless in our society, identifying himself with such unpopular issues as welfare and busing.

I interviewed Mondale recently, in his Senate office—Room 443 of the Old Senate Office Building. The office contains the typical objects a politician accumulates: the state seal; awards; books written by colleagues and friends. The furniture is Undistinguished Government Issue. Mondale, wearing a short-sleeved shirt, sat in a corner of the only unusual piece of furniture, a pale-blue tufted Victorian sofa. Above him were large color photographs of the St. Croix River. Mondale is slim, youthful, with a touch of gray at the temples. He has prominent blue eyes, a nose that is slightly beaked, and straight, dark-blond hair cut in such a way as to avoid commitment on the length issue. He has the earnest air of a son of a Midwestern Methodist minister, which he is. But he also has a streak of wry irreverence, which has made him popular among Senate staff members. As we talked, Mondale piled the loose pillows of the sofa under his right arm, arranging and rearranging them, and occasionally pounding them for emphasis. From time to time, he put his feet on a coffee table that was in front of the sofa.

I began by asking Senator Mondale about the dilemmas of the contemporary liberal. What gave the Senator his belief that the social programs of the nineteen-sixties were really worth defending?

"Well, first of all, I have no argument with those who seek reform in these programs, and maybe even termination of some of them, because I don't argue that they're perfect and that there is not waste," he replied. "But I believe that the federal government has a fundamental role in delivering services to people who are overwhelmed by problems that they can't handle themselves: hungry children, and children who need to be educated; people who are handicapped, mentally ill, or retarded; people who have special learning difficulties; people who can't find work; old folks who can't care for themselves. And then there is a need for social programs that deal with the environment, transportation, and a whole range of human problems, in which I think the federal government has an indispensable role—leading, and helping to find national solutions. And I think many of those programs must include the provision of services, which means people, bureaucrats, delivery systems; and those programs cannot be disbanded. The President's attack has not been one of reform. It's been fundamentally one of assaulting the whole notion of the delivery of services to people who need them. As a matter of fact, there's a very disturbing notion that I find which somehow suggests that in our free society we're incapable of efficiently and effectively delivering essential services through government employees."

I asked him if he believed we were capable of doing so.

"I think there is more good going on than the President's dark appraisal of these programs suggests," he replied.

"Do you have appraisals that suggest to you that these services are getting through to the people who need them and are improving their lives?"

"It depends on the program. I could give as examples many programs where you have signs that two things have happened. First, the services of this whole range of poverty-related programs (student assistance, and so on), together with the philosophy that poor people can make it—which is what Johnson and Kennedy were saying in the sixties—have encouraged thousands and thousands of persons from disadvantaged backgrounds to believe that they can make it, and that the government and society would like to help them make it. And I think that what we learned in the sixties is that these problems are more difficult to solve than we expected, that government does not work automatically and efficiently and without waste, but that the fundamental commitment to help is a valid and essential role for this country, and I think that that's what Nixon is attacking—the notion that we can help. I think he's telling the federal government to get out of the social-reform business, and I think that that's a terrible notion."

"You said in response to my first question that you do believe these programs need some reform and some of them should be eliminated. What sorts of reforms would you propose?"

"Many. Because I think that it's in these social programs that the contemporary liberal is most vulnerable, and this is where some of us have been trying to do something for some years. I set up a pathetic little subcommittee on social-policy planning and evaluation a few years ago to try to begin, to to evaluate and plan what we're doing."

"What ever happened to that?"

"It was a pathetic little subcommittee. We had no staff, and the one thing we did do which was important was we continued to push a bill, which I was—and am—very interested in, calling for a Council of Social Advisers, which would be an institution like the Council of Economic Advisers but would concentrate on human programs. It would be required to put out an annual social report indicating how we were coming, and to try to do some pioneering in what we call social indicators, to see if we couldn't apply computer technology and data-gathering to give us a better understanding of how well we're doing. One of the things that appall me about our government programs is we just don't know how well they're doing. You can go out in the field and you can get anecdotal examples of how we're succeeding. You can talk to teachers who are thrilled with smaller classrooms or with new textbooks or with a school-lunch program, and they say it has changed their classrooms, but you can't get any data to back them up."

"Isn't that one of the points about this

whole debate—you have an anecdotal syndrome that works both ways? Some people will tell you success stories, and the Secretary of Housing can talk about a public-housing project that's a calamity, and in fact there is no base of information that gives us any broad picture?"

"That's correct. That's correct. So the question, then, is what you do about evaluation and data in the face of this anarchy, and of the lack of a strategic approach to human problems, and of the lack of the data base that gives you the hot facts rather than the cold facts."

"What do you mean by 'hot facts' versus 'cold facts'?"

"Well, most of the cold facts are inputs facts. I mean, how many teachers, how many bricks in the building, how many soybeans south of Mankato. The hot facts are the output facts, like what we are feeding hungry people, whether we are educating children, what comes out of the system. This is what's missing in so many programs. We know how much money is going in; we don't know what we're getting for it. We know how much we're spending on manpower; we don't know how many are being trained and finding jobs, improving their position, and so on. That's what I tried to do in this little subcommittee, and there are several things I would suggest. First of all, I would like to see my Council of Social Advisers' annual social report—for social indicators—set up. Second, I would like to see a national social-science foundation set up to concentrate on the social-science questions in the same way the National Science Foundation concentrates on the natural-science questions. The N.S.F. claims it's doing both, but it isn't. Third, I would like to see us in the Congress be required when we pass a bill to define specifically what it is we claim we're going to accomplish. If we pass a Head Start program, how many children do we expect to reach? What do we expect those children to receive? What do we expect the result will be if this is done? How much money do we want? And then, once the bill is passed, I would like to see us set aside a percentage of the program's funds—say, one-half of one per cent—to be controlled by the committee (the Labor and Public Welfare Committee in this case), and we'd hire some of the best social scientists in the country and say, 'Now, your job is to go out in the field, evaluate these programs, test them, and prepare a report two years from now. Did we achieve those objectives? Why didn't we? Is there waste? Did we do better than we thought? Did we do less than we thought? How can we improve our program?' So that every program we passed would have built into it an independent, highly sophisticated public evaluation. In other words, so that all of us would have to face the music and no program would be sort of an unguided missile on its own. You see, right now the evaluation usually comes from agencies that have a tremendous built-in incentive to either approve it or destroy it, depending on the policy."

"But, as I understand it, there could be several problems with that, as there have been even within agencies that have tried to get honest evaluations. These things are very hard to measure. Over at the Office of Education, they're knee-deep in reports on whether or not their programs have 'worked.' But nobody really knows what the criteria for deciding that should be."

"Well, I would hope that the Council of Social Advisers would help bring us out of the anarchy that you describe."

"Also, isn't there a time-lag problem? In other words, you would want an evaluation, you say, in two years. But aren't you talking about things that you would like to see improve people's lives in ways whose effects might not show up for some time, or might not be measurable at all?"

"Yes. The time frame would, I think, depend on what you were doing. Education is a slow process, and I think one of the things we do that are unfair to educators is to expect a quick yield that's quantifiable. Second, as your question implies, we don't give much credit for things like a healthy child or a child who has been sick mentally and is now becoming healthier. So much of our data and so-called quantifiable material dismiss the human element and ask—you know—how are they doing in math? How are they doing in reading? But I still think we should insist on quantifiable data in basic skills, and so on. What bothers me today is that there is no manageable structure or approach for finding out what's going on, for leading these discussions in terms of reform in this government. John Gardner [Secretary of Health, Education, and Welfare during the Johnson Administration] said when he left that we've got a time-honored way of backing into the future.

Joe Califano [Joseph A. Califano, Jr., Special Assistant to President Johnson for Domestic Affairs], when he finished in the White House, noted how little data they had to work with on fundamental questions, like welfare reform and manpower, that we spend billions on. He said that our way of deciding questions about basic human programs more closely resembles the intuitive judgment of a tribal chief in Africa than it does modern decisionmaking techniques. And what I'm saying is that we ought to be geared up in a way that would permit us to evaluate, to understand, to reform, and to build into every program some kind of system that would help us find out what's happening. That's all."

"Isn't the results of the current debate that the liberals are busy defending what has been happening, and trying to save the programs from being cut, instead of thinking about new ways to accomplish the same purposes?"

"Yes, and partly that's our fault and partly it's the President's fault, because when he attacks the whole idea of federally assisted housing, say, we have to counterattack in a tough way. You just can't go back into your social-science laboratories and say that three years from now you're going to come up with a better delivery system because then there won't be any program at all. In other words, he's created what I think is a radical environment, where we have to fight back on political terms to create a counterforce that will prevent the dismemberment of all these programs."

"Do you reject the idea that in attacking the programs of the sixties Mr. Nixon may have been on to something: perhaps an incipient national mood that was tired—tired of federal programs, tired of taxes, tired of guidelines, tired of bureaucracies, and disappointed in the results?"

"I think he very shrewdly and cunningly exploited a sense of frustration and fatigue in American life. For nearly a decade, at least, Kennedy and Johnson and many of us were pleading with the American people to move on—more solutions, more programs. I think the public saw just an endless number of programs being passed, many of them oversold, and then they waited for the results. Many times, the programs weren't fully funded. Many times, they were maladministered, and many times it was impossible to achieve what it was claimed those programs could achieve—in the time frame, at least, that we talked about. And I also think the impression was given—which Nixon exploited very shrewdly—that part of what was being done was to make it possible for lazy people not to work, so that those who had the work ethic worked and paid their taxes for those who just would not work. I think he has exploited it and hoped to convert it into an enormous social retreat, which I think would be—well, I don't know what else to call it—immoral, because there are a lot of problems behind those statistics. And it's all right to flail the bureaucrats, but there are those poor kids out there who need help—who are handicapped, who are mentally ill, who are retarded, who desperately need help and affection—and the thousands of children out there who are poor, and hungry, and live in lousy housing, and many of whom don't have two parents. The Indian kids who never go to school with a textbook or a teacher that has any respect for them. The Chicano children who never hear a word of Spanish, or Portuguese children that no one speaks to in their language. There are a lot of problems out there. There are a lot of lonely old folks who live in housing by themselves, in poor health and with no one to care about them, and a lot of decent people who are looking for work and can't find it, and a lot of bright kids who can't afford to go on to college or to vocational school. There are a lot of disabled people who can't live on what's available to them. There are so many human problems in the midst of our wealth that need a country that cares and a government that tries. I don't think the average American is that selfish, and I think this is where the Nixon approach is going to go wrong. I think the average American is more just and more compassionate than Nixon thinks he is. I think we're going through a period of reaction from the sixties, but I think it's going to spring back. I don't think the American people want to live on a diet of selfishness, which is what is served up to them now. I think they'd rather be united and hopeful and helpful and humane than be just niggardly and selfish, and I think our time will come. It may not be right now, but I think it's going to come."

"There is also, as you know, an attack on the liberal programs from the other side, which says that the liberal approach amounts to simply tinkering with the status quo. That argument runs that if you're really talking about equality of opportunity in this country, which was one of the fundamental premises of these programs, you have to do much larger things, you have to have much greater transfers of income. It says that these programs did not really go to the heart of the matter of unequal opportunity or unequal existences in this country."

"Well, I would say two things. First, I think most Americans accept the notion that every child ought to have a chance in terms of opportunity—not in terms of result but in terms of opportunity. I think that if we abandon the notion that people have to, through their own effort, through excellence and through energy, through trying to learn, be a part of society and achieve on those terms—I think we've cheapened society. I'm too old-fashioned to abandon that notion and I think that this country must do a far better job than it's done, and spend more than it has and spend it more wisely and with more spirit and compassion, and with a fuller commitment than we ever have had, to give every child a chance, and I think that's so central that I am sickened by some who would abandon that effort. Now, second, I also believe in dealing with the problem of the unequal distribution of America's wealth, and that's why I'm interested in tax reform, and that's why I'm interested in reform of welfare programs, that's why I'm interested in public-service employment, interested in improved antitrust-law enforcement and other things that might help the average American get a better break in the distribution of the vast wealth of this country. But I do not believe in some massive program of dollar redistribution of wealth. I don't think the American people would stand for it, and I think it's folly to spend much time on it."

"You have often said that one of the problems of the programs of the sixties was that 'we authorized dreams and appropriated peanuts.' Would you, then, be willing to argue that taxes should be raised in order to do the things you think are necessary?"

"Well, I might, but there are some things that come first here, in my opinion. I think there are some very substantial revenues that can be raised in tax reform. I reported the other day—on the basis of some figures I got from the I.R.S.—that two hundred and seventy-three Americans who earned a hundred thousand dollars or more in 1971 didn't pay a dime in taxes. Two who earned more than one million dollars didn't pay a penny in taxes. Then we looked at those who paid practically nothing, and we found that some thirty-four thousand Americans in 1971 reported loophole income of a hundred and sixty-seven thousand dollars on the average and paid only four per cent tax on it.

"They took in nearly four billion dollars, and they paid something like a hundred and thirty-six million dollars in taxes. So there's several billion dollars that can be picked up by closing loopholes, or by reducing them in a way that does not hurt the business climate and that, in my opinion, would create a better sense of equity in America, because the average worker and his family think they're taking a hosing, and they've got a pretty good case. Also, I think there's still enormous waste in American government. For example, they're proposing, in effect, an increase of eight billion dollars in the defense budget this year, when we're supposed to be entering a generation of peace. We have something like two thousand bases overseas, in thirty countries. I think we're spending seventeen billion dollars this year in NATO. We just cannot continue to spill money on things in that way and have the money we need to deal with the problems of our own people. I'm not an isolationist, but I think we lack a sense of balance."

"Those are fairly familiar liberal arguments, if I may say so."

"Yes, they are, but they are still arguments. And we're not winning them."

"You have been moving into—at least by definition—a new set of issues, having to do with children and the family. Is it really a new set of issues, or is it old issues in new rhetoric? Why has your attention taken this turn?"

"Well, I sort of slipped into it. I started with problems of poverty and hunger and migrants, and the rest, and became more and more convinced that we were multilating thousands and thousands of children before they had a chance, and that if we wanted this fundamental notion of social opportunity and fairness and justice to have significance and substance, we had to deliver justice in those first few years of life. And we had to help the family do so. I helped create the Subcommittee on Children and Youth, which I now chair, and we've simply tried to look at a whole range of problems, from crib deaths to child abuse, child care, day care, the question of the mother's health during pregnancy—all those issues. And I'm becoming convinced that one of the revolutions under way, which is perhaps the most damaging thing going on in this country, is the growing pressure on and destruction of the American family. I believe, for ancient historical and biological reasons, and for psychological reasons and health reasons, that it is absolutely fundamental that a child be brought up in an atmosphere of security and love and respect, with stimulation and self-respect and all that goes with a healthy, strong family, and that children who are denied that pay the price. All of us pay the price, in a host of tragic and sometimes bizarre ways. We're starting to try to see behind some of these pathological problems, like child abuse, or the divided family, and ask what's happening about them. It's estimated, I think, that over forty per cent of mothers now work. With inflation and economic pressure, I think that percentage is going up. Is it a wise thing to require mothers to work when they have children at home? Do our tax laws encourage people who work when at least one of them ought to be home with the kids? If it's necessary that both parents be gone, are we really concentrating on adequate alternatives—decent, warm, supportive child-development centers—or are we just dumping them in cold custodial areas? What happens when a family breaks down and it leads to divorce or leads to a separated family, or where there's a family that's psychotic or so emotionally in trouble that the parents abuse their children or don't raise them properly, and so the children stop thriving and they have profound psychological problems, and all the rest? How do we deal with the necessity of strengthening the family and strengthening the ability of the family to produce those healthy, loving children that are the hope not only of our country but of the world? That, I think, is an issue that needs to be looked at."

"Is that not suggesting a range of government concern about the nature of people's lives that is unprecedented?"

"No—I do not think that the government ought to substitute for parental guidance and authority. And I think that idea is one of the reasons people shy away from this issue—because they think it smells bad. I'm very much opposed to that. But what I want to do is to have policies that strengthen the family, so that it isn't necessary that both parents work when they don't want to. Take, for example, these child-abuse cases that we're looking at. When the parents are scalding, mutilating, poisoning, dismembering an infant child, it doesn't help the situation just to say that you're strong for the family. Now, we found that in ninety per cent of the child-abuse cases the child can stay at home and the parents can be helped, and the family unit can be strengthened to everyone's benefit. That's the direction we ought to go in. Then, I think one of the questions we might ask is whether government isn't already interfering with the family and putting pressures on it that many families can't resist. Under the present welfare laws in many states, the only way the parents can take care of the family when the father is employed is to separate—the mother and the family can get help *only* if the man leaves. And that doesn't seem to me to strengthen the family. Also, I guess we're about the only Western society or modern industrial society that doesn't have some kind of children's allowance, so that during the early, formative years of the family it gets a little extra help to stay together, to help the kids until the kids are older. When we do provide day care, I think we're chiseling. We put a lot of these children in centers where there is no emotional support, no education, no stimulation. The children are just rejected for hours per day, and they must feel that. I mean, children are like flowers—you can damage them, and you can damage them permanently. Child psychiatrists will tell you that you find a serious psychological problem and often it's traceable to some things like that—things that happened in those first couple of years of life. We've got these environmental-impact studies that are great. With everything the government does, there's now supposed to first be a study that asks 'What does this do to the environment?' I think that's a good thing. I wonder if we shouldn't have a family-impact study. When we pass tax laws or welfare laws or housing laws or transportation laws, we ought to say, 'Well, what will this do to the families?' Urie Bronfenbrenner [professor of Human Development and Family Studies at Cornell University] said that it is remarkable that over the million-year history of mankind almost every society, no matter what the differences of religion and culture, ended up with the family unit. And he said that before we destroy that unit we'd better ask why they all found it essential. Wouldn't it be ironic if this nation, the wealthiest and most powerful in the world, should be the first to substantially destroy that system which mankind has always found essential?"

"You also took on the question of busing, and, when it was controversial, volunteered to head a special committee to examine the problem of how to achieve equal educational opportunity. You recently put out a report that called for 'quality integrated education' and said that busing was a misleading issue, but it's still busing that you're advocating, isn't it?"

"It is and it isn't. I'm not for busing for busing's sake."

"Well, no politician would say that he is."

"No, but I don't know of any reason he should be, either. In other words, the idea that American children, for the sake of some theory of computerized mixtures, ought to be bused to carry out some kind of balance notion never has made any sense to me, and I've said so many times. Where I draw the line is in trying to deny the court the power it needs to eliminate discrimination—and by discrimination I mean deliberate public policies that separate children on the basis of race. That, I think, is intolerable under the Constitution and intolerable from a public-policy standpoint. And that's why I have resisted attempts to limit the courts' jurisdiction to eliminate discrimination—attempts that often include a ban on busing. There are many other ways that we can work on this problem, but fighting limits on the courts is one that we must work on if we intend to eliminate discrimination. And that's been my position, and I don't know how you could say that you're against discrimination without taking that position."

"One issue that has been before us this year, in various forms, is the relative power of the Congress and the executive. Do you think the Congress is really capable, institutionally, over the long run, of acting effectively—of leading on important issues?"

"Yes. We haven't always done as well as we should, and there's much that we should do, but I think we can do it."

"Yet isn't there a streak of passivity in every legislative body?"

"Yes. I think that's correct. We're slow to anger and even slower to organize, but it may be that when we get organized, it's more definite and final. There's much that we should do to improve the way in which we act here in the Congress. I would like us to move toward some sort of arbitrary retirement age. I would like to see us eliminate seniority. I would like to see the Congress build in, under its own control, an adequate system for evaluation and planning, and the ability to tear apart a budget and start from zero and work on up to see what we can do in each of the agencies to cut out waste. I would like to see us set a spending ceiling. There are many things I think we must do here, and I think that if we did them there would be far more public respect for the Congress than we see today. But, having said that, I must say I also think that we often do better than we get credit for doing. I think the average American, with some good reason, wants to see expedition and efficiency in the Congress. I think there's a certain value to delay, and to the aging of an issue, that one perhaps appreciates only after one has been around here for a while. I think that in a democracy there's some value in allowing time for issues to be ventilated, for digging out facts, for having the debates, for having the efforts to compromise, which take time and for which the Congress is given little credit, because what people say is 'What are you producing?' Sometimes it

looks as if you weren't getting anywhere, but I think in the long run the Senate, more than any other institution in America, is the forum for great public-policy debates in which the public takes a part. The Senate is the only agency I know of of which that's true. It's certainly not true of the executive. Too much of the hot stuff has been decided behind doors. It's not true in the House as much, just because of the numbers—they can't have four hundred and thirty-five people debating. But in the Senate we can debate. And, looking at the great issues of the war, the environment, the consumers' movement, civil rights, I'm proud of the kind of forum that we have had on these great issues over the years. Now, we've not accomplished all that much, but once an idea is out, once the public sees the clash, I believe that in a strange fashion the public finally gets its way and decency finally gets there. It may be a little slow in getting there, but it gets there. So I think sometimes the standard that we're judged by—efficiency, prompt action—is one that does not give us credit for an even more fundamental role that we perform."

"Do you not at times find yourself impatient with the pace, though?"

"Yes, but I must concede this as a liberal: many times I have to concede that an ornery, cantankerous conservative in the committee or on the floor asking mean questions about my beloved programs—many times he makes me face up to issues that I should face up to, and I think there's a certain validity to this business of democracy and give-and-take and listening to all sides."

"Isn't it still true, whatever happens as a result of the upheaval over Watergate, that the executive, as an institution, has inherent advantages, which a President can use to dominate the government, and which may, over the long run, make an accumulation of power in the executive branch inevitable?"

"I hope not. I think we need a coequal system. The executive will always have certain advantages, because there's only one President, and he can make almost any decision he wants to—especially if he doesn't believe in the law. Also, he can get access to television and dominate the news when he wants to. He can make television and radio practically a private communication system with the American people. We have few ways to counterattack."

"Is it possible, though, that the increasingly complicated questions and large-scale enterprises and organizations that the federal government is dealing with just do not lend themselves to parliamentary control?"

"Oh, I don't believe that for a minute. I think that control may sometimes be more difficult. Let me say this—I think Watergate, when it's all over, is going to be very encouraging in terms of the fundamental strengths of American society and its institutions. As I understand it, there was a strategy for corrupting the last election, for literally buying it and then keeping the facts from public view, so no one knew what had happened. But slowly the courts were angered, the Congress was angered, the press bestirred itself, and the truth started coming out, and I believe we can follow now with legal reforms to prevent or discourage that sort of thing in the future. We were slow getting there, but I think the fact that we did get there showed that the traditions and strengths of our institutions were greater than even the tremendous power and inside advantages of the Presidency. And I don't think for a moment that the government is bigger than democracy. You know, I've been through some fights that I've lost here, but it's interesting to see what happens. I led the fight against additional aircraft carriers. I'm not against *all* aircraft carriers, but I didn't see why we needed a new one every year, costing a billion dollars. I lost on the Senate floor. But it's an interesting thing that we've now reduced the aircraft-carrier attack-force level by three carriers; that's a thirty-billion-dollar saving over the life of those carriers. I think the public debate here in the Congress made people face up to some of the realities they didn't want to face up to. I've been leading a fight lately against the space shuttle, which I think is a horrible waste. That never won on the Senate floor, but I noticed the other day that the chairman of the Appropriations Committee said that one of the ways we can save a lot of money is by delaying that space shuttle—which may mean the end of the space shuttle. I think that sometimes things work slowly, but if you're right they work, even against enormous commercial and governmental interests on the other side."

"Have we had an example here of the axiom that where you stand depends on where you sit? When the liberals were in charge of the White House—when one of their own was in power—there were frequent complaints that the Congress was blocking things. We heard about the 'deadlock of democracy.' There were all sorts of proposals for strengthening the hand of the President at the expense of the Congress. But then the Democrats lost the White House, and the power of the Congress to block the President looked more attractive. Do you think the liberals are coming to some new conclusions about this?"

"Well, I hope that to some extent we are, but I also think that the nature of the challenge the President posed at the beginning of the year was different from anything we'd had in the past, and ought to be a warning to us. I don't think that that was just another effort on the part of the President to crowd the Congress. What the President tried to do amounted to a massive, wholesale, un-Constitutional dismantlement of our system, in an attempt to convert it into a Presidential system. I think you have to look at the domestic side differently from the foreign one. I think in foreign relations the Congress has permitted itself to forfeit its Constitutional powers and responsibilities through many different Administrations, of both political parties. I think it's going to take us thirty years to repair the damage to the foreign-relations powers—warmaking powers, treaty powers—of the Congress. And we must do so. We're beginning to do it, but it's going to be a slow show. The Administration people tried to apply the same unlimited Presidential powers domestically that they've applied to foreign relations, and that's what was new about this challenge, it seems to me."

"How seriously will the Watergate controversy affect the President's power and affect the nature of his relationship with the Congress?"

"Some people have been saying that the damage will be so great that he can't govern. I don't believe that this is true, unless it develops that the President was personally involved in or personally knew of widespread illegal acts. Even so, I think the scandal is much greater than anything else that has happened in or around the White House in our nation's history. If it would just make the President realize the strengths that come from working with the system, I think we could begin to restore government to some legal, due-process proportions; and I think the dramatic erosion of public confidence in the President and the great doubts about those who have been around him will inevitably force him to give some ground on these questions of Constitutional importance. And I think the weakening of the President politically will make him deal more realistically with other institutions, too."

"Does that mean that we have to wait for a President to get himself in trouble before politicians in the Congress will take him on?"

"Well, I think that there is what is always referred to as a 'honeymoon period,' when a President who's been newly elected or just been reelected is given a period of special deference to develop and propose legislation. And I think the length of that honeymoon depends upon how he behaves and how he uses it. In the case of Mr. Nixon, he blew one of the largest mandates in American history in about a month by his divisive, hostile, and other negative tactics and his wholesale disregard for the law. In other words, I think that you can't suspend human nature, and it's the proper thing to do, in terms of normal Western traditions of civility, to be decent to a new President, to give him a chance. I think Herblock said every new President gets a free shave, and that's what we try to do, and that's what I do."

"But there are other times, not only after elections, when there is the phenomenon of the politicians backing off because they think the President may be powerful, even if he isn't right. I can think of President Nixon's November 3, 1969, speech about Vietnam, which a lot of people up here disagreed with but were not very vocal about, for fear that the President had in fact captured public opinion—a fear that then became self-fulfilling."

"I can't deny that that's what happened. But, fortunately, the fact is that there were some here who didn't follow that strategy and spoke up and criticized it. There was clearly an effort on the part of the White House to silence dissent. They warned everybody, 'Don't criticize us or you're going to be embarrassed.' The same thing followed the Cambodian invasion. I don't think the critics of the war will ever get credit—at least, in the short run—but I think those criticisms and that debate helped end the war."

"That brings up something else I have been wanting to ask you. You supported the Vietnam war for a longer time than several of your colleagues. In 1967, you gave a very closely reasoned speech laying out what you considered to be the dilemmas, and came out on the side of supporting the war. How do you now look back on that?"

"The biggest mistake of my public career."

"How did you make it?"

"Well, several ways. First of all, I think I trusted the executive and its answers too much. I just couldn't believe that they could be that wrong. And I recall going to Vietnam myself for a week and going all over."

"What year was that?"

"It was early '66. And I came up with some questions about 'Why are they still fighting so close to Saigon if you're winning, if the people are for you?' And the leadership all had answers—the Defense Department or the State Department—and I guess if there's one thing that I learned out of all that it is that you have to trust your own judgment. You can't be sure of the accuracy, or sometimes even the honesty, of what you hear from established departments. That was one of my big mistakes. Another mistake I made was that I was applying what you might call the European analogy to Asia. It had no relationship at all, but I thought it did. Then it slowly dawned on me that there are limits to American power, limits to how we can influence what are essentially indigenous problems of another country. Finally, I saw first-hand what the war was doing to this country. It was not a pretty sight. The deaths and the injuries—permanent injuries. The costs—over a hundred billion dollars—which devastated so many human programs. But also the incredible spiritual and emotional costs. The war poisoned the public dialogue. It divided our country. It destroyed the affection of millions of Americans for their own government,

and I think we'll be paying for it for the rest of my life."

"In what you were saying earlier, you painted a more positive picture than many do of the potential effectiveness of the Congress, and particularly the Senate. I'd like to ask you a little more about some of the human and realistic factors that make it difficult for senators to organize their colleagues to take action, or for the Senate in general to do very much at certain times. Each senator has his own constituency, has his own reelection to think about. Collective action is not easy. It seems that after a large effort up here it's very difficult to mount another one; people get tired, they want to go home, they're caught up in having to answer their mail and greet constituents. Are these not also factors that affect what really happens?"

"Sure, they're factors. This is a democracy. We all have to be mindful of what our own people want in our states and how they want us to spend our time. That's part of our job, and anybody who said that wasn't true would not be realistic. And sure we get tired. We don't fight every fight that we perhaps should fight, and we don't win every round that we should, because of these factors that you mentioned. And I think we can do better; I think we should do better. I think we should reorganize in some of the ways that I've suggested. More fundamentally, I think we need campaign-funding reform. I keep coming back to that. People do not realize the skyrocketing cost of campaigns and the growing temptation for compromising the public interest because of money. Now, that certainly has been exposed in an ugly way in the Watergate episode—how that money came in and how it was used and how it was falsely received and reported—but money in politics is the dark side of the political moon, and until we take full, pervasive action to solve that problem, we're going to have this continuing tawdry, tragic, dispiriting, demoralizing spectacle of public men trading public decisions for private money."

"Does this affect even those politicians who would like to be honest—who would like to feel that they are making decisions regardless of who has contributed how much?"

"It affects everybody. I think the miracle is that the system has remained as honest as it has. But the temptations are undeniable, and some people are weak. And the thing is subtle. For example, take just the access question. If you give money, you get an ear. I try very hard not to take money in amounts or from sources that would affect my course of action. But I would be less than candid if I did not say that when I've had a large contributor he gets in to see me and I talk to him. While I try very hard to listen to everyone, I must admit that this is true. We're all a part of this system, and I think maybe in subtle ways that we don't even appreciate. We tend to remember who helped us financially, and even the most honest person cannot be unmindful of that support. And I just hope that we can get out from under this system."

"How?"

"Well, this goes back nearly seventy years. Teddy Roosevelt once called for public support of federal campaigns. I think we ought to begin with the Presidency and do that right. We've seen enough, I think, to understand the corruption of money. Maybe we could have a system like the one Albert Gore talked about a few years ago, where we would estimate approximately what a campaign would cost, give a candidate an amount out of the public treasury which would pay for a decent campaign, and then prohibit any outside money—something like that."

"What makes you think, from what we've seen, that federal support of campaigns could be set up in such a way that the process itself would not be corrupted or manipulated?"

"I can't be sure about it, but I am sure that the present system isn't doing it, and we'd better try. Maybe then the public could trust the government again. People all think it's being bought off. Even my son—he's eleven years old—said to me the other day when we were talking about Watergate, 'Daddy, are the courts honest?' Eleven years old, talking that way. The American people are being served up a raunchy, smelly, nostril-filling mess, and so much of it comes from money. It wouldn't cost much to try to change that. We have a national budget of about two hundred and sixty-nine billion dollars, and we're talking about an expenditure of a few million dollars to keep the thing honest. Well, why not do it? Well, I'll tell you the reason I think we haven't done it. It's that the people who control the American system with money now don't want to, because they *know* they control the American system and they don't want to let loose. It's been such a long, deeply embedded tradition in American life that you restrain and influence government through money—and that that's part of doing business in America—that they all do it and have more or less accepted it as being the proper thing to do. Well, it isn't proper. It's wrong and it's corrupting, and I think it's getting to the point where it's shaking American confidence in the basic integrity of our free system, and someday a demagogue is going to come along and really ride that wave unless we can correct it in a way that will restore confidence in the system. And I don't think Mickey Mouse changes are going to work; I think you need a basic system of public support. You know, I saw a poll the other day that showed that, of all the occupations in this country, the politician ranked second to last in public confidence, just ahead of a used-car dealer. Well, one more month of this and we're going to be behind the used-car dealer."

"But you do think it is possible to restore faith in the governmental process and institutions?"

"It has to be done, and underneath all the current tragedy I feel better today than I have in a long time, because the institutions stood up to this mess. When you look at what Mr. Nixon's people had in mind—to sidetrack that last election and to hide what they did and to receive and spend money corruptly . . ."

"But wasn't there a failure of confidence in the institutions even before the Watergate story began to come out?"

"Yes. But what I'm saying is that four or five months ago I was really feeling depressed, on the ground that there was no hope in the courts, there was no hope in the Congress, there was really no hope in the press, and a cynical Administration could ignore the laws, could ignore and could corrupt the truth, and could get away with it. In the middle of this mess, I think what we're learning is that the strength of our institutions is great—is greater than even the President—though it takes some time, it takes some pressure for the strength to show itself, it takes a while to anger. I feel that after this whole mess we can move for the kinds of reforms we're talking about in the Congress, in the way we fund elections, in the way we prohibit who can contribute and how they can contribute. If we just look at this whole investigation when we get done with it, we can say 'Now, all right, where did the system break down?' and pass laws and establish institutions that protect it."

"Do you feel that recent events—Watergate—will accelerate the kinds of change you seek?"

"Yes, I do. I hear more talk now about the system—how it can be improved and strengthened and made more honest—than I have heard before in my entire public career. I think leaders are both hopeful and worried. It can't go on like this. It must be changed."

"Do you at least entertain a question about the long-range success of our democratic experiment?"

"Yes, because I don't think it's secure, and I think there's so much more that needs to be done. I think there are so many danger points in our system.

For example, I view these private wars that have gone on as a very dangerous thing—Cambodia, Laos. I think they've been carried on without a shred of legal support. I believe that the President's wholesale attempt to terminate programs he doesn't believe in—unless we can destroy that precedent over the next four years—will lead future Presidents to continue to press for omnipotence in the domestic field. Then we would move toward a Presidential system rather than a shared congressional system, a representative system—and that, I think, would be very dangerous. I can see that unless we deal with this money problem corruption could undermine the fundamental faith of the people in our government to the point where some demagogue could take it over in an anti-freedom and anti-politician campaign. There are many things that could happen. But I believe that we've got the wisdom and the strength to deal with these problems, and I believe that out of this mess may come some very important progress."

"Has the scope of what has been revealed in the Watergate affair suggested to you that there were greater dangers to our democracy than you had supposed—dangers hard to deal with through passing laws?"

"Greater dangers and greater strengths. It had never occurred to me that a major party would adopt and use on our own society tactics that had been developed in the C.I.A. to subject foreign governments to disruption and espionage and dirty tricks. In a sense, the invention has returned to plague the inventor, and it's very dangerous. There is much that we can do in terms of the law, and I've described some of them. I think there should be a study of the connections between our covert disruptive tactics abroad and the political process here at home. We might learn how to safeguard American society, and maybe other societies as well. But I think the fundamental decision is beyond the law. It is founded in the judgment that the American people make about our country, its institutions, and its leadership. If the final judgment is one of despair and cynicism, our nation will be fundamentally weakened. But if it's one of outrage against those who have tired to tamper with our laws, our freedom, and our Constitution—with the just powers of our institutions—and if that outrage is harnessed toward specific reforms, then it may be that out of the tragedy of Watergate can come a new level of confidence and morality in public life."

ELIZABETH DREW.

AIR FREIGHT GROWTH IN THE PACIFIC

Mr. INOUYE. Mr. President, the air freight industry has assumed an importance in Hawaii and the Pacific that is perhaps unique in the world.

The Pacific is the world's greatest air freight market. While the average global growth for the past decade has been significant everywhere, the rate of increase for the Pacific basin, including the Hawaii-Mainland domestic run, has far exceeded the average.

In 1972 freight moving by air amounted to $1.5 billion in U.S. exports and $1.3 billion in imports, and the prospects for further growth in this trade are very promising. In 1973 U.S. scheduled airlines expect the first $1 billion freight revenue year in their history.

The air freight industry has been particularly significant for Hawaii. It has facilitated the export of fresh Hawaiian fruit and flowers, and other consumer products which would not have been possible only a few short years ago. During the course of the disastrous West Coast-Hawaii maritime strikes in 1972, the airlines carried thousands of tons of necessities that enabled Hawaii to survive the crisis.

On April 30, Stuart G. Tipton, chairman of the Air Transport Association of America, delivered the keynote address at the Hawaii Department of Transportation's Second Annual Pacific Air Cargo Conference in Honolulu. It was a notable speech because it emphasized both the prospects for further growth and the factors which American shippers will need to consider if our foreign markets are to be encouraged.

I ask unanimous consent that the full speech be printed in the RECORD.

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

AIR FREIGHT GROWTH IN THE PACIFIC

(Remarks of Stuart G. Tipton)

Aloha!

As we all know, this rich, meaningful word is far more than a simple greeting or farewell. It is also a term of affection.

Certainly I have a fondness and affection for these islands and this state. I welcome each opportunity that brings me here. And apparently I am not alone in this feeling.

The list of speakers who will follow me over the next three days at this Second Annual Pacific Air Cargo Conference reads like a veritable Who's Who in the air cargo industry and I am pleased to be among them.

As air cargo operations continue to grow at a rapid clip, I can report to you today that the U.S. scheduled airlines in 1973 are looking forward to the first one billion dollar freight revenue year in their history.

This billion dollar record comes about not only because we are carrying increasing volumes of traditional air freight commodities, but also because we are broadening our base by carrying new commodities—new commodities ranging from light switches to thousands of pounds of live eels.

This billion dollar revenue is from air freight alone, and does not include revenues from mail and express. Air freight produced revenues of less than $235 million only 10 years ago.

Air freight has come a long way, and quickly. Today it is a big business that must be viewed in big, positive and imaginative dimensions, as we move forward to meet increasing customer demands throughout the Pacific.

During the past decade, the U.S. scheduled airlines' air freight business, as a whole, has been growing at an average annual rate of 16.9 per cent. However, air freight over the Pacific has been moving ahead at an average annual growth rate of 31 per cent.

The Pacific presents a variety of air freight markets, including the important domestic market between Hawaii and the Mainland.

The Hawaii-Mainland market was once thought of in terms of pineapple and other fruit which tasted better to people in Chicago because air freight moved it from field to supermarket at peak quality. This is still true. But a number of other elements must be added to update the story:

Thousands of colorful Hawaiian sports shirts are exported from here by air and sold to American tourists in the Caribbean.

During the West Coast dock strikes in 1971 and 1972 air freight proved effective in moving household wares, hardware store items and other things that used to move exclusively by ocean shipping. A large part of this business has been retained.

A transport combination that sees some goods move by ship from the Orient to Hawaii and then on by air freight to the Main land, is a technique that is giving many shippers the right combination of time and economy.

This conference is replete with experts from Hawaii's own Department of Transportation, the University of Hawaii and the airlines who serve the area. I will leave to them the detailed discussions of this expanding market and proceed to assume my role as keynoter.

I think there is no real difficulty in determining what the keynote of this conference is and should be.

The Pacific is the greatest air freight market of them all.

All of the study, all of the discussion, and all of the cross-examination should be based upon the recognition of this great potential.

Let me add quickly that this statement, and the responsibility for making it come true, should not be reserved exclusively for carriers. Shippers and consignees also must be prepared to take bold, imaginative looks at their cargo movement in order to take maximum advantage of superior air freight service and thereby provide maximum customer service and profits.

I want briefly to discuss several questions all related to this theme.

(1) Why does the Pacific hold such great promise for major growth in the use of air freight?

(2) Is there efficient capacity available or on order to meet this growth?

(3) Can we of the airlines develop the strategy to sell this capacity?

(4) What are the impediments to the massive expansion of air freight and what is needed to eliminate them?

I have asked these questions in rapid-fire order. As a keynoter, setting the stage for a comprehensive discussion that will follow, I will give you a series of rapid-fire responses to these questions.

FIRST, MARKET POTENTIAL

Anyone who can calculate the span of distance across the Pacific, the time it takes to cover these distances by sea transportation, and the value of this time in customer service and profitability must conclude that the high speed jets, with their enormous flexibility, make the Pacific runs an ideal air freight market. In my view, not enough attention has been given even yet to the cash value of time in the movement of freight. But this is changing and in the Pacific will change more rapidly than any place else.

SECOND, AIRLIFT CAPACITY

The airlines have on hand and on order adequate lift capacity to meet the foreseeable growth requirements of air freight movement throughout the Pacific. While we do not yet have our dream air freight airplane, we have vastly improved equipment and a lot of it. The older jets are good airplanes and the new wide-bodied ones are even better.

If we have been overly conservative in our projections—and this is always a possibility—I can assure you that additional equipment can be had for profitable freight business. Again, I want to underscore the great flexibility of airline operations—including the flexibility of scheduling to meet new market demands.

THIRD, MARKETING STRATEGY

I am confident that the airlines, facing up to the challenges in the decade of the 70's and 80's will, through conferences such as this, be able to sell available and projected lift capacity on a profitable basis. I feel certain that airline freight marketing people are going to get a big lift from innovative and profit-conscious shippers and consignees who will no longer be content with time-costly movement of their goods by surface means.

FOURTH OVERCOMING IMPEDIMENTS TO GROWTH

Clearly, the full potential of air freight growth in the Pacific will be checked unless we are able to eliminate such impediments as trade barriers. The President has opened new vistas for trade growth by advocating the elimination of restrictive practices, and in Congress, Chairman Wilbur Mills of the House Ways and Means Committee, is leading the fight to assure fair and equitable treatment for American products and services in the world market.

In the remaining few minutes allotted a keynote speaker, let me suggest some guidelines for future air freight marketing in the Pacific.

The marketing effort must be selective, in terms of country and commodities.

The marketing must be geared to the value of the transportation service we are selling.

To be successful, the marketing will require a good climate for trade.

Again, to be successful, the marketing will require a large input of imagination on the part of airlines, shippers and consignees.

The need for selectivity in expanding our markets in the Pacific is obvious.

It would be strange, indeed, if the U.S. attempted to export wigs and double-knit fabrics to Korea. It is the other way around. Korea has become one of the world's leading producers of these two items and is exporting them to us. As Korea industrializes, however, a demand grows there for the importation of specialized equipment and industrial machinery. We are exporting these valuable goods to them, including parts that go by air, and we can sell them a great deal more of this equipment.

The odds against a U.S.-built television set in Japan would be long indeed, but not if the product were a multi-speed kitchen blender. The Japanese manufacture only a single-speed blender, yet many Japanese families want the U.S. models and are buying them in increasing numbers.

Let's emphasize the value of the service we provide—the movement of a shipment in ten hours from the shipper's door in San Francisco to the receiver's door in Honolulu, instead of seven or eight days minimum by sea. . . . The movement of a product from a plant in Los Angeles to a customer in Hong Kong in 24 hours or less, as opposed to more than two weeks by the fastest container ship.

The most advanced transportation system, however, can be stymied as a tool for export growth by tariff and non-tariff barriers to trade. That's why I urge this conference to examine the important of helping to create a good trade climate.

Let's take a look at the international trade climate as it applies to air freight over the Pacific. Last year, in this part of the world, freight moving by air accounted for a trade balance slightly in our favor. The figures: About $1.5 billion of U.S. exports by air to our Pacific trading partners and about $1.3 billion of air imports from them to the United States.

More than 50 percent of this air commerce was between the United States and Japan. This is characteristic of Pacific trade, whether moving by air or ocean vessel.

Japan, after Canada, is the biggest market for U.S. exports. We sold Japan last year about $4.9 billion worth of U.S. exports—more than 10 percent of all U.S. exports.

The United States is Japan's biggest customer for that country's exports. Japan exported $9.1 billion worth of goods to the United States last year, accounting for more than 16 per cent of total U.S. imports.

The 1972 U.S. trade deficit with Japan was more than $4 billion, the result in part of an historic network of Japanese barriers against many kinds of imports.

I am hopeful this imbalance will be corrected and I can cite at least three good reasons for my optimism.

The Japanese are sure to realize that excessive imbalance of trade creates retaliatory restriction and that, by reason of their high standard of performance, they do not need import barriers anymore.

The U.S. Commerce Department's Office of International Commercial Relations reported this month that while many of the import barriers remain, Japan, over the past four years, has been reducing some of its formal barriers to imports—mainly by relaxing some import quotas and, to a lesser extent, by relaxing tariffs, licensing and deposit requirements and by making it somewhat easier for foreign companies to maintain sales offices in Japan.

This may explain why U.S. exports by air to Japan in 1972 for the first time in many years rose at a greater percentage rate than air imports to the U.S. from Japan.

The actual volume of Japanese imports into this country by air was still greater than the air freight flow in the other direction—by about a 60 to 40 ratio; but U.S. air exports to Japan were up 34 per cent, compared with a 25 per cent increase in air imports from Japan.

My other reasons for optimism concerning reduction in Japanese import barriers stem from recent developments in the United States I referred to earlier. One is the President's recently proposed Trade Reform Act of 1973 and the other is the intense interest this bill has aroused in the Congress.

This is far too complex a piece of legislation to be covered in detail in these remarks. The important thing in the proposal for this conference is that it would give the United States more effective tools for negotiating for the lowering or removal of import barriers erected by its trading partners.

Success by the President and Congress in giving the United States more effective tools in negotiating for the removal or lowering of import barriers erected by its trading nation partners could be the biggest stimulus for international air freight in years. Given such a new opportunity, the air freight industry can be a much more effective instrument for expanding U.S. exports.

But all the trade expansion in the world will not help us or our customers if we are unable to attract a larger and larger share of this increased movement. Here enters imaginative marketing, the remaining point I urge you to concentrate on during this conference.

Imaginative marketing! How and by whom?

To answer this question let me tell you a story—a true story, a little story but a story with a big moral.

I came across the story when I found a strange looking specific commodity air freight tariff. It provided for the shipment of live eels at 57 cents per pound from Washington, D.C., to Tokyo.

Behind the tariff is a man who lives in Montross, Va., in the tidewater area where the Potomac River empties into the Chesapeake Bay and where the water teems with succulent eels. He learned that pollution had reduced the eel supply in Japan at the same time that demand for this Japanese delicacy was growing in that country.

The man in Montross was but a stone's throw from some of the finest eels in the world. He designed his own watertight container, approached a U.S. flag carrier serving both Washington and Tokyo. A deal was struck, a tariff was filed and that first year a few hundred pounds of eels made the long journey.

This year the airlines will fly some 70,000 pounds of eels from the East Coast of the United States to Tokyo.

As I told you in the beginning, it is a small story. Seventy thousand pounds of exported eels doesn't begin to compare with the more than one million dollars worth of machine tools and their replacement parts exported by air from the United States to Japan last year.

But I think the moral of the story is clear to all of us. Air freight marketers and shippers alike must join in the imaginative marketing. Both must exercise a high degree of ingenuity in finding the most opportune markets.

I urge you to emulate the man from Montross in seeking the right product for the right market. Here are a few suggestions of my own on products of growth potential for air export to the Pacific.

The Japanese are now entering a sports and leisure-time boom in which there is a growing demand for American-made equipment for skiing, bowling and camping.

Equipment and parts for generators, conventional and nuclear, is a promising area of growth in U.S. exports to many countries in the area.

Avionics and support ground equipment are also products for expanded export to Pacific markets.

Anti-pollution equipment presents one of the best of all sources of growth in exports from the U.S. to other highly developed nations. Much of this equipment is eligible for shipment by air, particularly the instruments used in detecting and measuring pollutants.

Other good prospects for air export growth in this market include material handling equipment, electronic measuring and controlling equipment and circuit-breaking devices. The latter means switches and we air ship a lot of switches to the Pacific each year—from big circuit breakers for industry costing $10,000 each to thousands of the light switches that go on the ordinary household wall.

The airlines are also exporting increasing amounts of fresh tuna fish from the U.S. East Coast to Japan. The thought of exporting fresh fish to an island nation may sound strange, but I suppose it is not much different than exporting potatoes to Germany, which the U.S. does in significant quantities. There are opportunities also for a major expansion in air shipments of other foodstuffs to the nations of the Pacific.

As one who has spent most of his working life close to the airline business, I am accustomed to covering a lot of territory rapidly and that is what I have done this morning. I have not attempted a detailed discussion of the far-ranging challenges which confront this conference, but I hope that I have stimulated your thinking as you approach them.

In conclusion, let me raise and answer a further question—What is the long-range future of air freight movement in the Pacific?

I see no reason, if carriers, shippers and consignees are as imaginative as the gentleman with the eels, why the high growth rate of recent years cannot be exceeded in the Pacific year after year after year on a profitable basis for the air freight system and its growing ranks of customers.

Aloha.

FEDERAL SUPPORT FOR LIBRARIES

Mr. MUSKIE. Mr. President, our Nation observed National Library Week during the week of April 8–14. Normally, this week is a week of celebration of the Nation's library resources. But for those of us who view libraries as a priceless educational resource, it was a week of sorrow. The cause of this sorrow was the administration's proposal to end Federal support for public libraries.

Mr. President, I have received many letters from my constituents in Maine expressing concern about the threatened cutoff of funds under the Library Services and Construction Act, and the impact such a cutoff would have on library services and related educational facilities in Maine.

For instance, a major casualty of the administration's proposal would be the Maine State Library. The State library provides services to the handicapped and the elderly. In cooperation with New Hampshire and Vermont, it provides films to small communities which would have no other access to such materials. The library has provided a WATS telephone service to Maine high schools to give students access to a wider range of research materials. It is currently developing a centralized subject research service to upgrade educational access to those materials. And the library provides additional books and materials to underequipped school libraries. One-half of the elementary schools in Maine do not have libraries, and some 250 small towns have no libraries. The Maine State Library is servicing these communities with a bookmobile service. In addition, the State library is working on providing access to library services to the disadvantaged in cities and rural areas.

An end of Federal aid would cripple these programs. Currently, Federal funding provides 53 percent of the general budget, and 60 percent of personnel budget, of the Maine State Library. It is unlikely that State revenue sharing funds would be available if Federal funding is ended.

Mr. President, Maine's situation is not unusual. But the administration has requested no funds for 1974 grants for public library services, stating that "responsibility for this program should now be assumed by the State and local governments." It is extremely unlikely that libraries will receive the funds they deserve in the scramble of competing interests for revenue sharing money. The administration argues that funds under the Library Services and Construction Act were to serve only as "seed money" to stimulate local support for public libraries, beginning at the inception of the act and ending at the start of the fiscal year 1974. But from such seeds grow plants that must be nurtured and cared for if they are to flourish. And the Federal Government should retain that responsibility, through continued funding of the Library Services and Construction Act.

Mr. President, I ask unanimous consent that a letter from the Department of Health, Education and Welfare, outlining the administration's position, several newspaper articles, and a number of letters from my constituents in Maine be printed in the RECORD.

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

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
Washington, D.C., March 14, 1973.

Hon. EDMUND S. MUSKIE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MUSKIE: Thank you for your letter of February 7 concerning the status of funding for the public library programs.

On March 8, the President signed H.J. Res. 345, the Continuing Resolution, which authorizes the Office of Education to continue operations through June 30, 1973. Under this authority, a total of $30,000,000 will be allotted to the States for public library services.

As you have stated in your letter, no funds were requested in fiscal year 1974 for grants for public library services. However, since the enactment of the public library program in 1956, Federal funds have provided library services for the first time to more than 17 million people, and about 87 million people have benefited through improved library services. Today, nearly every citizen is in a library service area. This is due in large measure to the increased local support for public libraries, which it is felt was stimulated by the "seed money" from the Federal Government. It is felt that responsibility for this program should now be assumed by the State and local governments.

Sincerely,

JOE G. KEEN,
Director, Budget Division.

[From the New York Times, April 30, 1973]

DIM LIGHT ON BOOKS

Librarians are not usually known for their political activism, but on May 8 libraries across the country will dim their lights in protest against the Administration's meat ax threat to books. Under the present budget proposal, the $140 million-a-year Federal appropriation for library subsidies would be wiped out after July, 1973. Neither public libraries nor those in schools and colleges would henceforth get direct grants. Any subsequent aid would have to come out of general revenue sharing, but the vociferous claims on such funds by forces with much more political clout would leave slender hope for libraries.

It is not as if Congress' contribution to libraries had been overly generous. The Federal share of the $3.60 spent per capita for public libraries is only 15 cents, and school libraries get only $1.75 per pupil from the Government. In fact, the Administration builds its case on a contention that the amounts are so small that they can readily be placed by state and local subsidies. But this argument ignores the reality that the schools are already in desperate financial straits and many public libraries are struggling against creeping deterioration. About 40 per cent of the nation's elementary schools have no libraries at all.

Recently, during National Library Week, President Nixon saluted the librarians and underscored their importance to a well-informed nation. Now the Administration claims that the Federal library aid program has been so successful that it can safely be eliminated. Apparently, in the Administration's new budgetary vision, there are two forms of social and educational programs whose appropriations are to be cut or eliminated—those which failed and those which succeeded.

The epitaph for the libraries' killed subsidies therefore might well be: their success is their own reward. Rejecting such perverse sentiments, the librarians say that in darkening their libraries they will be "dimming the lights on the public's right to know." Theirs is a symbolic warning to the nation not to let the lights be turned out on books and knowledge.

[From the New York Times, May 9, 1973]

LIBRARIES PUT OUT LIGHTS IN NATIONAL FUND PROTEST

(By George Goodman, Jr.)

At noon yesterday, the lights went out in the Hunts Point branch of the New York Public Library. In fact, lights were dimmed or turned off in libraries throughout the country, though not from a loss of power.

It was all part of a protest by the American Library Association to draw public attention to the federal government's plan to cut $148.7-million from funds for special learning programs primarily conducted for minorities and the poor.

"The cuts mean a loss of a chance for self-respect and dignity mainly for black and Spanish-speaking youth," said Lillian Lopez, coordinator for special services at Hunts Point and nine other branches in the South Bronx slums.

CANDLE LIT AND BLOWN OUT

Mrs. Lopez lit a candle then blew it out while visitors in the reading room sat for nearly 30 minutes in semi-darkness.

"I thought there was some kind of religious ceremony going on," said Yolanda Rodriguez, a 20-year-old biology major at Lehman College.

Miss Rodriguez came to study along with John Velez, a 21-year-old student at Bronx Community College who hopes to become a medical technician.

"There are so many community things going on here," Miss Rodriguez said, "you never know what to expect."

Films, lectures, dramatic productions, books and other materials geared primarily for Spanish-speaking youth are provided in the special project for which funds are due to expire in June of this year, library officials said.

Mrs. Lopez told a visitor yesterday how students who would otherwise have little incentive for pursuing higher professional aspirations depended on the special project.

"Sometimes it's just through a youngster making personal contact with a Puerto Rican member of our staff who is something of a model for achievement," she said, "but I also remember young people coming to me for help in finding books on Puerto Rican history that they cannot find elsewhere."

On a tour of the library's dwindling collection, Sylvia Beanson, chief librarian, described as "frustrating" the shortage of materials, which she said was becoming more critical because of cutbacks.

"When books are lost we can't afford to replace them," she said.

A tutorial program may be among the first programs affected, she added. "And through such programs we have drawn more and more youngsters here to read and check out books."

In Hawaii, where library officials intended to participate in the light-dimming protest, government officials overruled them.

The state librarian there, James Igoe, said Hawaii's system has been hit hard by a budget cut and added that 22 per cent of the jobs were currently unfilled.

The national protest was a result of letters suggesting the protest and other steps mailed by the American Library Association's Chicago headquarters several weeks ago.

[From the Wall Street Journal, Feb. 27, 1973]

DO LIBRARIES NEED FEDERAL AID? WHITE HOUSE SAYS NO, BUT LIBRARIANS SAY THEY'LL SUFFER

(By John Pierson)

President Nixon's plan to stop helping libraries has spawned some dark humor in Detroit.

"Some of our money comes from traffic tickets, prostitution fines and other penalties" explains Robert Croneberger, the city's deputy library director. "If Nixon cuts off the federal money, we're thinking of urging people to 'run a red light for your public library' or 'walk the street for your public library.'"

Turning serious, Mr. Croneberger says that loss of federal dollars would force Detroit to stop buying magazines for 30 branch libraries and to close 15 storefront libraries, many of them in black neighborhoods.

Most librarians are unable to see a funny side to Mr. Nixon's budget axe. While the fight over ending federal aid to libraries involves only about $140 million—roughly 7% of what U.S. libraries spend each year—the President's plan looks to some like a threat to cut off essential operating funds and dim the lamp of book-learning. In any case, this struggle over economizing is raising many of the issues implicit in Mr. Nixon's call for a "new federalism."

The President and his people say federal aid to libraries has been so successful that it's no longer needed. Librarians and their friends in Congress say libraries' needs require that aid be increased, not abandoned.

The administration says libraries are local things, which Uncle Sam has no business paying for. Librarians say book-sharing across county and even state lines is the wave of the future and one that needs federal money.

Nixon & Co. say librarians can make up the loss of earmarked aid funds by persuading state and local officials to let them have revenue-sharing dollars. Librarians doubt they can compete with teachers, firemen, sewagetreaters and other local operative for those precious revenues Washington has promised to share with the states and towns and cities.

THREE PROGRAMS TO GO

Since 1965, the federal government has been helping 60,000 public and private elementary and secondary schools buy books, magazines, films and other library materials. Since 1956, the government has helped 12,000 public libraries buy books and other materials, as well as pay salaries and operating expenses and put up buildings. And since 1965, Washington has been giving 2,800 college and university libraries up to $5,000 each for books, periodicals and such as well as for training librarians and conducting research. These three programs will get the axe, if Mr. Nixon has his way.

The economy blow wouldn't come all at once, it's true. Though Mr. Nixon's budget for the fiscal year starting July 1 proposes to halt the flow of federal funds, there would be enough aid money in the pipeline for libraries to receive $73 million next year and $27 million the year after, officials say. Then zero, if the President prevails.

Mr. Nixon's obvious aim in cutting off aid to libraries—and a lot of other items—is to hold down federal spending. But apart from that, administration officials argue that the aid program, at least for public libraries, has outlived its usefulness. "It's stimulated a lot of state initiative, and we're all proud of it," says John Hughes, acting associate commissioner of education for libraries and learning resources. Due to federal dollars, says an Office of Education budget paper, "today nearly every citizen is in a library service area."

Not so, reply champions of the aid program. "Despite noteworthy progress," Germaine Krettek of the American Library Association testified last year, "an estimated 20 million Americans are still without access to public library services in their communities."

A CRUCIAL 2 PERCENT

"Stimulate"—Mr. Hughes' word—is an important word, librarians add. They insist that federal dollars are needed to finance the more avant-garde library projects—books by mail, bookmobiles in the ghetto, films and games for nonreaders—that cautious state or local officials are reluctant to try until they've proved their worth.

Detroit's public library gets less than 2% of its money from Uncle Sam, but according to Mr. Croneberger it's a crucial 2%. "Local money is kind of existence money," he says. "The money for any kind of experimental thing has to come from someplace else."

When it comes to college and university libraries, the administration maintains that a $5,000 grant isn't enough to help a poor college much and isn't enough to be noticed by a rich one. So, while proposing to do away with this help. Nixon planners want to double general aid to the neediest "developing"

colleges. Eileen Cooke, director of the American Library Association's Washington office, replies that aid even to rich colleges has been useful, since they have been obliged to put up matching sums and to maintain their previous levels of library support.

Basically, Nixon men argue that libraries aren't something the federal government ought to be messing with. Writing in this newspaper recently. Richard Nathan, a former deputy under secretary of Health, Education and Welfare, asserted: "Libraries simply are not a national government responsibility. Books usually stay in the community for loan purposes. This is a good case of a federal program that should be turned back to the states and localities."

To librarians and their supporters, Mr. Nathan is guilty of horse-and-buggy thinking. Modern communications make it possible to send books all over the country with ease. So it's wasteful, say librarians, for every library to try to acquire every book.

"Libraries spent maybe 100 years trying to build up bigger collections," says Charles Stevens, executive director of the National Commission on Libraries and information Service, a planning group, established by Congress in 1970. "Now library cooperation is on the verge of breaking out and doing what should have been done for the past 30 years." And federal aid is needed for this, it is argued.

Commission member Louis Lerner, who publishes suburban newspapers around Chicago, says 90% of an average library's calls are for 10% of its books. "So libraries are looking for federal money to build regional centers, which would cross state lines, to circulate that other 90% of the books," explains Mr. Lerner, a trustee of the Chicago Public Library.

ROLE OF THE PROPERTY TAX

Congress spoke of "national goals" in setting up the commission, and Mr. Nixon himself, in signing the legislation, said libraries "are among our most precious national resources." The commission recently resolved that "national equality of access to information is as important as equality in education."

Comparing libraries to schools raises an important money question. Like schools, public libraries depend for much of their money on local property taxes. City residents are arguing in court that unequal property-tax bases mean unequal education. If the courts strike down the local property tax as a method of financing schools, libraries too may find themselves looking elsewhere for money. "If the property tax is overthrown," says Illinois library director Alphonse Trezza, "what a time for us to face a cutoff of federal funds!"

Nixon administration men maintain that revenue-sharing should provide plenty of money, if librarians will only go after it. Under general revenue-sharing, the federal government is giving the states and localities $30 billion over five years, with few strings attached. Local governments must spend their share on any of nine "priority" activities, one of which is aiding libraries. States can spend their money on anything.

Moreover, Mr. Nixon has asked Congress to replace some 30 "categorical" education programs, including aid to school libraries, with special revenue sharing for education. Schools would get $2.8 billion next year and would have broad discretion in spending it.

OUT OF THE STACKS

The administration view is that school libraries will have a chance to compete for education revenue sharing money just as public libraries already can compete for general revenue-sharing dollars. "Libraries perhaps need to be somewhat more aggressive," says Mr. Hughes of the education office. "Discontinuing their money may add to their desire to be so." That's a polite way of saying what many Nixon men feel: Librarians have got to get out of their musty stacks and get down to city hall and fight for their funds; if libraries can't convince the people they serve that libraries are worth supporting, maybe they're not.

One influential Democrat on Capitol Hill who doesn't buy this argument is Rep. Carl Perkins of Kentucky, chairman of the House Education and Labor Committee, which authored the three library programs that the administration proposes to kill. "I deeply regret that there's no money in the budget for libraries," Rep. Perkins told a recent hearing on aid to school libraries. "I want to protect this library program, and I don't know any way to do it except through the categorical approach."

Some librarians have indeed been successful in getting their hands on revenue-sharing dollars, giving some credence to the administration's position. Trustees of Chicago's public library wrote every city alderman, explaining how library services would be cut in his ward unless the city coughed up more money. The result: $1 million in revenue-sharing funds for Chicago libraries. Detroit's public library has obtained $375,000 in revenue-sharing funds this year.

But for Detroit, this isn't quite the windfall it might seem. The city's library system has been ordered to absorb hefty municipal pay increases by laying off employes, and the $375,000 merely permitted them to keep those workers on. Detroit's librarians still insist continuation of direct federal aid is needed to finance their magazine purchases and keep their storefront branches open.

In any case, most librarians despair of doing as well as Chicago or Detroit. "Local demands are so great," says Miss Cooke of the library association. "They want more police, more fire protection and so forth. The average workingman looks at a library as a luxury . . . until he needs a particular piece of information. Then he hollers, 'Why isn't the library open?' "

Mr. Hughes of the education office thinks librarians are throwing in the towel too soon. "It's premature to say that libraries aren't going to fare effectively in the competition for those funds," he says.

In his new budget, President Nixon promises that "the power to make many major decisions and to help meet local needs will be returned to where it belongs—to state and local officials, men and women accountable to an alert citizenry, and responsive to local conditions and opinions."

But local opinion isn't always friendly toward libraries or the values they stand for, fears Mr. Lerner of Chicago. "In a sense," he says, "the federal government should regard itself as the protector of the sick, the crippled, the blind and . . . intellectual values."

AUGUSTA, MAINE,
January 31, 1973.

Hon. EDMUND S. MUSKIE,
U.S. Senate,
Washington, D.C.

MY DEAR MR. MUSKIE: I am concerned over the rumor that President Nixon may cut off federal aid to libraries. As a librarian at the Maine State Library, I see some of the ways in which the Library Services and Construction Act (LSCA) benefits Maine. Loss of these benefits would be a serious blow to state library services.

To begin with, the LSCA supports five of the eight State Library bookmobiles which serve the numerous small communities which cannot afford their own libraries. These bookmobiles are the only contact some Maine residents have with a library.

Second, the LSCA furnishes materials such as talking books, large print books, and mechanical page turners to the physically handicapped and the elderly. Without these aids, many people in Maine would not be able to enjoy library materials.

Third, the LSCA funds the WATS line and the teletype system, both of which speed interlibrary service by putting libraries throughout the state directly in touch with the State Library.

Loss of LSCA funds would be a real setback for library services throughout the state. Please work to kep funds for libraries in the President's budget.

Sincerely,

MARY SAUNDERS.

BRIDGTON, MAINE,
February 14, 1973.

Senator EDMUND S. MUSKIE,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MUSKIE: I am writing to you in regard to the rumored cancelation (LSCA) which would mean no more *Bookmobiles.* I beg of you to do all you can to keep the Bookmobile in service. My Bookmobile is the Harrison Area #7. I am an 81 year old lady with no immediate living family. I live all alone seven or 8 miles from the village of Bridgton, Maine on a country road in a farm house. Reading is my greatest pleasure and I do a lot of it.

The monthly visit of the Bookmobile is a high spot in my lonely life. I go to the Bookmobile that stops in Denmark, Maine. Besides the books I get from it, is the pleasure of seeing so many children there taking out books. The children come in by the dozens and I observe the books they take out—books on how to make things—on stamp collecting, on aeroplane construction. Many other worthwhile subjects of interest. God only knows they might turn to drugs if we took away the books. We certainly would not want to have that on our conscience.

I beg of you, Senator Muskie, to do all you can to let us keep the Bookmobiles. We have had a particularly terrific rugged winter here in this farming area of Maine. Reading is one of the things that keeps us sane when we are housed in by enormous drifts of snow. I know that I speak for many of your constituents here in Maine. Please help us.

WILHELMINA B. FARRAND.

SMYRNA MILLS, MAINE,
February 14, 1973.

Senator EDMUND S. MUSKIE,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MUSKIE: Due to the cutback in federal spending, our five *bookmobiles* in the state will no longer be in operation after June 30th. I urge you, as a senator of our grand State of Maine, to consider the importance of these bookmobiles. I can see eliminating programs that have not been successful, but bookmobiling has become a "must" for our many rural towns. Circulation has increased immensely over the past 15 years.

I have been associated with the Houlton Bookmobile for over eight years, and I can honestly say bookmobiles perform a public service of immeasurable significance. When we circulate over 60,000 books a year, it's a good indication that these traveling libraries are serving a worthwhile purpose.

I'm sure you're familiar with towns such as Danforth, Brookton, Bridgewater, Linneus, Smyrna Mills, Oakfield, Crystal, Benedicta, Sherman Station, Stacyville, Medway, Springfield, Winn, Carroll, and many others. Why deprive the people of these small rural towns a service that is so beneficial to them?

I wish you could witness the experience of driving into a school yard, and seeing children "peeking" out the windows, with big smiles all over their faces, and lips in movement, saying "Here comes the bookmobile!" It's a joy that is hard to express.

Please, I urge you again, to weigh the importance of the bookmobiles in o'" hun-

dreds of Maine towns. Let's not take away something that is so vital to our people—young and old. Keep bookmobiles alive!

Very truly yours,

Mrs. WILLIAM BRYANT.

EDITH A. LOMBARD SCHOOL,
Springfield, Maine, February 7, 1973.

Senator EDMUND MUSKIE,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MUSKIE: We are unhappy that President Nixon is planning to remove library assistance funds.

Because we do not have a library, it is not easy for us to get reading materials.

We would be very pleased if we could continue having our bookmobile.

Please help us.

Sincerely,

DAWN THOMPSON,
Fifth Grade Class.

In the manner of the "Declaration of Independence," we affix our signatures.

Carolyn Stevens, Hubert C. Aldrich, Cynthia Purinton, Scot Averill, Melanie Gordon, Holly Jacob, Gail Worster by E. W. in her absence, and Kevin Ham, Graylin Toby, Dane Glidden, Scott Seibrer.

Guy Stevens, Charles Lowell, Kelly Nute, Shelly Ham, Dawn Thompson, Phyllis Stevens, Michael Cramer, Pamela Doane, Paula Dicker, Kendall MacDonald, and Mr. Erroll Woodward, Teacher Principal.

FEBRUARY 15, 1973.

Senator E. S. MUSKIE,
Senate Office Bldg.,
Washington, D.C.

DEAR SIR: We are a small island community (three villages) a few miles off the coast of Mt. Desert on Swans Is.

Our communities and school have been serviced by the Bookmobile Library once a month for the past few years. This service has become a very welcomed and important part of our lives especially during the long winter months.

We now understand that the funds paying for ¾ of this service through the Library Services and Construction Act may be discontinued due to new cut backs in the Federal Budget.

We urge you to do all you can to prevent this or to find some other source of funding to continue this service to such isolated communities such as we are.

Need it be brought to your attention what this would mean to our already culturally deprived community?

Sincerely,

Mrs. MARSHALL P. BAILEY.

CITY OF SOUTH PORTLAND, MAINE,
January 24, 1973.

Hon. EDMUND S. MUSKIE,
U.S. Senate,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MUSKIE: I have been very much perturbed by the fact that the FY Labor-HEW Appropriation Bill has twice been vetoed. My chief interest has been in the fate of the Library Services and Construction Act. Maine's libraries have been suffering from acute starvation for many years as documented by the *Governor's Task Force on Library Services in Maine.* The Library Services and Construction Act has provided a little badly needed nourishment since its inception in 1956. If this bill is not passed and funded Maine libraries will return to the pallid and undernourished condition of the pre-1956 era, with one difference only. People are beginning to know they are missing something.

Practically every improvement made during the last 15 years has been the result of federal funding.

If the Library Services and Construction Act is not passed the following services will be lost:

1. Bookmobile services to the 250 Maine towns that have no library.
2. State library loans of books and materials to individuals and libraries throughout the state.
3. Free cataloging services for books published within the last two years.
4. The publication "Downeast Newsletter."
5. State wide library public relations program.
6. Free films for use for library programs or for other programs in the community.
7. Talking book service to the blind.
8. Materials and mechanical aids, such as page turners, magnifier view tables, etc., for the visually and physically handicapped.
9. Advisory service to institutional libraries.
10. Special programs, such as the mobile library services to the disadvantaged residents in Portland and the service to the shut-in elderly in Lewiston.
11. Money for the construction of badly needed library buildings.
12. A telephone-teletype network which enables a library to locate any book in the state for one of their borrowers. The book is then sent to the library for the use of the said borrower.
13. Special workshops and training sessions provided by the State Library for public librarians.
14. Publishing of the *Directory of Special Subject Resources in Maine* so that borrowers may know where to locate special subject materials.
15. 53 per cent of the State Library budget and 60 per cent of their staff are funded by the Library Services and Construction Act. State library service will be drastically curtailed if no federal money is forthcoming.
16. In the Greater Portland area, libraries from eleven cities and towns have combined with the PRIME Resource Center in Portland to provide films, filmstrips, records, cassettes, tapes, graphic arts equipment, etc., to the libraries and organizations in these towns. The federal money that supported this venture came from the Library Services and Construction Act. This pilot project seems to be in danger of rapid extinction due to lack of funds.

Despite library requests, I do not know of one library that seems likely to benefit from the revenue sharing monies.

Knowing of your concern for education and libraries, I feel sure that you would be interested in our concern about the fate of the Library Services and Construction Act.

Sincerely yours,

ANN STINSON,
Director, South Portland Public Library.

FEDERAL PENSION PLANS PROTECTION ACT OF 1973

Mr. HARTKE. Mr. President, never has the need for pension reform been greater. In 1940, only 4 million employees were covered by private pensions; in 1950, the figure more than doubled to 10 million; in 1960, over 21 million employees were covered; in 1973, over 34 million wage and salary workers rely on the private pension's promise of retirement income. By 1980, their number will have reached 42 million.

The assets controlled by these private pension funds have also grown. From a mere $2.4 billion in 1940, their funds now stands at a record $152 billion. By 1980, assets are estimated to reach $250 billion. This is the largest concentration of wealth with the least regulation in The growth and development of the the country.

private pension system in the past two decades has been substantial. Yet, regulation of the private system's scope and operation has been minimal and its effectiveness a matter of debate. The assets of private plans, constitute the only large private accumulation of funds which have escaped the imprimatur of effective Federal regulation.

Although the assets controlled by private pensions are large, they do not give a comparably large return. Only 1 out of 10 employees who enroll in a private pension plan, will receive pension benefits. As a government official put it: "If you remain in good health and stay with the same company until you are 65 years old, and if the company is still in business, and if your department has not been abolished, and if you haven't been laid off for too long a period, and if there's enough money in the fund, and if that money has been prudently managed, you will get a pension."

In almost every instance, participants lose their benefits not because of some violation of Federal law, but rather because of the manner in which the plan is executed with respect to its contractual requirements of vesting or funding. Courts strictly interpret the plain indenture and are reluctant to apply concepts of equitable relief or to disregard the technical wording of the pension document. Thus, under present law, accumulated pension credits can be lost even when separated employees are within a few months or even days, of qualifying for retirement.

Statistics indicate that 1 in every 14 plans qualified by the Internal Revenue Service terminates. In 1971 alone, 3,335 plans folded affecting more than 125,000 workers. The Internal Revenue Service only requires that when a plan terminates, the employer must pay out all the money in the fund. But the funds generally cannot cover all of its liabilities. Many people lose all their money and there is nothing they can do about it. These statistics do not reveal the severity of the problem as they only include those employees who are participants in pension plans at the time of termination. Most employees are laid off prior to termination, during production cutbacks and other employment changes that usually go along with plan terminations.

On the average, 20,000 workers a year are affected by pension failures. The participants hit hardest by these closeouts are those between the ages of 40 and 60. This age group usually has many years of service for which they were paid little or nothing in pension benefits, and they have considerably less chance than younger persons in finding new jobs with pension coverage.

My own interest in private pension reform dates from 1964—the year in which the Studebaker plant in South Bend, Ind., closed its doors and over 8,500 employees lost their pensions because there was not enough to fund them. The company remained in existence, but various laws allowed it to escape its obligation to these employees. Those between 40 and 59 with 10 years of service got 15 percent of their promised benefits; everyone else got nothing. One 59-year-old employee

who had worked for the company since he was 16 ended up with only 15 cents for every dollar of pension he thought he was earning during those years.

Since that time, I have fought for Federal termination insurance, liberal vesting rights and minimum standards for funding. Today, I submit my latest proposal dealing with these issues, "The Federal Pension Plans Protection Act of 1973."

THE HARTKE SOLUTION

A. PLAN TERMINATION INSURANCE

In the first 7 months of 1972, 683 pension plans failed affecting 20,700 pension participants. My bill would protect these workers by guaranteeing to them the payment of pension obligations if a plan should fail. It establishes a Federal insurance program which would be self-financing through premiums assessed on the unfunded liabilities of all eligible pension plans. A pension plan would be eligible for this Federal insurance protection only if it met present qualifying requirements of section 401 of the Internal Revenue Code. These are the same requirements which determine the eligibility of pension funds for tax-exempt status.

The legislation provides that every eligible pension plan shall pay a uniform premium based upon the unfunded obligations of each insured fund, but in no case will this premium exceed one-half of 1 percent for each dollar of unfunded obligations. Vested benefits would be insured to a maximum of 80 percent of the highest average wage over a 5-year period or $500 monthly, whichever is less.

The Secretary of Labor, whose Department is given jurisdiction over the reinsurance program, is given general authority to set the premium rate. The program is specifically placed under the direction of the Secretary of Labor, since his department is charged historically with the protection of workers' interests and already collects detailed annual information on assets, costs, and actuarial liabilities under the Pension and Welfare Plans Disclosure Act.

It is with grave concern that I note that the administration's pension proposals contain no provisions for termination insurance.

B. VESTING

Vesting, or the nonforfeitable right or interest which an employee participant acquires in the pension fund, is at the heart of the current battle over pension reform. This legislation calls for an eventual 100-percent vesting after 5 years, the condition for participation is a period of service no longer than 2 years or age 25, whichever occurs later.

The Hartke vesting approach is the most liberal of all the bills presently before Congress. The Williams-Javits bill would not require full vesting until after 15 years. Senator BENTSEN'S legislation would require 20 years and the administration's proposal would only begin to vest when the sum of an employee's age and the period of his active participation equaled 50 years.

My more liberal rules on vesting will open the way for more frequent job changes, increases in work satisfaction, a more mobile and a more effective labor force. We owe this to the working men and women of this country.

C. FUNDING

Funding refers to the accumulation of sufficient assets in a pension plan to assure the availability of funds for payment of benefits due to the employees as such obligations arise. Far too many pension plans are underfunded and when the demand exceeds what is there, benefits have to be cut.

The tragedy of Studebaker was the lack of adequate funds in their pension plan. The problem today is as pressing as it was in 1964. The Western Union Telegraph Co. had only 12 percent of its liabilities in their fund as of July 30, 1969. Uniroyal, Inc. was underfunded to the extent that its assets amounted to less than 35 percent of its liabilities. A recent United Auto Workers study of failed plans showed that 39 precent of the workers covered by these plans received no benefits at all because of the lack of adequate funding.

Under my bill, every pension plan must pay normal or current costs and amortize any unfunded liability for past service over a period not to exceed 25 years. This will put an abrupt halt to the unfair practice of unfunded pension plans.

Critics of pension reform claim that it would boost costs which would result in stifling the growth of private pension plans. This is clearly incorrect. The enormous increase in the number of plans since 1940 with a parallel increase in their worth, is indicative of their tremendous popularity. A proposal which would better guarantee that these plans will not disappoint the expectation of those they are supposed to benefit, should not materially hinder their expansion.

As I indicated above, there are over 20,000 workers yearly who are adversely affected by pension plan failures. I do not consider this to be insubstantial. I do not consider this to be minimal. I do consider it to be wrong.

My legislation will right these wrongs. Less than 3 years ago, I was impressed by the speed with which the Congress acted to protect the livelihood of those who would invest in the stock market. I am sure that the Congress will not do less for the average American worker whose future security depends upon the strength of his pension.

Mr. President, I ask unanimous consent that the text of my bill S. 1858 be printed in the RECORD.

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

S. 1858

A BILL To establish a comprehensive employees pension plan protection system

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Pension Plans Protection Act of 1973".

DEFINITIONS

SEC. 2. As used in this Act, the term—

(1) "pension plan" means a private pension fund or other program under which a private employer undertakes to provide, or assist in providing, retirement benefits for the exclusive benefit of his employees or their beneficiaries. This term does not include any plan or program established by a self-employed individual for his own benefit or for the benefit of his survivors or established by one or more owner-employees exclusively for his or their benefit, or for the benefit of his or their survivors;

(10) "unfunded liability" means the amount on the date when such liability is actuarially computed, by which the assets of the plan are required to be augmented to insure that the plan is and will remain fully funded;

(11) "fully funded" with respect to any pension plan means that such plan at any particular time has assets determined, by a certified actuary, to be sufficient to provide for the payment of all pension and other benefits to participants then entitled or who may become entitled under the terms of the plan to an immediate or deferred benefit in respect to service rendered by such participants;

(12) "funding" means payment or transfer of assets into a fund, and shall also include payment to an insurance carrier to secure a contractual right pursuant to an agreement with such carrier;

(13) "covered service" means that period of service performed by a participant for an employer or as a member of an employee organization which is recognized under the terms of the plan or the collective bargaining agreement for purposes of determining a participant's eligibility to receive pension benefits or for determining the amount of such benefits;

(14) "pension benefit" means the aggregate, annual, monthly, or other amounts to which a participant will become or has become entitled upon retirement or to which any other person is entitled by virtue of such participant's death;

(15) "accrued portion of normal retirement benefit" means that amount of benefit which, irrespective of whether the right to such benefit is nonforfeitable, is equal to—

(A) in the case of a money purchase plan, the total amount (including all interest held in the plan) credited to the account of a participant;

(B) in the case of a unit benefit-type pension plan, the benefit units credited to a participant; or

(C) in the case of other types of pension plans, that portion of the prospective normal retirement benefit of a participant, which under rule or regulation of the Secretary of Labor is determined to constitute the participant's accrued portion of the normal retirement benefit under the terms of the appropriate plan;

(16) "normal retirement benefit' means that benefit payable under a pension plan in the event of retirement at the normal retirement age;

(17) "administrator" means—

(A) the person specifically so designated by the terms of the pension plan, collective bargaining agreement, trust agreement, contract, or other instrument, under which the plan is established or operated; or

(B) In the absence of such designation, (i) the employer in the case of a pension plan established or maintained by a single employer, (ii) the employee organization in the case of such plan established or maintained by an employee organization, or (iii) the association, committee, joint board of trustees, or similar group of representatives of the parties who have established or maintain such plan, in the case of a plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations.

TITLE I—PLAN TERMINATION INSURANCE

INSURANCE PROGRAM

SEC. 101. There is hereby established in the Department of Labor a program to be known

as the "Private Pension Plan Insurance Program".

PLAN TERMINATION INSURANCE

SEC. 102. (a) The program shall insure (to the extent provided in subsection (b)) beneficiaries of covered pension funds against the loss of benefits to which they are entitled under such pension fund arising from failure of the amounts contributed to such fund to provide benefits anticipated at the time such fund was established, if such failure is attributable to cessation of one or more of the operations carried on by the contributing employer in one or more facilities of such employer.

(b) The rights of beneficiaries shall be insured under the program only to the extent that such rights do not exceed—

(1) in the case of a right to a monthly retirement or disability benefit for the employee himself, the lesser of 80 per centum of his average monthly wage in the five-year period for which his earnings were the greatest, or $500 per month;

(2) in the case of a right on the part of one or more dependents, or members of the family of the employee, or in the case of a right to a lump-sum survivor benefit on account of the death of any employee, an amount found by the Secretary to be reasonably related to the amount determined under clause (1).

(c) In no case shall the insurance program be liable under this section unless the pension fund has maintained insurance under the program for the three years immediately preceding the occurrence of the liability of the program.

PREMIUM FOR PARTICIPATION IN PROGRAM

SEC. 103. (a) Each eligible pension fund may, upon application therefore, obtain insurance under the program upon payment of such annual premium as may be established by the Secretary. Premium rates established under this section shall be uniform for all pension funds insured by the program and shall be applied to the amount of the unfunded liabilities of each insured pension fund. The premium rates may be changed from year to year by the Secretary, when the Secretary determines changes to be necessary or advisable to give effect to the purposes of this Act; but in no event shall the premium rate exceed one-half of 1 per centum of each dollar of unfunded vested obligations. (b) The Secretary of Labor, in determining premium rates, and establishing formulas and standards for determining unfunded liabilities and assets of pension funds, shall consult with, and be guided by the advice of, the Advisory Council established under section 106.

(c) If the Secretary of Labor (after consulting with the Advisory Council) determines that, because of the limitation on rate of premium established under subsection (a) or for other reasons, it is not feasible to insure against loss of right of all beneficiaries of insured pension funds, then the Secretary shall insure the right of beneficiaries in accordance with the following order of priorities—

First: individuals who, at the time when there occurs the contingency insured against, are receiving benefits under the pension fund, and individuals who have attained normal retirement age or if no normal retirement age is fixed have reached the age when an unreduced old-age benefit is payable under title II of the Social Security Act, as amended, and who are eligible, upon retirement, for retirement benefits under the pension fund;

Second: individuals who, at such time have attained the age for early retirement and who are entitled, upon early retirement, to early retirement benefits under the pension fund; or, if the pension fund plan does not provide for early retirement, individuals who, at such time, have attained age sixty and who, under such pension fund, are eligible for benefits upon retirement;

Third: in addition to individuals described in the above priorities, such other individuals as the Secretary of Labor, after consulting with the Advisory Council, shall prescribe.

(d) Notwithstanding the provisions of this section, the Secretary of Labor may reduce the premium for those multi-employer plans whose ratio of assets to liabilities or whose experience justifies such a reduction.

(c) Participation in the program by a pension fund shall be terminated by the Secretary of Labor upon failure, after such reasonable period as the Secretary of Labor shall prescribe, of such pension fund to make payment of premiums due for participation in the program.

REVOLVING FUND

SEC. 104. (a) In carrying out his duties under this Act, the Secretary of the Treasury shall establish a revolving fund into which all amounts paid into the program as premiums shall be deposited and from which all liabilities incurred under the program shall be paid.

(b) Moneys borrowed from the Treasury shall bear a rate of interest determined by the Secretary of the Treasury to be equal to the average rate on outstanding marketable obligations of the United States as of the period such moneys are borrowed. Such moneys shall be repaid by the Secretary of the Treasury from premiums paid into the revolving fund.

(c) Moneys in the revolving fund not required for current operations shall be invested in obligations of, or guaranteed as to principal and interest by, the United States.

RECOVERY

SEC. 105. (a) Where the employer or employers contributing to the terminating plan or who terminated the plan are not insolvent (within the meaning of section 1(19) of the Bankruptcy Act), such employer or employers (or any successor in interest to such employer or employers) shall be liable to reimburse the insurance program for any insurance benefits paid by the program to the beneficiaries of such terminated plan to the extent provided in this section.

(b) An employer, determined by the Secretary of Labor to be liable for reimbursement under subsection (a), shall be liable to pay 100 per centum of the terminated plan's unfunded vested liabilities on the date of such termination. In no event however, shall the employer's liability exceed 50 per centum of the net worth of such employer.

(c) The Secretary of Labor is authorized to make arrangements with employers, liable under subsection (a), for reimbursement of insurance paid by the Secretary of Labor, including arrangements for deferred payment on such terms and for such periods as are deemed equitable and appropriate.

(d) (1) If any employer or employers liable for any amount due under subsection (a) of this section neglects or refused to pay the same demand, the amount (including interest) shall be a lien in favor of the United States upon all property and rights in property, whether real or personal, belonging to such employer or employers.

(2) The lien imposed by paragraph (1) of of this subsection shall not be valid as against a lien created under section 6321 of the Internal Revenue Code of 1954.

(3) Notice to the lien imposed by paragraph (1) of this subsection shall be filed in a manner and form prescribed by the Secretary of Labor. Such notice shall be valid notwithstanding any other provision of law regarding the form and content of a notice of lien.

(4) The Secretary of Labor shall promulgate rules and regulations with regard to the release of any lien imposed by paragraph (1) of this subsection.

ADVISORY COUNCIL

SEC. 106. (a) There is hereby created a Federal Advisory Council for Insurance of Employee's Pension Funds (herein referred to as the "Advisory Council"), which shall consist of nine members, to be appointed by the President, by and with the advice and consent of the Senate, at least two of whom shall be representatives of labor and at least two of whom shall be representatives of employers. The President shall select, for appointment to the Council, individuals who are, by reason of training or experience, or both, familiar with and competent to deal with problems involving employees' pension funds and problems relating to the insurance of such funds. Members of the Council shall be appointed for a term of two years.

(b) Appointed members of the Council shall receive compensation at rates not to exceed the daily rate prescribed for GS–18 under section 5332, title 5, United States Code, for each day they are engaged in the actual performance of their duties, including traveltime, and while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as the expense authorized by section 5703, title 5, United States Code, for persons in government service employed intermittently.

(c) It shall be the duty of the Advisory Council to consult with and advise the Secretary of Labor with respect to the administration of this title.

TITLE II—VESTING

REQUIREMENTS

SEC. 201. (a) A pension plan shall not be an eligible pension plan unless the Secretary of Labor certifies to the Secretary of Treasury that such plan provides that participants shall be vested in 100 per centum of the accrued portion of the normal retirement benefit of such funds attributable to covered service both before and after the effective date of this title—

(1) after 10 years service under the fund, during the first three years following the date of enactment of this title,

(2) after 8 years service under the fund, during the fourth and fifth years following the date of enactment of this title, and

(3) after 5 years service under the fund following the end of the fifth year after the date of enactment of this title.

(b) A pension plan may require as a condition of eligibility to participate, a period of service no longer than two years or age 25, whichever occurs later.

(c) Any participant covered under a plan, for the number of years required for a vested right under this section, shall be entitled to such vested right regardless of whether his years of covered service are continuous, except that a plan may provide that—

(1) three of the years required to qualify for a vested right under subsection (a) shall be continuous under standards prescribed under subsection (d),

(2) service by a participant prior to the age of twenty-five may be ignored in determining eligibility for a vested right under this section, unless such participant or an employer has contributed to the plan with respect to such service, and

(3) in the event a participant has attained a vested right equal to 100 per centum of the accrued portion of the normal retirement benefit as provided by the plan with respect to such service, and such participant has been separated permanently from coverage under the plan and subsequently returns to coverage under the same plan, such participant may be treated as a new participant for purposes of the vesting requirements without regard to his prior service.

(d) The Secretary shall prescribe standards, consistent with the purposes of this Act, governing the maximum number of working hours, days, weeks, or months, which shall constitute a year of covered service, or a break in service for purposes of this Act. In no case shall a participant's time worked

in any period in which he is credited for a period of service for the purposes of this section, be credited to any other period of time unless the plan so provides.

(e) Notwithstanding any other provision of this Act, a pension plan may allow for vesting of pension benefits after a lesser period than is required by this section.

VARIANCES—DEFERRED APPLICABILITY OF VESTING STANDARDS

SEC. 202 (a) Where, upon application to the Secretary of Labor by the plan administrator and notice to affected or interested parties, the Secretary of Labor may defer, in whole or in part, applicability of the requirements of section 201 of this title for a period not to exceed five years from the effective date of title II, upon a showing that compliance with the requirements of section 201 on the part of a plan in existence on the date of enactment of this Act would result in increasing the costs of the employer or employers contributing to the plan to such an extent that substantial economic injury would be caused to such employer or employers and to the interests of the participants or beneficiaries in the plan.

(b) For purposes of subsection (a), the term "substantial economic injury" includes, but is not limited to, a showing that (1) a substantial risk to the capability of voluntarily continuing the plan exists, (2) the plan will be unable to discharge its existing contractual obligations for benefits, (3) a substantial curtailment of pension or other benefit levels or the levels of employees' compensation would result, or (4) there will be an adverse effect on the levels of employment with respect to the work force employed by the employer or employers contributing to the plan.

(c)(1) In the case of any plan established or maintained pursuant to a collective bargaining agreement, no application for the granting of the variance provided for under subsection (a) shall be considered by the Secretary of Labor unless it is submitted by the parties to the collective bargaining agreement or their duly authorized representatives.

(2) As to any application for a variance under subsection (a) submitted by the parties to a collective bargaining agreement or their duly authorized representatives, the Secretary of Labor shall accord due weight to the experience, technical competence, and specialized knowledge of the parties with respect to the particular circumstances affecting the plan, industry, or other pertinent factors forming the basis for the application.

TITLE III—FUNDING

MINIMUM FUNDING REQUIREMENTS

SEC. 301. (a) In order to qualify as an eligible pension fund a pension fund must set forth the obligation of the employer or employers to contribute both in respect of the normal service cost of the plan and in respect to any initial unfunded liability. The contribution of the employer, including any contributions made by employees, shall consist of the payment into the fund of—

(1) all normal service costs; and

(2) where the plan has an initial unfunded liability, special payments consisting of no less than equal amounts sufficient to amortize such unfunded liabilities over a term not exceeding:

(A) in the case of an initial unfunded liability existing on the effective date of this title, in any plan established before that date, twenty-five years from such date;

(B) in the case of an initial unfunded liability resulting from the establishment of a pension plan, or an amendment thereto, on or after the effective date of this title, twenty-five years from the date of such establishment or amendment, except that in the event that any such amendment after the effective date of this title results in a substantial increase to any unfunded liability of the plan, as determined by the Secretary, such increase shall be regarded as a new plan for purposes of the funding schedule imposed by this subsection.

(3) special payments, where the plan has an experience deficiency consisting of no less than equal annual amounts sufficient to remove such experience deficiency over a term not exceeding five years from the date on which the experience deficiency was determined, except where the experience deficiency cannot be removed over a five-year period without the amounts required to remove such deficiency exceeding the allowable limits for a tax deduction under the Internal Revenue Code of 1954 for any particular year during which such payments must be made, the Secretary shall, consistent with the purposes of this subsection, prescribe such additional times may be necessary to remove such deficiency within allowable tax deduction limitations.

(b) Within six months after the effective date of rules promulgated by the Secretary to implement this title (but in no event more than 12 months after the effective date of this title) or within six months after the date of the establishment of a pension fund, whichever is later, the plan administrator shall submit a report of an actuary stating—

(1) the estimated cost of benefits in respect of service for the first plan year for which such plan is required to register and the formula for computing such cost in subsequent years up to the date of the following report;

(2) the initial unfunded liability, if any, for benefits under the pension plan as of the date on which the plan is required to be registered;

(3) the special payments required to remove such unfunded liability and experience deficiencies in accordance with subsection (b);

(4) the actuarial assumptions used and the basis for using such actuarial assumptions; and

(5) such other pertinent actuarial information required by the Secretary of the Treasury.

(c) The Secretary of Treasury shall establish standards and qualifications for persons responsible for performing services under this Act as actuaries and, upon application of any such person, certify whether such person meets such standards and qualifications.

(d) The administrator of a pension fund shall cause the fund to be reviewed not less than once every five years by an actuary and shall submit a report of such actuary stating—

(1) the estimated cost of benefits in respect of service in the next succeeding five-year period and the formula for computing such cost for such subsequent five-year period:

(2) the surplus or the experience deficiency in the pension plan after making allowance for the present value of all special payments required to be made in the future by the employer as determined by previous reports;

(3) the special payments which will remove any such experience deficiency over a term not exceeding five years;

(4) the actuarial assumptions used and the basis for using such actuarial assumptions; and

(5) such other pertinent actuarial information required by the Secretary of Treasury. If any such report discloses a surplus in a pension plan, the amount of any future payments required to be made to the fund or plan may be reduced or the amount of benefits may be increased, by the amount of such surplus, subject to the provisions of the Internal Revenue Code of 1954 and regulations promulgated thereunder. The reports under this subsection shall be filed with the Secretary by the administrator as part of the annual report required by section 7 of the Welfare and Pension Plans Disclosure Act, at such time that the report under such section 7 is due with respect to the last year of such five-year period.

(d) The Secretary of Treasury may exempt any plan, in whole or in part, from the requirement that such reports be filed where the Secretary finds such filing to be unnecessary.

(e) Where an insured pension plan is funded exclusively by the purchase of individual insurance contracts which—

(1) require level annual premium payments to be paid extending not beyond the retirement age for each individual participant in the plan, and commencing with the participant's entry into the plan (or, in the case of an increase in benefits, commencing at the time such increase becomes effective), and

(2) benefits provided by the plan are equal to the benefits provided under each contract, and are guaranteed by the insurance carrier to the extent premiums have been paid, such plan shall be exempt from the requirements imposed by this Act.

MULTIEMPLOYER PLANS

SEC. 302(a)(1) Notwithstanding the requirements of Section 301 of Title III of this Act the Secretary of the Treasury shall by rule or regulation prescribe alternative funding requirements for multiemployer plans which will give reasonable assurances that the plan's benefit commitments will be met.

(2) The period of time provided to fund such multiemployer plans shall be a period which will give reasonable assurances that the plan's benefit commitments will be met and which reflects the particular circumstances affecting the plan, industry, or other pertinent factors, except that no period prescribed by the Secretary of the Treasury shall be less than thirty years.

(3) No multiemployer plan shall increase benefits beyond a level for which the contributions made to the plan would be determined to be adequate unless the contribution rate is commensurately increased.

TITLE IV—INTERNAL REVENUE CODE AMENDMENT

PENSION PLAN QUALIFICATION

SEC. 401. (a) Section 401(a) of the Internal Revenue Code of 1954 (relating to definition of qualified pension and other similar plans) is amended by adding at the end thereof the following new paragraph:

"(11) Notwithstanding the preceding provisions of this subsection, no pension fund which, for any taxable years is insurable under the Federal Pension Plans Protection Act of 1973, shall be a qualified pension plan under this section if such fund is not insured for such year under the program established under such Act."

(b) Section 404(a)(2) of such Code (relating to deductibility of contributions to employees' annuities) is amended by striking out "section 401(a)(9) and (10)" and inserting in lieu thereof "section 401(a) (9), (10), and (11)".

(c) The amendments made by this title shall be effective with respect to taxable years which begin not less than six months after the date of enactment of this Act.

TITLE V—EFFECTIVE DATES

SEC. 501(a) Title I (vesting) of this Act shall become effective three years after the enactment of this Act.

(b) Titles II and III (termination insurance, and funding) of the Act shall become effective two years after the date of enactment of this Act.

HEARINGS ON PRIVATE PENSION PLANS

Mr. NELSON. Mr. President, the Subcommittee on Private Pension Plans of the Senate Finance Committee is hold-

ing hearings on private pension plans. These hearings and panel discussions are designed to present a full and objective review of all the pertinent legislative issues involving pension plans and the tax treatment for retirement savings. The witnesses and panel members have been selected to include, to the extent possible, all interested parties and viewpoints.

These hearings are taking place at, I hope and believe to be, a propitious time for the enactment of substantial pension legislation. For the past several years, Members of Congress have learned about the workings of private pension plans from knowledgeable experts, from those who initiate and operate such plans, and also from individual employees who have found themselves deprived of pensions they had every right to expect on the basis of their employment. A consensus has developed, not only in Congress but by all interested parties, that certain legislated minimum standards are necessary to strengthen the private pension system.

Much of this consensus can be attributed to the hard work and leadership of the chairman of the Labor and Public Welfare Committee, Senator WILLIAMS, and his ranking minority member, Senator JAVITS. The culmination of this work, S. 4, now reported to the Senate by the Senate Labor and Public Welfare Committee, represents a thoughtful and comprehensive approach to the problems of private pension plans. As previously announced, the principles and policies of S. 4 will be among the subjects before this subcommittee along with bills introduced by two of its members, Senator CURTIS, (S. 1631), whose bill represents the thinking of the administration, and Senator BENTSEN (S. 1179). Also before the subcommittee is Senator GRIFFIN'S bill, (S. 75), one of the first proposed to deal with private pension plans.

Private pension plans have experienced a dynamic growth in the last 30 years. In 1940, only 4 million employees were covered by private pensions; today about 30 million employees participate in private pension plans. Total assets of pension plans have grown from $2.4 billion in 1940 to $151.8 billion in 1973.

This rapid growth of the private pension system has been directly attributable to the favorable tax treatment of employer contributions. The current tax code includes a number of regulatory provisions affecting the tax qualifications status of pension trusts. These hearings will explore for the first time possible changes in the tax code which may be necessary to strengthen the private pension system. In addition, a number of other tax issues have been presented to the subcommittee, including, for example, tax deductions for retirement savings and the tax treatment of lump sum distributions from retirement plans.

We want to make certain that these hearings consider all viewpoints and we are interested in moving forward in the legislative process as promptly as possible so that the early consideration of these questions will be assured. It is our hope to complete consideration of pension legislation in time for Senate action prior to the August recess.

It seems to me that pension legislation should accomplish the following:

A minimum vesting standard that will assure private pension participants a retirement benefit after a reasonable period of service.

At present, only one out of every three employees participating in employer-financed pension plans has vested rights to benefits. Moreover, 58 percent of covered employees between the ages of 50 and 60, and 54 percent of covered employees 60 years of age and over, do not have vested pension rights. As a result, even employees with substantial periods of service may lose pension benefits on separation from employment. Extreme cases have been noted in which employees have lost pension rights at advanced ages as a result of being discharged shortly before they would be eligible to retire. In addition, failure to vest more rapidly is interfering with the mobility of labor, to the detriment of the economy.

A strengthened funding requirement that will assure continuing accumulation of funds to meet private pension obligations.

The available evidence suggests that many pension plans are adequately funded—but that a significant proportion of the plans have not been adequately funded. This is indicated, for example, by a survey made by the Senate Labor Subcommittee of 469 trustee-administered pension plans covering 7.1 million employees. In 1970, about one-third of the plans covering one-third of the participants reported a ratio of assets to total accrued liabilities of 50 percent or less; while 7 percent of the plans covering 8 percent of the participants reported a ratio of assets to accrued liabilities of 21 percent or less.

In general, the older plans are better funded than the newer ones. Over one-half of the plans covered by the study which were 6 years old or less had an assets-liabilities ratio of 50 percent or less, while 35 percent of the plans in existence for 17 years to 21 years had a 50-percent or more assets-liabilities ratio.

A system of plan termination insurance to protect the vested benefits of private pension participants.

Concern has also been expressed over the possible loss of pension benefits as a result of termination of pension plans. The Studebaker case, which has been widely publicized, illustrates how pension benefits can be lost as a result of termination of a plan. When Studebaker closed its South Bend, Ind., plant in 1964, the employees were separated and the pension plan was terminated. The plan provided fairly generous vested rights and the funding apparently would have been adequate had the firm remained in business and the plan continued in operation. However, at termination, the plan had not yet accumulated sufficient assets to meet all its obligations. As a result, full pension benefits were paid only to employees already retired and to employees age 60 or over with 10 years or more of service. Little or no benefits were paid to large numbers of other employees, many of whom had vested rights.

A joint study by the Treasury Department and the Department of Labor indicates that there were 683 plan terminations in the first 7 months of 1972. These terminations resulted in the loss of $20 million of benefits—present value—by 8,400 pension participants in 293 of the terminated plans. The average loss of benefits for participants amounted to $2,400.

Serious consideration of procedures to assist the transfer of pension credits among different pension plans.

Strong provisions setting fiduciary standards and eliminating conflicts of interest in the management of pension funds.

Added requirements for private pension plans to report their financial and operating status to public authorities and above all to their individual participants.

Provisions to ensure that any new pension laws or regulations are not a burdensome problem to the participants, especially the small businessmen.

New tax provisions to improve the tax treatment of retirement plans of self-employed individuals and of employees not covered by pension plans.

Finally, these desired changes in the law regarding private pension plans will not weaken or destroy the private pension system. Quite the contrary, the system has proved a most useful mechanism for meeting the retirement needs of a large part of the working population. Our task is to reinforce this function by legislating certain key minimum standards so that the system itself can serve an even broader purpose in the years ahead.

WHAT DOES AFFIRMATIVE ACTION REALLY AFFIRM?

Mr. BUCKLEY. Mr. President, New York State is blessed with more than its share of this country's institutions of higher learning. As a result, I have received more than my share of the cries of anguish now issuing from our campuses as the tireless agents of the Department of Health, Education, and Welfare's Office for Civil Rights seek to impose "affirmative action plans" on all educational institutions hapless enough to receive funds pursuant to contracts with the Federal Government.

Now the surprising thing about these complaints is that most academics assume, as an article of faith, that the concept of federally enforced "affirmative action" to do away with discrimination in employment is a good thing—at least when directed at less enlightened folk than those who inhabit the groves of Academe. What this anguish is all about is the requirement, pursuant to the Department of Labor's "Revised Order No. 4," that each college or university that is a beneficiary of Federal contracts adopt a plan designed to achieve specific numerical goals for the employment of women and members of specified minority groups by specific dates. Failure to develop a plan agreeable to the Office of Civil Rights of the Department of

Health, Education, and Welfare results in the withholding of Federal funding.

The OCR's authority—or claim of authority—is derived, via HEW, from the Department of Labor, which in turn bases its authority on Executive Order 11246 which was signed by Lyndon Johnson in 1965 pursuant to the Civil Rights Act of 1964. Now there are those who were about at the time the Act was enacted who would dispute that it was ever intended to authorize a middle-ranking bureaucrat to exercise the power of life and death over, say, Columbia University by empowering him to withhold $30 million in Federal funds—not because Columbia had been found guilty of specific acts of discrimination, but because Columbia, after a half dozen tries and the expenditure of several tens of thousands of dollars in computer studies, had failed to come up with an affirmative action plan satisfactory to said bureaucrat.

But before I pursue this subject further, Mr. President, I would like to make a point or two by way of introduction. As the complaints I speak of have come from some of the great moralizers of our time, I simply cannot resist the temptation to indulge in a little moralizing of my own.

The first point I would like to make is that the seeds of the current controversy were planted long ago when the universities and colleges decided to embrace the idea of massive Federal aid for higher education. There were those who warned that Federal aid would eventually come with strings attached, strings that might someday be used to manipulate higher education. Those warnings were scoffed at. Yet, today, the truth of the warning against Federal encroachment in matters of higher education is all too evident. This is neither the time nor the place to lecture university officials on their lack of foresight in this matter. It only remains to say that the current sad state of events might have been avoided had university officials, who were eager for Federal funds, paid more attention to others who were skeptical of such aid. The Biblical reminder that those who sow the wind soon reap the whirlwind comes immediately to mind.

My second introductory point is related to the first. My office has been deluged with mail from educators and college and university administrators who complain about the injustices being visited upon them by the implementation of the affirmative action concept. Yet the intellectual community, which ought to have been able to foresee the direction that affirmative action would inevitably take, was cheering on the activists as they imposed their increasingly stringent guidelines on other segments of society, until more and more employers were in effect being required to discriminate against nonminority males.

It occurs to me that educational spokesmen have taken the leadership in condemning the reactionary turn that affirmative action was taking, they might have headed off their own confrontations with the zealots of the OCR. But courage, never in great supply in any establishment, seems to have been on leave of absence from the administration offices of the American campus.

It is thus with a certain wry amusement that I undertake to speak out to defend our colleges and universities against unjustified bureaucratic harassment of a kind they applauded when directed at others.

One should not, of course, judge the merits of a case by the shortcomings of its proponents. As it happens, I find the complaints made by university officials against affirmative action to have a solid basis in fact; and while I will later return to the topic of the responsibility of academics and intellectuals in this area, I would now like to address myself to this bureaucratic horror.

First, let me define more precisely what is at issue. What is the affirmative action concept about which so much has been said? Instead of offering my own definition, I will quote Mr. J. Stanley Pottinger, former Director of the Office of Civil Rights. Mr. Pottinger is, everyone concedes, the most forceful and eloquent proponent of the affirmative action concept as it applies to Academe. Here is how he describes it:

> The concept of Affirmative Action requires more than mere neutrality on race and sex. It requires the university to determine whether it has failed to recruit, employ and promote women and minorities commensurate with their availability, even if this failure cannot be traced to specific acts of discrimination by university officials. Where women and minorities are not represented on a university's rolls, despite their availability (that is, where they are "underutilized") the university has an obligation to initiate affirmative efforts to recruit and hire them. The premise of this obligation is that systemic forms of exclusion, inattention and discrimination cannot be remedied in any meaningful way, in any reasonable length of time, simply by ensuring a future benign neutrality with regard to race and sex. This would perpetuate indefinitely the grossest inequities of past discrimination. Thus there must be some form of positive action, along with a schedule for how such actions are to take place, and an honest appraisal of what the plan is likely to yield—an appraisal that the regulations call a "goal."

An official document for the Office for Civil Rights describes what such a plan must be:

> An affirmative action plan must outline the employer-contractor's old, new or additional efforts to recruit, employ and promote employees. Such a plan is required to overcome institutional forms of exclusion and discrimination and must indicate corrective goals and how and when the goals will be achieved. Thus, the guidelines explicitly require that goals and timetables be established to eliminate hiring, firing, promotion, recruiting, pay and fringe benefit discrimination.

Two points must be made concerning the above. Affirmative action, according to this OCR view, is not to be confused with "nondiscrimination," another concept embodied in Executive Order 11246. According to Mr. Pottinger:

> Nondiscrimination means the elimination of all existing discriminatory treatment of present and potential employees. University officials are required under this concept to insure that their employment policies do not, if followed as stated, operate to the detriment of any persons on grounds of race, color, religion, sex or natural origin.

The second point gets to the heart of the matter. Affirmative action "goals" are not according to the Office of Civil Rights, to be confused with "quotas." Once more a quotation from Mr. Pottinger:

> Historically, hiring quotas have been rigid numerical ceilings on the number of persons of a given racial, ethnic, religious, or sex group who could be employed by (or admitted to) an academic institution. If quotas were required or permitted by the Executive Order, they would operate as levels of employment that must be fulfilled if the university is to remain eligible for Federal contracts. . .
>
> . . . No one in the government is making an argument that any requirements in the form of quotas—for or against a defined class—are legitimate.

Mr. President, I have quoted Mr. Pottinger at some length in order to make certain that the case for affirmative action, as it is understood by the Office of Civil Rights, is presented fairly and clearly. Although Mr. Pottinger is no longer with the Office of Civil Rights, his spirit lingers on in the current position of OCR concern-affirmative action. I think that position may be fairly summarized as follows:

Affirmative action in the employment practices of Federal contractors is required by an Executive order of the President. The responsibility for implementing and enforcing affirmative action in the field of education has been delegated by the Secretary of Labor to the Director of HEW's Office of Civil Rights. That Office does not set standards or goals or timetables, but it requires that universities do so, thereby showing good faith compliance with the requirements of the Executive order. In no way does the Office set a quota. Therefore the charges that affirmative action is a quota system and a form of reverse discrimination are unfounded. Or, in Mr. Pottinger's words:

> Every crusade must have its simplistic side—a galvanizing symbol, a bogeyman, a rallying cry. The word "quotas" serves these rhetorical purposes in the present case. Since quotas are not required or permitted by the Executive order, they are for the most part a phony issue, but very much an issue nevertheless.

I note in passing, Mr. President, that everyone appears to concede that the setting of employment quotas on the basis of sex or ethnic origin or religion cannot be condoned. In speaking for the Office of Civil Rights, Mr. Pottinger in fact suggests that anyone who raises the quota issue is either deliberately misleading the public or does not understand what the Government is requiring.

Now so far as it goes, Mr. Pottinger's point is well taken. Strictly speaking, the Government does not specifically require employment quotas to be set. But I feel it is, at the very least, disingenuous of the Office of Civil Rights to leave the matter there. It is conceivable, for example, that a given policy will result in a quota system without its being called a quota system. And that, Mr. President, is precisely what the critics of affirmative action have been stating. Leaving aside for a moment Mr. Pottinger's reference to "bogeyman"—which says more about Mr. Pottinger's attempt to understand

his critics than it does of the critics themselves—what is at the heart of this matter is not—and here I agree wholeheartedly with Mr. Pottinger—a semantic problem, but a problem involving human actions and human choices, no matter what label may be pinned on them.

Mr. President, the real issue is not what we are to call what is happening in our colleges and universities because of affirmative action directives, but the fact of what is happening. What is happening, no matter what name it may be given, is wrong. It is wrong from the point of view of civil liberties; it is wrong from the point of view of academic freedom; it is wrong from the point of view of elementary justice; it is wrong in its essence and in its effects.

What is happening was described in an article that appeared in the Washington Post on March 5, 1973. I shall ask unanimous consent that the entire article be printed in the RECORD at the conclusion of my remarks, but for the present I wish to quote one section:

Arguing that goals for hiring numbers of minorities and women are essentially a perversion of academic integrity, a number of professorial associations has sprung up within the last year to oppose just such measures.

Probably the most prestigious is called the Committee on Academic Nondiscrimination and Integrity, led by such scholars as Sidney Hook of New York University, Paul Seabury of the University of California and Eugene Rostow of Yale Law School.

"We are entering a new era of discrimination on the basis of race, creed and color," argues Seabury. "Large numbers of highly qualified scholars will pay with their careers simply because they are male and white."

Miro Todorovich, a physicist on leave from City University of New York, is coordinator for the committee. In his office he maintains a file of complaints from white male scholars who contend they're being discriminated against on grounds of sex or race.

"We are especially worried that a non-educational factor, a non-educational motivation will mushroom to such a large scale in the functioning of the universities, that their basic purpose will be perverted," says Todorovich.

He disputes the government's contention that affirmative action as it's being applied on the nation's campuses is not a quota system but instead a definition of attainable goals.

"A goal to which you attach numbers and timetables is a quota," argues Todorovich. "All of this was introduced by administrative fiat and was autocratically enforced by the Department of Health, Education and Welfare under the direction of Mr. (Stanley) Pottinger."

In addition to what they contended was preferential hiring, what many of the dissidents objected to was having to open their personnel files to government investigators. This, it was argued, was unwarranted government intervention into the private preserve of the university.

Mr. President, it is inconceivable to me that the specific charges of such distinguished academics can be dismissed with the term "bogeyman." It is equally inconceivable that officials of so many universities can have missed the point of affirmative action, as OCR claims. I have seen letters written by chairmen of academic departments in major universities, the thrust of which leads me to conclude that de facto, if not de jure, the effect, if not the stated purpose, of affirmative action programs is to impose employment quotas on universities on the basis of sex and ethnic origin. What else could account for letters containing passages such as these:

The Faculty of Arts and Sciences of Washington University desires to increase the number of Faculty members who are either *women or members of minority groups*. . . .

I would greatly appreciate your drawing to my attention your Ph. D. students *who are in those categories*.

All of the California State Colleges have been requested to implement a program of active recruitment of qualified faculty of minority background, especially Negro and Mexican-American.

Since I am unable to determine this type of information from the resumes you have sent me, I should very much appreciate it if you could indicate which of your 1972 candidates are either Negro or Mexican-American.

Your prompt response to my letter of May 12 with four candidates, *all of whom seem qualified* for our vacancy, is greatly appreciated. Since there is no indication that any of them belongs to one of the minority groups listed, I will be unable to contact them at present.

Claremont Men's College has a vacancy in its economics department as a result of retirement. *We desire to appoint a Black or Chicano, preferably female.* The appointee would be asked to offer principles and theory courses as well as undergraduate or graduate seminars in his or her areas of specialization. . . .

We are looking for *female economists and members of minority groups*. As you know Northwestern along with a lot of other universities are under some pressure from the Office of Economic Opportunity to hire women, Chicanos, etc. I would greatly appreciate it if you would let me know whether there are any fourth year students at UCLA that we should look at. . . .

Sacramento State College is currently engaged in an Affirmative Action Program, the goal of which is to recruit, hire, and promote ethnic and women candidates until they comprise the same proportion of our faculty as they do of the general population . . .

The Department of Philosophy at the University of Washington is seeking qualified women and minority candidates for faculty positions at all levels beginning Fall Quarter 1973 . . .

Mr. President, it seems to me that these letters in and of themselves demonstrate that something is drastically wrong with the idea of affirmative action. Its effect on employment practices is so apparent that any attempt to make a distinction between "goals" and "quotas" becomes a patent absurdity.

Apologists for the affirmative action system nevertheless persist in trying to make the distinction by stating, that "affirmative action goals are usually arrived at through collaboration between Government and private parties, while quotas are imposed arbitrarily upon the employer." Mr. President, may I say that this use of the word "collaboration" is an exercise in poetic license exceeding anything since Humpty Dumpty told Alice that words meant what he alone chose them to mean "neither more nor less." If what is going on now between the universities and the OCR is "collaboration," then God help them if duress is ever used. The plain fact is that universities are being bludgeoned into compliance with the OCR's notion of what constitutes an appropriate plan by the threat of withholding Federal funds. That they must assume a large share of the blame for the position in which they find themselves is besides the point. The fact is that the universities face a clear and present threat to their independence and integrity by that most fearsome of institutional forces, the bureaucrat armed with messianic fervor.

The term "Orwellian" is very often used to describe a situation in which the twisted logic of a bureaucracy shapes reality. We all recall Orwell's "1984" in which "Freedom Is Slavery" was a political slogan. And, of course, there is the immortal parody of Socialist egalitarianism in Orwell's "Animal Farm":

All animals are equal but some animals are more equal than others.

But I think "Orwellian" is perhaps too dignified a word to use in describing what has happened through the messianic fervor of the affirmative action shock troops. There is a kind of marvelous absurdity about it all, as if Lewis Carroll and Laurel and Hardy had been called upon as consultants in the formulation of policy. Consider for a moment the current status of the word "minority" as officially defined by the U.S. Government.

As I plunged into the labrynthine world of affirmative action policies, I had occasion to read "The Higher Education Guidelines" issued by the Department of Health, Education, and Welfare through its Office for Civil Rights. On page 3 of that document we find the following:

The *affirmative action* requirements of determining underutilization, setting goals and timetables and taking related action as detailed in Revised Order No. 4 were designed to further employment opportunity for *women* and minorities. Minorities are defined by the Department of Labor as *Negroes, Spanish-surnamed, American Indians, and Orientals . . .*"

Now it happens that the word "minority" does not appear at all in Executive Order 11246 or in the 1964 Civil Rights Act. I therefore wondered how the term came to be used as it is in the guidelines for implementation of that Executive Order. I discovered that the Office for Civil Rights relies on a document of the Department of Labor called "Revised Order No. 4" as the basis for its guidelines. An examination of "Revised Order No. 4" revealed that the word "minority" or some form of that word is used no fewer than 65 times—but is never defined. Where, then, was the basis for the particular definition of the word "minority" contained in the OCR guidelines? My office asked the question and the reply was that the Department of Labor had arrived at the definition when it was implementing what has come to be known as the "Philadelphia plan." The earliest reference I have been able to find to that particular use of the word "minority" is in an appendix to a memorandum by Arthur A. Fletcher, then Assistant Secretary of Labor for Wage and Labor Standards, which is dated June 27, 1969. The appendix states:

For the purpose of this Notice, the term minority means Negro, Oriental, American and Spanish Surnamed American. Spanish

Surnamed American includes all persons of Mexican, Puerto Rican, Cuban or Spanish origin or ancestry.

Mr. President, allow me to summarize at this point what I have discovered. The Office for Civil Rights tells us that it is using in guidelines affecting minority employment practices a definition of the word "minority" which was first formulated by the Department of Labor. The Department of Labor used that definition in a document dealing with specific industry — construction companies — with specific problems of hiring among specific minorities. Thus, the Office for Civil Rights has transferred from one specific problem—alleged discrimination in the construction industry — to another, wholly different area—higher education—the same criteria for defining a "minority." But surely it must have been obvious that different kinds of minority groups are victims of different forms of discrimination.

This leads me to suggest that the problem of the universities in attempting to cope with the infinite variety of human beings is just beginning. To show what may lie ahead, let me quote from "Guidelines on Discrimination Because of Religion or National Origin," issued by the Department of Labor and printed in the Federal Register on Friday, January 19, 1973, which have to do with affirmative action in another area of employment. Part (b) of 60–50.1 of those guidelines reads as follows:

Members of various religious and ethnic groups, primarily but not exclusively of Eastern, Middle, and Southern European ancestry, such as Jews, Catholics, Italians, Greeks and Slavic groups, continue to be excluded from executive, middle-management and other job levels because of discrimination based upon their religion and/or national origin. These guidelines are intended to remedy such unfair treatment.

I ask unanimous consent that the guidelines from which I have just quoted be printed in their entirety at the conclusion of my remarks.

All of this presents us with a complex problem, Mr. President. As it stands now, the Government of the United States has decreed, officially, through the Department of Labor, that while members of European minority groups and certain religions are definitely victims of discrimination in business employment, it has also decreed, through HEW's Office of Civil Rights, that when it comes to employment on a campus, they are not entitled to the same regulatory protection that is now accorded Negroes, the Spanish surnamed, American Indians and orientals. I, for one, have no doubt that in due course, the OCR will not only catch up with, but leapfrog the DOL as more and more groups seek the very real advantages of reverse discrimination that will accrue to them by virtue of membership in a class officially found to be subject to job discrimination. And so our colleges and universities will find themselves forced to punch into their computer cards more and more categories of human beings so that they may achieve the exact mix of sex, race, religion and national origin that will be required to satisfy their evermore fastidious inquisitors.

The absurdity of the exercise ought to be self-evident. But it is worse than absurd. The notion of affirmative action plans designed to achieve precise goals is inherently vicious, inherently discriminatory. It flies in the face of everything that the civil rights movement has sought to achieve—a society in which every human being is judged on his merits as a human being, a society that is truly colorblind, a society that applies a single set of standards for employment and advancement irrespective of the accident of birth. This is true whether quotas are applied to universities or businesses, or unions. The human soul does not know distinctions of race or sex or ethnic origins. To attempt to catalog human beings by such categories for purposes of employment is to insult their humanity.

That is why it is now illegal in the more enlightened States for an employer to require information as to an applicant's race or religion. And so we are treated to the serio-comic stratagems to which academic administrators in such States are driven as they attempt to satisfy the most precise requirements of the Office for Civil Rights without overtly violating State laws designed to protect civil rights.

The whole situation is ludicrous. More than that, it is wrong, wrong, wrong. It is time we started treating this nonsense for what it is: a travesty of good government and a veritable burlesque of good intentions. In this instance, however, I will not propose instant legislative relief for academe. Frankly, I take some ignoble delight in the anguish being felt by so many college and university officials now that they must reap the whirlwind they have done so much to sow.

Before I involve myself in the issue further, I would like to see a little official leadership from the academic community itself. I would like to see some of our leading colleges and universities formally and publicly denouncing the whole concept of affirmative action instead of furtively communicating their anxieties to their representatives in Congress. I would like to see some of the academic community's professional associations formally denouncing affirmative action plans not because of some special claim of academic privilege, but because the concept is inherently discriminatory.

When New York college and university administrators bring their complaints to me about the treatment they are receiving at the hands of the Office for Civil Rights, I will continue to do what I can to shield them from the more obvious abuses of bureaucratic discretion. But I will also recommend to these college and university officials that they try their hand at a little bit of self-help by going to court to seek an injunction against the implementation of the Department of Labor Revised Order No. 4 on the grounds that it contravenes the provisions of the Civil Rights Act of 1964, that it exceeds any reasonable interpretation of the purposes of and the authority granted by Executive Order 11246, and that its effect is to force discrimination in employment. It is time, in short, for the academics to stand up and be counted. If they are not willing to defend their own professional integrity, how can they expect others to work effectively on their behalf?

Mr. President, the only conclusions possible from the facts I have cited is that affirmative action affirms nothing more than the right of the Government to impose hiring standards that debase the very idea of equal opportunity. I ask unanimous consent that the following articles be printed in the RECORD at the conclusion of these remarks so that the depth and breadth of the passions now being aroused by the OCR's dictatorial ukases may be fully examined:

First. "Reverse Bias Alleged in College Hiring," The Washington Post, March 5, 1973, page A2.

Second. "HEW and the Universities," Commentary, February 1972, pages 38–44, Paul Seabury.

Third. "Semantic Evasions," Freedom At Issue, pages 12–14, July–August/1972, Sidney Hook.

Fourth. "The Numbers Racket on Campus," Alternative, March 1973, pages 11–14, Paul Seabury.

Fifth. "The Progress of a Bad Idea," Alternative, March 1973, pages 14–18, pages 28–29, Neil Howe.

Sixth. "Affirmative Action: Means and Ends," an address by Robert F. Sasseen, dean of the faculty, California State University, San Jose.

Seventh. "Quotas by any Other Name," Commentary January 1972, pages 41–45, Earl Rabb.

Eighth. "Do Justice, Justly" a statement of Dr. Stanley Dacher, executive vice president of the Queens Jewish Community Council, June 27, 1972.

Ninth. "A Critical Survey of Affirmative Action, Part II," a paper by Prof. Milo M. Todorovich.

Tenth. "How 'Equal Opportunity' Turned Into Employment Quotas," Fortune, March 1973, pages 160–168, Daniel Seligman.

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

REVERSE BIAS ALLEGED IN COLLEGE HIRING—BACKLASH MOUNTS FOR WOMEN AND MINORITIES

(By Bart Barnes)

"It is only honest to say that Jewish faculty view numerical goals for affirmative action as a thinly veiled revival of anti-Semitism," Columbia University President William J. McGill told a B'nai B'rith dinner early this winter.

"Jews are represented on university faculties far out of proportion with their representation in the population. Affirmative action goals or quotas or whatever one calls them . . . can only convince Jewish faculty that an effort is afoot once more to exclude them from universities and that simple excellence no longer counts in matters of university appointments."

McGill, whose university has faced as intense pressure as any in the nation to hire and promote more women and minorities, was trying to counter a strong backlash that has developed nationwide against those pressures.

Like other universities holding large government contracts, Columbia has been required within the last year to develop an affirmative action plan setting forth, department by department, its plans for adding women and minorities to its staff over the next few years.

Among male faculty members and particularly from Jewish organizations such affirmative action plans have been met with protests that the purposes of higher education would be perverted and scholarship sacrificed in the name of a racial and sexual balance.

So strong has been the dissent that high administration officials say the whole issue of affirmative action at colleges and universities will be thoroughly reviewed to see whether, in fact, it is disruptive of academic order.

In his talk to B'nai B'rith, McGill tried to convince his audience that affirmative action need not necessarily be disruptive. Applied properly, he argued, it could be simply a means of redressing grievances long overdue, assuring women and minorities their fair share of jobs and influence in academia.

McGill had some skepticism to overcome and he knew it.

At Columbia, he estimated, about half the faculty was Jewish and many of them would remember the pre-World War II days when "America's best colleges were rampant with anti-Semitism."

"Not only were there quotas limiting the admission of Jews to the best colleges and professional schools, but there was also a vicious form of the same discrimination in appointments at the faculty level."

Now, he went on, it was understandable that Jewish faculty who had once been denied access to universities because of a quota system might view efforts to recruit women and minorities as a threat to their own standing. McGill's talk to B'nai B'rith followed by some months the filing of a complaint by the organization's Anti-Defamation League that affirmative action at some colleges was creating an atmosphere of discrimination against white males.

Since 1970, more than 350 of the nation's colleges and universities have been charged with discriminating against women. To compensate for this officials of the Department of Health, Education and Welfare have threatened a cutoff of federal funds to institutions failing to make a conscious effort to recruit and promote both women and minorities.

At a time when virtually all institutions of higher education are hard pressed for money, such threats have been taken very seriously.

"No one," observed Columbia's McGill, "likes to be in a position of negotiating for his survival with Uncle Sam sitting at the other side of the table.

"Our instincts in such circumstances were to promise almost anything in order to get the government off Columbia's back".

In fact, charge the ADL and a number of academic groups organized to oppose affirmative action, most colleges and universities have been too ready to promise anything. Now, the critics contend, they are concerned mainly with hiring women and minorities as quickly as possible to make sure the government doesn't bother them any more.

"Nonsense," answers Dr. Bernice Sandler, director of the Project on the Status and Education of Women for the Association of American Colleges.

"They're upset because they have to compete against women. That's what it amounts to."

"And I wish those Jewish men who are so concerned about affirmative action would become concerned about Jewish women who have been systematically pushed out of universities. Their concern is only with Jewish men, not with Jewish women," said Dr. Sandler, who is Jewish herself.

In a letter to Health, Education and Welfare Secretary Caspar W. Weinberger last month, Dr. Sandler contended that HEW's Office of Civil Rights is giving top priority now to investigating cases of white males who complain of "reverse discrimination."

Federal officials do admit there have been instances of illegal discrimination against men at colleges within the last two years but they insist such cases stem from a misunderstanding of the law.

In one such case in the Washington area, a doctoral candidate at George Washington University won appointment to the faculty of Prince George's Community College after contending he'd originally been turned down because he was neither female nor a minority.

The doctoral candidate, W. Cooper Pittman, had taught during the 1971–73 academic year at Prince George's while studying clinical psychology at George Washington.

Last winter, his department chairman at Prince George's Community College told him he'd be a leading contender for a permanent appointment in the fall as Assistant Professor.

In the spring his departmental committee chose Pittman from among 30 applicants as the No. 1 recommendation and the appointment was subsequently approved by the dean of social sciences and the vice president for academic affairs.

Then, on Aug. 16, Pittman was notified that his appointment had been disapproved by the board of trustees.

"The disapproval in no way reflects upon your professional preparation or specific background in the area of clinical psychology," Pittman was told in a letter.

"The basis for disapproval was primarily that the position presently vacant in that department requires certain qualifications regarding the overall profile of the institution. . ."

Pittman was later informed by his department chairman that he'd have gotten the appointment had he been a woman or black. The slot Pittman had been seeking and another vacancy would be filled by women or blacks, the college president and trustees had informed the psychology department, and the department had been ordered to go out and recruit them.

Pittman subsequently took his case to the American Association of University Professors and in November he was reinstated at Prince George's.

In another incident at Pima College in Tucson, Arizona a $700 "fudge factor" was introduced to the recruiting process as a means of attracting minority or female candidates.

Under this system, as much as $700 extra in incentive pay was authorized to attract minority or women faculty to Pima.

Officials of the college discontinued the "fudge factor" in December after being informed by HEW that it was illegal.

At California's Sonoma State College, a letter advancing the candidacy of Michael Goldberg, a graduate student in Sociology at the University of California at Berkeley, for appointment to the Sonoma staff was answered:

"Mr. Goldberg has not contacted me and I fear that were he to do so we would have no more than pleasant conversation, for we are pledged to the affirmative action policy in our hiring this year."

Arguing that goals for hiring numbers of minorities and women are essentially a perversion of academic integrity, a number of professorial associations has sprung up within the last year to oppose just such measures.

Probably the most prestigious is called the Committee on Academic Nondiscrimination and Integrity, led by such scholars as Sidney Hook of New York University, Paul Seabury of the University of California and Eugene Rostow of Yale Law School.

"We are entering a new era of discrimination on the basis of race, creed and color," argues Seabury. "Large numbers of highly qualified scholars will pay with their careers simply because they are male and white."

Miro Todorovich, a physicist on leave from City University of New York, is coordinator for the committee. In his office he maintains a file of complaints from white male scholars who contend they're being discriminated against on grounds of sex or race.

"We are especially worried that a non-educational factor, a non-educational motivation will mushroom to such a large scale in the functioning of the universities, that their basic purpose will be perverted," says Todorovich.

He disputes the government's contention that affirmative action as it's being applied on the nation's campuses is not a quota system but instead a definition of attainable goals.

"A goal to which you attach numbers and timetables is a quota," argues Todorovich.

"All of this was introduced by administrative fiat and was autocratically enforced by the Department of Health, Education, and Welfare under the direction of Mr. (Stanley) Pottinger."

In addition to what they contended was preferential hiring, what many of the dissidents objected to was having to open their personnel files to government investigators. This, it was argued, was unwarranted government intervention into the private preserve of the university.

Barbara Buoncristiano, a leader of the Women's Affirmative Action Coalition at Columbia, disputes that argument.

"They didn't mind opening their files at all. What they did mind was not being able to hire the way they wanted to . . . no longer being able to pick their successor when they retire . . . no longer being able to perpetuate themselves in their departments from generation to generation."

HEW AND THE UNIVERSITIES

(By Paul Seabury)

Old Howard Smith, Virginia swamp fox of the House Rules Committee, was a clever tactical fighter. When Dixiecrats in 1964 unsuccessfully tried to obstruct passage of the Civil Rights bill, Smith in a fit of inspired raillery devised a perverse stratagem. He proposed an amendment to the bill, to include women as an object of federal protection in employment, by adding sex to the other criteria of race, color, national origin, and religion as illegitimate grounds for discrimination in hiring. This tactical maneuver had far-reaching effects: calculated to rouse at least some Northern masculine ire against the whole bill, it backfired by eliciting a chivalrous rather than (as we now call it) sexistresponse: the amendment actually passed!

Smith, however, had greater things in mind for women's rights. As a fall-back strategy, they would distract federal bureaucrats from the principal object of the bill, namely, to rectify employment inequities for Negroes. In this, at least in higher education, Smith's stratagem is paying off according to expectations. The middle-range bureaucrats staffing the HEW Civil Rights office, under its Director, J. Stanley Pottinger, now scent sexism more easily than racism in the crusade to purify university hiring practices. Minority-group spokesmen grumble when this powerful feminine competitor appears, to horn in. In the dynamics of competition between race and sex for scarce places on university faculties, a new hidden crisis of higher education is brewing. As universities climb out of the rubble of campus disorders of the 1960's, best by harsh budgetary reverses, they now are required to redress national social injustices within their walls at their own expense. Compliance with demands from the federal government to do this would compel a stark remodeling of their criteria of recruitment, their ethos of professionalism, and their standards of excellence. Refusal to comply satisfactorily would risk their destruction.

The story of how this came about, and

what it portends, is a complex one, so complex that it is hard to know where to begin. It is also an unpleasant tale. Only its first chapters can be written.

I

Let us begin the story, then, with a brief history of the Civil Rights Act of 1964. This act, in the view of its principal sponsors, purposed (among other things) to engage the force of the federal government in battle to diminish or to rectify discriminatory hiring practices in firms and institutions having or seeking contracts with the federal government. Title VII of the act expressly forbids discrimination by employers on grounds of race, color, religion, and national origin, either in the form of preferential hiring or advancement, or in the form of differential compensation. Contracting institutions deemed negligent in complying with these provisions could be deemed ineligible for such contracts, or their contracts could be suspended, terminated, or not renewed.

When Title VII was debated in the Senate, some opponents of it, asserting (in the words of a Washington Star editorial) that it was a "draftman's nightmare," voiced alarm that it might be used for discriminatory purposes, and employers might be coerced into hiring practices which might, in fact, violate the equal-protection doctrine of the Constitution, thus perversely reversing the stated purposes of the bill. In one significant interchange, this alarm, raised by Florida's Senator Smathers, was genially dismissed by Senator Humphrey, in words which bear recalling:

Mr. HUMPHREY. [T]he Senator from Florida is so convincing that when he speaks, as he does, with the ring of sincerity in his voice and heart, and says that an employee should be hired on the basis of his ability—

Mr. SMATHERS. Correct.

Mr. HUMPHREY. And that an employer should not be denied the right to hire on the basis of ability and should not take into consideration race—how right the Senator is. . . .

But the trouble is that these idealistic pleadings are not followed by some sinful mortals. There are some who do not hire solely on the basis of ability. Doors are closed; positions are closed; unions are closed to people of color. That situation does not help America. . . .

I know that the Senator from Florida desires to help America, industry and enterprise. We ought to adopt the Smathers doctrine, which is contained in Title VII. I never realized that I would hear such an appropriate description of the philosophy behind Title VII as I have heard today.

Mr. SMATHERS. Mr. President, the Senator from Minnesota has expressed my doctrine completely. . . .

The first steps in implementing the new act were based on executive orders of the President corresponding to Humphrey's Smathers Doctrine. President Johnson's Executive Order No. 11375 (1967) stated that—

"The contractor will not discriminate against any employee or applicant because of race, color, religion, sex, or national origin. The contractor *will take affirmative action* [italics added] to ensure that employees are treated during employment, without regard to their race, color, religion, sex, or national origin.

Under such plausible auspices, "affirmative action" was born, and with a huge federal endowment to guarantee its success in life. Since 1967, however, this child prodigy—like Charles Addams's famous nursery boy with the test tubes—has been experimenting with novel brews, so as to change both his appearance and his behavior. And it is curious to see how the singleminded pursuers of an ideal of equity can overrun and trample the ideal itself, while injuring innocent bystanders as well.

II

Affirmative action was altered by a Labor Department order (based not on the Civil Rights Act but on revised presidential directives) only months after the Johnson order was announced. This order reshaped it into a weapon for discriminatory hiring practices. If the reader will bear with a further recitation of federal prose, let me introduce Order No. 4, Department of Labor:

"An affirmative-action program is a set of specific and result-oriented procedures to which a contractor commits himself to apply every good faith effort. The objective of these procedures plus such efforts is equal employment opportunity. Procedures without effort to make them work are meaningless; and effort, undirected by specific and meaningful procedures, is inadequate. An acceptable affirmative-action program must include an analysis of areas within which the contractor is deficient in the utilization of minority groups and women, and further, goals and timetables to which the contractor's good faith efforts must be directed to correct the deficiencies and thus, to increase materially the utilization of minorities and women, at all levels and in all segments of his work force where deficiencies exist."

This directive is now applicable through HEW enforcement procedures to universities by delegation of authority from the Labor Department. By late 1971, something of a brushfire, fanned by hard-working HEW compliance officers, had spread through American higher education, the cause of it being the demand that universities, as a condition of obtaining or retaining their federal contracts, establish hiring goals based upon race and sex.

III

Universities, for a variety of singular reasons, are extremely vulnerable to this novel attack. As President McGill of Columbia remarked recently, "We are no longer in all respects an independent private university." As early as 1967, the federal government was annually disbursing contract funds to universities at the rate of three-and-a-half billion dollars a year; recently the Carnegie Commission suggested that federal contract funding be increased by 1978 to thirteen billion dollars, if universities are to meet their educational objectives. Individual institutions, notably great and distinguished ones, already are extraordinarily dependent on continuing receipt of federal support. The University of California, for instance, currently (1970–71) depends upon federal contract funds for approximately $72 million. The University of Michigan, periodically harassed by HEW threats of contract suspension, cancellation, or non-renewal, would stand to lose as much as $60 million per annum. The threat of permanent disqualification, if consummated, could wholly wreck a university's prospects for the future.

In November 1971, HEW's Office for Civil Rights announced its intent to institute proceedings for Columbia's permanent debarment—even though no charges or findings of discrimination had been made: Columbia had simply not come up with an acceptable affirmative-action program to redress inequities which had not even been found to exist. When minor officials act like Alice in Wonderland's Red Queen, using threats of decapitation for frivolous purposes; when they act as investigator, prosecutor, and judge rolled into one, there may be no cause for surprise. But one can certainly wonder how even they would dare pronounce sentence—and a sentence of death at that—even before completion of the investigatory phase. Such, however, appears to be the deadly logic of HEW procedures. As J. Stanley Pottinger, chief of HEW's office, said at a West Coast press conference recently, "We have a whale of a lot of power and we're prepared to use it if necessary." In known circumstances of its recent use, the threat resembles the deployment of MIRV missiles to apprehend a suspected embezzler.

IV

As the federal government of the United States moves uncertainly to establish equitable racial patterns in universities and colleges, it does so with few guidelines from historical experience. The management, manipulation, and evaluation of quotas, targets, and goals for preferential hiring are certainly matters as complex as are the unusual politics which such announced policies inspire. How equitably to assuage the many group claimants for preference, context-by-context, occasion-by-occasion, and year-by-year, as these press and jostle among themselves for prior attention in preference, must now occasion some puzzlement even among HEW bureaucrats. On a recent Inspector General's tour of California, J. Stanley Pottinger found himself giving comfort to militant women at Boalt Hall Law School of the University of California; yet at Hayward State College, he was attacked by Chicanos for giving preference to blacks! Leaders of militant groups, needless to say, are less interested in the acute dilemmas posed to administrators by this adventure than in what they actually want for themselves. (When at Michigan I raised with a Women's Commission lady the question of whether an actual conflict-of-interest might exist between blacks and women, she simply dismissed the matter: that's for an administrator to figure out.) How to arrive at some distant utopian day, when "underutilization" of minorities or women has "disappeared," is as difficult to imagine as the nature of the ratios that will apply on that day.*

V

Fifteen years ago, David Riesman in his *Constraint and Variety in American Education* pointed to certain qualities which distinctively characterized avant-garde institutions of higher learning in this country. The world of scholarship, he said, "is democratic rather than aristocratic in tone, and scholars are made, not born." A "certain universalizing quality in academic life" resulted from the existence of disciplines which can lift us out of our attachments to home and mother, to our undergraduate alma mater, too and attach us instead to the new country of Biophysics or the old of Medieval History." In America, the relative decline of ethnic and social-class snobberies and discrimination, combined with immense expansion of the colleges, drew into scholarship a great majority whose backgrounds were distinctly unscholarly. "The advancing inner frontier of science," he wrote, had for many taken the place which the Western frontier served for earlier pioneers. The loyalty which the new democratic scholar showed to his discipline signalled a kind of "non-territorial nationalism." In contrast to his European counterparts, the American scholar found few colleagues among the mass of undergraduates on the basis either of "a common culture of a common ideology in the political or eschatological sense." Paradoxically this democratization of the university (with its stress not on status but upon excellence in performance) had not begun in rank-and-file small colleges of the nation, which were exemplars of America's ethnic, religious, and cultural diversity. Rather it had come out of those innovating institutions which, in quest of excellence, either abandoned or transcended much of their discriminatory sociological parochialism. It was the denominational college, where deliberate discrimina-

*When I asked an administrator at San Francisco State College what "underutilization" of minorities meant, he simply replied, "Experience will let us know."

tion according to sex, religion, color, and culture continued to be practiced in admissions and faculty recruitment, which made up the rear of the snake-like academic procession. The egalitarianism of excellence, a democracy of performance, was in ethos consummated by the avant-garde. Riesman labelled the disciplines of the great universities the "race-courses of the mind."

Felix Frankfurter, who went from CCNY to Harvard Law School, was equally impressed with how the system worked. "What mattered," he wrote, "was excellence in your profession to which your father or your face was equally irrelevant. And so rich man, poor man were just irrelevant titles to the equation of human relations. The thing that mattered was what you did professionally. . . ." As he saw the merit system, the alternative to it had to be "personal likes and dislikes, or class or color, or religious partialities or antipathies. . . . These incommensurable things give too much room for personal preferences and on the whole make room for unworthy and irrelevant biases."

The greatest boost to America's universities came in the 1930's from European emigre scholars whose powerful influence (notably in the sciences and social sciences) is still felt even today. As exemplars of learning, their impact upon young and parochial American students was profound.* Thanks in part to them, by the 1950's the great American universities attained an authentic cosmopolitanism of scholarship matched by no other university system in the world. And the outward reach of American higher education toward the best the world of scholarship could offer generated an inward magnetism, attracting to itself the most qualified students who could be found to study with these newly renowned faculties.

This system of recruitment also left a myriad of American sociological categories statistically underrepresented in the highest precincts of American higher education. Today, with respect to race and ethnicity, blacks, Irish, Italians, Greeks, Poles, and all other Slavic groups (including Slovaks, Slovenes, Serbs, Czechs, and Croatians) are underrepresented. On faculties, at least, women are underrepresented. Important religious categories are underrepresented. The great Catholic universities, until recently, have stood aside from the mainstream of secular higher education; they have been enclaves of a separated scholarship. Thus few Catholics are to be found in the roster of distinguished faculties of America's great secular universities, even though Catholics comprise perhaps 30 per cent of the population. And it is interesting to note that the quest for professional excellence in some respects has militated against the achievement of group parities: among those women's colleges which had obtained by the 1950's an enviable academic status as being more than *apartheid* seminaries, one apparent "price" of scholarly excellence was the rapid infusion of male faculty.

And then, on the other hand, there are the Jews. For a long time, administrators of some of America's universities, aware of the powerful scholarly competition which Jewish students and scholars posed, and the social "inequities" which their admission or recruitment might pose, established protective quotas—the famous *numerus clausus*—to keep their number down. Yale Law School, for example, abandoned its Jewish quota for incoming students only in the 1950's. With the triumph of equal opportunity over quotas, the bastions of discrimination collapsed. It is estimated that Jews make up about 3 percent of the population. Clearly they constitute a vastly greater proportion than that on the faculties of America's greatest universities, especially in the social sciences, mathematics, and the humanities.

One could enlarge this catalogue of statistical disparities indefinitely. Yet I must also mention the political, although it is seldom touched upon. The partisan complexion of universities is a matter which HEW does not, and cannot, attend to. Still, I would point out that the faculty of my department at Berkeley, for example, very large by any standards, had to the best of my knowledge three Republicans on it a few years ago; two have since left, one by retirement and one by resignation. There is one new convert, who switched registration to vote for Senator Kuchel in the GOP primary and against Max Rafferty and found, after conversion, that he enjoyed the noteriety which his deviance produced. So, currently we have two Republicans in a department of thirty-eight. This situation is in no way unique. Yet I doubt that even Nixon's HEW crusaders for equality of results would tread into this minefield of blatant inequity. On the other hand, one wonders whether, in White House garrets, there are not some among the President's Republican equerry who take perverse pleasure in watching academic liberals, crusaders for social justice for others, how hoist by their own petard on home territory.

VI

The ironic potentials in affirmative action might have been foreseen had American lawmakers and administrators known the results which in recent years have plagued the government of India's pursuit of a quite similar goal. Here, perhaps more clearly than in any other contemporary culture, the idea that social justice can be reached via quotas and preferences has led almost inexorably to extremes of absurdity.

Before independence, under British rule, special privileges to communities and castes were given or withheld under the British *raj* both to rectify inequities and (as in the instance of the Muslims) to punish disloyalty or reward support. Commencing in legislatures as the establishment of reserved seats for privileged groups—first for Muslims, then for Anglo-Indians, then for Indian Christians—the principle of privileged representation soon spread into other sectors of public life.

When in the early 1930's B. R. Ambedkar, leader of the Untouchables, demanded that the British establish preferential electoral quotas for them, Gandhi objected, arguing that the interests of the Untouchables would better be advanced by integrating them into society than by protecting them with preferential treatment. Gandhi believed that preference would heighten identity of caste rather than diminish it, and that it further risked creating vested-interest minorities. Yet in negotiations with the British, Ambedkar won and Gandhi lost. After independence, the government of India backtracked, abolishing preferential treatment for all groups except tribal peoples and scheduled castes (i.e., Untouchables) who were accorded certain preferences in government recruitment and in access to educational institutions, fellowships, and admissions. Such preferences, originaly instituted as temporary devices, soon became institutionalized and again they spread. So-called "backward classes" proliferated to the point where it became necessary to be designated as "backward" in order to become privileged. And, indeed, in 1964, a "Backwardness Commission" recommended in the state of Mysore that every group except two (the Brahmins and the Lingayats) be officially designated as backward!

The Indian experience clearly shows that when access to privilege is defined on ethnic-community lines, the basic issue of individual rights is evaded; new privileges arise; caste privilege sabotages the principle of equality; the polity further fragments; and the test of performance is replaced by the test of previous status. (In Kanpur, recently, the son of a wealthy Jat family applied for admission to the Indian Institute of Technology and was rejected on objective criteria; then he reapplied as a member of an ethnically-scheduled caste, and on this basis was admitted.)

VII

To remain eligible for federal contracts under the new procedures, universities must devise package proposals, containing stated targets for preferential hiring on grounds of race and sex. HEW may reject these goals, giving the university thirty-day notice for swift rectification, even though no charges of discrimination have been brought. Innocence must either be quickly proved, or acceptable means of rectification devised. But how does one *prove* innocence?

"Hiring practices" (i.e., faculty recruitment procedures) are decentralized; they devolve chiefly upon departments. At Columbia, for instance, 77 units generate proposals for recruitment. Faculties resent (most of the time quite properly) attempts of administrators to tell them whom to hire, and whom not. Departments rarely keep records of the communications and transactions which precede the making of an employment offer, except as these records pertain to the individual finally selected. Still, the procedure is time-consuming and expensive. The Department of Economics of the San Diego campus of the University of California estimates that it costs twenty to forty man hours, plus three to five hundred dollars, to screen *one* candidate sufficiently to make an offer. Typically, dozens of candidates are reviewed in earlier stages.

Compliance data thus tend to be scanty and incomplete. "Columbia's problem," President McGill recently observed, "is that it is difficult to prove what we do because it is exceedingly difficult to develop the data base on which to show, in the depth and detail demanded [by HEW], what the University's personnel activities in fact are." Yet HEW demands such data from universities on thirty-day deadlines, with contract suspension threatened. Moreover, on its finding of discrimination (usually based on statistical, not qualitative, evidence), it may demand plans for rectification which oblige the university to commit itself to abstract preferential goals without regard to the issue of individual merit.

The best universities, which also happen to be those upon which HEW has chiefly worked its knout, habitually and commonsensically recruit from other best institutions. The top universities hire the top 5 per cent of graduate students in the top ten universities. This is the "skill pool" they rely upon. Some may now deem such practices archaic but they have definitely served to maintain quality. Just as definitely they have not served to obtain "equality of results" in terms of the proportional representation of sociological categories. Such equality assumes that faculties somehow must "represent" designated categories of people on grounds other than those of professional qualification. As Labor Department Order No. 4 states, special attention "should be given to academic, experience and skill requirements, to ensure that the requirements in themselves do not constitute inadvertent discrimination." Indeed, according to four professors at Cornell writing in the *Times* (Letters to the Editor, January 6), deans and department chairmen have been informed by that univer-

*It is now sometimes said, on behalf of preferential recruitment of less-qualified minority faculty, that minority students require *examples* whom "their community" can respect. Whether in practice this would, as claimed, stimulate their performance, is hard to say. The most stimulating exemplary professors I encountered as a student had quite different "socio-economic" backgrounds from mine. Many were even foreigners. It seems almost foolish to have to mention this.

sity's president that HEW policy means the "'hiring of additional minority persons and females' even if 'in many instances, it may be necessary to hire unqualified or marginally qualified people.'"

If departments abandon the practice of looking to the best pools from which they can hope to draw, then quality must in fact be jeopardized. To comply with HEW orders, every department must come up not with the *best* candidate, but with the best-qualified *woman* or *non-white* candidate. For when a male or a white candidate is actually selected or recommended, it is now incumbent on both department and university to *prove* that no qualified woman or non-white was found available. Some universities already have gone so far in emulating the federal bureaucracy as to have installed their own bureaucratic monitors, in the form of affirmative-action coordinators, to screen recommendations for faculty appointments before final action is taken.

A striking contradiction exists between HEW's insistence that faculties prove they do not discriminate and its demand for goals and timetables which require discrimination to occur. For there is no reason to suppose that equitable processes in individual cases will automatically produce results which are set in the timetables and statistical goals universities are now required to develop. If all that HEW wishes is evidence that universities are bending over backward to be fair, why should it require them to have statistical goals at all? Do they know something no one else knows, about where fairness inevitably leads?

Yet another facet of HEW's procedures goes to the very heart of faculty due process: its demand of the right of access to faculty files, when searching for evidence of discrimination. Such files have always been the most sacrosanct documents of academia, and for good reason: it has been assumed that candor in the evaluation of candidates and personnel is best guaranteed by confidentiality of comment; and that evasiveness, caution, smokescreening, and grandstanding—which would be the principal consequences of open files—would debase standards of judgment. In the past, universities have denied federal authorities—the FBI for instance—access to these files. Now HEW demands access. And it is the recent reluctance of the Berkeley campus of the University of California to render unto this agent of Caesar what was denied to the previous agents, which occasioned the HEW ultimatum of possible contract suspension: $72 million. One might imagine the faculty would be in an uproar, what with Nixon's men ransacking the inner temple. But no. In this as in other aspects of this curious story, the faculty is silent.

VIII

"In respect of civil rights, common to all citizens, the Constitution of the United States does not, I think, permit any public authority to know the race of those entitled to be protected in the enjoyment of such rights. . . . Our Constitution is color-blind, and neither knows nor tolerates classes among citizens." This is Justice Harlan, dissenting in Plessy *v.* Ferguson in 1896, when the Supreme Court endorsed the "separate but equal" doctrine.

Some of us in the league of lost liberals are still wont to say that the Constitution is color-blind. Yet now under the watchful eye of federal functionaries, academic administrators are compelled to be as acutely sensitive as Kodachrome to the outward physical appearance of their faculty members and of proposed candidates for employment. Forms supplying such information are now fed into data-processing machines; printouts supply ethnic profiles of departments, colleges, and schools, from which compliance reports may be sent to HEW, and university affirmative-action goals are approved or rejected.[1]

All of this is done in some uneasiness of mind, to put it mildly. In many states, Harlan-like blue-laws of a recent innocent epoch still expressly prohibit employers from collecting and maintaining data on prospective employees with respect to race, religion, and national origin. The crafty practices contrived to elude the intention of such laws while at the same time complying with HEW, vary from campus to campus. At the University of Michigan, the procedure entails what is known as "self-designation"—the employee indicates on a form the race or ethnic group of which he considers himself a part.[2] These forms are collected and grouped according to job-classifications, departments, etc., and then they are burned, so as to disappear without a trace. Other universities, less anxious to cover their traces, simply file the forms separately from regular personnel files, without the names of the individuals concerned. In New York, the CUNY system resorts to a quite different practice invented and perfected by South African Boers: "visual identification." Affirmative-action coordinators are told to proceed as follows: "The affirmative-action inventory is to be done by a *visual* survey [italics in original]. There *should not be a notation of any kind* as to ethnic background in either personnel records or permanent files. This is against the law. . . . Identification of Italian Americans will be done visually and by name. . . . Please remember, however, that each individual is to be listed in only one ethnic group."

The number of categories established on behalf of affirmative action, though at present finite, already betrays accordion-like expansibility. The affirmative-action program at San Francisco State College, typical of most, is now confined to six racial groups: Negroes; Orientals; other Non-White; persons of Mexican, Central or South American ancestry ("except those who have physical characteristics of Negro, Oriental, or other Non-White races"); Native American (American Indian); and All Others, ". . . including those commonly designated as Caucasian or White." All but the last category are eligible for discriminatory preference.[3]

As the above CUNY memorandum signals, however, this last category of "those commonly designated as Caucasian or White" is a Pandora's box inside a Pandora's box. Now that the Italians have escaped from it in New York, the lid is open for others—all the many different groups now fashionably known as "ethnics"—to do likewise. A far-seeing administrator, even as under HEW's gun he hastily devises future-oriented hiring quotas ("goals") to muffle the noise of one or two squeaky wheels, might wonder how he will be able to gratify subsequent claimants on the dwindling capital of reserved quotas still at his disposal.

Yet the administrator in practice has no choice but to act on the "sufficient unto the day is the evil thereof" principle. HEW ultimata, when they come, are imperious and immediate. Thirty-day rectifications are in order. At Johns Hopkins, MIT, Columbia, Michigan, and the University of California, an acute agony arises from no such philosophical long-range speculations, but from how to put together attractive compliance reports fast enough to avoid the threatened withholding of vast funds, the closing-down of whole facilities, the dismissal of thousands of staff workers, and the irreparable damage done to important ongoing research, especially to laboratory experiments. Crocodile tears do flow, from the gimlet-eyes of HEW investigators, who observe these sufferings from distant federal offices. Even J. Stanley Pottinger recently noted, in appropriate Pentagonese, that the act of contract suspension at Berkeley, for instance, might constitute "overkill." Yet no sooner had he voiced this note of sadness than his regional compliance director recommended to Washington precisely such action.

IX

While deans, chancellors, and personnel officials struggle with these momentous matters, faculties and graduate students with few exceptions are silent. HEW is acting in the name of social justice. Who in the prevailing campus atmosphere would openly challenge anything done in that name? Tenured faculty perhaps consult their private interests and conclude that whatever damage the storm may do to less-protected colleagues or to their job-seeking students, prudence suggests a posture of silence. Others perhaps, refusing to admit that contending interests are involved, believe that affirmative action is costfree, and that all will benefit from it in the Keynesian long run. But someone *will* pay: namely very large numbers of white males who are among those distingishable as "best qualified" and who will be shunted aside in the frantic quest for "disadvantaged qualifiables."

The inequities implied in affirmative action, and the concealed but real costs to individuals, would probably have had less damaging effects upon such highly-skilled graduate students had they been imposed in the early 1960's. Then, the sky was the limit on the growth and the affluence of higher education. If a pie gets bigger, so may its slices enlarge; nobody *seems* to lose. Such is today not the case. The pie now shrinks. One West Coast state college, for example, last year alone lost nearly 70 budgeted faculty positions due to financial stringency. Yet this same college has just announced the boldest affirmative-action program in California higher education. "Decided educational advantages can accrue to the college," it said, "by having its faculty as well as its student body be more representative of the minority population of the area. *It is therefore expected that a substantial majority of all new faculty appointments during the immediate academic years will be from minorities, including women, until the underutilization no longer exists.*" (Italics added.) Departments which refuse to play the game will have their budgets reviewed by university officials.

It is hard to say how widely such pernicious practices have been institutionalized in other colleges and universities. But were they to be generalized across the nation, one thing is certain: either large numbers of highly-qualified scholars will pay with their careers simply because they are male and white, *or*, affirmative action will have failed in its benevolent purposes.

X

It seems superfluous to end this chronicle of woe with mention of another heavy cost—one not so immediately visible—in the forceful administration of affirmative-action hiring goals. This is that men will be less able to know, much less sustain, the professional standards by which they and others judge

---

[1] Since HEW has divulged no reliable standards of its own, the well-intentioned administrator is like a worshiper of Baal, propitiating a god who may punish or reward, but who is silent.

[2] Self-designation is not always reliable. At Michigan, the amused or disgusted members of one of the university's maintenance crews all self-designated themselves as American Indians (bureaucratese: Native American); their supervisor was quietly asked to redesignate them accurately.

[3] One object of current discriminatory hiring practices at San Francisco State is to make the institution's non-academic personnel ethnically mirror the population of the Bay Area.

and are judged. An enthusiastic affirmative-action administrator recently in argument with a skeptical college president said, "Let's face it—you and I know there are a lot of lousy programs and a lot of shoddiness around here. Why object to this?" By such logic, one bad turn deserves another. Since more and more less and less qualified students may enter universities, why bother too much about the quality of the new faculty hired to teach them? It is an interesting reflex habit of some federal bureaucrats and politicians (when confronted with objections that affirmative action might, for instance, discriminate against well- or better-qualified persons) to draw rhetorical analogies to confute their critics on this score. Told that affirmative action might actually discriminate against white males, J. Stanley Pottinger of HEW simply replied, "That is balderdash. That is the biggest crock I have ever heard. It is the kind of argument one expects to hear from a backwoods cracker farmer."

Indeed, backwoods cracker farmers *are* making this argument—though for reasons other than those Pottinger had in mind, and which have much to do with the things great universities require in order to survive in their greatness. Consider what a white third-year law student at a Southern university (self-designating himself disadvantaged but according to no currently approved norms) had to say with respect to his personal situation:

"The ability to think in the abstract is hard for a person with my cultural background and economic background. My parents were WASPS whose income barely exceeded the poverty level. My father is a Southern Baptist with a third-grade education. . . . My mother is a Southern Baptist also. . . . She can read and write but my father is illiterate."

In the public schools I attended, memorization was always emphasized. At ——— University . . . during my first eight quarters at this law school no one has emphasized the ability to think in abstract terms. . . . I do not know if this type of education is good or bad, but I do know that all your time is spent taking notes and that there is no time for thought. . . . Regardless, the course has made me acutely aware of how fortunate I am to be an American. In no other country would I have been able to complete the requirements for a J.D. degree. My cultural and economic background would have prevented it. . . . My background also prevents me from answering a test like this in the manner you desire. But if I must answer, then I will. . . .

There is another form of discrimination of which, I believe, I am a victim. As a non-member of a minority group I feel that I . . . [am] discriminated against constantly. The same admissions standards are not applied because a certain percentage of minority students must be admitted in each class regardless of their qualifications. My test score, undergraduate record, and my family (poor white) deny me admittance to Harvard because I am white. I do not say this in bitterness, but in observation of the current status of admission practices as I perceive them. . . .

Somebody, then, has to pay, when the principle of merit is compromised or replaced by preferential ethnic and sex criteria.

Who then wins? The beneficiaries of preference? The particular institution involved? Society as a whole? One may debate the answer to each of those questions, but one thing is certain: HEW wins. It wins, as Aaron Wildavsky has pointed out, because winning can be defined by internal norms. The box-score is of its own devising. To the extent that its goals are met, and the body-count proves this, it wins. But then, where have we heard *that* before?

HEW'S FACULTY "QUOTAS" INSPIRE—SEMANTIC EVASIONS

(By Sidney Hook)[1]

To meet HEW pressure, colleges increasingly turn to discriminatory hiring—an "embarrassment," says Prof. Hook, which the agency tries to mask by "semantic evasions."

From one end of the country to another the affirmative action program of HEW, imposing quotas on universities and colleges under threat of cancellation of Federal funds, is continuing apace. The campaign is largely succeeding due to administrative cowardice, explicable but not excusable because of current financial stringencies and faculty indifference. Almost every mail brings to the offices of University Centers for Rational Alternatives copies of official correspondence documenting what is going on:

A letter from Claremont Men's College begins: "Dear Colleague: Claremont Men's College has a vacancy in its ——— Department as a result of retirement. We desire to appoint a black or Chicano, preferably female . . ."

A letter from Washington University, St. Louis: "The Faculty of Arts and Sciences of Washington University desires to increase the number of faculty members who are either women or members of minority groups. I would greatly appreciate your drawing to my attention your Ph.D. students who are in those categories." The writer is obviously not interested in Ph.D. students who are *not* in these categories regardless of talent.

From one of the California State Colleges: "All of the California State Colleges have been requested to implement a program of active recruitment of qualified faculty of minority background, especially Negro and Mexican-American. Since I am unable to determine this type of information from the resumes you have sent me, I should very much appreciate it if you could indicate which of your 1972 candidates are either Negro or Mexican-American." Under existing state laws in California and New York it would be illegal to provide the information requested.

The following letter was actually posted on the bulletin board of a university. "Dear Sir: The Department of Economics at Chico State College is now just entering the job market actively to recruit economists for the next academic year . . . Chico State College is also an affirmative action institution with respect to both American minority groups and women. Our doctoral requirements for faculty will be waived for candidates who qualify under the affirmative action criteria, [i.e., minority groups and women] and who are willing to continue graduate work on a part-time basis." The doctoral requirement is not waived for males who are *not* members of minority groups even when they are willing to continue graduate work on a part-time basis.

One administrator from another California State College, under date of April 24, 1972, frankly announces the goal of the Affirmative Action Program: "Dear Sir: Sacramento State College is currently engaged in an Affirmatice Action Program, the goal of which is to recruit, hire, and promote ethnic and women candidates until they comprise the same proportion of our faculty as they do of the general population."

From New Mexico a letter not so extreme as those from California: "Dear Professor: Your prompt response to my letter of May 12 with four candidates, all of whom seem qualified for our vacancy, is greatly appreciated. Since there is no indication that any of them belongs to one of the minority groups listed, I will be unable to contact them at present."

From the midwest: "Dear ———: We are looking for female ——— and members of minority groups. As you know, Northwestern along with a lot of other universities is under some pressure from the Office of Economic Opportunity to hire women, Chicanos, etc. . . ."

From a letter addressed to a highly qualified applicant by the Chairman of an English Department in New England: "Dear Mr. ———: I have received your letter regarding your candidacy here. It is quite true that we have an opening here and that I have examined your dossier. It is very impressive indeed, and I wish I could invite you to come for an interview. At present, however, the Department is interested in the appointment of a woman, so we are concentrating on interviews of this kind."

This sampling establishes beyond doubt that institutions knuckling under to the demands of HEW are not seeking *the best qualified person*, regardless of sex, race, religion or national origin, for positions as they become available. In a period when it is anticipated by experts on college enrollment and faculty needs that there will be a relative decline in available positions, when competition for them will be keener than ever before, the criteria of selection will not be personal merit alone but will reflect *group* membership largely beyond the power of individuals to alter, and for which they cannot and should not be held responsible.

HEW LOSING THE DEBATE

Nonetheless, although HEW is winning the battle because it controls the power of the purse, before which educational principles in the best of institutions have been known to yield, it is losing the argument. It has resorted to the shabbiest evasions and sometimes to outright denial of the record in rejoinder to those of its critics who are just as much opposed to unjust discrimination on grounds of sex, race, religion or national origin as HEW professes to be—and who were active on this front long before HEW discovered the problem—but who at the same time wish to preserve academic integrity and academic freedom.

The chief rejoinder to the critics is the denial that HEW believes in "a quota system" or that the program of Affirmative Action has consequences that even remotely resemble a quota system. The sensitiveness of HEW to the charge that it is imposing a quota system is highly significant. For it recognizes that a quota system cannot be reconciled with any fair system of distributing posts and positions on the basis of personal merit. HEW is acutely uncomfortable when any of its supporters frankly acknowledges that "of course affirmative action programs aim at or result in quotas," and finds nothing objectionable in that fact. It is extremely embarrassed when its supporters boldly declare that affirmative action programs are a presently justified form of discrimination "to remedy past discrimination." (See the letter of Professor William B. Gould in the *New York Times* of April 10, 1972). HEW knows that morally its case is lost if it involves a quota system or the barbaric notion that we can atone for past injustices towards innocent victims by present injustices to innocent victims.

NOT A QUOTA SYSTEM?

What then is the "affirmative action program" according to HEW and its spokesmen? It is not a quota system. It aims only at "goals and time tables," at "numerical targets" or "statistical target goals." Replying to my article in *Freedom At Issue* (March-April 1972) Robert E. Smith, Assistant Director for Public Affairs, Office for Civil Rights, HEW, writes:

"When you insist that HEW requires

[1] The author, a member of the board of Freedom House, was recently appointed to the council of the National Endowment for the Humanities.

quotas, I think you should be fair and include our disclaimer. Quotas are not required by the executive order. Goals and time tables are. Failure to meet goals does not automatically result in noncompliance; if there is evidence of good faith effort to meet goals, this is an adequate substitute for evidence that goals have been met. In no case that I know of has the Office for Civil Rights reached the point of evaluating the performance of a university in meeting its goals and time-tables. Therefore it is not accurate to imply HEW threatens to withdraw Federal money from a university for failure to meet goals. I think also that the term 'quotas' has a special (negative) meaning in the academic community and among some groups. It is comparable to 'busing' in many ways. I do not think that it sheds much light on the debate to continue to raise the spectre of 'quotas.' All of us in this office abhor quotas as they have been used in the past."

Let us examine this. What is the logical or cognitive difference between saying (1) "You are to aim at a quota of 20% redheads for your staff within two years," and (2) "You are to set as your *goal* recruitment of 20% redheads for your staff within two years."? Quotas are numerical goals. A "quota of 20%" is equivalent to "a numerical goal of 20%." The expressions are interchangeable. The cognitive meaning of neither sentence is altered if we substitute one expression for the other.

For some purposes—trade, immigration policy, rationing of scarce commodities, etc.—a quota system may be legitimate. But when we are seeking the best qualified person or persons for a position it is never *morally legitimate*, particularly when we are on record as being opposed in principle to discrimination on grounds of race, religion, sex or national origin (except when these are justifiably among the qualifications, e.g. sex for certain kinds of dancers or officers for women's detention centers, religion for service in houses of worship, etc.).

If a quota system is morally undesirable, then the effort to achieve it is likewise undesirable even if made in good faith. If numerical goals are undesirable, then the effort to achieve them is also undesirable. Spokesmen of HEW seek to absolve themselves of the guilt of seeking to impose a quota system by insisting on a distinction that makes no difference in fact or practice. "We don't demand," they plead, "that the numerical goals we set down actually be achieved. We ask only that a good faith effort be made to achieve it." How does this differ from saying, "We don't demand that the quotas actually be filled or reached, only that you honestly try."?

RESULTS OF HEW PRESSURE

What is wrong with insisting on good faith efforts to achieve numerical goals or targets or quotas within a given time-schedule? Precisely what we observe today—a natural tendency to hire individuals not on the basis of their individual competence but on the basis of their *membership* in a minority group or as a woman.

In effect, HEW is saying to colleges and universities: Very well, you may not be able to meet the numerical goals set for you but you must prove at the very least when you award the post to someone who is not a member of a minority group or a woman that there was no qualified person available among the latter. Despite all reasonable efforts, this may prove very difficult to establish. What more natural than to close one's eye to qualifications, to compromise, to reduce standards in order to establish good faith in the quest for numerical goals or quotas?

Suppose a university sets as a numerical goal recruitment of 10% or even 5% blacks for staff in a period of three or five years. This may mean, because of the past scarcity of black faculty members, that the numerical goal of black faculty for future appointments may be 50%, particularly if not many new appointments are in the offing. Where are they to come from? For as any informed person knows there is little evidence that American universitits at present are discriminating against qualified blacks. As the Harvard University Report on Tenure puts it:

"At the present moment, the competition for professionally qualified black faculty members is so incredibly intense that Harvard and comparable institutions have been warned against raiding black colleges." (AAUP *Bulletin*, March 1972, p. 66)

If universities are expected to meet "a numerical target" or "numerical goal" from where are the qualified blacks to be recruited? From the unqualified blacks? Or if qualified women in mathematics are not available from where are they to be recruited? From unqualified women? I am confident that blacks and women who are in principle opposed to discrimination would proudly reject the policy of appointing blacks and women except on grounds of individual professional competence.

HEW, however, has actually indicated a way in which some additional appointments can be made. Revised Order #4 of the Secretary of Labor which mandates Affirmative Action Programs for federal contractors went into effect on April 4, 1972. With reference to hiring practices, it states:

"Make certain worker specifications have been validated on job-performance related criteria. (Neither minority nor female employees should be required to possess higher qualifications than those of the lowest qualified incumbent)."

The University of Michigan and at least nine other universities were served with this order which the National Organization of Women and other militant women's groups are stressing in making up lists of qualified women with which to confront universities.

A moment's reflection should be sufficient to bring home the fantastic character of the requirement I have italicized. It opens the door to hiring persons who cannot meet *current standards of qualification* because, forsooth, a poorly qualified incumbent was hired by some fluke or perhaps ages ago when the department was struggling for recognition. All institutions over the years have steadily upgraded the requirements of scholarship and/or teaching as prerequisites for appointment and promotion. If members of minorities and women were to cry havoc, charge discrimination and insist that they be hired or promoted because their qualifications were equal to the "lowest qualified incumbent," our colleges and universities would become havens of mediocrity. Here is proof positive that HEW is not interested in seeing that the *best qualified* person gets the position. It opts for the least qualified as sufficiently meritorious to warrant appointment.

What the guidelines should have stressed is that current standards of qualification and promotion, whatever they are, should be applied without any discrimination.

It remains to inquire why there are comparatively so few women on the faculties of our major universities. Is not this relative scarcity incontrovertible evidence of the discrimination against women in hiring policies? Does not the disproportion between women students and women teachers confirm the charges of the bureaucrats in HEW and their public allies?

There are two generic causes that explain the relative scarcity of women in university faculties that have little to do with discrimination which at the worst has been a peripheral phenomenon among mediocre men unsure of themselves in the presence of competent women.

(1) First has been the social stereotypes prevalent in the past that cast women in domestic roles from their earliest years, discouraged them from pursuing careers, and made marriage and the family not only their primary vocation but their exclusive one. I can verify this from my own long experience as a teacher, and from that of my colleagues. I have always encouraged the many bright, young women I have taught to pursue their studies professionally, to aim high, to combine marriage and a career. But until recently few listened to me. They were subject to strong social pressures from family, friends and the social climate to which they yielded. Hopefully this attitude is disappearing. There is always a time lag between the career of graduate students and that of faculty members. Because there are today more women in graduate schools, there will be more women on the faculties of the universities in the future. They can make it on their own without the anti-intellectual, demagogic propaganda of HEW.

(2) The second reason why there have been so relatively few women in the university, as in other major institutions, is the attitude of most men in the past. Few women can combine marriage, children, and a career without the active support and cooperation of their husbands. Ask any woman who has managed all of these commitments and obligations successfully; almost invariably she will give a large share of the credit to the cooperation of her husband. In the past most men have been loath to surrender the comforts and time required to adjust their lives to their wives' professional activity. This, too, reflects social attitudes that happily seem to be changing. Most men in the past preferred to have their wives remain at home rather than work outside the home. In some periods men considered it a disgrace for their wives to work. During the depression women had difficulty competing with men for positions because an unemployed man usually meant an entire family in distress.

That there was some discrimination against minorities and women in higher education goes without saying. But it doesn't explain the statistical distributions.

A great deal can be done in the universities to increase equality of educational opportunity so that the best man or woman gets the job. It may be that the English and Australian systems should be adopted. Institutions should be required to advertise all their academic openings so that everyone knows what is open, and what are the requirements. Like some men, some women cannot believe they have failed through no fault but their own. The academic community, however, is already sufficiently polarized without introducing purely gratuitous differences among scholars and teachers concerning race or sex. To solve their difficulties, colleges and universities need straight, honest talk—not semantic evasions.

PAUL SEABURY: THE NUMBERS RACKET ON CAMPUS

Paul Seabury is a professor of political science at the University of California at Berkeley.

Within the last year or two, he has become widely known for his outspoken criticism of "affirmative action" in the university. His criticism is especially directed toward HEW's Office for Civil Rights (OCR) which is now requiring the vast majority of American universities to implement sweeping "affirmative action" programs under the authority of federal contract compliance law. Two articles by professor Seabury on the significance of "affirmative action" have recently appeared in Commentary: "HEW and the Universities," February 1972; and "The Idea of Merit," December 1972.

In this interview, The Alternative dis-

cusses with professor Seabury the short and long term effects of "affirmative action" quota systems as they are now being administered by American universities.

The Alternative: In your article in Commentary (February 1972) you wrote that what has distinguished the American university over the last four or five decades has been a singular insistence upon excellence in scholastic achievement. Do you think that the racial and ethnic discrimination of affirmative action seriously endangers these principles of academic excellence?

Professor Seabury: I do. The question is what the special forms of damage are. One of the great risks in this business is what I call "do-it-yourself" affirmative action which is in a sense less sanctioned by the practices and policies of HEW itself. It is very interesting, for example, that HEW never itself sets its own quotas. It requires universities to establish their own set so that they are not liable under law to be found in violation of the Civil Rights Act. Now what is happening all over the country is that a wide range of affirmative action programs are now being put together by very alarmed administrations threatened by the cutoff of federal funds and also by a combination of pressures within individual colleges which themselves want to do the very thing HEW is doing, only they want to do it even more so.

A: When we talk about academic standards of excellence, what exactly are these and how can they be measured?

S: The standards, of course, are the standards of scholarship and teaching. I have never thought that it was possible at all to establish uniform laws of excellence. What there is is a kind of internalized ethic where—in seeking out new scholars for your faculty and promoting them—one is really searching for the best one can get. The judgment of competence evolves upon a very narrow group of prudential scholars working in the field. That is the way I think it ought to be.

A: Is there any way to reconcile the idea of affirmative action quotas and these principles of academic professionalism? Is there any way to bring them together?

S: It is possible to imagine ways in which the impact of quotas could be somehow modified; that is to say, in the sense that you would agree upon a set of so-called goals which wouldn't radically require you to substitute those discriminatory categories for the categories normally used. Unfortunately, one of the strangest, current problems facing universities all over the country is the very tight budget situation; colleges are not expanding, and at this very moment of constraint you're getting this clout coming in from Washington when the slots you have open are very few. This means there is a terrible pressure upon university administrations to place top priority on hiring people in particular affirmative action categories. This means you have to exclude from consideration everybody who is disadvantaged by not being "disadvantaged."

A: Considering how deeply the motto "to each according to his ability" is rooted in American culture, and particularly in American universities, what are the social and intellectual forces pushing affirmative action? Where exactly did this demand to achieve racial equality at the expense of all other considerations come from?

S: I am not a cultural historian, but there is after all something of a *zeitgeist*, a spirit of a particular period of time, that works its way in rivulets and eddies throughout your culture, and I think this is one of our problems. If you go back for example to the 1950's, you had at that point, I think, possibly an overstress upon credentialing excellence. It was what I call the Hyman Rickover effect of the 1950s, where many ambitious universities pressed very, very hard to become the best, the greatest, and so forth. It tended to place far too much emphasis upon scholarship and research to the detriment of anything else. What we are now getting is an enormous backlash in the opposite direction. As many people have pointed out, the equality of opportunity is really not the same as the equality of results. These are two, entirely different ways of looking at equality. To have equality of opportunity does not mean that the sociological results are going to correspond to the sociological categories, and there are many reasons for this which have absolutely nothing to do with the writings of Mr. Jensen, but have a great deal to do with mysterious elements in our culture. Some particular categories of people—whether we like it or not—like to do certain things that other people don't and they happen to be good at it because they are very motivated to do it.

A: Do you believe that the legislators who originally framed the Civil Rights Act in 1964 and favored affirmative action knew that this provision would eventually lead to some sort of quota system?

S: I really don't know. I do know that the principal sponsors, men like Senator Humphrey for example, *denied* that quotas would be a consequence of this. Now, of course, the argument which is made by those who did turn in the direction of quotas is: how are you otherwise going to achieve social justice? That's the bureaucrat's approach to it, which is another thing that has struck me about HEW's affirmative action. That is the development of an immense bureaucracy in Washington to deal with these problems of compliance. I am told now that the HEW "Contract Compliance" office for higher education has in the neighborhood of 500 employees, including almost a hundred of these who negotiate with universities.

A: What makes HEW officials so determined and eager to wield their power against the universities?

S: It's a middle-ranged bureaucracy that's inspired by a moral fervor. It is interesting that Stanley Pottinger is an appointment not of Elliott Richardson but of Finch. When he came to OCR, I am sure this was a very modest kind of enterprise. But what was then attracted into it, I think, was a wide variety of compliance officers who were really coming to reform society with a messianic impulse. That isn't to say that all of them are like that, but that there are quite a large number who view their roles in negotiating with universities as that of purifying universities.

A: In your article you said that "affirmative action was altered by a Labor Department order based not on the Civil Rights Act but on revised presidential directives only months after the Johnson order was announced. This order reshaped it into a weapon for discriminatory hiring practices." When I compare the language of these two orders, I see a substantial shift in both the theory and practice of affirmative action. Who and what forces are to be blamed or praised for this shift?

S: You have to look back into the origins of this thing. The source for the orders is the Department of Labor. The language and practices that develop in HEW are imitative of those that the Labor Department is using, so that the particular procedures, the particular modes of compliance investigation and compliance are derived from the industrial sector. Now, I'm not saying in any way that one ought to have a double standard and that universities should somehow be exempt from the ordinary rules of law that apply to everybody. But it is true that there is a very sharp distinction between a brick layer's union and a faculty of the university. The differential skills in a university faculty are so vastly greater, so much more diffuse. The length and types of training involved in becoming competent are so different than those that might apply in a brick layer's union. It's easy to administer affirmative action where you are dealing with a large category of uniform types. This is one reason, I think, why the HEW people when they moved into the universities never knew what was going to hit them. They just didn't understand the university and the unique decentralized character of the thing. In the university, as basic agencies of decision are departments, but if you take an industrial firm, someone goes to a central hiring office and gets a job. That was something that a lot of the HEW people really didn't think about.

A: Could HEW adopt any better procedure? Looking at this problem from HEW's point of view, do you think they should wait for complaints or that they should investigate each case on their own?

S: My feeling is that the practices of HEW should be brought into line with the Civil Rights Act—to make it in that respect legal—and that the honest thing to do would be to investigate all individual complaints and discriminations. That would be a helluva job for a federal bureaucracy to engage in. But nevertheless, there are so many scandalous instances of pernicious reverse discrimination going on that it would be rather nice to see HEW looking into these, but I haven't seen a single shred of evidence that HEW cares at all about the victims of its own current policies. It would be an embarrassing thing for them to do.

A: Do you share the common fear that the quota system might become so absurdly extensive that it would set ratios for every imaginable racial, national, political, or geographic group—that is, set ratios for everything?

S: It's the old parade of the horribles when one imagines these nightmares. There must be a certain point that you get to where the ludicrousness of this becomes apparent. Now, I said a year ago when I began getting interested in this that the effect of HEW's policies was going to breed more oppressed groups. This indeed is what has been happening. What was begun, as I pointed out in my article, to alleviate the condition of blacks has now become a gigantic crusade for all sorts of categories. I was rather interested, for example, when Congressman Podell of New York became concerned with the problem of discrimination, that his first reaction was to demand of HEW that they also include religious groups. Instead of objecting to the categoric system, you invent some other category that can be protected. That way lies madness, of course. This is something that the government of India discovered to its great dismay in the 1950s and 1960s when they were dealing with the backward caste. The moment you set up one category of castes that are eligible for preferential treatment, everybody else wants to get on the bandwagon. There are a couple of Indian states where the thing became so ludicrous that all of the castes except one or two became officially registered as 'backward.' There is a very good book, incidentally, on the Indian experience, by Donald Smith called India as a Secular State that goes into great detail about this. Now the Indians went very far and this has had very bad consequences. Once you get these privileges, you keep them. It is like oil depletion allowances. It isn't true that you can do this as a temporary measure until you have redressed past wrongs, until you have reached some new, equitable standard, before you go back to ordinary practices. It is very hard

to do this because organized groups have got their clutches on a part of the pie. They are going to fight to keep it.

A: Let's discuss some of the arguments in favor of affirmative action. Don't proponents argue that it is now recognized that certain minority groups have suffered social and legal injustices in past decades and centuries, and because of this, because blacks especially suffer from what educators call 'an inferior educational environment' in upbringing, that affirmative action requires universities to counteract this bias by waiving admission in the minority's favor? 'Making up for society's injustice,' I guess, is one way of putting it.

S: The question is, what are the agencies of altering the nature of human beings? It seems to me that there is a sharp difference between quotas and a practice that was authentically attempting to train and, in that sense, to liberate people from cultural constraints so that they could then move into the broad stream of effective national life and be treated as equals by other people. When you apply preferential treatment at a very advanced stage—here, I am thinking about academic recruitment—one establishes, in effect, double standards. It seems to me that this has a very pernicious effect—and rightly so as a number of black educators have pointed out—upon the morale of people who then begin to think that the only reason they are being hired, for example, is because of their color and not because of their intrinsic qualities. This, is a matter of extreme, private disgust among a number of black and minority scholars who have gotten where they are by virtue of their own achievements and qualities. I must say that if I were black and a scholar, I would share that disgust.

A: Let's take on the issue of quotas or preferential treatment in student admissions. What is the difference in principle between lowering the cutoff line on the SAT scores of a minority college applicant and, say, adding ten points to a veteran's score on a Civil Service Exam? Each is rendered as a counteracting of a previous condition.

S: I haven't given enough thought to this question of admissions policies except in the more grievous instances and the grossest contrivances. When you are dealing with a minor, fractional form of discrimination, I suppose an argument can be made that it is going to have some good consequences. It seems to me that the basic rule in all of this is to think about what the consequences are going to be of practicing things of this sort.

But you have to be careful that in 'weighting" your standards you aren't also getting rid of them. There is a coincidence in time between admissions quotas, the assault on standards and tests, and a very powerful anti-intellectual movement which is really basing its conception of education upon spontaneity, intuition, and a kind of rap session where the idea in the man. Edgar C. Friedenberg talks about "real" education as being shared experience and that the main object of education is to establish a sense of community among students. Of course, if you go in that particular direction, you don't really need any kind of testing at all—other than of a person's ability to relate to a group, where you all sit around and contemplate your navel and think about things and so forth. Now it is unfair to wholly interpret the question you asked in these terms, except to see that in many schools it is already happening in a very powerful way.

Most of the energy that goes into this comes from non-minority, middle-class whites. If one argues, as some do, that these standards for admission and these internalized standards for evaluation in the university are devices to trap people into the system by emphasizing standards which are so-called 'middle-class standards,' then the conclusion is that you are inveigling them into a system that they shouldn't belong to. This is the kind of phony, underclass radicalism which would prevent minority students from acquiring the very competitive skills that they need to go out and live in the world. This is a very interesting kind of a problem.

You do need tests to see how people are going to be able to perform. For example, the law school test: one may object to it on the grounds that it is somehow invidious, but it has been proved to be a very effective predictor not only of how a student is going to do in law school but also how he is going to do when he gets out of law school. If you eliminate these tests, you then get back into the question I was talking about earlier, the psychic trauma when people get thrown into an institution where they cannot float. In that case the institution might lower its criteria to make it simpler so that it won't be so painful for these people. Or you may institutionalize double standards within the student body somehow, but only as they sort of unravel the whole fabric of academic standards. Society too, if you look at it from a different perspective, has always counted on the reasonable accuracy of the credentialing practices of schools, so that when you are getting somebody from a school, what he is known to have accomplished is an indicator of whether you want him. How do you evaluate somebody who hasn't been evaluated? In the more specialized fields, you want to know whether someone does or does not know chemistry or physics, or whether he is competent enough to be admitted to an engineering school, or having gotten out, whether a firm should employ him. The issue here is our confidence in a person who is moving into a very responsible position in the real world. If you wipe out these standards, who is to know what a doctor's degree really means? Who is to say whether this surgeon is any good?

A: Do you think that the performance of minority students who are admitted on a marginal basis to the university under affirmative action can in general be accelerated up to the level of their other classmates—say, by tutoring?

S: In general, this applies to everybody. It shouldn't be looked upon as a matter of minorities alone. California, for example, was one of the pioneers in the development of the junior college system. California's master plan has a triple-tiered arrangement: junior colleges, state colleges, and the university. In some of the better junior colleges—in California there are quite a number of them—they have been doing this kind of thing for a very long time for students who aspire to go on for a full four years of university education. In fact, one theory behind this has been that you can catch the people who are late maturers and late learners, put them through the paces, and at the end of a year or two they may be able to pass into the world of the university and do very well. It has been proven time and time again in California that the academic performance of junior college kids coming into universities is just about as good as those who were admitted at the beginning. This is something, however, that is made possible by a very intense dedication to teaching in these junior colleges, and I think this could be very greatly strengthened.

A: What do you think would be the long term effects of affirmative action—of the principle of inclusion—on student admissions, where we see an increase in open admissions policies or a greater breadth of admissions.

S: I am not in principle opposed to the idea of open admission. In practice, open admissions as in the New York City system has, in the real world, various disastrous consequences. State universities in the Midwest were the ones which I believe pioneered the notion of open admissions: namely, everybody certified with a high school credential got to come in. It has always been the case that there has been a very high dropout rate in the state institutions that practice it. Now when one expands into wider areas, subsidizing children of minority families, you get more people who can then actually afford to come in, so the mass of the student invasion is infinitely greater than it was twenty or thirty years ago. In New York City you get a salary if you are a qualified minority student. You get paid to go to college. An Italian is disqualified because he is not the right color. This economic favoritism is breeding vast ethnic discontents in the student bodies of New York universities. The other side of it, of course, is that the more one subsidizes the notion of mass education, the more difficult it is to sustain the idea of higher education. It's simply no longer education if the institution becomes trampled by an extraordinary number of people who are pushed reluctantly by their parents or by other incentives into the system. It has a demoralizing effect upon everyone concerned. The dropout rate in New York is absolutely phenomenal. And quite rightly so, because there are a lot of kids who come in and really don't want to do it.

A: What do you think will be the long term effects of affirmative action on the hiring and tenure granting procedures of university departments?

S: I tend to be optimistic in the sense that I cannot imagine that these practices will be uniformly institutionalized. Having said the generalization, let me qualify it. I think that there are certain types of institutions which are going to be very badly affected, where the principles of real professionalism are being modified to the point of being sabotaged. You are going to have people coming in to tenure positions who are going to be there for an awfully long time, and if there is one thing people don't like, they don't like competition. In choosing their own successors, they will choose people who will be equally mediocre so they are not threatened. This has always been a problem in any institution of higher learning. The improvement of American colleges and universities in the thirties, forties, and fifties was accomplished over the dead bodies of mediocre people. These institutions that are now going back to mediocrity in the guise of social justice are going to have some trouble. I would think some of the very best universities like Harvard, Columbia, and so forth are not going to be endangered by this. There, the internalized sense of excellence in scholarship is very strong. But that is not the case in a large number of other places. I am thinking, especially, of a number of new, state colleges.

A: Could or should the goals of affirmative action be reached by any other means besides quotas? What exactly should be done about affirmative action?

S: You can approach that question from two directions. The first direction is how all of this might benignly affect academic hiring practices. It may be true that some university departments may have been too lax in their procedures of hiring, that they haven't cast their net broadly enough because they have been lazy—without attributing here any discriminatory motives. If an improvement may be seen in this sense, it ought to be incumbent upon departments to pay much more attention than some of them do to really going out and searching, rather than doing so routinely. That's one kind of thing. However, that isn't going to

satisfy those people who are concerned about equality of results, because you might end up, for example, getting more Chinese in a mathematics department when what HEW calls for is more blacks. If you are looking for sociological equality of results, this is an entirely different matter.

The whole business occurs at a time when there is a kind of generalized assault upon the merit principle, so what we are talking about is not something that is a matter of higher education, but goes into the whole institutional life of the country. Some people begin to play games with institutions that have lost a sense of their authentic and special role. And that is not something that the university alone is afflicted by. As I said earlier, we are passing through a very strange period in American history and you never know when these things terminate, and also—this is another thing that troubles me sometimes—you don't know what the reactive backlash might be when people have had enough. The terrible risk is that we might return to practices that would make the post-Reconstruction period appear to be a paradise. This, I think, is something that some of the enthusiasts should pay attention to, because an excess of their particular virtues can breed a mighty powerful reaction. And I see some signs that this is already happening.

THE PROGRESS OF A BAD IDEA

(By Neil Howe)

All of the letters reprinted in this article are authentic. Most of these were made available through the generous cooperation of the University Centers for Rational Alternatives.

Direct quotations from Stanley Pottinger are taken from (1) a speech to the National Association of College and University Attorneys (Honolulu; June 30, 1972), and (2) an article "The Drive Toward Equality" in Change (October 1972).

Graduate students, faculty members, or anyone else interested in the debate over campus "affirmative action" programs may want to write to the University Centers for Rational Alternatives, 110 West 40th Street, New York, N.Y. 10018, or subscribe to their newsletter, Measure. They can also join the Committee on Nondiscrimination (444 Park Ave. S., New York, N.Y. 10016) which has been expressly organized to combat all forms of reverse discrimination and the associated dislocation of academic integrity.

The quota system as it is now being implemented at universities—under HEW's euphemistic guise, "affirmative action"—is a spectacular failure for the civil rights movement and an awesome tragedy for the university. With matchless zeal, affirmative action is attempting to foster what is best for both, and in fact its advocates claim that the fair treatment of minorities and the well-being of academia is its only reason for existence. But as transcendentalized law or legally enforced moral crusading is wont to do, affirmative action betrays and finally defeats its own purposes. With its history of unwisely mixed idealism, enthusiasm, and governmental authority, its effect has been a familiar one: not only does it tend to destroy precisely what it tries to protect, but it totally destroys what it is most thoroughly successful in protecting.

"Affirmative action" is a quota system, and a quota system requires an institution to treat an individual not on the basis of his effectiveness or merit, but on the basis of any group characteristic, from race to age to economic background to the first letter of a last name, that is not subject to individual choice. Contrary to the age-old auspices of "equal opportunity" under which it was introduced, the net effect of the affirmative action quota system has been to popularize and institutionalize an unprecedented relationship (or lack of one) between opportunity and reward. Should present trends continue, future generations may look back on the affirmative action years, a most peculiar aftermath of the civil rights movement, as a period when our society began to discard "equality of opportunity" for what David Bell has called "equality of results" (The Public Interest, Fall 1972). According to Bell: "What is extraordinary about this change is that, without public debate, an entirely new principle of rights has been introduced into the policy. In the nature of the practice, the principle has changed from discrimination to 'representation.' Women, blacks, and Chicanos now are to be employed, as a matter of right, in proportion to their number, and the principle of professional qualification or individual achievement is subordinated to the new ascriptive principle of corporate identity."

A BACKGROUND

If the quota "principle" of affirmative action seems to have sprung up suddenly and surreptitiously among us, it is because the ideology of affirmative action has had years to grow without our realizing that any "principle" was involved. During the early sixties, at the zenith of the civil rights movement, "affirmative action" seemed to be nothing more than a political slogan. President Kennedy, who coined the phrase in 1961, used it as a vague exhortation—to the effect that Congress and the Executive, force states to take "affirmative action" against civil and economic injustices suffered by minorities. In 1962 and 1963, it found its way into a number of honor executive orders, but its function was always more symbolic than legal. The word "affirmative" suggested strength and moral certitude, "action" suggested vigor and perhaps a touch of crusading ardor. In short, the words were simply a rhetorical stratagem that could evoke all the grander idealism we now associate with the Kennedy era. In only one way did the early slogan prefigure the later "principle": "affirmative action," as Kennedy envisioned it, implied that the federal government should, by seizing a certain moral prerogative, override the parochial standards of slower, less activist institutions. This remains a characteristic of affirmative action today.

Early in the Johnson Administration, the idea assumed crude legal shape. Congress began to give serious attention to "affirmative action" legislation when it was proposed as part of the Civil Rights Act. As it was finally passed in 1964 the Act included no mention of "affirmative action," but legislative blueprints under that name continued to be discussed as enforcement tactics. Affirmative action, according to its advocates, would allow overall racial proportions to be used as "lawful" evidence, and thus provide federal authorities swift means of circumventing individual court cases in forcing employers to abandon discrimination.

These proposals were at least partially realized. On September 24, 1965, President Johnson signed Executive Order 11246, and affirmative action, with its unprecendeted "quota" approach to fairness in hiring, was made effective law for all institutions and corporations receiving federal funds. Newspaper editorials lauded Title VII together with affirmative action as a "law with a conscience," as civil rights transformed into "the law of the land." To the movement, the purpose of an ideology had been realized, and the goals of a crusade had become enforceable edict. Yet, despite the euphoria, the "principle" of affirmative action had still not been accepted. Everyone knew that a quota system—no matter how carefully administered—distorted the justice of fair employment at an individual level. Proponents insisted that racial proportions were only to be an indicator of possible discrimination, that individual "equal opportunity" was still their paramount goal, and that, in sum, affirmative action was only a particular means to a general end.

Ever since 1965, this distinction between means and ends has been evaporating. Once specific programs had been developed by the Department of Labor and HEW, and a wide variety of contracting institutions had succumbed, complaints were raised against the surprising stringency of affirmative action's statistical demands. Industries employing unskilled or semi-skilled workers were made to comply first. Later, federal authorities devised means of including within their executive domain higher-skilled and professional, employees. By 1969–1970, university faculties were being ordered to comply; and it was here, in appointments to highly qualified positions, that the insensitive mandate of quotas committed its most glaring injustices. From all sectors of the business, professional, and academic communities there soon arose serious and embittered criticism.

In the most recent policies of the Department of Labor and HEW, and in their response to such criticism, we are finally witnessing the emergence of what Bell has accurately identified as the "principle" of affirmative action quotas. "Affirmative action" is coming to be defended and enforced by its executors as a philosophy in its own right; not so much as a means to an end, but as an end in itself, necessary not because it best insures non-discrimination and the primacy of merit, but because it is thought overt discrimination is the only way a society can achieve true equality. Formal homage is still commonly given to "merit" and "qualification" and "excellence," but these are becoming bare vestiges of a bygone era. It is for this reason, it is because individual merit is being rescinded by group privilege, that the issue of quotas has such profound significance. The question is especially critical for the future of the universities, whose worth to our society and to civilization has been sustained—throughout history—by an almost religious insistence upon merit, equal opportunity, and the very highest levels of professional excellence.

WHAT IS AFFIRMATIVE ACTION?

As they wended their tortuous path from slogan to law, the words "affirmative action" attached themselves to all sorts of notions vaguely associated with civil rights. Only now have they assumed a definite, almost doctrinal shape. In general an affirmative action program has come to mean any timetable by which an institution modifies its entrance procedures and requirements so that its membership will include certain predetermined proportions (most frequently, equal to proportions in the general population) of "recognized" racial, ethnic, or sexual categories. Some institutions (e.g. churches and schools) may follow such programs voluntarily. Institutions which employ members are liable to have such a program forced on them by federal law. Private businesses, though long exempt from anything but "nondiscrimination," lately seem vulnerable to affirmative action quotas administered by the EEOC (viz. the AT&T case; May 1972) under the questionable authority of Title VII of the Civil Rights Act. In businesses holding federal contracts, such programs are enforced by the Department of Labor's Office of Contract Compliance under the aegis of Executive Order 11246. In universities holding federal contracts or grants, where affirmative action has had such extreme and notorious consequences, they are enforced by HEW and HEW's Office for Civil Rights.

From a legal standpoint, the case of the university is somewhat unique since universities are not covered by any part of the 1964 Civil Rights Act. Title VI prohibits discrimination associated with all government contracts and programs except where employment is concerned. Title VII prohibits discrimination among employers except where educational institutions are concerned. Ironically, this may have allowed affirmative action quotas to be wielded more openly against the university than against any other federal contractor, since Title VII specifically prohibits enforced quotas as a means to eliminate discrimination. Professor Paul Seabury (Commentary, Correspondence, May 1972) has concluded that the "Executive Orders in the name of Affirmative Action clearly contradict the letter and the spirit of the Civil Rights Act as well as the intentions of its sponsors. Universities are being compelled to do what the Act forbids employers to do." In June of 1972, President Nixon signed an amendment to the Civil Rights Act which now includes universities under Title VII. But this has probably come too late, judging from the most recent interpretations of Title VII, to have much effect on HEW's policies.

"Affirmative Action" as it is defined in Johnson's Executive Order—and this cannot be over-emphasized—is essentially and explicitly different from simple "Non-discrimination." The latter is defined as the requirement that "no person may be denied employment or related benefits on the grounds of . . ." etc. But "affirmative action," according to the text of the Order, is a different "concept." It "requires the employer to do more than ensure employment neutrality with regard to race, color, religion, sex, and national origin. As the phrase implies, affirmative action requires the employer to make additional efforts to recruit, employ, and promote qualified members of groups formerly excluded, even if that exclusion cannot be traced to particular discriminatory actions on the part of the employer, (so that) employment practices will not perpetuate the status quo ante indefinitely."

Once the implication of the italicized clause is accepted, that universities cannot rid themselves of discrimination because they cannot even identify it (invisibility, alas, is the very nature of "cultural" and "institutional" discrimination), and once it is decided that discrimination must be eliminated, then an external quota system is inevitable. The original argument of the civil rights movement was that fair judgment of merit will eventually lead to proportional representation. Now, the argument has been reversed. Premises have been replaced by conclusions, means by ends. The backward reasoning of "affirmative action" is that proportional representation will somehow guarantee fair judgment of merit. This reversal is the *sine quo non* of the affirmative action "principle," and means that the rule of group representation has now superseded as a basic, institutional necessity, the rule of individual worth. Late in 1972, the Office for Civil Rights reached what may be a portentous decision: it declared it will no longer consider individual cases of discrimination (these will now go to the EEOC), but instead will concentrate only on "patterns of discrimination" (i.e., quotas). Justice *qua* individual, once the legitimate concern of civil rights activists, is no longer worthy of OCR's resources. These it will now spend diligently to ensure justice *qua* group—an effort, not many years ago considered racist.

In practice, affirmative action programs are supervised and enforced by OCR's ten regional offices in all universities receiving over $10,000 in federal funds. The programs are drawn up individually with each institution and are designed to rectify the employment practices of any academic department "having fewer minorities or women in a particular job classification than would reasonably be expected by their availability (Revised Labor Dept. Order 4)." Complete records of the current racial and sexual composition of university employees, both academic and non-academic, and specific affirmative action "timetables" and "goals" showing "planned" and "attained" progress toward an "acceptable" composition are compiled by the university administration and sent to OCR. After reviewing them, OCR can either accept or reject all or any part of the program.

The procedures alone have had their difficulties. Many university departments have found it demeaning and a breach of inviolate academic tradition that an outside organization should gain immediate access to confidential records. The University of California at Berkeley for months resisted disclosing some of the information that OCR demanded. It relented only after OCR made repetitious promises that such records would remain "secret"—and after OCR directly charged UCB with "non-compliance." State laws prohibiting employees from revealing or recording their race on institutional records (laws once thought to be "pro-civil rights") are yet another obstacle to OCR. Frequently, OCR must infer racial or ethnic origin from related data (e.g., "Spanish *surnamed* candidates"), or require members of a department to identify each other's race, or use what it calls a "visual survey."

The enforcement of any quota system is a relatively simple matter, and the enforcement of affirmative action is no exception. From the outset, OCR has a rough idea what "guidelines" it considers "acceptable." If the written affirmative action program proposed by a university is not sufficiently extensive, extreme, or specific, OCR can reject it again and again any number of times until federal officers are satisfied that the university is acting in "good faith." If the university refuses or is slow to comply with its own guidelines, or if it denies access to its departmental records, OCR may, after a formal hearing, "cause to be cancelled, terminated, or suspended, any federal contract, or any portions thereof . . ." Because most major universities are 30 to 60 percent dependent upon federal funds, they are effectively at OCR's mercy.

It is of no use to argue that federal contracts or grants may involve only one specific area of the university (usually research in the sciences). Executive Order 11246 includes the proviso that *all* employment in the contractor's institution must comply. HEW's attempts to justify affirmative action as a legitimate prerogative of federal government and executive mandate has led to a number of *faux pas*. Elliott Richardson, until recently Secretary of HEW, for instance, defended affirmative action by claiming that it is government's "vital interest" to assure "the largest possible pool of qualified manpower for its products." This led Professor Seabury to respond in *Commentary* (May 1972): "Does HEW now regard universities as federal projects? If so, how far down the road of government control have we come?"

OCR'S "NEW SPEAK"

The Office or Civil Rights, like any bureaucracy possessing great powers and questionable motives, has difficulty explaining clearly how its programs work. "Guidelines" and "regulations," though offered in great abundance, are as deliberately vague and enigmatic as the smoke and fire of a mysterious oracle. Contradictions are replaced by confusion. "Affirmative action," according to OCR, is an "agreement between the Office for Civil Rights and the university" that departments shall "make an effort" in "sincere and good faith" to fulfill certain "goals" with respect to minority employment For the sake of clarity alone, the smoke ought to be cleared from such innocuous phraseology.

First, for the words "agreement between" ought to be substituted the words "command by" OCR. It is ludicrous to call the result of arbitration between two institutions, one of whom is invulnerable and carries life or death punitive power over the other, an "agreement." With the Supreme Court unwilling to rule on the matter and the most vocal university groups siding with OCR, university administrators can hardly regard their own compliance as voluntary. When OCR resorts to threats, universities genuinely fear for their own survival, for behind such threats are hair-trigger methods of sanction: after a thirty-day notice and without any specific charge of discrimination, HEW may begin procedures for suspension of funds. Protesting these arbitrary enforcement tactics. William J. McGill, president of Columbia University, claims that OCR is disregarding established precedents of labor regulation: "One of the greatest achievements of American law has been construction of the rules of orderly conflict between management and labor, embodied in our new classical concepts of labor law. We do not now have such formal procedures." (Life, Oct. 8, 1971)

Second, the words "make an effort" in "sincere and good faith" ought to be deleted entirely. HEW's Office for Civil Rights repeatedly emphasizes that a "good faith effort" is all that is necessary for university compliance (quite rightly, since qualified minority applicants may not be available in every instance), but just as emphatically OCR insists that "the best evidence of good faith is a good result." Stanley Pottinger, Director of OCR, offers the following ambiguous observation: "Good faith efforts remain the standard of compliance set by the Executive Order; goals remain as a barometer of good faith performance. . ." In practice, some large universities (e.g., The City University of New York and New Mexico State University) have been threatened with termination of funds even though they proved that they had done everything in their power to comply, and that OCR's hazy "guidelines" were at fault.

But what is more important, statements such as Pottinger's reveal either an appalling ignorance or a zealot's interpretation of the function of legal sanction. In theory and in ordinary practice, the purpose of law is to proscribe, regulate, and influence definable *acts* and tangible *procedures*. Pottinger is singularly intent on putting law to a quite different task: to inspiring *attitudes* of "good faith." Indeed, Pottinger seems surprised and embarrassed when asked to examine only the substantive effects of his office's "guidelines." In a June, 1972 speech, he declared: "I am convinced . . . that the spectre of lost autonomy and diminished quality among faculties is one which obscures the real objective of the law against discrimination." A law's consequences, he implies, should not be allowed to "obscure" the intentions of its maker. If—as some claim—OCR is attempting to bring about a "New Reformation" in civil rights, then Pottinger has encountered an old Calvinist dilemma: how to keep an absolute insistence on "good faith" without "good works" from degenerating into oppressive demands for "good works" with no real need for "good faith."

Third, "goals" or "guidelines" are only confusing synonyms for numerical quotas, and no one—either inside or outside HEW—has yet offered a reasonable explanation how a "goal" differs from a "quota." Professor Sidney Hook of the University Centers for Ra-

tional Alternatives has asked HEW the simplest of rhetorical questions: "What is the cognitive difference between saying (1) 'You are to aim at a quota of 20 percent redheads for your staff within two years,' and (2) 'You are to set as your goal recruitment of 20 percent redheads for your staff within two years'?" HEW's answer: "quotas" must be filled without fail, while "goals" are only an "indication of good faith"—again, law is thrown back into the phantasmic realm of spiritual purity. As the bureaucracy sees it, goals are "reasonable" and "produce results," while quotas are "rigid," "exclusive," and "compel" employers to make unwise decisions. From such loaded language we can infer only one, very simple distinction: "goals" are quotas that HEW happens to approve and support. Professor Hook has concluded that the supposed clarification is nothing more than a "semantic evasion." Stanley Pottinger resolutely affirms that the difference is not a matter of semantics. This, in sum, has been OCR's most positive statement on the issue.

But the reasoning ought to be set straight. OCR, obviously, cannot claim to represent the conscience or the inner wishes of the university. It is an outside, regulatory institution. Thus, good faith or bad faith, if the university is coerced into compliance, "goals" are quotas; if the university is not coerced in any way, "goals" are not even goals. They are nothing at all. OCR has chosen the path of coercion, in part to justify its own existence as an office that is "doing something" about civil rights, and to satisfy some groups (e.g. The Women's Equity Action League) who have already criticized the effectiveness of OCR because it has not to date terminated a university contract. On the other hand, OCR desperately wants people to understand that its role is to persuade universities to do what is right (by enlightening them with "guidelines" and "goals"), rather than to require rigid compliance (by enforcing quotas). The result is peculiar. OCR sometimes tries to convince, and sometimes makes outright threats, but it dreads the prospect of giving a simple order, of stating honestly what it in truth demands. President Spenser of Davidson College, after reams of exasperating correspondence with OCR, found he could never determine precisely what his local office wanted or under what authority it acted. He finally wrote:

"If your 'request' is in reality an order, I would appreciate your stating this in clear and unequivocal terms. If Davidson College is being ordered to report to you, I would also appreciate your citing to me that . . . law which gives HEW the authority to issue orders to any college . . ." And in still later correspondence: "Your letter does not respond to this essential question. Are you or are you not ordering Davidson College to submit the . . . report . . .? I do not believe I can state the question more clearly or directly." Reading the full text of this correspondence, one suspects that OCR, more interested in repentance than compliance, would almost prefer the manifest guilt of an obstreperous refusal to a dispassionate willingness-to-obey-if-ordered. President Spenser, incidentally, has yet to receive another answer.

THE IDEAL QUOTA

The Office for Civil Rights never itself proposes standards for university hiring; it simply accepts or rejects whatever programs are offered by campus administrations. There are very good reasons why HEW follows such a policy. It absolves OCR of guilt, and rests the responsibility for quotas on university policy rather than on OCR's interpretation of federal law. OCR does not dare issue specific figures and face unified resistance among universities. It is easier to couch its directives in vague and indeterminate language, and then watch the radical, liberal, and conservative members of each campus fight it out among themselves. Whenever it appears to OCR that the wrong side has won at the university level, it can always use its power of veto.

For this reason, it is difficult to know just what HEW considers "reasonable" when it insists that universities hire as many minorities as "would reasonably be expected by their availability." Each regional OCR office has its own fluctuating whims and fancies. Moreover, campuses with particularly radical faculties frequently go beyond anything OCR might require. Only from their record of rejections can we extrapolate the operational principles toward which OCR is headed.

The most extreme and far-reaching of these principles is the following requirement: *that the proportions of racial and sexual categories of faculty members to the faculty as a whole be made identical—eventually—to the proportions of racial and sexual categories in the population as a whole.* Now, the speed with which HEW is forcing universities to realize this final "proportion-to-population" rule varies from campus to campus. Ultimatums are not, as yet, being issued. But there are exceptions, and in the West, regional OCR pressure seems particularly intense. Late in 1971, San Francisco State College, responding—at least in part—to OCR's persuasion, called for "an employee balance which in ethnic and male/female groups, approximates that of the general population of the Bay Area from which we recruit." Sacramento State recently sent out letters which read: "Sacramento State College is currently engaged in an Affirmative Action Program, the goal of which is to recruit, hire, and promote ethnic and women candidates until they comprise the same proportion of the faculty as they do of the general population."

More frequently, regional OCR offices are constrained to soften their approach. The "proportion-to-population" rule still applies to racial minorities, but for women, they will allow a principle somewhat less extreme: *that the proportion of women faculty members to the entire faculty be identical to the proportion of women applicants to applicants of both sexes.* The rationale for this divergent standard seems to be based on practical considerations alone. Even some OCR offices evidently thought it unfeasible to demand an across-the-board female plurality of faculty members—*in toto* and in each department—since women do in fact slightly outnumber men in the population at large. The "proportion-to-applicant" rule, because it is less extreme, is all the more strictly enforced, and many universities are being held in a quasi-probationary status until they accept it. The University of Michigan, for example, whose proposed affirmative action programs were repeatedly rejected throughout 1971 for indefinite and inadequate "numerical goals and timetables," was told by the local OCR office that it must "achieve a ratio of female employment at least equivalent to their ability as evidenced by applications for employment"—that is, to the *number* of female applicants. A timetable for this "achievement" was required immediately.

There are endless variations in OCR's standards. A department of one midwestern university was recently charged with discrimination in its Ph. D. program simply because only one minority student enrolled out of over 100 applicants. Although nineteen minority students had actually been offered positions, OCR never mentioned that fact in its report. In March 1971, a similar charge was levelled against the University of Oregon on similar grounds: that only one minority candidate *enrolled* out of several minority applicants. Faculty hiring at Brown University offers still another innovative interpretation of "good faith" employment practices. Brown administrators, after having their first program rejected, proposed in December 1970 to make the proportions of minorities in their faculty the same as the proportions of *"available members of such groups in the labor forces."* OCR accepted this plan, and a new rule—"proportion-to-labor force"—might have been born, had not OCR's regional office changed its mind one year later when it claimed that Brown's discriminatory problem was too "deep" for such a plan to work.

THE QUESTION OF MERIT

While officials at OCR are poring over columns of statistics and debating among themselves—presumably—which group quotas shall best ensure group justice, chairmen of university departments are facing the peculiar difficulty of trying to comply with their campus' racial and sexual timetables while maintaining the academic quality of their departments. On the one hand, they want to avoid endangering the financial status of the university and incurring the wrath of the more radical students, administrators, and faculty members. On the other hand, they feel an obligation to award candidates solely on the basis of merit. The ideal solution, of course, is to find enough candidates who are both women or "minority group persons" *and* who are well-qualified (or at least not utterly unqualified). Not surprisingly, this is a solution that academic departments are now spending a great deal of time and energy pursuing. One of OCR's adamant demands is that departments make "vigorous and systematic efforts to locate and encourage the candidacy of qualified women and minorities." Such a demand was never necessary. Departmental chairman know very well this is the only way they can successfully survive the "system."

The resulting academic recruitment policies must be puzzling to candidates of any race or sex who have grown up with old-fashioned notions about civil rights and academic liberalism.

Letters on campus bulletin boards now read:

"The Department of Philosophy at the University of Washington is seeking qualified women and minority candidates for faculty positions at all levels beginning Fall Quarter 1973 . . ."

"We desire to appoint a Black or Chicano, preferably female . . ."

"Preference will be given to women and minority group candidates in filing this position if candidates of equal quality are identified."

"Dear Sir: The Department of Economics at Chico State is now just entering the job market actively to recruit economists for the next academic year . . . Chico State College is also an affirmative action institution with respect to both American minority groups and women. Our doctoral requirements for faculty will be waived for candidates who qualify under the affirmative action criteria."

Letters between departments now read:

"Dear Colleague: Claremont Men's College has a vacancy in its . . . Department as a result of retirement. We desire to appoint a black or Chicano, preferably female . . ."

"I should very much appreciate it if you could indicate which of your 1972 candidates are either Negro or Mexican American."

"Dear . . .: We are looking for female . . . and members of minority groups. As you know, Northwestern along with a lot of other universities is under some pressure . . . to hire women, Chicanos, etc. . . ."

"Your prompt response to my letter of May 12 with four candidates, all of whom

seem qualified for our vacancy, is greatly appreciated. Since there is no indication that any of them belong to one of the minority groups listed, I will be unable to contact them . . ."

"I would greatly appreciate your drawing to my attention your Ph.D. students who are in those categories . . ."

With every university trying to fulfill its quota, the current competition between academic departments for minority or women candidates has reached a fever pitch of intensity. According to the simple law of supply and demand, departments must now offer a significantly higher salary to a minority candidate than to a similarly qualified nonminority candidate—if they want to keep him (or her). In most instances, departments consider this a small price to pay for a solution to the quota dilemma. Contrary to OCR's charges that black candidates are being denied placement due to discrimination, the situation has now grown so lopsided that, according to the *AAUP Bulletin* (March 1972), "Harvard and comparable institutions have been warned against raiding black colleges."

"Good works" are the only reliable measure of "good faith," and fulfilled quotas are the only certain means of satisfying OCR's demands. If a department cannot fulfill its quota with what it feels are qualified candidates, pleas to the university and to OCR that it has made superhuman efforts to recruit such candidates will rarely be of much avail. At this stage, a new category is pulled out of OCR's cryptic lexicon: the category of the "qualifiable" candidate. "Qualifiable" is a word OCR uses repeatedly in its correspondence with universities. Quite simply, it describes a group of candidates whom the department does not presently regard as qualified, but who had better be qualified soon if the department wants to prove it is "serious" about affirmative action. And once "qualifiable" candidates perforce become qualified," OCR pulls another deft, syntactical maneuver by gracelessly demanding that all departments "hire and promote *qualified* women and minorities." The language of this order particularly distresses departmental chairmen who know that to survive and excel departments must look for something quite different: namely the *most* qualified candidate of any race or sex. But "most" or "best" are adverbs rarely used by OCR in conjunction with "qualified," and even "qualified" itself has a habit of slipping away from the words "minorities and women."

"Qualification," as interpreted by the universities is an obstacle that OCR is trying to remove from the path of affirmative action. OCR has ruled, for instance, that unless the department can prove that the qualification is necessary, any qualification "which tends to discriminate according to race and sex" must be eliminated. Since almost any qualifying test that is given to different categories of the general population (categories based not only on sex or race, but on economic or educational backgrounds, or physical height or weight, or geographic location, or what have you) will yield results that are—to some degree—unequal, the very principle behind OCR's ruling has effectively jeopardized any means of judging merit. In practice, the department is guilty until proven innocent; a qualification is assumed to be prejudicial until proven valid and necessary. And proving the validity of a departmental requirement—to an OCR official who often knows nothing about scholarship or research in the field—can be a difficult task. When the chairman of the Graduate Department of Religious Studies at one Ivy League University tried to explain to OCR representatives that knowledge of Hebrew and Greek was a standard prerequisite for candidacy, he was told, with characteristic bluntness: "then end these old fashioned programs that require irrelevant languages!"

By means of a similar ploy, OCR has ruled that women or minority candidates must always be chosen over a man or nonminority candidate with "equal" qualifications. Again, this rests the onus of guilt and the burden of proof on the department if, in choosing between two candidates of proximate quality, it happens to choose the "wrong" way. Upon investigation, OCR must be substantively convinced that the nonminority candidate is indeed superior by a sizable margin.

Yet what must be considered OCR's most ingenious and extreme tactic to date, though now it is no longer used, was an interpretation of a Labor Department order which required "universities to reject male and nonminority applicants who might have better credentials than female and minority applicants so long as the latter have qualifications better than the least qualified person presently employed by a department." No order could have been better worded to ensure everlasting mediocrity. What it means is that the department—if it has just one professor far less competent than the rest—must hire only women or minority candidates until there is none available who is better qualified than that one, least common denominator. Since most departments have one or two such professors, often hired decades ago when the campus was small and money was short, academic senates protested furiously when this order was actually presented to ten universities. After Congressman Gerald Ford began publicly investigating the complaints, the order was rescinded—despite the reluctance of the OCR hierarchy.

OCR, of course, never wants it to appear that its policies are degrading "academic excellence" or violating the principles of merit or qualifications. They simply want to distort and reorient these principles so that universities can legitimately accomplish the goals of affirmative action. If possible, they will leave the ideology of merit intact. But if worst comes to worst, OCR is fully prepared to pressure the university to adopt not only a final, ideal goal (e.g. "proportion-to-population" which is met by means of a "timetable"), but specific and immediately applicable methods for reaching it. Thus, responding to OCR pressure, Northwestern tersely declared late in 1971 that it will "replace all appointments to the faculty . . . at a rate of 25 percent women and racial minorities." The State University of New York at Albany recently announced "a policy of one-to-one hiring of minorities affecting all the administrative staff." Variations of this idea of immediate quotas are now being adopted by an increasing number of universities. Pottinger has tried to deny OCR's responsibility for the most extreme cases, but in an unusually equivocal manner: "while HEW does not endorse quotas, I feel that HEW has no responsibility to object if quotas are used by universities on their own initiative."

Inevitably, letters sent from universities to male, non-minority candidates have come to include, as a matter of course, some rather awkward phraseology:

"Dear Mr. Pittman . . . This disapproval in no way reflects upon your professional preparation or specific background. . . . The basis for disapproval was primarily that the position . . . requires certain qualifications regarding the overall profile of the institution. . . ."

"Dear Mr. Larscham . . . I have examined your dossier. It is very impressive indeed, and I wish I could invite you to come for an interview. At present, however, the department is concentrating on the appointment of a woman. . . ."

"Dear Mr. — . . . all unfilled positions in the university must be filled by females or blacks. Since I have no information regarding your racial identification, it will only be possible to contact you for a position in the event you are black."

SINFUL MORTALS

Back in 1964, in the flurry of Senate debate over Title VII of the Civil Rights Act, Senator Smathers of Florida at one point argued that federal legislation was not the correct approach, that employers should be allowed to end discrimination on their own. Senator Humphrey, choosing his words carefully, responded: "how right the senator is . . . But the trouble is that these idealistic pleadings are not followed by some sinful mortals. There are some who do not hire solely on the basis of ability. Doors are closed; positions are closed; unions are closed to people of color. That situation does not help America." Such language, of course, was typical of the "civil rights" esprit of the early sixties. But Humphrey's version is of particular interest because it expresses what was and still is a vital animus within the civil rights movement; a desire to uplift man and to presume an "idealistic" insight into his prejudices. On behalf of a reasonable principle, this crusading, the blending of morality and politics can be a boon for all of us. After all, we deserve to be chastised for "sinful" wrongdoings; we often cry out for a slogan or a law that will force our neighbors to behave in accord with widely accepted ideals. But on behalf of an unreasonable principle, the whole effort has tragic consequences. No matter how thickly they are cushioned by platitudes of goodwill, "idealistic pleadings," given the force of law, can turn into genuine repression—when no other consideration seems "idealistic" enough to refute them. And if, as Senator Humphrey suggests, we are really dealing with "sinful mortals," well, who is to say what methods are too extreme to alleviate their sorrowful condition?

The difference between the civil rights movement of the early sixties and the movement of today is not that one is any more or less a moral crusade than the other. The difference is simply this: the movement of yesteryear worked for the reasonable principle of "non-discrimination," while the vanguard of today's movement works for the unreasonable and now discriminatory principle of the "affirmative action" quota. The goal of the former is (or was) a compromise between the ideal of equality and the inherent inequality of society's demands, rewards, acquired responsibilities, and required capabilities. The goal of the latter is a self-defeating triumph of morality over politics, a triumph which tramples rudely over any competing ideal and can itself ensure only the most unideal, delusory, and superficial sort of equality, the numerical "equality of result." "Nondiscrimination," the original purpose of the Civil Rights Act and once the slogan of a host of admirable legislators and civil rights groups, is a reasonable principle because its approach is flexible in practice; because it recognizes that "equal opportunity" as a concept only has meaning when applied to particular cases of employment: because it respects other legitimate, institutional principles—excellence, efficiency, profit, to name a few; and because it need not breach the autonomous standards of decentralized, independent professions. Affirmative action quotas, on the other hand, are by nature inflexible. They can only interpret "equal opportunity" in terms of numerical results which render the very idea of "opportunity" meaningless; they abridge, to the extent that they are enforced, any other governing prin-

ciple of participation; and, if they are centrally administered (which they must be if the quotas are not to contradict each other), they necessarily centralize professional standards.

It is a common tendency among reformers to judge progress toward an ideal by what they envision will be the most tangible results of such progress. This tendency, along with the disappointment, cynicism, and frustration it engenders, was the precursor of the affirmative action principle. Throughout the sixties, especially after the 1964 Civil Rights Act, it became obvious to many members of the civil rights movement that full minority participation in all areas of society could not be brought about as soon as they had hoped. Simple "non-discrimination" still did not mean that just as many minorities as non-minorities could legitimately participate in every institution. "Equal opportunity," now enforced by law, still did not guarantee "equal results"—which seem to have been, among some reformers, the envisioned ideal. The cultural barriers to instant participation were more insurmountable, more complicated, more instrinsically bound up with other, fundamental societal values than had once been imagined. Advocates of civil rights could see that the difficult but equitable progress of racial "neutrality" would reach complete fruition not in months or years, but perhaps in decades. Some grew wiser, trimmed their expectations, and accepted the inevitable inertia of cultural change. Others grew desperate, and transformed earlier civil rights' rhetoric into iron-clad principles that promised—above all else—immediate results.

Thus, "affirmative action" was born. Insofar as it contradicts any traditional or common-sense grounds for institutional participation, it is a mysterious principle. Indeed, to the uninitiated, it is esoteric. "Good faith" proof of adherence and of belief can only be within you, for, as Pottinger gently reminds us, "affirmative action . . . has a spirit as well as a letter." Insofar as it utterly rejects the values and procedures of society at large, it is an elitist and uncompromising principle. No piece of HEW literature, no advocate of affirmative action can refrain from emphasizing how this law will set an example for the less enlightened, or how it is an improvement on mere deliberation and older (i.e. racist) standards, because this law demands "action." Again, Pottinger says it best: "Clearly, when the issue comes close to home, the academic community's response should not be to refuse to participate, or even to ask whether it should participate. The response must be to seize the opportunity to translate advocacy into results with a vigor and commitment that will lead the community at large."

The American universities, OCR's affirmative action program is an overt attempt to reshape the internal standards of excellence that have sustained and nourished the academic community for nearly a thousand years. It is a hasty, fervent thoughtless attempt, brimming with tragic consequences. "Academic excellence," in spite of OCR's protestations, means exactly what it says: "excellence" as it is interpreted by the "academic" institution. To the extent that OCR is effective—for better or for worse—this ideal will necessarily lose its age-old authority. What is taking its place? Among the less radical advocates of affirmative action, who are convinced that subjective, "clubhouse," "old boy" recruitment policies are responsible for departmental discrimination, the answer appears to be less personal, and more uniform, strictly credential-based evaluation procedures. The advantages of this change, that such standards are free from individual bias and easily weighted, if need be, in a minority's favor, seem to outweigh the disadvantages: that such standards inevitably vitiate the very highest levels and less quantifiable modes of achievement. Among the more radical advocates, nothing really need replace "academic excellence." An increasingly popular justification of affirmative action, popular among those who tend to regard all standards—academic or otherwise—as culturally relative favors "proportion-to-population" quotas for no better reason than that they are at least as fair as any other method. When in doubt—so run the empty-headed strains of this line of reasoning—be democratic! To be sure, the long term effects of affirmative action in the university are intimately tied up with other current attempts to reform the philosophy and practice education.

For the civil rights movement, affirmative action is a more conspicuous failure. "Separate but equal," the discriminatory standard of the Jim Crow era, has at last found its cultural descendent in the "equal and opposite" discrimination of HEW. Due largely to the principle of affirmative action, the arguments of ten and fifteen years ago that participation should be allotted on the basis of merit alone without regard to race, creed, or color, now are derelict and abandoned, "objectivity" and "neutrality" in employment are considered naive, and the old bogeys—double or triple standards, quotas, racial inventories, etc.—are gaining a new respectability. It is an ominous reversal of an ideology. Even if we accept the notion that it is government's responsibility to readjust institutional standards so that social justice may be meted out to citizens on the basis of race or sex, how are we to determine the ideal readjustment? How does one go about passing judgment not on an individual, but on a group, or distributing rewards not according to voluntary behavior, but according to some determinist rule of tribal worth. If, as many OCR supporters would claim (though officially, HEW disavows such support), over-compensatory quotas are necessary to make up for "past injustices" to minorities, then what racial or ethnic vengeance cannot be made legitimate under the mandate of affirmative action—say, on the scale of German domestic policy in the 1930s? This is not idle speculation. There are already indications that the principle of affirmative action in the last five or ten years has helped to increase competitive animosity between different races, sexes, and ethnic groups, and has helped politicize and institutionalize the boundaries between such groups. The venerable goals of the civil rights movement, from the grand old myth of the "melting pot" to the modern-day dream of "integration," are hardly what affirmative action is all about.

AFFIRMATIVE ACTION MEANS AND ENDS

(An address by Robert F. Sasseen, Dean of the Faculty, California State University, San Jose)

The topic for today's discussion is the means and ends of affirmative action. In preparing for today's talk, I could not help but remember an experience I had a few weeks ago. I then gave a talk on affirmative action to a conference of public administrators. My purpose was to demonstrate that opposition to affirmative action can be a principled rather than a prejudiced opposition. Well, to make a long story short, my attempt was an unmitigated failure. As might have been anticipated, I was altogether misunderstood. The position I represented was understood to be grounded, not in principle, but in prejudice. I was told in no uncertain terms that I was a complete fool, thoroughly incompetent and fully illustrative of the kind of racism which affirmative action is designed to overcome. Needless to say, the experience was rather unpleasant. It prompts the question whether a white, male, Anglo-American can ever be understood if he appears less than enthusiastic about the principle of affirmative action.

However, there is a general rule of public speaking which states that misunderstanding must be viewed as the speaker's failure to make his meaning clear. Well, I will do my best, but I need your help. If my best is not good enough, let me at the outset ask your help in understanding what I will try to say. My previous audience thought I had denied the fact of discrimination and prejudice in this country. Perhaps this audience will be good enough to believe that I am not so stupid. Of course prejudice exists in this country. That is not at issue. Apparently, too, my previous audience thought that I had denied the fact of unequal opportunity in this country. Of course there is, and perhaps this audience will believe that I mean what I say. Apparently, my previous audience thought I had denied that unequal opportunity is in some respect rooted in the prejudice present in this country. Of course it is, and perhaps you will believe me when I say so. But none of that is at issue in the problem posed by affirmative action. The affirmative action issue is *not* whether there is discrimination or prejudice or unequal opportunity in this country. We know that there is. The issue is *not* whether we should strive to mitigate prejudice and to foster equal opportunity. Of course we should. But the issue posed by affirmative action is a different issue. The affirmative action issue is this: what can, what should, the Federal Government do to eliminate discrimination and to promote equal opportunity.

The advocates of affirmative action believe that their policy is a necessary or reasonable means to equal opportunity. They believe that it is a necessary or reasonable cure for the wrongs of employment discrimination. If this were really so, then you and I and every decent person must support this policy. We all wish for equal opportunity, and we are all obliged to work to eliminate prejudiced discrimination in employment. If affirmative action were a policy which could accomplish these ends, then I will support it and so should you. But the issue is whether affirmative action is such a policy. The issue is precisely whether affirmative action promotes these ends. If it does, then let us support it; if it does not, then let us change the policy as may be necessary to promote genuine equality of opportunity.

Let us then, at the outset, be perfectly candid and as clear as possible. We all believe in the end of equal opportunity. We all believe that employment discrimination on the grounds of race, color, religion, sex or national origin is a terrible wrong. And we all believe that we must make every effort to overcome this wrong. On these points, there can be no disagreement among us. If there is a disagreement, it is not about these ends. To be perfectly candid, I will say at the outset that I disagree with those who believe that affirmative action is designed to eliminate discrimination and to promote equality of opportunity. I do not think that this is so. I believe that affirmative action has as its end, not equal opportunity, but rather the proportionate employment of women and minority persons. I believe that to achieve this end of proportionate employment, affirmative action commands, not an end to discrimination, but systematic and overriding efforts by employers to hire and promote persons identified by their race, sex or national origin. And I believe that this means to the end of proportionate employment amounts in practice to nothing more or less than preferential

treatment of persons on the basis of their sex, race or national origin. Believing all this, I find myself in opposition to this policy called affirmative action.

At this point, let me again ask for your help in understanding what I am trying to say. If there is a disagreement among us, let us be sure to understand what our disagreement may be. Precisely because I am for equal opportunity, I am against a governmental policy which aims to establish and enforce countrywide a system of proportionate employment. Precisely because I believe any form of discrimination based upon race or national origin is wrong, I am against this preferential employment policy. I believe that anyone who is for equal opportunity should be against a preferential policy of proportionate employment. If we disagree, our disagreement concerns the nature of affirmative action. Some may think affirmative action is an anti-discrimination policy aimed at equal opportunity. I deny it. I say affirmative action is a preferential policy aimed at proportionate employment of persons identified on the basis of their sex, race or national origin. Well, then, am I correct? Let us see, let us together examine the policy. What does it say and what does it require?

On the surface, affirmative action does not present itself as a preferential policy aimed at the proportionate employment of women and minority persons. At first glance, the policy presents itself as a prohibition of discrimination in employment. The policy originates in Executive Order 11246. This Executive Order is tied to no law; it is not even a means of implementing some law. It is a purely executive action. The Executive Order states that:

"The contractor will not discriminate against any employee or applicant for employment *because of* race, color, religion, sex or national origin. The contractor will *take affirmative action to ensure* that applicants are employed and that employees *are treated* during their employment *without regard* to their race, color, religion, sex or national origin."[1]

At this point, the policy seems to aim at equal treatment of all persons in employment.

However, HEW and the Department of Labor, who are to implement the Executive Order, understand the policy in a different way. They say that the policy has *two* parts, only one of which aims at equal treatment. HEW explains that the first part of "nondiscrimination requires the elimination of all existing discriminatory conditions, whether purposeful or inadvertent." HEW explains that this first part of the policy protects everyone. *All* persons are protected by this command to eliminate discrimination on grounds of race, sex, color, religion or national origin. But the second part of the policy—the part called affirmative action—has a different purpose. HEW explains that the second part is designed for the benefit of only *some* persons, persons identified precisely on the basis of their race, sex or national origin. HEW explains that the affirmative action part is designed "to further employment opportunity," not for all persons, but only "for women and (some) minorities"—not even for all minorities, but only for "Negroes, Spanish-surnamed, American Indians and Orientals." HEW further explains that the employer must:

"Do more than ensure employment neutrality with regard to race, color, religion, sex or national origin. As the phrase implies, affirmative action requires the employer to make additional efforts to recruit, employ and promote qualified members of groups formerly excluded even if that exclusion cannot be traced to particular discriminatory actions on the part of the employer."

Right at the outset, then, there appears to be a difference—a crucial difference—between what the Executive Order says and what HEW commands. The Executive Order says that the contractor will take affirmative action to ensure equal treatment *without regard* to race, color, religion, sex or national origin. But HEW says that affirmative action requires, not equal treatment, but additional efforts to recruit, employ and promote some persons—persons identified by race, sex or national origin. This is a very great difference. HEW says, further, that an employer must do this even if he has not been discriminating, even if an "underutilization" of women or minorities cannot be traced to particular discriminatory actions of his own. It thus appears that affirmative action, as HEW understands it, has nothing to do with equal treatment or actual discrimination.

Now, of course, HEW denies this. HEW also denies, and repeatedly denies, that its policy of affirmative action requires employers to engage in reverse discrimination of preferential treatment. HEW insists that such practices are contrary to the Executive Order, and tries to show the compatability of its policy with the Executive Order. HEW tries to link its affirmative action with equal treatment through the concept of "underutilization." "Underutilization is defined as having fewer women or minorities in a particular job than would reasonably be expected by their availability" in the labor market. HEW explains that under the affirmative action part of the policy an employer must "determine whether women and minorities are underutilized in its employee work force and if that is the case, to develop as part of its affirmative action program specific goals and timetables designed to overcome that underutilization."

In other words, HEW requires a university to make a statistical analysis of its work force by department and job classification broken down into sex and race. The university is also required to make a similar statistical analysis of its employment market. The university is then required to compare the two analyses. The comparison is for the purpose of locating "deficiencies." The university is then obligated to establish numerical goals and to take affirmative action to overcome its statistical discrimination. The goals are statistical definitions of proper utilization in the circumstances of the university; the timetables specify the period in which this proper utilization is to be achieved. In sum, the university has a discrimination problem, and HEW asserts an authority to act if the university is statistically out of proportion with respect either to the rate or the proportion of women and minority persons recruited, employed or promoted. The university's affirmative action goals are numerical statements of the level or rate of employment necessary to bring the preferred groups into a proper proportionality.

Affirmative action thus appears in its naked aspect. These requirements of the policy may have originated in an attempt to resolve the bureaucratic problem of effectively enforcing the obligation of equal treatment. They may have originated in an attempt to resolve the legal problem of demonstrating unequal treatment. But whatever their origination, the requirements determine the nature of the policy. The aim of a policy is evident, not from the intention explicit in the origin of its requirements, but from the intention implicit in what the policy requires. The policy requires an employer to determine "underutilization," and to make systematic efforts to employ properly proportionate numbers of persons from the "underutilized" groups. Whatever the intention in their origination, these requirements have captured the policy, and give the policy its decisive character. The policy is nothing more or less than an employment policy designed to overcome the "underutilization" of persons in groups identified by race, sex or national origin. It is a preferential policy aimed at proportionate employment. It is based on the assumption that underutilization equals discrimination, that proportionate employment is equal opportunity.

This concept of underutilization is the link between the meaning of affirmative action in the Executive Order and the meaning of affirmative action in HEW's policy. The Executive Order says there must be affirmative action to eliminate discrimination, to treat all persons equally. HEW says there must be affirmative action to recruit, hire and promote, not all persons equally, but members of the preferred groups. The link between the two statements is "underutilization." Only if underutilization is the same thing as unequal treatment can affirmative action to hire underutilized persons appear to be the same thing as affirmative action to ensure the treatment of all persons equally.

Now, of course, underutilization is *not* the same thing as discrimination or unequal treatment; clearly, affirmative action to hire persons from preferred groups is *not* the same thing as affirmative action to treat all persons equally *without regard to* race, sex or national origin. But if underutilization is not the same thing as discrimination, then the command to employ more of the preferred groups is not the same thing, and may be contrary to the command to treat all persons equally. Clearly, there is a crucial difference between the Executive Order and HEW's policy.

Once more let me pause to ask your help in understanding what I am trying to say. I do not deny that present employment patterns are in some measure the result of past discrimination. What I am trying to point out is that HEW and the Executive Order say two quite different things. The Executive Order says treat all persons equally. HEW says overcome the underutilization of persons in the preferred groups. HEW tries to connect its statement with the different statement of the Executive Order by the assumption that underutilization equals discrimination. It tries to connect its orders with the Executive Order by its assumption that underutilization is the same thing as unequal treatment.

Now the Executive Order indeed forbids discrimination. But if underutilization is not the same thing as discrimination then HEW has no authority under the Executive Order to command employers to overcome underutilization. The Executive Order also commands affirmative action to ensure equal treatment. But if underutilization is not the same thing as unequal treatment, then HEW has no authority to issue commands for employers to increase the utilization of the preferred groups. Finally, if increasing the utilization of the preferred groups involves preferring some persons to other persons because of their race or sex, then not only does HEW act without authority, but it also commands precisely what the Executive Order forbids. That is the point. It means that in the command to employers to increase the utilization of persons from the preferred groups, HEW acts not only illegally, but it also acts without any legal foundation at all.

But let us suppose for a minute that when the Executive Order says "treat all persons equally" it really means "employ properly proportionate numbers of women and minor-

[1] This and all subsequent quotations are from the *Higher Education Guidelines, Executive Order 11246,* issued by the Office of Civil Rights, U.S. Department of Health, Education, and Welfare.

ity persons." Let us suppose that the Executive Order means what HEW says it does. Does this make a difference? In all candor, I believe that it makes a momentous difference. In that case, we are confronted with a constitutional crisis potentially as serious as any this nation has seen. If this purely executive order commands proportionate employment in the name of equal treatment or equal opportunity, then the President of the United States has assumed a prerogative power beyond all limitation, contrary to the Constitution, and in substance utterly subversive of the principle of equality which is the foundation of all our law and all our morality.

Think about it. If HEW is correct, then equal treatment or equal opportunity means proportional result. If HEW is correct, then equality does not mean equal rights, but proportionate results. And if HEW is correct, then the President of the United States, solely on his own prerogative, has the authority to declare which groups are to be included, and which persons are to be excluded in the governmentally established system of proportional employment. Think about it. Is this, in principle, any different from a presidential attempt to use the FCC to create balance in the news media; or to use his war powers to promote wild foreign adventures? Think about it. Is there any distinction in principle between the power of the President to command the proportionate employment of persons identified by their race and his power to command universities to hire persons identified by their religion, ideology or party membership? In this last example, certainly, there is no principled difference. Can you imagine a more radical or more subversive extension of executive prerogative?

But, of course, HEW is not correct. What HEW orders is not the same thing as what the Executive Order commands. Underutilization is not the same thing as discrimination. It is not even a valid indicator of such dscrimination. If it were, then numerical goals would be undisguised quotas and there would be no excuse for failure to meet them. But if underutilization after the fact of numerical goal-setting is no indicator of unequal treatment, then neither is it a valid indicator of discrimination before the fact of such goal-setting. Because it is not, no agency of the government has authority to compel employers to establish numerical goals in systematic and overriding efforts to overcome underutilization.

Now, once again, and for the last time, I must ask your help in understanding what I am trying to say. All of us wish for genuine equality of opportunity, and all of us must work to eliminate any form of discrimination or unequal treatment on grounds of race, color, religion, sex or national origin. I, no less than you—perhaps even more than some of you—care about these ends. I no less than you believe that genuine underutilization is a terrible waste and discrimination a terrible wrong. Indeed, all of us wish to see more women and minority persons employed in meaningful jobs in this land. We all wish for more on our faculty here. In all of this we agree. We all desire these ends, and all of us must work for their realization. If we disagree, the disagreement is not about these ends. If we disagree, it is because you think that affirmative action serves these ends, and I believe that it subverts these ends. I believe that affirmative action serves a quite different end. I believe that it is an altogether dangerous policy which, if successful, will result, not in genuine equality of opportunity, but in a peculiary American version of apartheid. For the negative principle that 'underutilization equals discrimination necessarily writes into our laws the positive principle that equal opportunity means the proportionate employment of persons identified on the basis of their race, sex or national origin. Once that principle is settled in our law, then we will never see an end to discrimination in this country. It is in itself a discriminatory principle which makes racism lawful throughout the land.

I hesitate to close, for I am mindful of my experience with that previous audience. As you may have suspected, it was not everyone who misunderstood what I said in such vocal contempt of my person. Well, then, let me conclude with a word addressed to the minority persons in this audience. A man of the cloth told me that my previous talk failed because I spoke about affirmative action instead of communicating to you my sensitivity to your problems. As a result, he said, minority persons could not trust me; and not trusting me, could not hear what I was saying.

Now I wonder about that. I wonder if it is not a subtle form of clerical paternalism which says you are all children with minds captive of your emotions. Surely that is not true. I wonder, too, if trust is a precondition for understanding. I doubt it, for I saw no distrust of the advocates of affirmative action. So I concluded that to the extent my failure was not my own fault, it must have roots in your conviction that this policy of affirmative action means real progress on the road to full equality.

It must be evident to you that I do not share this conviction. I believe that *for you especially* this policy is filled with the gravest danger. You say that this is a racist country, and that affirmative action will help put an end to that. But what makes you so sure? The racism in this country—terrible as it has been and may be—is not so terrible as it might be. Only one thing has ever kept that racism in bounds, and now keeps it bound in dark corners of our souls. That one thing is the conviction bred of our laws that all men are created equal, that racism is wrong, that race should *not* count in the competitions of life. How then is there any salvation for you or for me in a policy which declares that race should count after all? Is it for writing this principle of racism into our laws that so many have struggled and suffered and died? How shall we redeem their labors and overcome this great evil if we endorse this policy of proportional employment of persons identified by their race, sex or national origin?

Quotas By Any Other Name

(By Earl Raab)

In March 1971, the San Francisco School Board decided to eliminate a number of administrative positions. This meant that the people occupying those positions would have to be "deselected," the delicate term used throughout for demotion. Only 71 jobs were involved, according to one published plan, but, for technical reasons, 125 administrators were actually notified that they were in line for demotion.

The school board formally established several criteria for deselection, including "the racial and ethnic needs" of students, "special sensitivity to unique problems," competence, experience, and previous service. But the superintendent of schools and his staff in fact adopted in its "affirmative action reorganization plan," a somewhat different procedure. Following guidelines handed down by the Department of Health, Education and Welfare, the San Francisco authorities used nine categories in making their determinations: Negro/Black, Chinese, Japanese, Korean, American Indian, Filipino, Other Non-White, Spanish-Speaking/Spanish Surname, and Other White. In the words of a State Hearing Officer: ". . . strict seniority would be followed in 'deselecting' administrators who have been classified as 'Other White,' and all those administrators in the other eight designated minority groups would be exempted from such deselection process." In short, and in plain English, only whites—except for Spanish surname/Spanish-speaking whites—would be demoted. And indeed, all 125 administrators put on notice were such "Other Whites."

Many of the underlying issues in a growing number of similar contretemps around the country came to the surface here. We all know the reasons behind affirmative-action programs—that is, programs which attempt to remedy disadvantages suffered by blacks and others because of past inequities—but on what working principles are such programs to be implemented? How do these principles relate to or shift the system of American values? And, since by sociological accident Jews are so often caught in the middle of affirmative-action programs, how does the entire phenomenon affect the future of Jewish life in America?

Affirmative action became an official part of American social philosophy in the middle 1960's. The image of the shackled runner was widely used: Imagine a hundred-yard dash in which one of the two runners has his legs shackled together. He has progressed ten yards, while the unshackled runner has gone fifty yards. At that point the judges decide that the race is unfair. How do they rectify the situation? Do they merely remove the shackles and allow the race to proceed? Then they could say that "equal opportunity" now prevailed. But one of the runners would still be forty yards ahead of the other. Would it not be the better part of justice to allow the previously shackled runner to make up the forty-yard gap, or to start the race all over again? That would be affirmative action toward equality. In September 1965 President Johnson prescribed such action in employment in Executive Order 11246.

As it developed in the 1960's, affirmative action in employment took on a number of working definitions all designed to give members of historically disadvantaged groups an edge in the process of competition: (1) Seeking out qualified applicants among disadvantaged groups; (2) Giving "preferential treatment" to applicants from disadvantaged groups whose qualifications were roughly equal to those of other applicants (this is similar to the older principle of "veterans' preference," recompense for a competitive disability imposed by society in the past); (3) Eliminating cultural bias in determining the nature of relevant qualification; (4) Providing special training and apprenticeship for *qualifiable* applicants to bring them "up to the mark." There was, too, a deeper level of affirmative action involved in breaking the long-range chain of generational factors which had come to be seen as impeding the group's ability to compete—factors like family background and the conditions governing motivation in school. To affect these factors was the intent of the anti-poverty program, of the compensatory education programs, the Elementary and Secondary Education Act, and so forth.

In accord with the general principle of giving an edge to historically disadvantaged groups in the process of competition, the San Francisco school board, two years before the case of the deselected administrators broke out, had resolved "to implement a program of faculty racial and ethnic balance which more closely approximates the racial and ethnic distribution of the total school population so long as such efforts maintain or improve quality of education." Thus there had been an active attempt to find qualified nonwhite or Hispanic personnel, and to give such personnel preferential treatment in hiring and promotion. There was also a special administrative training course for minority personnel within the district, so that they would be better prepared to compete whenever vacancies occurred. No trouble arose over these policies.

However, a subtle but critical line was crossed beyond affirmative action in the case of the deselected administrators. For here it was no longer a matter of giving members of a disadvantaged group an edge in the process of competition; here it became a matter of eliminating the concept of competition altogether. It was not a matter of affirmative action toward equal opportunity, but a matter of eliminating equal opportunity altogether.

One of the marks of the free society is the ascendance of performance over ancestry—or, to put it more comprehensively, the ascendance of achieved status over ascribed status. Aristocracies and racist societies confer status on the basis of heredity. A democratic society begins with the cutting of the ancestral cord. This by itself does not yet make a humanistic society or even a properly democratic one. There is, for example, the not inconsiderable question of distributive justice in rewarding performance. But achieved versus ascribed status is *one* inexorable dividing line between a democratic and an undemocratic society. This is the aspect of democracy which represents the primacy of the individual, and of individual freedom. It has to do with the belief that an individual exists not just to serve a social function, but to stretch his unique spirit and capacities for their own sake: "the right of every man not to have but to be his best." In that sense, it could be said that a principle of ascribed equality—a kind of perverse hereditary theory—would be as insidiously destructive of the individual and of individual freedom as a principle of ascribed inequality.

Of course the laws, the rules of the game, have to be roughly the same for everyone if the system is to work ideally. This has not been the case. Further, we have come to learn how heavy the subcultural load is which each individual carries at birth. At its best, a democratic society provides institutional "catch-up" aids for individual self-realization, such as free common schools. There already is the seed-principle of affirmative action. The free common schools have not necessarily or always served that purpose. But if they are flawed in practice, the remedy is to make them conform more closely to the system of values they are meant to serve. If on the other hand we want to scrap the system, we should be clear that this is what we are doing and we should be aware of the possible consequences.

The practical consequences for the administration of justice, for example, are clearly demonstrated in the case of the deselected administrators in San Francisco. At a formal hearing, there were these exchanges between the attorney for the deselected administrators, and the representative of the school superintendent. The attorney is asking the questions:

Question: Do you know that Armenians, as well as being a minority ethnic group, have had a history of persecution and disadvantage?

Answer: No, I never studied that.

Question: Did you every hear of the persecution of the Armenians by the Turks?

Answer: Not as I recall.

Question: Did you ever hear of the disadvantage which Armenians in California suffered in Fresno and Bakersfield?

Answer: I am not aware of it.

Question: If the [demoted Armenian] respondent in this case says: "I am an Armenian and I want to be treated as a separate minority," what would you do with his case?

Answer: For the purposes of this, I would judge him to be "white" and put him in "white" because there is no specific Armenian classification. . . .

Question: Would you consider that the Jewish people were an ethnic group?

Answer: Yes.

Question: Do you believe that there is a history of persecution and disadvantage which the Jewish people have had?

Answer: I have some remote knowledge of this.

Question: Now suppose one of the respondents in this case came to you and said: I am a member of an ethnic minority, one of the Jewish people, and I believe that by reason of our historical disadvantage that we would like to be treated as a separate ethnic group, what would your reply be?

Answer: That we have no category for you as a Jew.

In short, no individual Armenian or Jew could be considered for retention in his job. In affirmative-action theory, the racial or ethnic group is used to identify those individuals who should, as a matter of historical justice, be given a compensatory edge in the competition. But the principle of historical justice is supposed to balance individual justice, not to replace it. It is one thing when the employees of a given company are white in massive disproportion and the black population in that community is massively underemployed. But if white Joe Smith and black Jim Jones are currently employed, and one must be fired, should Joe Smith be deprived of his job solely because his ancestors were white? The need for social remedy in the first situation must not be confused with the problem of individual justice in the second. Indeed, the life circumstances of Joe Smith, his parental circumstances, may have been more disadvantaged than those of Jim Jones—however large the statistical odds to the contrary.

Cardozo wrote that ". . . each case [of injustice] . . . implies two things: a wrong done and some assignable person who is wronged." In this case, "historical injustice" means that a wrong committed in the ancestral past has affected some people in the present. Since society imposed that wrong in the past, it has accepted an obligation to undo it so far as possible in the present. But there is no way to measure the exact relationship between ancestral wrong and current damage for any given individual. Affirmative action, therefore, does not represent specific acts of remedial justice, but rather a political program of social betterment. If this program entails penalizing a specific individual who is not assignable—who, that is, cannot be picked out from among his fellows as one responsible for the historical wrong that is to be righted—then he is wronged in being penalized and an injustice has been committed. As a member of society, he certainly shares the remedial responsibility of the entire society in this case, but it is unjust to burden him with more than a proportional share.

In San Francisco, the school board ended up not demoting anyone in the case of the deselected administrators. The direct assault on principles of individual justice was thus avoided. But the question of quotas remained. In the early 1960's, when the legislative battle for civil rights was being superseded by direct-action tactics, a demand for quota goals became part of confrontations on behalf of real advances in employment. There was good reason for this tactic, for it put the burden of proof on employers who would otherwise disclaim responsibility for the absence of blacks in their firms. This was especially true in certain unionized industries where the employer was saying, We'd like to do more, but the unions won't let us, and the unions were saying, We're doing our best, but it's the employers' responsibility. Stating a quota goal was often an effective way of establishing responsibility for affirmative action, and measuring results. The quota, in the sense of a fixed number, was not taken literally.

Once it begins to be taken literally, however, another critical line is crossed. Thus the Superintendent of Schools in San Francisco has recently proposed a plan whereby no more than 20 per cent of Other Whites will be hired for or promoted to administrative positions in the first year, no more than 10 percent in the second year, and no Other Whites at all in the ensuing years until ethnic and racial proportions among administrators equal the respective proportions in the school population.

Here we have a good example of the use of quotas not as a measure and instrument of affirmative action but as a way of replacing achievement with ascription by political fiat and without any reference to competitive performance. To say that the minority people to be hired will be "qualified" is to evade the issue. If they are indeed qualified or qualifiable, and affirmative action is taken, they will move at a certain pace into these positions anyway. But the inescapable assumption of the ascriptive approach, of the literal quota, is that minority people are not qualified or qualifiable, that they cannot compete even if given a competitive margin. The proposers of such a quota system are calling, then, for a social-welfare program, pure and simple, which indeed should not be performance-connected.

But should their assumption of the hopeless inferiority of minority workers be accepted? Is the minority population to believe that it is incapable of competition under any circumstances? Is the belief to be developed that performance should be abandoned on every level as a criterion, not only to accomplishment, but of a sense of accomplishment? This would involve not only a basic shift in our values as a society, but a cruel and destructive hoax on expectations.

The same shift is seen in another aspect of school life. The concept of "tracking"—of providing a special pace for those children who are academically talented or motivated—has traditionally had a built-in cultural bias. The tests used to determine talent were often skewed in favor of the white middle-class child, while talents which were not academic in the usual sense were downgraded. Affirmative action seemed indicated: abandonment of old tests, special efforts to identify talented non-white children, new attention to other talents. But there is now a distinct tendency to eliminate all tracking, all performance-grouping. The underlying premise was made clear by the demand of one NAACP chapter that all classes for the mentally retarded should reflect the racial balance of the general school population.

It should be very clear that these proposals are frustrated reactions to the fact that white school children are informally but effectively ascribed a superior status. But surely the remedy is to remove that ascription by affirmative action as swiftly as possible, not to move from ascribed inequality to ascribed equality. In either case, the individual is wiped out.

The point again is that human justice, as distinct from divine justice, must center around the treatment of assignable individuals. Divine justice has often taken the form of a class action, and Job wondered for all of us why it is not always connected to individual performance. He received no answer except that man cannot always understand the ways of God; and indeed our experience tells us that when any group of men try to impose a God-like style of political justice on human affairs, catastrophe ensues. This is why so many of us, in the continuing struggle to find a suitable human politics, are so stubborn about keeping individual performance and accountability rather than group ascription at the center of our system of values.

But do not the dangers implicit in the kind of ascriptive action taken in the case of the deselected administrators apply also to affirmative action? To the extent that affirm-

ative action describes an active search for qualified applicants, or the bringing of tests for merit closer to occupational reality, or the training of qualifiable applicants, then the situation is not one of imposing competitive disadvantage, but of removing it. However, to the extent that affirmative action also includes the principle of "veterans' preference" for members of specified minority groups, then obviously there *is* created a competitive disadvantage for all individual members of "others" as a class. Whether it is a reasonable or unreasonable disadvantage will depend on the concrete circumstances of the given case and will under no circumstances be easy to determine.

So too with the issue of pace. It is impossible to say when affirmative action is moving "fast enough" or "too fast." Between 1968 and 1970, the proportion of defined minorities holding administrative jobs in the San Francisco school system increased from 11 per cent to 18 per cent. At that rate, the minorities made, in two years, about one-third of the progress needed for them to grow—and for whites to shrink—to proportions which parallel their proportions in the general population. (This, incidentally, was a large-city reflection of the kind of statistical progress that was being made by minorities during the latter part of the 1960's throughout the country. Between 1962 and 1967, for example, the increased proportion of blacks in white-collar jobs represented about one-fifth of the progress needed for blacks to grow—and for whites to shrink—to proportions which parallel their respective representation in the total working force.*)

Is that "satisfactory" progress? To ask that question is a bit like asking for a definition of "satisfactory taxes": the answer always lies in some shifting combination of what is needed, what is felt to be needed, and what the traffic will bear. It is that combination which will determine the shifting point at which some individual whites will be "unduly" disadvantaged, or at which blacks will be "unduly" locked into the status quo.

However satisfactory the progress made through affirmative action may or may not have been in the 1960's, it was made during a period of economic expansion. That is one key to the success of affirmative action. In a constricting economy, certain kinds of affirmative-action programs will present the risk of slipping over into ascriptive action, or of raising impossible dilemmas in balancing historical and individual justice. In some cases, certain programs may politically endanger progress that has already been made. All the theoretical talk about justice should not obscure the fact that affirmative action is a political as well as a moral exercise.

In short, there is no blueprint for determining the suitability of affirmative-action programs. But there are several strong guidelines. One is that such programs should be pushed as far as the traffic will bear at any given time. Another is that they should not do specific injustice to specific people. The third is that they should stay within a competitive, performance-related framework. Thus if the equivalent of "5 points" is given to one applicant for a job, that might be considered within the limits of a competitive edge; if the equivalent of "75 points" is given, that might be considered a means of eliminating competition altogether. Depending on the situation, if there are 100 promotions to be made, and 10 members of a disadvantaged group are chosen, that might well not be as much as the traffic will bear; if 100 are edged into promotion, it might well be more than the traffic will bear.

In the case of the deselected administrators there was a disproportionate number of Jews among those Other-White administrators who were to be demoted—because there is a disproportionate number of Jews among school administrators. Jews are *not* disproportionately represented, however, among the top administrators in private industry: around San Francisco, Jews occupy about one per cent of such positions. Only fifteen years ago, moreover, a California Department of Employment survey indicated that about a quarter of all California employers would not hire Jews for white-collar jobs, no matter how well qualified they were. If Jews are concentrated in the educational Establishment, one reason is that they have not been forcibly kept out of it by discrimination. If Jews should now be shut out of the educational Establishment, they would suffer as identifiable members of a historically disadvantaged group; and they would become other than Other-White.

Short of that, the sharpened competition provided by legitimate affirmative-action programs which follow the reasonable guidelines suggested is a fact of life which Jews will have to sustain along with other Other-Whites. Such affirmative action is an obligation of this society, and a necessary ingredient of its health, in which the Jews also have a strong self-interest. It is obvious too that the Jews must have a special interest in an expansionist American economy, especially in those public-service fields in which collisions are most likely to take place. But it is also fundamental to the security of American Jews that the wavy line in each instance between affirmative action and ascriptive action be firmly drawn. For an ascriptive society is a spiritually and politically closed society; as such it is not the kind of society in which Jews can find justice or can easily or comfortably live.

DO JUSTICE, JUSTLY

Statement of Dr. Stanley Dacher, Executive Vice President of the Queens Jewish Community Council on behalf of:

The Queens Jewish Community Council.

The Jewish Teachers Association of New York.

The Council of Jewish Organizations in Civil Service in New York.

The Rabbinical Council of America.

Jewish Rights Organization.

National Council of Young Israel.

Association of Jewish Orthodox University Faculty.

Association of Orthodox Jewish Teachers.

Presented on June 27, 1972 before Congressmen Rosenthal, Addabbo, Celler, Dow, Ellberg, Koch, Mikva, Podell, Reid, Halpern, Yates, Scheuer, Bingham, Biaggi, Congresswoman Abzug. Also present were staff members from Senator Buckley and Congressmen Murphy, Peyser and Rooney.

PREFACE

The proliferation of reverse-discrimination experiences resulting from The Department of Labor's 'Guidelines' and the implementation of those guidelines by The Department of Health, Education & Welfare has created a new world of bizarre inequities. They have reached such national dimensions that require nothing short of a Congressional investigation of the lethal shortcomings in the so called 'Affirmative Action Program'.

The use of quota systems, preferential hiring and racial census in an attempt to implement 'The Affirmative Action Program' has seriously begun to disaffect large portions of the general population. The Jewish minority has a special sensitivity to this problem. It is a sensitivity sadly earned. It is all the more tragic therefore, when such ancient victims become victims again. This has become a recurring phenomenon flouting constitutional rights of individuals in an attempt to catapult the special needs of one group above another.

A climate of silence and fear has developed on this 'sensitive ethnic matter' reminiscent of the days of Joseph McCarthy. For too many public servants it has again become respectable and safe to back-off and say nothing.

Since this has become both a constitutional and moral question of serious proportions, seven Jewish organizations from the Metropolitan New York area have joined together in this collective statement. We represent a very substantial portion of the Jewish community which is deeply concerned.

Collectively we ask the government conduct an immediate review of this program and the arbitrary manner in which various local administrators have overzealously interpreted the 'guidelines'.

We offer the enclosed documented statement compiling only some of the prominent injustice brought to our attention. Sadly, there are many others. We urge you to study this document so that you may react in time before the mounting inequities become a national disgrace.

STATEMENT

We have come to talk to you about a dangerous trend that is taking place in our country. This trend is the attempt to use ethnic, racial and sex quotas in solving existing social problems. In an attempt to deal with past and existent discriminations against some groups, new forms of discrimination against other groups are now being suggested and practiced.

I read to you a recruitment leaflet from the Department of Judaic Studies at State University of New York at Albany—excluding male Jews from consideration for Chairman of the Department—(see Exhibit A & B).

In his advertisement for the position Professor Eckstein has used a "gimmick" which is becoming an increasing problem. He has defined the job qualifications not in terms of what the position requires but in terms of the person he wants to hire. The qualification he gives for Chairman of the Judaic Studies Department is "a Biblical scholar" coming from a certain minority group. Judaic Studies certainly includes much more than Bible studies. It includes history of Jews in the Diaspora, Talmudic studies, Rabbinical literature, Jewish philosophy, modern Jewish history, current trends in the Jewish religion, etc. In order to find a person who would be well versed in all of these fields it would probably be necessary to hire a Jew. Eckstein, obviously wants a non-Jew and since there are many non-Jewish Biblical scholars he set the job qualification at only that level. He is not at all concerned as to whether or not he is hiring the best qualified *person* for the position.

But isn't this really the same argument we hear when we are told, for example, that black students can best learn from black teachers or black supervisors? The qualifications for a good teacher or supervisor are certainly much more than the color of one's skin. This tendency to change job qualifications to make the job fit the *group* one wishes to hire is rampant in civil service, private industries and colleges.

There has also been a growing trend in colleges and universities to set aside a certain portion of their entering classes for only special applicants. These seats are open for the admission of only favored minority

---

*According to the figures used by the San Francisco School District in proposing its new "quota system" for administrators, the new 1971–72 administrative appointments, in part of a year, had increased the percentage of minority administrators by about 4 per cent. "At the present rate," said the District, if the quota system were not used, it would take "at least twelve more years" [*sic*] to reach the goal of having the percentage of minority administrators correspond to racial proportions in the school population.

groups, at standards usually set lower than normal. The regular applicants are deprived of an opportunity to compete for these places.

Take the example of Marco DeFunis Jr.

THE FACTS

Marco DeFunis, Jr. was one of 1601 persons who applied for admission to the 1971 entering class at the University of Washington Law School, a state institution. To obtain an entering class of 150 students, letters of acceptance were sent to more than 200 applicants, but not to DeFunis, who was placed on a waiting list and later sent a letter denying admission.

On the basis of validity studies conducted by the Educational Testing Service, a formula based on the past experience of the law school was developed for predicting a student's first-year average. The chairman of the admission committee would review the applications of persons with an average below 74.5 and they would be summarily denied unless he felt something in his file merited full committee discussion. However, the files of all minority applicants were considered by the full committee regardless of whether or not their average was below 74.5. Those files were assigned to a professor and to a black student for review and report to the full committee. The adminissions committee admitted 74 persons who had predicted averages below that of DeFunis whose average was 76.23. Among those 74, there were 36 minority group applicants; the others were applicants returning from military service or applicants held to deserve invitation on grounds unconnected with race.

DeFunis—who, incidentally, is Jewish—challenged the law school's admission policy by instituting an action in the Superior Court of the State of Washington against the University of Washington claiming that his constitutional rights to equal protection were violated when applicants with predicted first-year averages lower than his own were admitted because of their race, and thus preferential consideration was accorded to minority group applicants to the detriment of DeFunis.

COURT DECISION

On September 22, 1971 Judge Lloyd Shorett of the State Superior Court rendered a decision in favor of DeFunis. He found that the law school, in order to achieve greater minority group representation, had given preference to members of minority races. He also found that "some minority students were admitted whose college grades and aptitude test scores were so low that, had they been white, their applications would have been summarily denied." He added that only one minority student out of more than 30 admitted had a predicted first-year average above DeFunis. The judge's conclusion was that DeFunis and others in his group had not been accorded the equal protection of the law guaranteed by the 14th Amendment. He relied on the U. S. Supreme Court decision in the school segregation case where it was decided that "public education must be equally available to all, regardless of race." He added that the 14th Amendment "could no longer be stretched to accommodate the need of any race," and further said, "Policies of discrimination will inevitably lead to reprisals. In my opinion, the only safe rule is to treat all races alike, and I feel that this is what is required under the equal protection clause."

The University of Washington complying with the court's order admitted DeFunis as a first year student, but appealed from the decision to the Washington State Supreme Court.

Lest you think this quota problem is a parochial Jewish concern let me read you a letter from Edward Costikyan commenting on the quota system set up by the Democratic Party for the national convention. This appeared in The New York Magazine of recent date:

THE URBAN EXCHANGE

New Politics—and Old—I used to go to state and national conventions of the Democratic Party. I used to represent my assembly district, the eighth (south) of Manhattan, in the New York County Democratic Executive Committee and the Democratic Committee of New York County in state Democratic councils. But, since the so-called McGovern guidelines, which require that the delegates to the national convention reflect the proportion of women, blacks, and younger people in the population at large, I have lost my constituencies. In those days, it did not seem so incongruous for a half-Armenian, half-Swiss Unitarian to represent a district which had few, if any, Swiss, few, if any, Armenians, and few, if any, Unitarians, let alone a county and state with only a handful of any of these exotic types.

For a WASP—a White Armenian Swiss Protestant—those were rather happy political days. I mean, nobody asked me to justify my election as district leader five times in ten years, or my election as county leader twice, in light of my sex, my age, my ancestry, or anything else. So, I happily supported all kinds of candidates like Stevenson, and Kennedy, and McCarthy, and Edward J. Dudley, and James L. Watson, and Constance Baker Motley, and Margot Gayle, and Eleanor Clark French, and Mary de Groat Reed, and lots and lots of others. No Armenians. No Swiss.

It's all changed. The Democratic National Committee has told us to forget the old-fashioned nonsense that resulted in the voters' selection of a male Armenian-Swiss amateur conductor of oratorios to represent them as a reform district leader and delegate and county leader. Now, the McGovern guidelines tell us, women must be represented by women, blacks by blacks, young by the young, and, I suppose, rich by rich, poor by the poor. And the Democratic National Committee further tells us that unless delegations mirror the color, sex, and age characteristics of the constituency, the nonconforming delegates must justify their election and explain why they are the wrong color, wrong sex, and wrong age.

This leaves us non-young, non-female, non-black, Armenian-Swiss Unitarians with something of a problem. The black men have organized, and the black women, too. The young have. The women have. And so, if we non-young, male, non-black, Armenian-Swiss Unitarians want to participate, I guess we'll have to organize, too.

Too bad. There aren't too many of us. Maybe the Democratic National Committee will give us cumulative voting so that we can be represented once every third or fourth national convention. Or maybe we can make a deal with the Greeks, or with the Albanians.

Or maybe the Democratic Party will abandon this nonsense before it has lost the allegiances of those who do not fit into the neat pigeonholes its sociologist-advisers have invented and its stunned leadership, still shaken by the convulsions that racked the party in the 1968 convention, has thoughtlessly adopted. What was wrong with the Democratic Party and its convention in 1968 will not be cured by the invoking of a quota system.

Meanwhile, it may be that we Armenian-Swiss Unitarians will have to organize so that, like the recently organized black women, we can hold together and for the first time "get something for our vote" in order to survive under the present political rules. But one wonders if it really is progress—if, instead of a triumphant expression of the New Politics, it isn't a very unsatisfactory expression of the Old.

EDWARD N. COSTIKYAN.

What happens to the electoral process and free choice in the voting booth if the results are later thrown out to satisfy quotas? It would seem as though we have now advanced enough to bypass electoral process.

Congressman Joseph Addabbo recently held hearings before his Select Committee on Small Business. Allegations were made that the Small Business Loan Administration was bypassing "non-preferred" minorities in granting loans.

The evidence is clear that we are not dealing with a narrow parochial issue but one affecting broad sectors of our national life.

The use of quotas to solve problems is illegal, illogical, unfair, devisive and unacceptable. It is unworkable and is detrimental to the rights of individuals, groups and the nation as a whole.

An example of all the things wrong with a quota system can be shown from the experiences of two New York Medical Colleges. In 1969 New York Medical College and Albert Einstein Medical College decided to admit a relatively large number of "preferred" minority students into their entering class. Unable to find enough qualified students (since "preferred" minority qualified students had no problem whatsoever in being accepted) they selected applicants who would normally be unqualified. Of the eight students selected at New York Medical College 5 could not get past the first year. Of the 14 students at Einstein Medical College 10 could not get past the first year.

It becomes apparent:

(a) these students who could not get past the first year wasted a year of their lives which could have been better spent training for some endeavor within their own capabilities.

(b) well qualified students who would have been accepted in place of these unqualified students, were denied the opportunity to become medical doctors.

(c) since medical schools do not place new students in those vacated seats during the second, third and fourth year of that class they lose tuitions to that extent.

(d) fifteen fewer doctors will be graduated from these two medical schools to tend the medical needs of the nation.

Despite this experience, the practice of imposing quotas in school admissions still exists. I cited before the DeFunis Case with the law school. In the May 1971 issue of the Journal of the American Dental Association the dean of Tufts University Dental College presents a plan in effect at Tufts, in which admittedly unqualified "preferred" minority are accepted, in a quota arrangement. This arrangement has become commonplace at many universities. (See Exhibit C—American Association of Dental Schools Application which offers special educational opportunities available to Dental Students from "special racial or ethnic backgrounds".)

Closely aligned with this general issue of quota solutions to social problems are the "Affirmative Action Programs" of the Federal government.

President Johnson in 1965 and 1967 issued executive orders 11246 and 11375 which dealt with equal opportunity employment. (See Exhibit D)

Those orders were then turned over to the Department of Labor for general enforcement and to the Department of Health, Education and Welfare for enforcement in universities and colleges.

We have no problem endorsing the philosophy President Johnson enunciated in the "Executive Order".

In fact we would look to it to end discrimination against Jews in those areas in which it still exists such as heavy industries, banks, insurance companies and the auto industry.

In essence, affirmative action connotes adding to the present supply of available and qualified applicants for employment, admission, job advancement etc., those who have

been previously bypassed because of discriminatory practices. It does not mean preferential treatment, which benefits some (whether qualified or unqualified) to the exclusion of others, and it is in this delicate area that the federal administrators are creating problems.

They have the task of identifying past and existent discrimination and then solving it without further discrimination. It is far easier administratively to set up goals or quotas than to carefully and patiently enforce a "color blind", "ethnic blind" or "sex blind" solution.

Part of the problem is that the guidelines drawn up by the Department of Labor speak of "affected classes" and "minority groups" rather than of individuals as does the Presidential Order. It is very easy for this kind of language to lead to the use of "group" solutions and quotas. (See Exhibit E)

The Office of Contract Compliance within the Department of Labor and HEW has requested contracting agencies, which are receiving Federal funds, to take a census of their work ethnic grouping. From this census the Office of Contract Compliance makes a determination of which groups are underutilized. Now these numbers can mean one of many things, only one of which is discrimination. However, the administrators have taken the position that the numbers reflect discrimination and a preferential hiring solution is encouraged.

To be more specific, Mr. Joseph Leahy and Mr. William Atkinson of the New York City Office of Contract Compliance of HEW have advised me of the following: If two people apply for a position in which it has been determined that there is a minority underutilization, and both applicants are at least minimally qualified, the minority applicant will be given preference over the other applicant. This would hold true even if the "majority group" applicant were more highly qualified.

The Civil Rights Act of 1964 prohibits preferential treatment in very strong terms. Public Law 88–352, Title VII (Equal Employment Opportunity), Section 703 (j) states:

"(j) Nothing contained in this title shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this title to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number of percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area."

Although the Department of Labor Guidelines contain provisions which would prohibit preferential treatment, these sections are admittedly ignored by the administrators because they are "too difficult to enforce."

Indeed, the man in charge of this entire program for HEW, J. Stanley Pottinger, Director of the Office for Civil Rights, endorsed this same point of view at a meeting on May 18th, 1972 with delegates of six large national Jewish organizations. He stated that where quotas were voluntarily established by universities because of "excesses of zeal," he felt that it would be inappropriate for him to object. Since his offices were already under considerable criticism by those who felt the Nixon Administration "was soft on Civil Rights," any public criticism of those institutions which were increasing their efforts to overcome past discrimination, he felt, would be a further misinterpretation of the administration's intent.

Secretary of HEW Richardson, at this same meeting, when asked about quotas being established for college admissions stated that HEW had no authority over college admission practices. Under prodding, he finally agreed that HEW did have authority under the Civil Rights Act of 1964. Whether this newly discovered authority will be used remains to be seen.

The path that the administrators are following is clearly that of using or condoning the use of quotas.

HEW and Mr. Pottinger also work under the assumption that the Executive Order was issued to help only certain groups. In a letter written to Professor Sellers at Brooklyn College Mr. Pottinger states, "the affirmative action concept is designed primarily to remedy employment discrimination against minorities, such as Blacks, Puerto Ricans, Orientals, Mexicans, and women, which continue to suffer far more markedly than other minority groups from the effects of employment discrimination." This concept puts "non-preferred" minorities in a very difficult position. On the one hand in the areas in which "non-preferred" minorities have been able to advance, they will be subject to the adverse effects of a quota, and in the areas in which "non-preferred" minorities are discriminated against, nothing will be done. Put this against a background of diminished economic opportunities in general and a very ominous situation arises. We already have a brain drain of talented young Americans emigrating to Australia, Canada, and Israel because of this.

The City University of New York is presently under attack by Mr. Pottinger. Let me give you the history of the situation at CUNY. The government compliance review of CUNY was initiated after several women faculty members at Brooklyn College had charged sex discrimination in promotion. It would seem that the proper response to this would be to investigate the department or departments at Brooklyn College which were involved. Mr. Pottinger's response was quite different. He warned the City University on June 20, 1972 that it must provide certain employment information, including data on the sex and race of all staff members for the entire university or face the loss of a $13 million in government research contracts. The City University does not have personnel lists that give the employees sex, race, or national origin. It attempted to compile such a census this past academic year but the professors and students refused to comply, standing on their legal right not to divulge such information.

How this situation will end remains to be seen. Other universities including Columbia, Harvard, Cornell and Michigan have been under similar attack. Columbia finally capitulated and applicants for tenured faculty positions are now encouraged to have a letter of recommendation from a "preferred" minority scholar as part of their credentials.

Mr. Pottinger's powers were vastly increased when the President signed the Aid to Higher Education Bill. Because there will be increased Federal funds to colleges and universities, Mr. Pottinger and his staff will have more of a club to wield.

To sum up, we are in favor of affirmative action programs which follow the philosophy of President Johnson's Executive Orders. This would open up new opportunities for all, without denying opportunities for some. We are opposed to Affirmative Action Programs as outlined in Department of Labor and HEW guidelines because these set up preferred and non-preferred groups and lead to preferential treatment and quotas. This is the opposite of equal opportunity employment. We are unhappy with the taking of detailed personnel data on sex, racial and ethnic background and the uses made of these surveys.

We have tried to correct these injustices at an administrative level but have been unsuccessful. This was apparent at the meeting with Secretary Richardson and Mr. Pottinger on May 18. We now look to you in Congress for redress and help.

We would suggest that the following be done:

1. Examination of the Department of Labor guidelines for Affirmative Action Programs to determine whether the language in them encourages the use of quotas; to determine whether there is a conflict with the Civil Rights Act of 1964 in regards to preferential treatment.

2. Examination of Secretary Richardson's and Mr. Pottinger's attitude toward their responsibilities.

3. Meaningful action to prevent colleges and universities from setting up quota admission systems.

In conclusion, we therefore look to you in government to—"Do Justice, Justly". We look to you to provide all people with the proper equity—and to do so with an even hand at the expense of none. Since this matter has indeed reached national proportions, we urge a formal Congressional Hearing to explore the scope of the new reverse-discrimination phenomenon and its growing impact on the national scene.

Since this is a matter not likely to disappear by itself, we urge your prompt intervention so that the broad American social contract for all peoples can be preserved.

Dr. STANLEY DACHER.

Dr. MICHAEL FISHBONE,
Administrative Secretary, AJS, Brandeis University (NEJS), Waltham, Mass.

ASSOCIATION FOR JEWISH STUDIES

Committee on Consultation and Placement.

1. Name and address of institution: State University of New York at Albany Albany, N.Y. 12222.

2. Contact: Jerome Eckstein, Judaic Studies Department, Chairman.

3. Position available and brief description of duties: The department is "searching for a Biblical scholar who is either female or a member of a minority group (Black, American Indian, Spanish Surnames or Oriental-American). If possible, we would like this person to be capable of chairing our Department—but this it not an essential requirement."

4. Rank and salary: not stated.

5. Effective date: Sept. 73.

6. Competency and preparation required: Stated in #3.

STATE UNIVERSITY OF
NEW YORK AT ALBANY,
Albany, N.Y., April 28, 1972.

Mr. GEOFFREY HEWITT,
Counsel to Senator Albert B. Lewis, Legislative Office Building, Albany, N.Y.

DEAR MR. HEWITT: Even though I have been ill now for some time, and have been at home I am dictating the following letter.

Your understanding of my intentions was absolutely correct. I was seeking all the very best qualified for the position. However, I did want to make it as strong as possible that we were an Equal Opportunity Employer and that applications from female and members of minority groups would be very welcome. Perhaps I overstressed this point in my original advertisement, but that was partly a result of some discriminatory practices that have been prevalent in many universities. I only wish to encourage in the minds of all Biblical scholars, regardless of sex, creed, religion or nationality, that they would receive an equal consideration for the position. Indeed, this advertisement brought such a severe reaction from the Association For Jew-

ish Studies that they informed me that it would no longer run the advertisement as it was originally written. I rewrote the advertisement and submitted it to the Association For Jewish Studies, but nevertheless mentioned that we were going to consider all applications equally and our sole concern would be academic merit.

Sincerely yours,

JEROME ECKSTEIN,
Judaic Studies Department, Chairman.

Special educational opportunities are sometimes available to dental students from special racial or ethnic backgrounds. If your background is listed below and you wish to identify yourself, please respond to this item. *You are not required to provide this information.*

EXECUTIVE ORDER 11375

AMENDING EXECUTIVE ORDER NO. 11246, RELATING TO EQUAL EMPLOYMENT OPPORTUNITY

It is the policy of the United States Government to provide equal opportunity in Federal employment and in employment by Federal contractors on the basis of merit and without discrimination because of race, color, religion, sex or national origin.

The Congress, by enacting Title VII of the Civil Rights Act of 1964, enunciated a national policy of equal employment opportunity in private employment, without discrimination because of race, color, religion, sex or national origin.

Executive Order No. 11246 of September 24, 1965, carried forward a program of equal employment opportunity in Government employment, employment by Federal contractors and subcontractors and employment under Federally assisted construction contracts regardless of race, creed, color or national origin.

"Section 101. It is the policy of the Government of the United States to provide equal opportunity in Federal employment for all qualified persons, to prohibit discrimination in employment because of race, color, religion, sex or national origin, and to promote the full realization of equal employment opportunity through a positive, continuing program in each executive department and agency. The policy of equal opportunity applies to every aspect of Federal employment policy and practice."

"(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

[From the Federal Register, Vol. 36, No. 234, December 4, 1971]

RULES AND REGULATIONS

* * * * *

Relief for members of an "affected class" who, by virtue of past discrimination, continue to suffer the present effects of that discrimination must either be included in the contractor's affirmative action program or be embodied in a separate written "corrective action" program. An "affected class" problem must be remedied in order for a contractor to be considered in compliance. Section 60-2.2 herein pertaining to an acceptable affirmative action program is also applicable to the failure to remedy discrimination against members of an "affected class."

SUBPART B—REQUIRED CONTENTS OF AFFIRMATIVE ACTION PROGRAMS

* * * * *

(1) In determining whether minorities are being underutilized in any job classification the contractor will consider at least all of the following factors:

(i) The minority population of the labor area surrounding the facility;

(ii) The size of the minority unemployment force in the labor area surrounding the facility;

(iii) The percentage of the minority work force as compared with the total work force in the immediate labor area;

(iv) The general availability of minorities having requisite skills in the immediate labor area;

(v) The availability of minorities having requisite skills in an area in which the contractor can reasonably recruit;

(vi) The availability of promotable and transferable minorities within the contractor's organization;

(vii) The existence of training institutions capable of training persons in the requisite skills; and

(viii) The degree of training which the contractor is reasonably able to undertake as a means of making all job classes available to minorities.

(2) In determining whether women are being underutilized in any job classification, the contractor will consider at least all of the following factors:

NEW YORK CITY.

TO THE EDITOR OF COMMENTARY:

Here is another document to be added to "The Pottinger Papers" [Letters from Readers, May, commenting on Paul Seabury's "HEW & the Universities," February]. This is a job description sent to the placement office of the Association for Jewish Studies; its authenticity has been verified.

SEYMOUR SINGER.

---

1. *Name and address of institution:* State University of New York at Albany, N.Y., 12222
2. *Contact:* Jerome Eckstein, Judaic Studies Department, Chairman
3. *Position available and brief description of duties:* The department is searching for a Biblical scholar who is either female or a member of a minority group (Black, American Indian, Spanish Surname, or Oriental-American). If possible, we would like this person to be capable of chairing our Department—but this is not an essential requirement.
4. *Rank and salary:* not stated
5. *Effective date:* Sept. '73
6. *Competency and preparation required:* stated in No. 3.

UNIVERSITY OF CALIFORNIA,
Berkeley, Calif.

TO THE EDITOR OF COMMENTARY:

I thought you might be interested in the following correspondence. As a matter of professional ethics, I have deleted the name of the institution and the department chairman. The problem of reverse discrimination is so widespread, I don't think one man or school should be made a whipping boy.

RICHARD J. LARSCHAN,

JANUARY 10, 1972.

——— COLLEGE,
DEPARTMENT OF ENGLISH.

DEAR MR. LARSCHAN: I have received your letter of January 4 regarding your candidacy here.

It is quite true that we have an opening here and that I have examined your dossier. It is very impressive indeed, and I wish I could invite you to come for an interview. At present, however, our department is interested in the appointment of a woman so we are concentrating on interviews of this kind.

I appreciate very much your interest in the College, and I know that with your excellent qualifications you will find a position of your choice. Naturally, I shall keep you in mind should any changes occur.

Best wishes to you for success.

Sincerely yours,

———— ————,
Chairman.

MAY 21, 1972.

MS. BERNICE SANDLER,
Executive Associate and Director, Project on the Status and Education of Women, Association of American Colleges, Washington, D.C.

DEAR MS. SANDLER: Knowing your high regard for the truth (amply demonstrated—or at least proclaimed—by your letter in COMMENTARY rebutting Paul Seabury's article), I was certain you would appreciate seeing the enclosed letter from ——— College. It was you, was it not, who wrote:

"Well-qualified males will now have to compete with well-qualified women and minorities. Hiring that is in line with the government's policy is on the basis of ability; the best-qualified person is hired regardless of sex or color or national origin, even if that person turns out to be white and male. The intent is not to give preference to any group, but to see that all groups are considered equally."

After my Acting Instructorship runs out, I should have plenty of free time to spend on making sure that the courts uphold "the intent" of which you have so eloquently spoken.

Sincerely,

RICHARD J. LARSCHAN,
Acting Instructor.

TO THE EDITOR OF COMMENTARY:

Why does Elliott L. Richardson, Secretary of the Department of Health, Education, and Welfare, leave out religious heritage when he lists in his letter those things over which victims of discrimination have no control? HEW should be protecting victims of religious as well as racial and sex discrimination (1964 Civil Rights Act, Section 703), but one would never know it from the agency's actions.

Last October HEW conducted an investigation into discrimination in faculty hiring at Princeton University. Though it is well known in the university community that Princeton's English department will not hire Jewish professors, the affirmative-action plan which was developed mentioned women, blacks, and Orientals, and ignored the problem of anti-Semitism. In addition, the New York HEW has so far refused to respond to my pleas for an investigation into religious discrimination in faculty hiring at Princeton.

There is, apparently, discrimination not only in the universities but in civil-rights enforcement as well.

ARTHUR COOPER,
Princeton, N.J.

TO THE EDITOR OF COMMENTARY: I have recently observed the subtle, or not-so-subtle, effects of affirmative-action programs in the personnel pages of scholarly journals. For example, a recent issue of a prestigious American scientific weekly contained three classified advertisements, out of a total of 17, which boasted references to the academicians' added "qualifications": "Female Planetologist," "Minority Group Ph.D.," "Physiological Psychologist, Ph.D., Chicano."

An *equitable* meritocracy is salubrious *both* to its members and to society as a

whole; discriminatory affirmative-action programs are only a stop-gap measure . . . and they will in the long run benefit no one . . .

JEFFREY GUSTAVSON,
Cambridge, Mass.

A CTITICAL SURVEY OF AFFIRMATIVE ACTION

PART II

The Revised Order of No. 4 as the generator of quotas

Let us assume for the moment, that institutions of higher learning have been asked and had agreed to comply with the following rules:

That they publicize in the most open and even-handed way all their academic and other job openings.

That they recruit applicants from *all available* sources.

That they maintain fully nondiscriminatory hiring procedures and keep full records of interviews and the like.

That they comply with fully nondiscriminatory promotion and pay policies.

That they abolish all rules and regulations which are discriminatory with regard to pay, leave or possible fringe benefits.

Let us also assume that our Colleges and Universities:

Open up fully their respective institutions to all qualified student applicants;

Recruit their student body evenhandedly from *all* secondary schools and other possible preparatory channels;

Maintain vigorous remedial programs for entrants who wish to remove deficiencies;

Maintain comprehensive counseling and other auxiliary programs to facilitate the entry of disadvantaged students into the mainstream of academic life.

Let us further assume that there be maintained a *simple, speedy* and *effective* complaint and grievance mechanism within and without the academic institutions (lower and appellate levels) for the prompt handling of complaints involving alleged discrimination on grounds of race, sex, or creed, and

Let there be academic and mixed academic—nonacademic study groups and standing commissions to continuously investigate the employment possibilities and practices and, when necessary, recommend censure and the withholding of government funding.

This package of positive commitments, remedial measures, and monitoring bodies would constitute one of the most comprehensive antidiscrimination mechanisms yet conceived;

It would be considered fair by an overwhelming majority of the academic community;

It would be able to enlist active support of all persons of good will;

It would work; and

It would be in full accord with the letter and spirit of the Executive Order 11246. The pertinent Affirmative Action clauses of this Order read as follows:

"(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

"(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin." And further

"The contracting agency or the Secretary of Labor may direct that any bidder or prospective contractor or subcontractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with supporting information, to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, religion, sex, or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this Order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the Order."

This proposed package, however, would *not* generate quotas and instances of reverse discrimination.

Instead of following the classical nondiscrimination approach outlined above, the Labor Department and other related agencies elected to tread new grounds.

In particular, the main pillar of the new look, the *Revised Order No. 4*, comprises a very specific and detailed set of rules which, if enforced and adhered to, lead necessarily to the establishment of quotas and the introduction into the organizational structure of our institutions of higher learning of an extensive "parallel bureaucracy" whose primary non-educational goals would keep it in constant conflicts with the primary educational tasks of the host institution. In this part of the survey (II) we study mainly the quota-generating characteristics of the said order.

In the first place, the order mandates the preparation of an Affirmative Action Compliance Program from every qualified contractor, irrespective of the actual status of its workforce:

"[It] requires that within 120 days from the commencement of a contract each prime contractor or subcontractor with 50 or more employees and a contract of $50,000 or more develop a written affirmative action compliance program for each of its establishments, and such contractors are now further required to revise existing written affirmative action programs to include the changes embodied in this order within 120 days of its publication in the Federal Register."

The aim of the order is apparently a compensation for past injustices on a *group basis:*

"Relief for members of an 'affected class' who, by virtue of past discrimination, continue to suffer the present effects of that discrimination must either be included in the contractor's affirmative action program or be embodied in a separate written 'corrective action' program. An 'affected class' problem must be remedied in order for a contractor to be considered in compliance."

The assumed shortcomings (guilt) of the institution must apparently be self-researched and admitted by the allegedly discriminating institution (defendant) itself:

". . . An acceptable affirmative action program must include an analysis of areas within which the contractor is deficient in the utilization of minority groups and women, and further, goals and timetables to which the contractor's good faith efforts must be directed to correct the deficiencies and, thus to increase materially the utilization of minorities and women, at all levels and in all segments of his work force where deficiencies exist."

From here on, the order becomes increasingly detailed and yet, at the same time, disturbingly vague. The following example may make this point clear:

"(a) . . . 'Underutilization' is defined as having fewer minorities or women in a particular job category than would reasonably be expected by their availability . . .

(1) In determining whether minorities are being underutilized in any job category, the contractor will consider at least all of the following factors:

(i) The minority population of the labor area surrounding the facility;

(ii) The size of the minority unemployment force in the labor area surrounding the facility; . . .

(iv) The general availability of minorities having requisite skills in the immediate labor area;

(v) The availability of minorities having requisite skills in an area in which the contractor can reasonably recruit; . . .

(2) In determining whether women are being underutilized in any job category, the contractor will consider at least all of the following factors:

(i) The size of the female unemployment force in the labor area surrounding the facility;

(ii) The percentage of the female work force as compared with the total work force in the immediate labor area;

(iii) The general availability of women having requisite skills in the immediate labor area;

(iv) The availability of women having requisite skills in an area in which the contractor can reasonably recruit;

(v) The availability of women seeking employment in the labor or recruitment area of the contractor; . . .

Like in many other similar instances, it is "the contractor" who is to determine the necessary *measures* by educated guesswork or by involved expensive studies. He has no guarantee that the actual numbers will have any validated meaning: the only ultimate criterion is their acceptability by government reviewers and the noncancellation of government funds.

Despite of a total lack of pilot projects which would have tested the validity of the many criteria listed in Order No. 4, the draft of the order as published in August of 1971 proceeds to demand that the College and University administrators establish goals, establish specific timetables, and initiate "corrective" measures:

"(b) Goals, timetables and affirmative action commitments must be designed to correct any identifiable deficiencies. Where deficiencies exist and where numbers of percentages are relevant in developing corrective action, the contractor shall establish and set forth specific goals and timetables separately for minorities and women. Such goals and timetables, with supporting data and the analysis thereof shall be a part of the contractor's written affirmative action program and shall be maintained at each establishment of the contractor. Where the contractor has not established a goal, his written affirmative action program must specifically analyze each of the factors listed in 'a' above and must detail his reason for a lack of a goal.

In the event it comes to the attention of the compliance agency or the Office of Federal Contract Compliance that there is a substantial disparity in the utilization of a particular minority group or men or women of a particular minority group, the compliance agency or OFCC may require separate goals and timetables for such minority group and may further require, where appropriate, such goals and timetables by sex for such group for such job categories and organizational units specified by the compliance agency or OFCC . . .

Although the final version of the Order, published in December of the same year

omitted this last quoted paragraph (b), its essential content remained scattered within the other various parts of the Order and was vigorously enforced by the compliance officers of the Office of Civil Rights under Mr. Pottinger.

The results were quotas whose "good faith" promulgation led to all the malpractices and flagrant discrimination described in Part I of this Survey.

How Equal Opportunity Turned Into Employment Quotas

Some strange things have been happening, in government and industry, in the name of "nondiscrimination"

(By Daniel Seligman)

Soon after it came into office, the Nixon Administration proposed that critics "watch what we do instead of listening to what we say." By this eminently reasonable standard, the Administration today might be judged to favor quotas in employment. The President has repeatedly assailed them; in fact, the elimination of quotas was identified in a major campaign statement as one of ten great goals for the nation in his second term. Yet during his years in office, and with some powerful encouragement from the executive branch of the U.S. Government, quotas have taken hold in several areas of American life. The controversies about them have centered on their appearance in the construction industry and on university campuses. Oddly enough, very little attention has been paid to employment quotas in large corporations.

The omission is very odd indeed, for it is in corporate employment that quotas are having their major impact on the American labor force and on relations between the races and sexes. Nowadays there are scarcely any companies among, say, the Fortune 500 that are not under pressure from the government to hire and promote more women and minority-group members; and many of these companies have responded to the pressure by installing what are, in effect, quota systems.

In most of the controversy over quotas, there is no real disagreement about ultimate objectives. Most educated Americans today would agree that several minorities, and women, suffer from discrimination in employment, that the discrimination is destructive and irrational, and that working to end it is a proper activity for government. Unfortunately, it is not clear what government should do—and all too clear that wise policies do not flow naturally from good intentions.

In discussions of this issue, people who don't define their terms can dither on for quite a while without getting anywhere. Let us begin, accordingly, with some definitions and distinctions. Among companies that have no intention of discriminating against women or minorities, four different postures may be discerned:

1. *Passive nondiscrimination* involves a willingness, in all decisions about hiring, promotion, and pay, to treat the races and sexes alike. However, this posture may involve a failure to recognize that the past discrimination leaves many prospective employees unaware of present opportunities.

2. *Pure affirmative action* involves a concerted effort to expand the pool of applicants so that no one is excluded because of past or present discrimination. At the point of decision, however, the company hires (or promotes) whoever seems most qualified, without regard to race or sex.

3. *Affirmative action with preferential hiring.* In this posture, the company not only ensures that it has a larger labor pool to draw from but systematically favors women and minority groups in the actual decisions about hiring. This might be thought of as a "soft" quota system, i.e., instead of establishing targets that absolutely must be met, the top officers of the company beef up employment of women and minority-group members to some unspecified extent by indicating that they want those groups given a break.

4. *Hard quotas.* No two ways about it—specific numbers or proportions of minority-group members must be hired.

Much of the current confusion about quotas—and the controversy about whether the government is imposing them—derives from a failure to differentiate among several of these postures. The officials who are administering the principal federal programs tend, of course, to bristle at any suggestion that they are imposing quotas; they have been bristling with special vigor ever since the President's campaign statements on the subject. Their formulations tend to be somewhat self-serving, however. The officials turn out, when pressed, to be denying that the government is pushing employers into posture No. 4. The real issue is No. 3, preferential hiring, which many government agencies are indeed promoting. Meanwhile, the President and a few other Administration officials concerned with equal-employment opportunity sound as though the objective of the program is to promote pure affirmative action—posture No. 2.

The conciliators have muscles

The U.S. Government's efforts to end discrimination in employment are carried out through two major programs. One was set in motion by Title VII of the Civil Rights Act of 1964, which forbids discrimination based on race, color, religion, sex, or national origin. The act established an Equal Employment Opportunity Commission, which now has two main functions. The first is enforcement: the commission may sue in a U.S. district court, on its own behalf or for other claimants, when it believes that discrimination has taken place. The EEOC has had the power to sue only since March, 1972—previously it was limited to conciliation efforts—and has filed only about twenty-five suits in that time. Chairman William H. Brown III believes that when the commission gets warmed up it might be filing an average of five suits a week.

In practice, Brown suspects, not many of these are apt to be litigated; the right to go into court is useful to the EEOC mainly for the muscle it provides in conciliation efforts. If the EEOC did get into court, it would have to prove outright discrimination; in principle, that is, an employer might comply with Title VII simply by practicing passive nondiscrimination—posture No. 1. However, the conciliation agreements extracted from those accused of discrimination typically call for more than that. Most of the agreements negotiated thus far involve preferential hiring.

The commission's other main function is information gathering. Every enterprise with 100 or more employees must file annually with the EEOC a form detailing the number of women and members of four different minority groups employed in each of nine different job categories, from laborers to "managers and officials." The minority groups are Negroes; Americans of Mexican, Puerto Rican, Cuban, or Spanish origin; Orientals; and American Indians (who in Alaska are deemed to include Eskimos and Aleuts). With some 260,000 forms a year to process, the EEOC is having some difficulty in staying on top of the data it is collecting. "Obviously, we can't look critically at all the reports." Brown concedes. Eventually, however, he hopes to develop some computerized procedures for finding patterns of discrimination, i.e., procedures somewhat analogous to those employed by the Internal Revenue Service in deciding which tax returns to audit.

Meanwhile, the EEOC is getting a fair amount of help from people who believe they are being discriminated against. When any complaint is received at the commission, even one with no visible substance to it, an EEOC staff member pulls the file on the company in question and looks for patterns of discrimination. In fiscal 1972 more than 30,000 charges were filed.

Special rules for contractors

The other major federal program is based on the special obligations incurred by government contractors. This program may be traced all the way back to 1941, when President Franklin D. Roosevelt issued an executive order outlawing racial discrimination by defense contractors. Every President since Roosevelt has issued one or more orders extending the reach of the ban. It applies now to subcontractors as well as primes, to civilian as well as military purchases, and to services as well as goods. It affects every division and every subsidiary of any company with a contract worth $10,000 or more. It covers women as well as racial, religious, and ethnic minorities. And it has entailed increasingly expansive definitions of "nondiscrimination." Right now, about a quarter of a million companies, employing about a third of the U.S. labor force, are covered by the executive orders.

At the time President Nixon took office most government contractors were operating under Executive Order 11246, which had been issued by President Johnson in September, 1965. The order, as later amended by Johnson, required "affirmative action" by employers—but did not specify what this meant in practice. The Office of Federal Contract Compliance had never developed guidelines for determining whether contractors were in compliance. It was left to the Nixon Administration to make the program operational.

The Administration's first major decision about the program was to make it, in the marvelous label applied by the Labor Department, "result-oriented." Affirmative action could have been defined so that it required companies to incorporate certain procedures into their personnel policies—but did not require that any particular results follow from the procedures. The difficulty with this approach was that companies determined to discriminate might simply go through the motions while continuing to exclude women and minority-group members. "It just would have been too easy for them to make patsies of us," said Laurence Silberman, who was solicitor of the Labor Department at the time, and who participated in the formulation of the program. An alternative approach, which was the one essentially adopted, would require each company to set goals and timetables for hiring specified numbers of women and minority-group members; would allow the government to review the goals to ensure that they were sufficiently ambitious; and, if they were not met, would require the company to prove that it had at least made a "good faith effort" to meet them.

This approach was certainly calculated to produce results. The difficulty was that it also seemed likely to produce *reverse* discrimination by companies fearful of losing their contracts. The Administration recognized this problem from the beginning, and agonized over it quite a lot. "No program has given me greater problems of conscience than this one," said Silberman recently, just before leaving the Labor Department to go into private law practice in the capital. In the end, however, the Administration always came back to the view that a program that didn't achieve results would be a charade—and that the only way to ensure results was to require goals and timetables.

The rules of the new game were first set forth in January, 1970, in the Labor Department's Order No. 4, signed by then-Secretary George Shultz. At the time, it seems clear, businessmen did not pay a great deal of at-

tention to Order No. 4. It is perhaps worth noting that the momentous changes signaled by the order had never been debated in Congress, not even during the great outpouring of civil-rights legislation in the 1960's. Anyone looking for examples of the growing autonomy of the executive branch of the federal government could do worse than focus on this quite unheralded administrative regulation.

TRYING TO BE REASONABLE

Specifically, Order No. 4 requires that every contractor have a written affirmative-action program for every one of his establishments. Every program must include a detailed report on the company's utilization of each of the four basic minorities in each of its own job categories. (A "Revised Order No. 4," issued by Secretary of Labor J. D. Hodgson in December, 1971, called for reports on women, too.) Whenever there are job categories with fewer women or minority-group members "than would reasonably be expected by their availability," the contractor must establish goals for increasing their utilization.

Well, how does one determine the appropriate utilization rates? The order makes a great show of being helpful in this regard, listing eight criteria that contractors should consider in trying to answer the question. The first is "the minority population of the labor area surrounding the facility"; others include "the availability of minorities having requisite skills in an area in which the contractor can reasonably recruit," and "the degree of training which the contractor is reasonably able to undertake as a means of making all job classes available to minorities." The criteria certainly give contractors a lot to think about, but they do not, in the end, make clear what would be a reasonable utilization rate for, say, black mechanics. A contractor focusing on this matter might find himself utterly confused about the number of blacks in town who were already trained as mechanics, the number who were "trainable," the amount he was expected to spend on training, the distance he was expected to travel to recruit, etc.

In practice, contractors are encouraged to assume that they are underutilizing women and minorities and, accordingly, they have goals and timetables just about everywhere. For example, International Business Machine Corp., which has long been a model employer so far as fair-employment practices are concerned, has goals and timetables today at every one of its 400-odd establishments in the U.S.

Because the criteria are so vague, the goal-setting procedure often becomes an exercise in collective bargaining, with the outcome dependent on the respective will and resourcefulness of the company's top executives and the government's compliance officers. The government is ordinarily represented in these matters by whichever of its departments is contracting for the company's services; the OFCC does some, but not much, coordinating. On the whole, the enforcement varies considerably in both fairness and effectiveness from one company to another. Furthermore, some companies deal with several different departments; Union Carbide, for example, is monitored by the Atomic Energy Commission and the Departments of Defense, Transportation, Labor, Interior, and Agriculture.

The compliance officers themselves are career civil servants, and they seem to come in all varieties. Two quite different criticisms of them are often heard. One is that they are apt to be knee-jerk liberals, persuaded in advance that the big corporation is guilty. The other is that they have often lazily adopted the position that anything the company proposes is fine with them. Herbert Hill, the labor specialist of the National Association for the Advancement of Colored People, is prepared to regale anyone who wants to listen with tales of compliance officers who have been co-opted by corporate personnel departments. One senior official of the Labor Department who has been in a good position to observe the contract-compliance program was asked recently what he thought of these two criticisms. "They're both true," he answered, adding, after a moment's reflection, that the compliance officers also included many thoughtful and conscientious public servants.

WHAT'S HAPPENED TO MERIT?

There is no doubt that, between them, the EEOC and the contract-compliance program have transformed the way big business in the U.S. hires people. Even allowing for those co-opted compliance officers, the government has gone a long way toward wiping out old-fashioned discrimination in the corporate universe. But it is increasingly evident that, in doing so, the government programs have undermined some other old-fashioned notions about hiring on the basis of merit.

The undermining process can be discerned in the campaigns, waged successfully by EEOC and OFCC, against certain kinds of employment standards. Employers who demand certain skills, education levels, or test-score results are presumed to be discriminating if their standards have the effect of excluding women or minority-group members. To counter this presumption, the employer must demonstrate conclusively that the skills are in fact needed for the job. If test-score results are involved, he must also demonstrate that the tests reliably predict the skills in question and, finally, that "alternative suitable . . . procedures are unavailable for his use." One argument the employer *cannot* make is that he had no discriminatory intent in establishing the requirements. Under Title VII, as administered by the EEOC, the intent is irrelevant; it is only the effect that matters—which represents a major alteration in the law of discrimination.

The altered concept became the law of the land in March, 1971, when the U.S. Supreme Court upheld the EEOC's view, and overruled a court of appeals, in *Griggs vs. Duke Power*. The company had required applicants for certain jobs to have a high-school diploma and also to score at certain levels in aptitude tests. There was no contention that Duke Power intended these standards to have a discriminatory effect, and it was agreed that they were applied impartially to blacks and whites alike. It was also agreed that the standards resulted in very few blacks being hired. The company argued that it wanted to use the standards to improve the over-all quality of its labor force; but it could not demonstrate that the standards had a direct relationship to the jobs being performed. In ruling that the standards had to be dropped, Chief Justice Warren E. Burger, who wrote the Court's opinion, upheld the EEOC's contention that Title VII "has placed on the employer the burden of showing that any given requirement must have a manifest relationship to the employment in question."

Anyone pondering the particulars of the Duke Power case would have to feel sympathy for the black workers involved. Growing up in a society that had denied them a decent education, they were unfit for many skilled jobs. When they applied to do some relatively unskilled work that they could perform, they were excluded by educational standards—which, the facts suggest, really were extraneous to the company's needs. Unfortunately, the logic of the Duke Power decision suggests that some perfectly reasonable standards are now in trouble too. Companies that have high standards and want to defend them will immediately perceive that the ground rules, which not only place the burden of proof on the employer but require coping with some formidable-looking validation procedures, are not inviting. Many will obviously conclude that it is simpler to abolish their standards than to try justifying them.

The new law presents special management problems to the numerous companies that have traditionally hired overqualified people at entry-level jobs, expecting them to compete for the better jobs. Dr. Lloyd Cooke, who monitors Union Carbide's equal-employment-opportunity program, suggested recently that most big companies like his own could no longer assume there were a lot of highly qualified people searching out their own paths to the top. "Now we must develop upward mobility models that include training along the way."

In addition to all their problems with tests and formal standards, federal contractors often face a new kind of pressure on the informal standards they may have in mind when they hire and promote people. Revised Order No. 4 specifies: "Neither minority nor female employees should be required to possess higher qualifications than those of the lowest-qualified incumbent." The logic of this rule is inexorable, and it too implies lower standards. In any organization that has a number of people working at different levels of skill and competence—a corporate engineering staff, say, or a university economics department—whoever does the hiring would ordinarily be trying to raise the average level of performance, i.e., to bring in more people at the high end of the range. If the organization must take on applicants who are at the low end or face charges of discrimination, it can only end up lowering the average.

Professor Sidney Hook, the philosopher, has assailed the possibilities of this "fantastic" requirement in universities. "It opens the door," he has written, "to hiring persons who cannot meet *current standards of qualification* because, forsooth, a poorly qualified incumbent was hired by some fluke or perhaps ages ago when the department was struggling for recognition."

WHAT CONGRESS HAS PROSCRIBED

For reasons that are certainly understandable, neither the EEOC nor the OFCC has ever said in writing that it believed the law to require some hiring or less-qualified people. To do so would apparently conflict with some of President Nixon's animadversions against quotas. In addition, it would seem to go against the plain language of the laws in question. It is, after all, logically impossible to discriminate in favor of blacks without discriminating against some whites; thus anyone espousing preferential hiring of blacks would be bucking Section 703(a) of Title VII, in which it is deemed unlawful for an employer "to . . . classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities . . . because of such individual's race, color, religion, sex or national origin." In *Griggs*, Chief Justice Burger reaffirmed the intent of the law in plain terms: "Discriminatory preference for any group, minority or majority, is precisely and only what Congress has proscribed."

In pushing preferences for women and minorities, the government's lawyers and compliance officers repeatedly offer the assurance that "you never have to hire an unqualified person." Since unqualified persons are by definition unable to do the job, the assurance is perhaps less meaningful than it sounds. The real question is whether employers should have to hire women or minority-group members who are less qualified than other available workers.

The answer one gets in conversation with EEOC officials is clear enough. If hiring someone who is less qualified will help an employer to utilize women or minorities at proper levels, then he should do so. Chairman Brown was asked recently what an employer should do if he was presumed to be underutilizing women and there were two ap-

plicants for a job: a fairly well qualified woman and a man who was somewhat better qualified. "If it's just a question of 'somewhat better,' you should probably hire the woman," he replied

THE LAWYER'S PREDICAMENT

How can the lawyers who run the federal programs justify preferences that seem to violate the intent of the basic statutes? Not all the lawyers would respond in the same way, but most of them would point to some court decisions at the appellate level that call for preferential hiring and even hard quotas. They would also note that the Supreme Court has declined to review these decisions. In one important case, for example, the Alabama state troopers were ordered by a federal judge to hire one black trooper for every white man hired until the over-all ratio was up to 25 percent black. Most of the lawyers would also agree with this formulation by William J. Kilberg, the Labor Department's associate solicitor for labor relations and civil rights: "In situations where there has been a finding of discrimination, and where no other remedy is available, temporary preferential hiring is legal and appropriate."

Kilberg himself believes strongly that preferences should be limited to these special circumstances—in which it is indeed hard to argue against them. But other government lawyers view them as natural and desirable in a wide range of circumstances. They argue, for example, that it is unnecessary to require a finding of discrimination; they contend that companies underutilizing women or minority-group members are per se guilty of discrimination and that it is appropriate, in reviewing their goals and timetables, to push for some preference. Furthermore, the EEOC tends to the view that any past discrimination justifies preferences, i.e., it often fails to consider whether other remedies are available.

Last fall H.E.W.'s Office of Civil Rights made a major, but only partially successful, effort to clarify the ground rules of the contract-compliance program. J. Stanley Pottinger, who has headed the office for most of the past three years (he recently moved over to the Justice Department), put together a volume spelling out some guidelines. At the same time, somewhat confusingly, he issued a covering statement that went beyond anything in the volume. It said, "Nothing in the affirmative-action concept requires a university to employ or promote any faculty member who is less qualified than other applicants competing for that position." That statement was, and indeed still is, the only formal declaration ever issued by any contract-compliance official ruling out a requirement for hiring less-qualified job applicants.

Many contractors who read the statement took it for granted that the same rule would apply to corporate employment. Unfortunately, anyone talking about this matter to officials of the Labor Department soon discovers that they regard university hiring problems as somewhat special. There is a view that faculties have a unique need for "excellence," but that in the business world, and especially at the blue-collar level, most jobs are such that employers suffer no real hardship when "less-qualified" people are hired.

A MESSAGE TO JACK ANDERSON

Meanwhile, corporate executives tend to take it for granted that, in practice, reverse discrimination is what affirmative action is all about. Whoever it is at International Telephone & Telegraph Corp. that leaks internal memorandums to columnist Jack Anderson recently sent along one on this subject. In the passage that Anderson published, Senior Vice President John Hanway was proposing to another executive that thirty-four rather high-ranking jobs "lend themselves readily to being filled by affirmative-action candidates," i.e., they should be filled by women or minority-group members.

Companies' public declarations about affirmative action do not ordinarily propose so blatantly to prefer these groups, but the dynamics of the program more or less guarantee that there will be preferences. Revised Order No. 4 says, "Supervisors should be made to understand that their work performance is being evaluated on the basis of their equal employment opportunity efforts and results, as well as other criteria."

Supervisors are indeed getting the message. At I.B.M., for example, *every manager* is told that his annual performance evaluation—on which the prospects for promotions, raises, and bonuses critically depend—includes a report on his success in meeting affirmative-action goals. A memo last July 5, from Chairman C. Peter McColough to all Xerox managers in the U.S. (it was later published by the company), warned that "a key element in each manager's over-all performance appraisal will be his progress in this important area. No manager should expect a satisfactory appraisal if he meets other objectives, but fails here." At Xerox, furthermore, the goals are very ambitious these days. Something like 40 percent of all net additions to the corporate payroll last year were minority-group members.

In principle, of course, a line manager who is not meeting his targets is allowed to argue that he has made a "good faith effort" to do so. But the burden of proof will be on the manager, who knows perfectly well that the only sure-fire way to prove good faith is to meet the targets. If he succeeds, no questions will be asked about reverse discrimination; if he fails, he will automatically stir up questions about the adequacy of his efforts and perhaps about his racial tolerance too (not to mention his bonus). Obviously, then, a manager whose goals call for hiring six black salesmen during the year, and who has hired only one by Labor Day, is feeling a lot of pressure to discriminate against white applicants in the fall. "In this company," said the president of one billion-dollar enterprise recently, "a black has a better chance of being hired than a white, frankly. When he's hired, he has a better chance of being promoted. That's the only way it can be."

SOME KIND WORDS FOR ABILITY

The future of the "quotas issue" is hard to predict, for several reasons. One is the continuing blurriness of the Nixon Administration's intentions. For a while, last summer, these appeared to have been clarified. In August, Philip Hoffman, president of the American Jewish Committee, sent identical letters to Nixon and McGovern expressing concern about the spread of quota systems in American education and employment. Both candidates replied with letters assailing quotas. The President wrote to Hoffman: "I share your support of affirmative efforts to ensure that all Americans have an equal chance to compete for employment opportunities, and to do so on the basis of individual ability . . . With respect to these affirmative-action programs, . . . numerical goals . . . must not be allowed to be applied in such a fashion as to, in fact, result in the imposition of quotas."

This declaration was followed by a number of newspaper articles suggesting that the Administration was preparing to gut the affirmative-action program. The articles were wrong however. Before the reply to Hoffman had been drafted, a number of Administration officials—they included White House special consultant (on minorities) Leonard Garment, Silberman, and Pottinger—met to discuss the program and to consider whether the time had come to change it. Specifically, they considered whether to drop the requirement for goals and timetables. And they decided, as they had in earlier reviews, to resolve their doubts in favor of standing pat.

It seems clear that the Nixon letter to Hoffman temporarily shook up some members of the equal-opportunity bureaucracy, but it doesn't seem to have led to any major changes in the way the federal program is implemented. Many executives, including some who are vigorous supporters of the program, confess to being baffled by the contrast between the President's words and the bureaucracy's actions. General Electric's man in charge of equal-employment-opportunity programs, whose name happens to be Jim Nixon, remarked recently that he kept reading in the papers that "the other Nixon" was cutting back on affirmative action, but "around here, all we see is a continuing tightening of the noose."

Perhaps the simplest explanation of that contrast between words and actions lies in the very nature of the program. It is logically possible to have goals and timetables that don't involve preferential hiring—and that happy arrangement is what the Administration keeps saying we have now. But there are built-in pressures that keep leading back to preference: the implicit presumption that employers are "underutilizing" women and minority-group members; the further presumption that this underutilization is essentially the result of discrimination; the extraordinary requirement, quite alien to our usual notions about due process, that unmet goals call for the employer to demonstrate good faith (i.e., instead of calling for the government to prove bad faith). It seems reasonable to speculate that at some point the Administration will abandon goals and time tables, conceding that they lead in practice to preferential hiring and even quotas. Indeed, some of the program's senior officials regard the present format as temporary. Pottinger, who has spent a lot of time in recent years arguing that goals don't mean quotas, nevertheless says, "I sure hope they're not permanent."

In any case, one would have to be skeptical of the long-term future of any program with so many anomalies built into it. For a democratic society to systematically discriminate against "the majority" seems quite without precedent. To do so in the name of nondiscrimination seems mind-boggling. For humane and liberal-minded members of the society to espouse racial discrimination at all seems most remarkable.

THE CRUELTIES OF REVERSE DISCRIMINATION

One immediate threat to the program may be discerned, meanwhile, in a number of suits against corporations and universities, alleging some form of reverse discrimination. H.E.W. now has an "ombudsman" working full-time on such complaints. It seems likely that companies engaged in preferential hiring will be hit by more such suits as the realities of their programs sink in on employees and job applicants.

But even aside from all the large litigious possibilities, there are surely going to be serious problems about morale in these companies. It is very difficult for a large corporation to discriminate in favor of any group without, to some extent, stigmatizing all members of the group who work for it. G.E.'s Nixon, who is himself black, says that talk about hiring less-qualified minority-group members makes him uneasy—that "it puts the 'less-qualified' stamp on the minorities you do hire." In companies where reverse discrimination is the rule, there will be a nagging question about the real capabilities of any black man who gets a good job or promotion. The question will occur to the white applicants who didn't get the job; it will occur to customers who deal with the black man; and, of course, it will occur to the black himself. Perhaps the cruelest aspect of reverse discrimination is that it ultimately denies minority-group members who have

made it on their own the satisfaction of knowing that.

In short, businessmen who are opting for preferential hiring, or who are being pushed to it by government pressure, may be deluding themselves if they think they're taking the easy way. It seems safe to say that at some point, even if the government does not abandon its pressures for preference, more businessmen will begin resisting them. It should go without saying that the resistance will be easier, and will come with better grace, if those businessmen have otherwise made clear their opposition to any form of discrimination.

TRANS-ALASKA PIPELINE

Mr. GRAVEL. Mr. President, on May 3, 1973, I appeared before the Senate Interior and Insular Affairs Committee in support of legislation that would, among other provisions, authorize the Secretary of the Interior to grant sufficient right-of-way width to construct the Trans-Alaska Pipeline.

While we study and discuss the national energy shortage, our situation worsens. Our balance of payments deficits continue to climb; the gasoline and fuel shortage become more precarious each day; and Alaska still has an unemployment rate more than twice the national average.

I ask unanimous consent to have printed in the RECORD my statement of May 3. Construction of the Trans-Alaska Pipeline would not resolve all our pressing national problems, but it would go a long way toward alleviating them.

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

STATEMENT BY SENATOR MIKE GRAVEL

Mr. Chairman: I deeply appreciate the opportunity to appear before this Committee to urge enactment of legislation to amend Section 28 of the 1920 Mineral Leasing Act to give the Secretary of the Interior authority to grant right-of-way permits specifically for the Trans-Alaska Pipeline in excess of the existing 25-foot limit on each side of oil and gas pipelines. I also ask the Congress to declare that the Secretary of the Interior has met all requirements under the National Environmental Protection Act for the environmental impact statement on the Trans-Alaska Pipeline. Briefly, I appeal to the Committee and the Congress to remove the roadblocks so that construction of the line can get underway without further delay.

With reference to the Trans-Alaska Pipeline, we are here today because the United States Court of Appeals for the District of Columbia Circuit, on February 9, 1973, found that the Secretary of the Interior lacked the authority to grant a right-of-way permit for a width in excess of 54 feet (25 feet on each side of the line plus the width of the line). Thus, according to the Appeals Court's decision, the Congress is charged with the responsibility of amending the 1920 Mineral Leasing Act to give the Secretary of the Interior the necessary authority to grant a width in excess of the present limitation of 25 feet on each side of oil and gas pipelines.

This decision points up very clearly that with today's modern construction methods and machinery, a number of oil and gas pipelines have been constructed in violation of the 1920 Mineral Leasing Act, and could effectively block any future construction of pipelines as well as power transmission lines and other facilities. Further, there is even the threat that maintenance of existing oil and gas pipelines may have violations as well. Thus, we have come to the cross-roads. Regardless of the Trans-Alaska Pipeline issue, the 1920 Mineral Leasing Act will have to be amended. The overall issue of rights-of-way is a complex one and should be considered with deliberation. The narrower issue of a right-of-way for the Trans-Alaska Pipeline has been deliberated at great length and now calls for immediate action.

A number of days have already been consumed in both the Senate and House Interior and Insular Affairs Committees on hearings covering the overall question of rights-of-way. I wish to commend Chairman Jackson at this point, and to thank him for setting aside two days of hearings specifically for the Trans-Alaska Pipeline. I am indebted to him and value his knowledge and leadership in trying to resolve the national energy crisis.

We have had a number of experts appear before the congressional committees testifying about the national energy crisis, the balance of payments problem, and the Governor of Alaska has appeared again just yesterday, pointing out Alaska's urgent need for revenue which the pipeline would generate. There are many other benefits to be derived from construction of the Trans-Alaska Pipeline, but let us concentrate on the three major points just mentioned.

THE NATIONAL ENERGY CRISIS AND BALANCE-OF-PAYMENTS DEFICITS

Is the United States facing an energy crisis? Do we have a balance of payments problem? Are our problems real or imagined? If they are real—and they must be obvious to all of us—then what are we going to do about trying to resolve these problems? Talking about them won't resolve them, nor is appointing another committee to study the problems the answer. We can talk, study or stick our heads in the sand like the proverbial ostrich—but the problems will simply not go away. To the contrary—further delay in construction of the Trans-Alaska Pipeline will only erode our position as a major power. This is a blunt assessment of the situation.

The Honorable William E. Simon, Deputy Secretary of the Treasury, appeared before the Subcommittee on Public Lands of the House Committee on Interior and Insular Affairs on Monday, April 30.

Secretary Simon stated: "The United States faces serious economic and monetary problems today because of our rapidly deteriorating balance of payments. We cannot afford to permit these deficits to go on mounting unnecessarily by delaying the development of already proven domestic resources. In the past this country has enjoyed energy security because of our shut-in production potential. This potential has now disappeared. Imports are soaring and several countries have declared that they intend to use their oil as a political weapon. Can we afford to become increasingly dependent upon such countries by deliberately delaying the development of the largest find of oil in U.S. History?"

This is a question that I also pose to my colleagues. Can we afford to keep North Slope oil in the ground and continue to depend upon foreign imports.

Without citing statistics on the present balance of payments deficits, and trying to project those deficits through the next five or ten years, I think it is reasonable to assume that for each additional barrel of oil domestically produced, it will be one barrel less that we have to import. It is elementary that this will be reflected in our balance of payments.

According to figures released by the Department of the Interior, the total energy consumption doubled during the 18-year period 1950–1968. It is anticipated that we can expect this trend to continue at the rate of approximately 4.2% per year through 1985. Senator Jackson as recently as March 27th pointed out that 27% of our oil consumption was imported in 1972 and that the figure is expected to rise to 33% in 1973 and to reach 60% by the end of this decade. This means that unless we increase our domestic production we will become more and more dependent upon oil imports, the continuation of which have a high degree of uncertainty.

The news media has reported on the critical energy shortage and cited convincing examples of extreme hardship endured by communities across the Nation. The situation reached such critical proportions on February 13 that Governor Wendell R. Anderson of Minnesota asked the Office of Emergency Preparedness to declare the state a disaster area in order to get Federal help in warding off the oil shortage. Schools and factories were shut down throughout the Midwest and some sections of the East Coast. The only thing that saved us from an even worse situation encompassing more states and communities was the relatively mild winter we experienced. These are immediate effects from the energy shortage, and the situation will certainly worsen as time goes by. I do not need to remind the committee that this Nation runs on wheels which means consumption of oil and its by-products, gasoline and diesel. Alaska, for example, is almost totally dependent upon the Lower 48 States for its food. Envision, if you will, what would happen to 310,000 people of Alaska if air, marine and truck lines were severed because of lack of gasoline and diesel fuel? A strong example, perhaps, but who is to say with any degree of certainty that it cannot happen? If the energy shortage worsens, indeed, it not only could happen, it would happen! Perhaps pointing out the dependency upon trucks and railroads for transporting foods to our larger cities would serve as a better example because it is somehow closer to "home." We are then talking about millions of people—not Alaska's 310,000 citizens.

It is clearly to the advantage of the United States to increase domestic oil production at the earliest possible time. This means marketing the Prudhoe Bay reserve, and exploring Alaska's other vast potential fields.

ALASKA'S FINANCIAL NEEDS

On March 9 before this Committee, the Honorable William A. Egan, Governor of my State of Alaska, outlined in detail what the delay in construction of the pipeline is exacting from Alaskans. He reiterated our problems again yesterday. We need schools, vocational and manpower training, hospitals, health and community facilities, and housing. While Alaska is the largest state in the Union in terms of land mass—1/5th the size of the United States—we have the smallest population with approximately 30% of the 310,000 citizens living in small villages. There you will find people living in the most abject poverty. Our problems are compounded by distance with resulting high transportation costs; by an unfriendly climate over much of the 586,000 square miles; and seasonal employment. Alaska's unemployment rate is generally more than twice the national average in the larger cities and towns and is as high as 90% in the villages.

Revenue from the pipeline would finance programs to give all Alaskans a higher standard of living.

Revenue from the pipeline would enable the State of Alaska to meet its obligations to Alaskan Natives as provided in the Native Land Claims Settlement Act passed by the Congress in December, 1971.

Pipeline construction would mean more jobs—not only more jobs for Alaskans but also for general and pipeline construction workers from the Lower 48 States.

It took the Territory of Alaska almost 100 years—longer than any other territory—to gain statehood. We were "governed" and I use the term advisedly, by a series of Federal Government Offices/Agencies from the time of purchase in 1867 to granting of territorial

status in 1912. From 1867 to statehood Alaska had a long history of systematic exploitation. The Federal Government has long been a substantial employer, but during World War II it became a major employer and we have been greatly dependent upon the Federal Government ever since.

While Alaska is the largest in size, the poorest in terms of standard of living, and the smallest in population, we have been blessed with vast mineral wealth, the extent of which staggers the imagination. We have the potential for self-sufficiency. We simply lack permission for crossing Federal lands to begin developing an infinitesimal part of our vast mineral wealth, The future development and self-sufficiency of Alaska depends upon Alaskans being able to extract and market their natural resources.

Frustration of the Trans-Alaska Pipeline program has not only brought future development of Alaska's oil and gas resources to a halt, it has also had a serious dampening effect on the development of Alaska's great mineral resources. For several years the Congress has been studying the prospect of a serious materials shortage beyond the energy crisis. Just as Alaskan fuel supplies offer a partial answer to the energy crisis, so Alaska's vast untapped materials resources can provide badly needed help in meeting many materials shortages. So long as North Slope oil development is blocked, the materials industry can have no confidence that other development in Alaska will not also be frustrated, smothered with costly delays, and skyrocketing, government imposed, investment risk. On the other hand, North Slope development in progress will not only stimulate interest in other northern resources but also provide access and the possibility of cheap power. The attack on the oil pipeline also blocks gas and other fuels and materials development.

PROTECTION OF THE ENVIRONMENT

I realize there is great concern for the environment and I share this concern. I am, however, convinced that the many studies and engineering tests conducted during the last four years—exceeding a cost of $400 million—will insure construction with the minimum disturbance to the environments. As a matter of fact, the Trans-Alaska Pipeline will be the safest line ever constructed. The studies and tests conducted on the Trans-Alaska Pipeline have set new standards for construction of all future lines throughout the United States. While the four-year delay in construction of the Alaska Pipeline has been costly to the United States in balance of payments and a worsening energy shortage, it has—and I think most of us agree, including the oil industry—served a very useful purpose. A safer line will be constructed today than could have been constructed four years ago.

Alaskans are very concerned about their environment and we intend to see that the pipeline is built with the minimum disturbance to our environment.

Alaska's major industries—lumber, fishing, and construction—are seasonal, which, of course, means seasonal employment. Tourism is rapidly developing into another major industry. While the main influx of tourists is during the late spring and summer months, with development of ski slopes we hope to attract winter sports enthusiasts. It stands to reason that if we are to continue to attract visitors, we must preserve the State's natural beauty. We are, and we must, therefore, be continually concerned about our environment. From the esthetic viewpoint, it would be preferable to traverse paths unmarred by footprints, except one's own. However, we Alaskans are realistic. We understand that development will mean more people, and more footprints.

I went to Alaska, as many before me and many since, to get away from the over-populated East. Alaska gives a man a new freedom and sense of purpose. This is all well and good to give expansiveness to the soul—but our children need shoes, and food, and clothes, and schools—the same as the children from the other 49 States. We like central heat, too, and running water. We can only begin to have a decent standard of living for ALL Alaskans when we are able to develop our resources.

TRANS-ALASKA VERSUS TRANS-CANADA ROUTES

A number of winesses have come before this committee to claim that a Canadian routing for the oil pipeline is preferable to the Alaska Pipeline. These men have come in good faith, but they are ignoring a whole series of problems and constraints that would frustrate construction of an oil pipeline in Canada in the 1970's. What are these constraints? They include political, economic, logistic, nationalistic, and environmental considerations. Before we consider whether or not Canada is ready to build an oil pipeline let's see where Canada stands at the moment with regard to energy policy.

Many witnesses have come here armed with quotations from responsible Ministers of Canada that appear to favor the building of an oil pipeline down the Mackenzie Delta. Most of these quotations are quite dated. There is little doubt in my mind that eventually the Canadians will become convinced that an oil pipeline from the Delta is a good thing. Currently, however, Canada does not even have an energy policy that effectively deals with the question of Northern Resource and Pipeline Development. The Canadians, however, have been devising policy options. In a few weeks, Donald Macdonald, Canada's Energy Minister, is expected to submit energy policy options to the House of Commons.

In a recent interview with a Canadian oil industry publication, entitled Oilweek, published in Calgary, the Minister discussed four basic approaches that would be included in the government statement. These approaches are as follows: 1) Maximum energy development; 2) Optimum environmental considerations; 3) Ultimate conservation; and 4) Continuing development along current lines.

Prime Minister Trudeau has said he expects that the energy policy that will result from discussions of the above options and other studies being presented in the energy policy statement is still a year away. Such a policy must be developed in careful cooperation with the Provinces in Canada as the Federal Government does not have the power to ignore the energy policies of each of Canada's Provinces when formulating its own. This has been demonstrated forcefully in recent months when a dispute broke out between Alberta, Canada's main energy-producing Province, and Ontario, the main energy-consuming Province. Alberta has successfully denied increased gas exports from that Province to Ontario because they are not satisfied with the current wellhead price in their Province. This illustrates the ability of a single Province to frustrate national objectives.

Aside from the problem of Canada developing a coherent energy policy, it is extremely naive to assume that environmentalists and nationalists will not vigorously oppose the construction of an oil pipeline down the Mackenzie Delta. Such groups will have ample opportunity to make their views known at the hearings that must take place before any pipeline—oil or gas—is approved in Canada. There is in fact already organized resistance to even a gas pipeline from the Delta.

As you are aware, an application for a gas pipeline from the Mackenzie Delta is expected to be submitted to Canadian authorities sometime this year. This group hopes that this pipeline will be started in 1975. An oil pipeline application would be in direct competition with a gas line. It is not well understood in the United States that the size of Canadian capital markets and industry is very small in comparison with our own. It is already felt to be a significant problem in Canada to find enough Canadian capital and supplies to make the gas pipeline truly Canadian. The Canadian Government has stated on a number of occasions that any line built in Canada must maximize its Canadian content and ownership. If it is difficult to find supplies, construction men and Canadian capital to build one pipeline, how can the Canadians possibly consider building two lines at the same time down the Mackenzie Delta corridor?

In the same Oilweek article referred to earlier, Minister Donald Macdonald is quoted as saying, "If a decision was made in Washington today to go the Canadian route it would take a year to do the engineering required to present an application, then at least another year to get approval. If that came in time to begin moving material into the North during the 1975 barging season three years of construction would finish the line in 1979 at the earliest. But, of course, the calculations don't take into consideration the possibility that a gas pipeline might win approval during the same period and get underway even without Prudhoe Bay gas as originally planned. The resultant problems of financing, logistics, or even just finding enough construction labor would be immense."

In another issue of the same publicaton, Mr. W. O. Twaits, Chairman of the Board of Imperial Oil of Canada, that country's largest oil company, said that he feels it is physically and financially impossible to build two major pipelines concurrently (down the Delta). He said that sequential construction is the only means of leveling out demands on labor, equipment, logistic systems and operations.

Much has been said in the United States about the balance of payments problem that this Nation is facing. No one here so far seems to have considered the balance of payments problem that Canada would face if it undertook to build a gas and an oil pipeline at the same time. The vast import of capital that would be required to build these lines at the same time could create a severe upward pressure on the level of the Canadian dollar and hence have a serious impact on the manufacturing industries in Canada which provide a large number of Canadian jobs. Could the Canadian Government risk Canadian jobs by attempting to do too much too fast?

If an oil pipeline application were placed before the National Energy Board and the Department of Indian Affairs and Northern Development, a choice would have to be made at some stage between an oil or a gas line down the Delta. It should be pointed out that before the Government can make any decision on a pipeline application full-scale hearings are required before the above boards. Some witnesses seem to have intimated that the Canadian Government would unilaterally approve an oil pipeline without the normal hearings. This is absolutely untrue and the Canadian Government has stated so.

Since it would eventually come down to a choice in Canada between an oil and a gas line, there is little doubt that the Canadians would choose a gas line since the discoveries in Canada's North have so far been almost totally gas.

Another factor that we as politicians should not forget is the current tenuous position of the Canadian minority government. Any issue as explosive as an oil pipeline application would likely receive a cold shoulder from the policy makers at this time.

In addition to the above issues I have touched on, the same problems that I have not mentioned that have held up the Trans-

Alaska Pipeline would likely occur in Canada. These include problems of Indian settlements and environmentally safe engineering methods. We have already solved these problems for the Trans-Alaska Pipeline, I am convinced. By approving the Trans-Alaska Pipeline we will immediately enhance the possibility of a Mackenzie Delta gas pipeline. In a recent interview, again in Oilweek, Mr. William Wilder, Chairman of the Board of the Canadian Arctic Gas Study Limited made the following points:

"It would be very helpful if the Alaska Pipeline is cleared this summer to start construction next winter. The longer it is delayed, the longer the delay in finding out whether gas can be released from the North Slope. If no substantial volume is likely to be available from this source Canadian Arctic will have to depend on more reserves from the Delta to support its ultimate development." He goes on later to say, "It is important also to integrate the Canadian project with Alaska gas. Alaska gas at this stage is required to provide sufficient reserves. It will also answer to a large extent the public concern over the speed with which Canadian reserves will be used."

Remember that Canada has a restriction on gas exports, and that 30 years of Canadian requirements must be met before an application for exports can be entertained. More recently, the government has asked the National Energy Board to call a hearing to determine the level of oil exports that are consistent with the Canadian interest. As you know, up until recently oil exports from Canada were not regulated there.

The environmental spokesmen testifying here yesterday afternoon stated that Canada was willing to increase its oil exports to the United States during the construction of an oil pipeline from Prudhoe Bay. This statement is out of date and inconsistent with the conclusions reached by the National Energy Board in a recent study dealing with oil supply in that country. This study was the main factor that led to a curtailment of oil exports from Canada to the United States. It showed that Canadian oil production in Western Canada will peak within the next two years.

Although many people bandy about the possibilities of the Athabasca Tar Sands contributing significantly to oil production in Canada, currently only one small plant with an output of 40,000 barrels per day is in existence. One more plant with a capacity of 125,000 barrels per day is being planned at present. Expert witnesses in Ottawa have testified that each tar sands plant will take three years to design and construct. The plant referred to above is not expected to be in production for three to four years. Even then the 125,000 barrels per day of new capacity will do very little to alleviate oil shortages whether they be in Canada or the United States. Each tar sands plant, by the way, will cost well over one-half billion dollars.

I would also like to make some statements with reference to the Mackenzie Valley Research Limited Report submitted here yesterday. It is an excellent study pertaining to the engineering, economic, and environmental feasibility of an oil pipeline down the Mackenzie Delta corridor. Few would argue that an oil pipeline cannot be built there. However, as I tried to discuss with you today there are serious problems associated with building an oil line in Canada that are above and beyond the considerations of that report. Some of these problems are quite unique to the Canadian situation, such as the Canadian content restraint, the Canadian ownership constraint and the balance of payments problem that Canada would face if it were to attempt to build two pipelines down the Delta corridor at the same time. The third conclusion of the Summary Report presented here yesterday is the one that I consider ill-founded. How can we assume government approvals would be granted within five years let alone within the first year? I certainly agree that a second oil line from the Arctic should come down the Mackenzie Delta if that is possible. But if we do not move ahead on the Trans-Alaska Pipeline we will be setting back the timetable for initial oil deliveries for many years. We cannot afford to do this.

It has been pointed out that the Midwest is an oil deficient area. It also happens to be a severely gas deficient one. The current gas shortage is propounding the oil shortage. As more and more prospective gas customers and existing interruptable gas customers are forced to turn to oil, the oil shortage gets more serious. By approving the Trans-Alaska Pipeline we will likely be able to get earlier delivery of gas to the Midwest area from Canada and Alaska.

In conclusion, it is extremely naive of us to think that we can solve our problems by handing them over to the Canadians. Environmental issues don't die when they cross borders. Indian claims are not settled by government statements that they are willing to negotiate. Before any pipeline is built in Canada the National Energy Policy of that country must be formulated, lengthy hearings must be completed before the National Energy Board and the Department of Indian Affairs and Northern Development, and finally, the Canadian Government must give a final go-ahead.

Does this sound like a short-term delay to you?

THE AMA AND PHYSICIANS' CHARGES UNDER MEDICARE

Mr. MUSKIE. Mr. President, it has come to my attention that the American Medical Association, a most sophisticated organization, has used some figures in a very unsophisticated way. In the February 1973 issue of AMA Update, the association prints some figures issued by the Social Security Administration to show that average charges by doctors were actually lower in 1971 than they were when the medicare program began—down 5.2 percent for surgical services and down 11.5 percent for outpatient medical care. The headline says, "Under Medicare, Average Doctor Bill Has Been Going Down (Not Up) SSA Data Shows."

Now, since we have all been hearing, and experiencing, the increasing costs of medical care it would indeed be remarkable to find that our perceptions and information have been all wrong—at least with regard to the medicare program. We are asked to believe that average charges for physicians' surgical services have gone down from $174 during the period July 1966 to December 1967 to $165 during January 1971 through December 1971. At the same time average charges for medical services were reduced from an average of $52 to $46.

But what do these figures really mean? A special analysis from the Social Security Administration gives us a somewhat different interpretation from the AMA, for these figures refer to the amount per bill and not per service.

The Social Security Administration states:

Use of the "average charge per bill" is a wholly inappropriate indicator of price per unit of service. One bill submitted under the SMI program often reflects more than one service or procedure. Average charges per bill for physicians' surgical and nonsurgical services have shown a declining trend since the beginning of the program, as the articles have reported. However, all available evidence indicates that this is a result of a change in the billing patterns of physicians which has led to a more frequent submission of bills with fewer services contained on each bill.

The figures which the AMA did not use show that during the first 18 months of the program 25 million bills were processed; during 1971 the number had grown to 45 million. The reason for the drop in charges per bill stems from a reduction in the number of services per bill rather than a reduction in the charge per service.

SSA says unequivocally—

There is no evidence that would indicate that charges have declined at any time during the program's existence.

Data from the current Medicare Survey show that average charge per service to SMI enrollees has risen from $9.47 in 1967 to $12.27 in 1971 for an average annual increase of 6.7 percent. At the same time the physicians' fees component of the Consumer Price Index has risen at the identical rate of 6.7 percent. In addition, data on "reasonable charges" in the medicare program compiled by SSA have also shown an increasing trend since the program began.

It is obvious that the per bill figure is not a reliable indicator of medical charges contrary to what the AMA would by implication have us believe, and it is also obvious that the AMA is being something less than candid in its use of these figures. I deplore this attempt to manipulate the facts concerning rising medicare charges through the misuse of social security figures. The AMA should be in the forefront of efforts to curb rising costs rather than to deny their existence.

Mr. President, I ask unanimous consent that the material from the AMA Update and the Social Security Administration, to which I have referred, be printed in the RECORD.

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

UNDER MEDICARE, AVERAGE DOCTOR BILL HAS BEEN GOING DOWN (NOT UP) SSA DATA SHOWS

Several readers have asked us about the average charges for medical care services provided under Medicare. Usually, the questions pertain to such things as . . .

. . . What do doctors charge under the program?

. . . Is it true that doctors' bills have been "soaring" since the program began in mid-1966?

. . . And what about hospital costs?

Answers to these and kindred questions can be found in data published by the Social Security Administration, the government agency which oversees the Medicare program. (We compiled the accompanying table from SSA reports.)

Among other things, the SSA figures indicate that hospital charges had nearly doubled (up 83.0%) by the end of 1971.

On the other hand, average charges by doctors were actually lower than they were when the program began—down 5.2% for surgical services and down 11.5% for outpatient medical care.

Comparable figures for 1972 are expected to be available by mid-1973.

Under Medicare, incidentally, a doctor bill

is approved for payment only if it has been determined by the insurance carrier to reflect the doctor's "customary charges" for similar services, and also the charges prevailing among other doctors in the locality for similar services.

AVERAGE CHARGES FOR MEDICAL CARE SERVICES UNDER MEDICARE

	Hospital charges (per day)	Physicians' bills	
		Surgical services	Medical Services
July 1966 to December 1967	$47	$174	$52
January 1968 to December 1968	56	164	51
January 1969 to December 1969	64	163	51
January 1970 to December 1970	74	165	49
January 1971 to December 1971	86	165	46

THE NBC NEWS VERSUS AMA CONTROVERSY

(Progress report No. 1)

No! That was the gist of NBC News' response to AMA's formal request for equal time to refute factual errors in NBC News' telecast, *What Price Health?*

"We believe that your charges and your request for 'equal' time are completely without basis," said Richard C. Wald, president of NBC News.

In response, AMA's executive vice president, Dr. E. B. Howard, called Mr. Wald's letter "unresponsive" to our request. "We cited at least 15 instances of inaccuracy in *What Price Health?* and substantiated them with specific documentation," he noted.

Dr. Howard asked NBC News to produce its documentary support for the statements AMA has challenged. "We have put ourselves on record," he said. "We ask that you do the same and let the public be the judge."

In Update for January, we spelled out AMA's objections to several of the statements made by NBC News in the broadcast. At the same time, we offered NBC News "equal space" (8 pages) to comment upon or refute our criticism.

At press time, NBC News had not yet indicated whether it plans to accept that offer. (It's still open.)

QUOTED WITHOUT COMMENT . . .

. . . from a recent speech by William D. Ruckelshaus, Environmental Protection Agency administrator.

"A questionnaire was circulated a few years ago noting the air pollution, noise and congestion caused by the automobile, the displacement of tens of thousands of homeowners and small businessmen by highways, the destruction of natural beauty, the tens of millions of injuries and the almost 2 million deaths during this century and so forth—and people were asked, "Is it worth it?"

"Eighty-five percent responded with an enthusiastic and unqualified, Yes."

PHYSICIANS' CHARGES UNDER MEDICARE

In recent weeks, stories have appeared in various publications which contend that physicians' charges to Medicare patients have declined since the program began in July 1966. Specifically, a 5.2 percent decline in charges per surgical procedure and an 11.5 percent decline in charges for other medical services were reported for the period 1966–71.[1] SSA data on average charges per bill under the Supplementary Medical Insurance (SMI) program were used to substantiate this claim.[2]

Use of the "average charge per bill" is a wholly inappropriate indicator of price per unit of service. One bill submitted under the SMI program often reflects more than one service or procedure. Average charges per bill for physicians' surgical and nonsurgical services have shown a declining trend since the beginning of the program, as the articles have reported. However, all available evidence indicates that this is a result of a change in the billing patterns of physicians which has led to a more frequent submission of bills with fewer services contained on each bill. Partial substantiation of this trend is the increase in the total number of bills reimbursed under SMI. During the first 18 months of the program (July 1966–December 1967), 25 million bills were processed; during 1971, the number had grown to 45 million. Therefore, the reason for the drop in charges per bill stems from a reduction in the number of services per bill rather than a reduction in the charge per service. In fact, data from several sources indicate that charges for physicians' services have increased since the program began.

The Current Medicare Survey (CMS) is a continuing monthly survey initiated by SSA to provide current estimates of hospital and medical services used and of charges incurred by persons covered under the program. Data from the CMS on average charge per service to SMI enrollees show that charges have risen from $9.47 in 1967 to $12.27 in 1971—an average annual increase of 6.7 percent. The physicians' fees component of the Consumer Price Index has risen at an identical average annual rate (6.7 percent) during this period. In addition, data on reasonable charges compiled by SSA have also shown an increasing trend since the Medicare program began. There is no evidence that would indicate that charges have declined at any time during the program's existence.

Finally, per capita reimbursement under SMI has increased 37 percent since the beginning of the program, rising from $73 in 1966–67 to $100 in 1971. Data from the CMS on per capita use of services show that there has been little or no increase in utilization in recent years, indicating that price rise is largely responsible for the higher benefit payments.

THE ADMINISTRATION'S NATIONAL HEALTH INSURANCE PROPOSALS

Mr. KENNEDY. Mr. President, in January, when Secretary of HEW Weinberger appeared before the Labor and Public Welfare Committee with respect to his confirmation, he pledged that a national health insurance proposal would be forthcoming from the administration. In subsequent weeks, he further stated that the health insurance proposal would be the very cornerstone of administration health policy.

It is now a well-known fact that the administration itself has withdrawn its previous health insurance proposals as being woefully inadequate to meet the health needs of the American people. The megaproposal makes that evident. This valuable document provided insight into the policy formulation process as it existed in the closing days of Secretary Richardson's tenure. I am today asking unanimous consent that the full text of the Department of Health, Education, and Welfare action memorandum on national health insurance of April 16, 1973, and Secretary Weinberger's April 23 decisions on that document, be printed in the RECORD. This document summarizes the latest thinking of the administration with respect to national health insurance, which otherwise would not be available to the Senate and the public.

Mr. President, this is the material that presumably was used by Mr. Stuart Auerbach in his preparation of an excellent article which appeared in the Washington Post on Monday, May 21. In addition, I am enclosing a copy of that article.

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

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
April 23, 1973.

MEMORANDUM

To Stuart H. Altman, Acting Assistant Secretary for Planning and Evaluation.
From Eugene J. Rubel, Assistant Executive Secretary (Health).
Subject National Health Insurance.

The Secretary has reviewed your action memo of April 16 and has made the following decisions:

1. Develop options D and F (page 32).
D. Combination of Federally-financed catastrophic coverage and mandated plan.
F. FEHB model.
2. Agrees in principle to terminate tax subsidies but final decision awaits NHI decisions (page 35).
3. With respect to funding favors a joint Federal-State program (page 37).
4. With respect to Medicaid favors termination of Medicaid for populations covered under NHI (page 38).
5. Favors analysis of restructuring of VA medical programs (page 40).

As indicated in your memo, please begin preparation of the detailed analysis of issues. This memo should be circulated for comment no later than May 18 and submitted to the Secretary no later than June 1.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
April 16, 1973.

MEMORANDUM

To The Secretary.
From Deputy Assistant Secretary for Planning and Evaluation/Health.
Subject National Health Insurance (NHI)—*Action Memorandum*

I. INTRODUCTION

National Health Insurance has become the cornerstone of the Administration's health strategy. Last Congress, the President proposed the National Health Insurance Partnership Act (NHIPA). NHIPA has two parts:

The National Health Insurance Standards Act (NHISA), which mandates that employers offer their full-time employees a minimum level of coverage, and

The Family Health Insurance Plan (FHIP), a Federally-financed program for low income families who are not offered NHISA through an employment setting.

As you know, over the last few months HEW staffs have undertaken major efforts to reappraise and improve upon the Administration's current proposals.

This memo seeks your guidance on the fundamental approach that HEW should support and on the directions that future staff work should take. It does not discuss in detail the issues that arise under each major option, e.g., specific issues of cost sharing, benefit package structure, method of administration. These will be presented in a sub-

[1] *AMA Update*, American Medical Association, Vol. 3, No. 2, February 1973.

[2] The Social Security Administration publishes Medicare data on a monthly basis which provides an up-to-date account of claims entered into the system under both HI and SMI. These data are published in both "Monthly Benefit Statistics" (issued monthly) and in "Current Operating Statistics," published in the back of the *Social Security Bulletin*, also issued monthly.

sequent decision memo for the option (or options) that you want developed further.

The next two sections provide background on (1) the justification for NHI and (2) legislative considerations. The following section addresses the major options, which are:

A. NHIPA as introduced in the last Congress.

B. NHIPA with improvements.

C. Federally-financed catastrophic coverage, e.g., Maximum Liability Health Insurance (MLHI)

D. Combination of employer mandated coverage (similar to NHISA) plus Federally-financed catastrophic coverage

E. Employer mandated coverage plus an improved Medicaid program

F. A proposal modeled after the Federal Employees Health Benefits (FEHB) program.

The final section addresses the following major cross-cutting issues:

A. Should the medical and health insurance personal income tax deductions be changed?

B. What is the appropriate role for joint State-Federal funding of health insurance programs, including Medicaid?

C. Should Medicare be restructured?

D. Should Veterans Administration medical programs be restructured?

II. THE JUSTIFICATION FOR NHI

The justifications commonly given for NHI are:

1. The inability of a segment of the population, particularly those who are not employed full time, to purchase private insurance at reasonable rates due to:

a. higher costs of administration. Some 50% of the premium dollar is retained—i.e., not paid as benefits—for individual coverage compared with only 10% for group coverage.

b. greater morbidity among unemployed populations.

2. The belief that society should guarantee financial access to medical care. The President's 1971 and 1972 Health Messages both called for equal access to health care.

In addition, the Administration's health strategy presupposes that it is more equitable and efficient to use financing to provide access to health care rather than supporting institutions directly to provide categorical health services.

The fundamental variables that characterize a NHI proposal include:

A method of financing (e.g., public vs. private); a definition of who is entitled to coverage (Specifically, is coverage universal and, if not, to what groups is it restricted?); a benefit package, i.e., the identification of the services that are covered and the extent of cost sharing (deductibles and coinsurance); a method of administration; and the effects on the delivery system (e.g., impact on price consciousness, features that retard or promote HMO development, reliance on State and substate health planning processes).

Most Americans have some health insurance. Among the 185 million under age 65, 75% are covered by private insurance alone, 10% are covered by public (Medicare, Medicaid, VA, CHAMPUS) programs alone, 4% are covered by both public and private insurance, and 11% have no coverage.

Among the 21 million elderly, 98% are covered under Part A (hospital services) of Medicare, and 95% are covered under Part B (physician services). Part B is available to anyone over 65 who agrees to pay the monthly premium. Also, 4 million elderly are eligible for Medicaid, which largely pays for cost sharing for low income Medicare enrollees and for services that Medicare does not cover, e.g., outpatient drugs, chronic nursing care.

The principal shortcomings of private insurance for populations that are covered are (1) its failure in many instances to protect against the catastrophic cost of major illness and (2) its bias towards hospital services. Most insurance policies have upper limits of $10,000–$25,000, and many policies are even more restrictive, e.g., cover only 30–60 days of hospitalization. Among the 147 million nonaged with private insurance, all have some hospital coverage, 98% have inhospital physician coverage, 62% have outpatient physician coverage, 69% have outpatient drug coverage, 22% have nursing home coverage, and 10% have dental coverage.

Because coverage for hospital services is both more widespread and has lower cost sharing than for physician services, third party payments (public and private) account for 92% of hospital expenditures for hospital services and only 59% of expenditures for physician services.

All State Medicaid programs provide coverage for varying levels of hospital, physician, skilled nursing home, and laboratory and x-ray services. However, the States can take measures—e.g., through fee controls and provider restrictions—to limit the availability of these services. States may cover a wide variety of optional services including prescription drugs (approximately 46 States), dental services (32 States), eyeglasses (33 States), prosthetic devices (35 States), and care for patients over 65 in institutions for tuberculosis (28 States) or mental diseases (34 States).

Although the data are not as accurate as we would like, we do know that persons most likely to be uncovered or have marginal coverage are: low income people not eligible for Medicaid (fewer than half of the population below the poverty line have private insurance), workers, particularly part-time or temporary workers, in low-wage industries, workers in industries characterized by high turnover and transiency, and persons who retire before age 65 because they are in ill health but who do not qualify for Medicare for the Disabled.

Furthermore, low income families spend a disproportionate amount of their personal income on health services, a situation that has changed little since the advent of Medicare and Medicaid, as shown below:

Annual family income	Medical outlays as percent of family income	
	1963	1970
$0 to $3,499	10.6	11.8
$3,500 to $7,499	5.9	6.5
$7,500 and over	3.8	3.7

III. LEGISLATIVE CONSIDERATIONS

The proposals

More than 12 distinct NHI bills were introduced during the 92nd Congress; at least that number will be introduced during the 93rd Congress. The bills fit into several broad categories. The Kennedy-Griffiths and the Javits bills would provide all Americans with Federally-financed comprehensive coverage. The benefit package in the Javits bill is modeled after Medicare but has expanded benefits. Employers could substitute approved private coverage for the Government program, and those that did so would have their health insurance payroll tax eliminated. The Kennedy bill would have the Government arrange for comprehensive coverage, principally with prepaid group practices. Of all the bills introduced, it would entail the greatest amount of Federal intervention.

The Administration's NHIPA, the Ullman bill, the Pell-Mondale bill, AMA's Medicredit (Fulton-Broyhill) proposal, and the HIAA's Health Care (Burleson-McIntyre) proposal all rely on mixed public-private financing and seek to establish minimum Federal standards for private health insurance. The first three would mandate that employers provide such coverage. The AMA and HIAA bills would instead use Federal tax incentives to encourage employers to offer the minimum benefits prescribed by the respective bills. Each bill, except for Pell-Mondale, has provisions for Federal or joint State-Federal financing of coverage for the poor.

Catastrophic health insurance bills have been introduced by Long, Hall, and Hogan/Beall. The Hogan/Beall bill would be privately financed with authority for Federal subsidies for the poor. The others would be fully Federally-financed by either general revenues or a payroll tax. All but the Long bill have cost sharing that is related to income and family size.

As of April 1, all major bills except Congressman Hall's had been reintroduced. Representative Railsback has introduced the 92nd Congress House version of NHIPA, without the Administration's regulatory amendments. In addition, we understand that Senators Brock and Ribicoff and Congressman Roy are each considering proposing legislation. Brock favors Federally-financed catastrophic coverage, and Congressman Roy is believed to favor a mixed public-private approach.

Public views and interest groups

Public witnesses at the House Ways and Means Committee hearings during the fall of 1971 displayed widely diverse attitudes. Of 159 analyzed presentations, 61 (mostly provider or practitioner spokesmen) were silent toward any particular approach. Building on pluralism was the theme of 51 witnesses, nearly half of whom represented medical interests. Full federalization was supported by 42 witnesses, nearly all of whom represented organizations favoring the Kennedy proposal. Five witnesses opposed any Federal action.

NHIPA received qualified endorsement from 12 public witnesses. Strongest support came from the National Association of Manufacturers, the U.S. Chambers of Commerce, and national Blue Cross and Blue Shield spokesmen.

Since the 92nd Congress adjourned, HEW staff have been in contact with most of the major interest groups, other than those fully committed to the Kennedy proposal. They concurred generally with NHIPA's principles but often differed on the specifics. Their concerns focused on assuring universality; placing benefits for the poor on a parity with those for the nonpoor; a clearer cost-control strategy; and a clearer delineation of Federal, State, carrier, and employer responsibilities. Secretary Richardson felt it inappropriate to develop a compromise at this time with the sponsors of bills that are philosophically consistent with NHIPA on the grounds that (1) these sponsors would eventually support the Administration to fend off greater Federal involvement as proposed by Kennedy and Javits and (2) the formation of a coalition now could strengthen the hands of the Kennedy forces.

Current outlook

While the Chairman of the Ways and Means Committee has publicly pledged to renew consideration of NHI legislation, he has also announced that tax reform and trade and pension legislation have equal or higher priority. LH expects the House Ways and Means Committee to consider national health insurance this year, but probably not before this fall. No bill is likely to be approved without some modification by the Committee. It is also likely that other House bodies (the Rogers Health Subcommittee and perhaps the Government Operations Committee and the Post Office and Civil Service Committee) will want to hold their own hearings on aspects of NHI. In the Senate, any health insurance bill leaving the Finance Committee will probably be referred to the Kennedy Health Subcommittee of the Labor and Public Welfare Committee and possibly to the Government Operations Committee.

In short, we anticipate that NHI faces a lengthy gestation process in Congress.

IV. BASIC STRUCTURE OF NHI

This section requests your decisions on the fundamental structure that HEW should support for NHI. At this time, you may wish to narrow the range of options that HEW staff should analyze in more detail rather than making firm choices. The options presented are:

A. NHIPA as introduced in the last Congress

B. NHIPA with modifications in basic structure

C. Maximum Liability Health Insurance (MLHI)

D. Combination of employer mandated coverage and Federally-financed catastrophic coverage

E. NHISA (i.e., mandated employer-employee coverage) plus an improved Medicaid program

F. An approach modeled after the FEHB program.

A. NHIPA as introduced in the last Congress

Description of NHIPA

Eligibility and Financing. NHISA would mandate that all employers offer their full-time employees and their dependents a basic package of benefits. Medicare beneficiaries, religious workers, and government employees would be exempted. In addition, pools, which would be administered by the States, would offer coverage to small-employer groups; the self-employed; and persons not otherwise coveved by NHISA, FHIP, or Medicare.

FHIP would be Federally financed and would cover low income families with children (maximum income for family of four= $5,000) provided they do not meet the NHISA employment criteria. It would replace Medicaid for the AFDC population; Medicaid would be retained for the blind, the disabled, and the aged welfare categories. It would have a premium, deductible, and cost sharing structure that would be graduated based on family income.

Benefit Package. The basic NHISA plan would cover hospital services; inpatient and outpatient physician services (other than those rendered by psychiatrists), including immunizations and other preventive services; a routine eye examination annually for children under 12; laboratory and x-ray services; medical supplies, except prosthetic devices, and emergency ambulance services. Hospital room and board charges would be subject to a two-day annual deductible per person and 25% coinsurance. Other charges would be subject to a $100 deductible and 25% coinsurance, except that a limited number of physician visits for children under 5 would be exempt from cost-sharing. No cost-sharing would be imposed for the current year and the next two years once an individual received $5,000 of covered services in a year. There would be a lifetime maximum limit of $50,000 on total payments per person, with a $2,000 automatic annual restoration.

FHIP would cover similar services but has annual upper limits of 30 days of hospital care and 8 ambulatory physician visits per person. FHIP (but not NHISA) would also cover (1) treatment in extended care facilities (ECFs), with three days in an ECF substituting for one day of hospital care, (2) home health services, with 7 visits substituting for one day of hospital care, and (3) family planning supplies.

Administration. NHISA would be privately administered under State regulation, provided the States had laws that met minimum Federal standards. The Federal Government would administer NHISA in States that did not have the requisite laws.

FHIP would be Federally administered.

Delivery System Effects. Major effects are as follows:

Both NHISA and FHIP provide HMO options.

The State health planning agencies would be required to give affirmative approval of major capital expenditures that would generate reimbursement under FHIP or NHISA.

PSROs would monitor the need for services and the quality of care provided.

Providers would be required publicly to disclose information concerning standard charges, hours of operation, and extent of licensure or accreditation.

Costs. NHISA would be financed privately, with the employer paying at least 65% of premiums the first 2½ years of the program and 75% thereafter. The employee would pay the remainder. The average annual premium cost in FY 1975 for members of large employer groups is estimated at $170 for single persons and $540 for families of two or more. The average premium cost per employee electing coverage would be $410. The cost to the employer would be roughly 12¢ per hour the first year of the program. However, economic theory argues that, in the long run, the employer share is taken from employee wages rather than from profits, except for workers who earn the minimum wage. Thus, the real incidence of the premium costs would be on the employee. The economic effect of mandating NHISA coverage on workers who earn the minimum wage would be similar to that of an increase in the minimum wage of 12¢ per hour.

Although NHISA would be privately financed, it would result in a tax loss because health insurance premiums are deductible. Our preliminary estimate is that the loss in income tax revenues at 1975 prices would be on the order of $1 billion.

FHIP would have a gross Federal cost of $3.1 billion in FY 1975 less an offset of $2.4 billion due to the termination of Medicaid for the AFDC population, yielding a net Federal cost of $0.7 billion. However, the FHIP income limits were designed in 1970 and may be unrealistically low for 1975–76, the earliest time that FHIP could become effective. The limits would exclude a significant proportion of persons who would have been eligible for Medicaid.

Criticisms of NHIPA

NHIPA has been criticized for its mixed public-private financing, its cost-sharing features, and its reliance on private carriers. The Kennedy forces, in particular, would have Federal financing replace the private insurance industry. In our opinion, these criticisms are not cause for concern.

A second class of criticism has considerably more validity. The most fundamental criticism is NHIPA's failure to provide universal entitlement. *Few of the 11% who now do not have any health insurance would become covered as a result of NHIPA.* FHIP would newly cover some low income male-headed families, but is more restrictive than most Medicaid programs. However, many States would supplement FHIP. The major effect of NHISA would be to broaden the scope of coverage, particularly for outpatient physician services, for those who presently have some form of private insurance. Gaps in coverage result because:

FHIP does not cover low income singles and childless couples (estimated 1975 cost to do so = $3 billion).

The proposed structure of the pools, which is central to the Administration's proposals, is unworkable in the absence of a subsidy (estimated cost of subsidy = $2 billion). Even with a subsidized pool, many persons could not afford coverage.

No provision, other than the pools, is made for the short-term or part-time worker.

Many full-time workers who change employment would be uncovered between jobs.

Because NHIPA does not achieve universal entitlement, a patchwork system of coverage would be perpetuated, and Congress would find it tempting to enact further piecemeal remedies, as evidenced by the recent inclusion in Medicare of end-stage kidney disease but not other high cost illnesses.

In addition:

The income distribution consequences would be regressive with regard to both the financing and, to a lesser extent, the benefit structure. NHISA would be financed by a fixed capitation contribution per employee. Thus, the proportion of earnings devoted to NHISA premiums would be greatest among low income workers.

The burden of cost-sharing would be regressive, since the deductible and coinsurance structure is not related to income. The cost-sharing provisions would reduce utilization among the low income population more than among those of high income. However, workers in low income industries are more likely than those in high income industries to have minimal coverage and thus would benefit most by NHISA.

On one hand, a notch exists between FHIP and NHISA because FHIP has lower deductibles and cost-sharing and broader benefits than NHISA.

On the other hand, the limitations of coverage to 8 physician visits and 30 days of hospitalization under FHIP have been criticized as being restrictive. As a result, the Administration has been accused of perpetuating different insurance systems for the poor and nonpoor.

NHISA and FHIP exclude outpatient drugs, dental care, and psychiatric services. NHISA excludes home health and ECF services as well.

Although employers must offer their employees NHISA coverage (and they may also offer competing plans), employees need not accept coverage. Consequently, society would still face the dilemma on whether to help someone who suffers a financially catastrophic illness after failing to obtain coverage.

The overall proposal is difficult for the public to understand.

As a result of HEW staffwork to improve NHIPA, it has been scrutinized more closely within HEW than the competing proposals, many of which have substantial deficiencies that have not been subject to public debate. We believe that HEW should have on hand the same level of critique of the major competing proposals, and SSA has agreed to prepare appropriate documentation.

B. NHIPA with structural improvements

This section discusses potential major changes in NHIPA. We believe that you need to understand the nature of these changes to assess whether the Administration should continue to support NHIPA. Should NHIPA (or aspects thereof) be retained, we will subsequently further develop this option in the next decision memo. The issues addressed below relate to:

1. Singles and childless couples
2. Pool coverage
3. Continuity of coverage
4. Equating the FHIP and NHISA benefit packages
5. The FHIP/NHISA notch

Addressing all of these problems would increase Federal budget outlays by roughly $7 billion, less a possible offset of $1 billion if Medicaid for the disabled and blind were terminated. Additional costs would be introduced if the FHIP income limits were raised to reflect prices in 1975 rather than 1970, when the proposal was designed.

The table below shows for the under age 65 the estimated numbers of people that would be covered by various programs under the current proposals and the effects of two possible changes: (1) extending FHIP to cover singles and childless couples under age 65 and (2) subsidizing the pools:

	Million
Population under age 65 in 1975	194.7
Current Proposal:	
FHIP eligible*	15.1
Offered RHISA coverage by employer*	118.1
Medicare (for the disabled)	1.7
Medicaid (for the disabled and blind)	2.2
Others with coverage that meets NHISA standards	10.9
Religious and government workers exempt from NHISA	20.3
	168.3
Uncovered or having less than NHISA/FHIP coverage	26.4
Effect of improvements in UHISA:	
Subsidize pools	10.9
Cover low income single sand couples under FHIP	1.5
	12.4
Remaining population with no or low quality coverage	14.0

* Assumes all FHIP and NHISA eligibles actually accept coverage, and thus slightly overestimates actual enrollment.

1. Singles and childless couples

The Administration's current proposal would replace Medicaid for the AFDC population by FHIP, which would not cover low income singles and childless couples. However, Medicaid for the adult welfare categories (aged, blind, disabled) would be retained. Singles and childless couples were excluded for budgetary reasons and because FHIP was tied administratively and conceptually to FAP, which would be available only to families under age 65 with children. Extending FHIP to cover singles and childless couples would cost $3 billion in 1975.

The 1972 Social Security Amendments federalized the adult cash welfare program. Were FHIP to be enacted as now drafted, we would have the anomaly of: a State-Federal Medicaid program and a Federal cash program (i.e., Supplemental Security Income) for the adult categories, and a Federal health insurance program (FHIP) and a State-Federal cash program for families with children.

If FHIP and FAP were both enacted, the eligibility determination could be performed jointly. In the absence of FAP, FHIP would have to be freestanding and would require a potentially complex Federal system to administer it.

The following approaches, in addition to replacing Medicaid for the AFDC population by FHIP, would partially rectify the anomaly described above:

a. Extend FHIP to low income singles and couples under age 65 and replace Medicaid for the blind and disabled.

b. Replace Medicaid for the blind, disabled, and aged by a Federal program with eligibility tied to SSI.

c. Replace Medicaid for the aged only by a Federal program tied to SSI, since Medicaid for the aged is used principally to pay (i) premiums and cost-sharing for low income Medicare enrollees and (ii) nursing home and other custodial services.

2. NHISA Pools

The President stated in his 1971 Health Message his intention to require that each State establish "special insurance pools which would offer insurance at reasonable group rates to people who did not qualify for other programs." The groups that would be eligible to join pools are (1) employees of small employers, (2) the self-employed, and (3) any one else not eligible for Medicare or FHIP. The cost of insuring individuals in these groups is higher than that for employees of large employers because the pools would incur higher administrative expenses and because there would be a greater concentration of bad risks among group (3).

The President decided to oppose any subsidies to the pool for the time being and pursue the possibility of working out changes with Congress. The only persons who would purchase pool insurance are those who could not obtain private insurance for less thus driving up the premiums that the pool would have to charge its enrollees to break even. This process of adverse selection would ultimately create an upward price spiral on pool premiums. Hence, for the pools to exist, a ceiling must be set on pool premiums and a subsidy provided to finance the difference between actual experience and the premiums.

The key issues are: whether a ceiling should be set on pool premiums and how should any resulting subsidy be financed.

Setting a Premium Ceiling. Two conflicting objectives are: (1) to minimize the requisite subsidy and (2) to keep the premiums low enough that as many eligible people as possible can afford coverage. If a ceiling were set at 130% of the average rates charged large employer firms, an estimated 31.5 million people would join the pools, and the requisite subsidy in 1975 would be $1.9 billion. Disabled persons and early retirees would account for 70% of total pool losses.

Financing Pool Losses. Possible options for financing pool losses are (1) a tax on nonpool insurance, (2) a Federal subsidy, and (3) the sharing of losses between insurers and the Federal Government.

Pool losses could be reduced by eliminating the two-year waiting period for Medicare for the Disabled. Under current law, a disabled worker eligible for Social Security must wait 5 months before he receives cash Disability Insurance payments and another 2 years before he is eligible for Medicare. Eliminating the Medicare waiting period would reduce pool losses by $.5 billion and increase Medicare costs by $1.3 billion.

Possible Strategy. One strategy would be to eliminate the two-year waiting period for Medicare for the Disabled and to set a ceiling on pool premiums in the 120–130% range. However, even at 130%, the family premium would be roughly $630 per year which, combined with the substantial cost sharing in NHISA, would discourage many low and middle income families from purchasing coverage.

If the Medicare waiting period were eliminated, pool losses might be financed by an assessment against nonpool health insurance. If the Medicare waiting period is not eliminated, the financial burden on private health insurance could be excessive (6–7% of all nonpool health insurance premiums), and a 50–50 split between general Federal revenues and a tax on all health insurance might be preferable.

3. Continuity of coverage

NHISA now requires that employers offer the basic plan to employees who have worked 25 hours per week for 10 weeks, or 350 hours in a period of no more than 13 weeks (the "waiting period"). Thus, a steady employee who works 35 hours per week would be covered after 10 weeks, when he would have worked the requisite 350 hours. Preexisting medical conditions, except for maternity, need not be covered for six months after the employee is first insured. An employee who has been *covered* for 13 weeks or longer and then separated from his employer is eligible for coverage for an additional 90 days (the "extension period").

These provisions potentially leave two categories of workers uncovered. The first category is the long-term employee who is temporarily unemployed between jobs. Once he is covered through his new employer, he faces two or more sets of deductibles in the same year because of his change in jobs. He also loses any credit towards the $5,000 limit on covered expenses beyond which all cost sharing is waived.

The second category is the short-term worker who does not work regularly—i.e., for periods of 26 weeks or longer—for a single employer, although he may be fully employed. At one extreme are the skilled workers (electricians, plumbers) who change employers frequently; at the other are domestics and migrant farm workers.

Both categories of workers could, of course, obtain pool coverage, assuming mechanisms for operating the pools are worked out. However, for the long-term worker to obtain coverage for a short period of time between jobs would be administratively cumbersome.

Extensive analyses on continuity issues were conducted last fall, and the consensus among HEW staff was to support the following change, which would assist the long-term worker:

a. The waiting and extension periods now in NHISA should be retained. However, the requirement that enrollee be covered for 90 days to be eligible for coverage during the 90-day extension should be deleted.

b. No pre-existing condition exclusions should be allowed.

c. Any expenses towards the deductible and the $5,000 upper limit should be portable when a worker changes jobs.

d. Any employee who has obtained NHISA coverage and then leaves employment should be able to continue his coverage as part of the employer group for three months beyond the extension period. However, the employee would pay 100% of the premium costs (at the employer group rate).

These four changes would increase premium costs by an estimated 3%.

The problems of covering the short-term worker remain. We have not as yet been able to devise an approach for this group. This is due in part to the potential inappropriateness of relying on an employer mandated plan to cover the short-term worker.

4. Benefit package issues

A subsequent memo will request guidance on specific benefit package issues. A separate issue relates to disparities between FHIP and NHISA. FHIP as drafted would cover only 8 outpatient physician visits and 30 days of hospitalization annually, whereas NHISA would cover unlimited physician and hospital services. FHIP is broader than NHIS in that it covers family planning supplies and limited nursing home and home health services.

The Administration has been severely criticized for proposing limits on low-income persons in FHIP that would not exist in NHISA. Available options include:

a. retaining the current limits on hospital and physician services,

b. removing the limits entirely (FY 1975 cost=$165 million, plus roughly an additional $300 million if low income singles and childless couples are included in FHIP), and

c. removing the limits partially, e.g., 15 physician visits and unlimited hospitalization (cost=$125 million, plus $200 million if low income and childless couples are included in FHIP.)

5. Coverage inequities—the FHIP/NHISA notches

NHIPA was intended to provide a smooth transition between FHIP and NHISA at all levels of earnings. In actuality, there are two distinct notch effects, which would create inequities and potential work disincentives.

The vertical notch. FHIP has a graduated structure of premiums, coinsurance, and deductibles based on family size and—income. Five income classes have been defined for purposes of cost sharing, with Class I (annual incomes of $0–3,000 for a family of four) including the poorest families and Class V (annual income of $4,501–5,000) the FHIP-eligible families with the highest in-

comes. As an enrollee moves from the maximum income level for FHIP to NHISA, he faces a substantial notch, for two reasons:

a. The deductibles for Class V of FHIP are considerably below those in NHISA.

b. FHIP, but not NHISA, covers family planning supplies, and nursing home and home health services.

The horizontal notch. A family that is eligible for NHISA is automatically ineligible for FHIP, even though it would qualify on the basis of income. FHIP would generally be preferred, however, because of its low premiums and cost sharing, and would be even more so if the upper limits of 8 physician visits and 30 days of hospitalization annually were liberalized. Thus, the low income person has a disincentive to accept a job where he would be covered by NHISA.

The horizontal notch can be solved by allowing a person who would qualify for FHIP except for his being eligible for NHISA coverage to elect FHIP coverage instead. Such coverage would be financed as follows: The employer would pay the Federal Government an amount equal to its share of premiums had the enrollee accepted NHISA coverage; the employee would pay a premium contribution based on his FHIP income class; and the Federal Government would in effect pay the remaining costs. The increase in Federal outlays resulting from this change would be $320 million in 1975.

C. Federally-financed catastrophic coverage

General Description

As a way of addressing the concerns with NHIPA, HEW staff have developed the Maximum Liability Health Insurance plan as an example of Federally-financed income-related catastrophic coverage. The two basic properties of MLHI are that it:

Provides universal protection for all Americans against those health expenses that would seriously impair their financial stability, and

Is Federally financed to assure universal coverage, to minimize its complexity, and to avoid the adverse economic consequences of employer mandated coverage.

MLHI would provide universal entitlement to all Americans and would replace the current Medicare and Medicaid programs. It could, however, be limited to those under 65, in which case the portions of Medicare and Medicaid that cover aged populations would be retained. MLHI would be financed through the personal income tax system.

A comprehensive range of services would be covered including hospital, outpatient and inpatient physician, clinic, and laboratory services. Long-term care and active treatment for mental illness would also be covered, although the benefits would be strictly limited.

All but very low income families would face a high deductible plus additional coinsurance. Medical expenditures above the maximum cost sharing level would be fully insured. Although MLHI could have any of a wide variety of cost sharing structures, a sample plan has been designed that would have a deductible of up to 10% of annual income, and a maximum cost sharing (i.e., deductibles and coinsurance combined) of up to 15% of income. The deductible, coinsurance rate, and maximum cost sharing under a sample plan are displayed below for five income levels.

Annual family income	Deductible	Coinsurance rate (percent)	Maximum cost sharing
$3,000	0	5	$36
$7,200	$720		720
$11,400	1,140	25	1,425
$20,000	2,000	50	3,000
$50,000	5,000	50	7,500

Since the average annual medical expense for a family of four is around $1,000, roughly 30% of family units would receive benefit payments in a single year, two-thirds of whom are below the current FHIP income limit. The overall costs of MLHI can be varied by adjusting the cost sharing parameters.

Consumers could readily understand their maximum liability for out-of-pocket payments and could purchase supplementary insurance to cover the cost sharing. Thus, most functions of the private health insurance industry would be preserved.

MLHI Costs

The FY 1976 impact of MLHI on Federal expenditures is displayed in Table 1. The net add-on would be around $6.0 billion. There is, however, disagreement that is still being resolved as to the validity of these cost estimates. The Medicare actuary believes that MLHI would have a net cost of $5–10 billion above these estimates. The costs are highly sensitive to the cost sharing structure, which can be adjusted within limits to achieve budgetary constraints.

Total MLHI outlays are estimated at $35.2 billion, of which $19.5 billion would finance coverage for persons under age 65 with the remaining $15.7 billion covering those 65 and over. These costs, however, would be offset by $29.2 billion resulting from reductions in both existing programs and tax subsidies. These offsets would come from terminating Medicare and Medicaid ($21.5 billion), ending various categorical health service programs ($0.7 billion), and eliminating personal income tax subsidies for medical care and health insurance ($7.0 billion). The Social Security payroll tax for Part A and premium payments for Part B of Medicare would have to be terminated along with Medicare. This, however, would largely entail a shift from a more regressive payroll tax to a general tax. Personal income tax subsidies would be terminated as follows:

1. The deduction for out-of-pocket medical expenses over 3% of income would be eliminated. This deduction largely loses its justification if the Federal catastrophic plan fully reimburses nearly all medical expenses over 15% of income.

2. Employer contributions to health insurance would be taxable as personal income to the employee. Currently, the employer's share of health insurance is exempt from personal income tax.

These subsidies warrant reappraisal regardless of the NHI scheme adopted. This matter is explored further starting on page 33.

TABLE 1.—MLHI FISCAL YEAR 1976 COSTS

[In millions of dollars]

	Universal coverage	Coverage of under age 65 only
MLHI outlays [1]	$35.2	$19.5
Offsets:		
Termination of medicare [2]	15.4	[3] 2.7
Termination of medicaid (Federal share only)	6.1	[4] 3.9
Termination of categorical health services program	.7	.7
Termination of special tax subsidies on health insurance	7.0	7.0
Total offsets	29.2	14.3
Net costs	6.0	5.2

[1] Includes costs of administration.
[2] Includes reduction in medicare outlays proposed in President's 1974 budget.
[3] Terminates medicare for the under 65 (i.e., the disabled) only.
[4] Terminates medicaid for the under 65 only.

Note: MLHI cost estimates are tentative and are currently being reviewed.

Criticisms of MLHI

The principal objections to income-related catastrophic coverage are that:

1. Such coverage would encourage the use of costly medical services having questionable benefits, e.g., keeping a patient alive for many weeks, although he is clearly not going to recover. It could also stimulate research, particularly by profit-making companies, in costly medical procedures.

2. Some argue that MLHI would not only stimulate cost consciousness, but would also encourage people to delay seeking early treatment.

3. Because of the income-tested cost sharing feature, the program may be difficult to administer and requires income testing over a broader range than most social programs. Also, the cost sharing structure may be difficult for some people to understand.

4. The combination of progressive financing and regressive benefits may be unacceptable to many middle and upper income persons. Furthermore, the progressive nature of MLHI would be exacerbated by eliminating insurance and medical tax deductions as proposed.

A reply is that national health insurance should remove the financial barriers to access and that the essentially ethical issues of access to costly medical care should be handled through allocation methods other than the patient's ability to pay for services. The proponents of this plan also believe that the difficulties of administration are manageable (FHIP, too, has income related cost sharing). Indeed a major motivating force behind the development of MLHI was the realization of the administrative complexities of achieving universal entitlement through changes in NHIPA.

D. Combination of employer mandated private insurance and federally-financed catastrophic coverage

We have been asked (by Paul O'Neill of OMB among others) whether an NHI proposal could be devised that would achieve the universal coverage objectives of MLHI and have the mixed public-private financing characteristics of NHIPA, thus reducing the budget impact of MLHI. The option presented would combine a Federally-funded catastrophic plan (similar conceptually to MLHI) with a privately-financed mandated plan (similar to NHISA). The two plans would be structured to cover the same services and have the same upper limit—if any—on covered services, e.g., $50,000 or $250,000. The principal difference in the benefit packages would be with respect to the deductibles.

The employer mandated plan (or other private health insurance) would have primary responsibility for paying benefits with the catastrophic plan only paying for (1) a portion of the cost-sharing required under NHISA for low and moderate income families and (2) for covering persons who are exempted from obtaining NHISA coverage. The NHISA-type plan would retain the feature of the present proposal, under which no further cost-sharing would be required when the family has incurred medical expenses of $5,000. The maximum cost-sharing at this point would total approximately $1,500. Thus, the catastrophic plan (assuming a deductible equal to 15% of income) would not pay benefits to families with NHISA coverage and incomes above $10,000.

Two very similar approaches are described below. The first achieves universal *enrollment* in NHI; the second makes enrollment voluntary but achieves universal *entitlement*. The advantage of either of these schemes are that they would: achieve universal enrollment or entitlement; have minimal impact on the Federal budget; preserve a mixed public-private financing, including the functions of private insurance; keep to a minimum the number of people who would be income tested to receive payments; create a unified system for all Americans regardless of income; and obviate the need for NHISA pools.

Under the first approach, all Americans would be covered by a Federally-financed catastrophic plan, which would pay benefits only to persons (1) who cannot obtain other

health insurance or (2) whose premium payments and cost sharing on their private plan exceeds some percent of income. The catastrophic plan would have income related cost sharing. Very low income families would face minimal cost sharing; higher income families would face deductibles of up to 15% of income. (If this approach is adopted, options for specific cost sharing schedules will be formulated.)

In addition, enrollment in a mandated plan, similar to NHISA, would be compulsory for all full-time employees and for self-employed and other persons with annual incomes above a specified level, e.g., $5,000. Persons covered under Medicare and individuals unable to obtain NHISA coverage at reasonable rates (perhaps 150% of the rate for a large group) would be exempted from this requirement and would automatically have catastrophic protection. Because the catastrophic plan would be secondary, only a very small proportion of persons with mandated coverage would ever receive benefit payments from the catastrophic plan. Thus, the benefits of catastrophic coverage would be restricted to persons who cannot reasonably obtain coverage privately, i.e., the poor and the sick. Most of the insurance system would remain privately financed, but universal coverage would be achieved.

The second approach is designed to continue the voluntary aspect of the present proposal. Employees could decide whether or not to accept the mandated plan, as in the current version of NHISA, but would be eligible for catastrophic coverage only if they did accept coverage. Similarly, self-employed and other individuals (with income over the specified amount) who are able to purchase NHISA coverage at reasonable rates would be required to do so as a condition for catastrophic coverage. Medicare eligibles would automatically have catastrophic protection as back-up.

As part of either approach, Medicaid would be terminated. Medicare could either be retained as is, restructured, or terminated. In addition, personal income tax deductions for health insurance (including the employer share of premiums) and for medical expenditures would be terminated. Finally, the need to provide for pools, which is perhaps the thorniest structural problem with NIHPA, would be obviated.

Some of the problems of MLHI would still be present, but in milder form because a smaller proportion of the population would be income tested. In addition, a notch would be created at the lower limit above which a self-employed or unemployed person would be required to obtain coverage ($5,000 in the example given above). Thus, a person with an income of $5,000 must obtain mandated coverage, whereas a self-employed or unemployed person with an income of $4,999 need not.

The estimated FY 1975 gross cost of either approach for the under age 65 is $13 billion less potential offsets due to terminating Medicaid of $4 billion, yielding a net cost of $9 billion. This contrasts with gross cost of $10 billion and a net cost of $7 billion for an improved NHIPA package. Importantly, this option would cover the 14 million people that would be left uncovered by an expanded NHIPA approach. Furthermore, because it would achieve universal entitlement, it would strengthen the rationale for terminating categorical health programs and the health insurance and tax deductions, discussed subsequently. As such, it could realistically be nearly self-financing. Covering the aged while terminating Medicaid for the aged and Medicare would add an additional $2 billion.

E. NHISA plus improved Medicaid

The least costly alternative would be for the Administration to propose NHISA for employed populations, but not FHIP. Provisions for the pools would be deleted from NHISA. This approach could be presented as an interim measure pending the formulation of the Administration's welfare proposals. Clearly, welfare reform and NHI for low income populations need to be considered in tandem. FHIP and FAP were intended to be integrated in terms of eligibility determination, their effective tax rates, and their impact on family structure.

Medicaid for welfare and related populations (including AFDC) would be retained. Efforts would be made to improve Medicaid by requiring that the States make reasonable efforts to ensure both that necessary services are available to all eligible and that unnecessary utilization is prevented. The estimated Medicaid budget for FY 1975 is provided below:

[In millions of dollars]

	State share	Federal share
AFDC	2.0	2.5
Blind and disabled	.9	1.1
Aged	1.7	1.7
Costs of administration	.3	.3
Total	4.9	5.6

This approach does not constitute national health insurance and would be severely criticized because it would: perpetuate differences in coverage among States, retain the current Medicaid notches, tie health insurance eligibility to welfare eligibility and thus fail to cover many low income persons, perpetuate the dual system of coverage, one for the rich and one for the poor, and continue existing conflicts between the Federal Government and the States regarding who should make the program decisions.

F. FEHB model (HPD proposal)

General Description

This approach is a variation of a Federally-administered system. It combines mandatory coverage with underwriting by a limited number of carriers (as under the Federal Employees Health Benefits Program) and premium collection handled as an adjunct to the income tax-payroll withholding system (with the Federal Government acting in effect as collection agent for the carriers), facilitated by a "HealthCard"—a credit card system to be administered by the carriers to facilitate payment of providers, collection of cost sharing, and financing premium payments during temporary unemployment.

This plan provides universal coverage under a single system. It can subsume Medicare and Medicaid and other governmental health service subsidy programs. It would largely replace existing private health insurance but it would preserve their bill paying and a limited form of their underwriting capacity. An important feature of this plan is that all individuals or groups of individuals within the same area would pay the same premium (regionalized community rating).

Summary of Key Features. Key features of this program include the following:

1. *Carrier Participation.* Participation in this system would be limited to a relatively small number of "approved carriers" in any geographical region. The objective would be to have enough carriers (including HMOs) active in a region to provide effective competition, but a sufficiently restricted number to make the choices comprehensible, and to minimize marketing and administration costs.

2. *Regionalization.* The nation would be divided into health insurance regions. (Some could well be co-extensive with State boundaries.)

3. *Options.* Carriers may offer more than one plan—e.g., a "low option" and a "high option," provided that their plan includes at least a minimum acceptable level of benefits.

4. *Enrollment.* All "eligible" individuals and family units are entitled to enroll in the plan of their choice, from the carrier of their choice. "Eligibility" can be defined as we choose, and can include the entire civilian population.

5. *Premiums—Financing and Collection.* The premium rate for any option offered by any carrier will be the same for all individuals or family units selecting that carrier and option.

For the employed population premium rates would be divided between the employer and employee. The employer's contribution would be established either regionally or on a nationwide basis.

Employees initially, and concurrently with each annual reenrollment period, would execute a payroll deduction form authorizing the employer to deduct, in addition to Social Security and income tax withholding, whatever amount is required to pay the employee's portion of the premium costs for the insurance selected. On changing employment, employees would be required to continue the same health insurance selection until the following annual reenrollment period.

The self-employed and others with adequate income would be required to select a health insurance plan and participate in a comparable payment system by submitting their health insurance payments along with their declarations of estimated tax.

Low income persons (including the "working poor") would be entitled to full or partial public subsidy of their health insurance premium costs. They would file a selection of plans together with income and family size information which would provide the basis for determining the amount of premium subsidy to which they are entitled, and the amount of premium payment (if any) for which they are responsible. This process would also embody key administrative features for collecting the premium contribution either by deduction from cash assistance or Social Security cash payments, payroll deduction for the "working poor" or monthly or quarterly individual payment.

6. *Payment of Carriers.* The government, which has functioned as a premium collection agency, remits amounts so collected to the carriers in accordance with the individual and family carrier selections.

7. *Operation—"HealthCard".* Each person enrolled under the foregoing system would receive a "HealthCard." It would identify the individual, the family unit, and the carrier and option selected. The cost sharing for which the individual enrollees are responsible under that particular option would be known only to the carrier. Thus the HealthCard system would permit the carriers to administer income-related cost sharing in a manner which would maintain a high degree of confidentiality. When seeking services, the individual would need only to present his "'HealthCard" to the provider. The provider would furnish the subscriber a record of any charge; no cash payment or complicated credit document would be necessary.

8. *Payment of Providers.* The provider would collect the entire amount due directly from the indicated carrier.

9. *Collection of Cost-Sharing.* Each subscriber would receive a monthly statement from the carrier indicating (a) the services used, (b) charges therefor, and (c) the amount of money due based on applicable cost-sharing. Unpaid bills could be subject to a regulated finance charge (e.g., 1% per month).

10. *Review and Monitoring.* The carrier would be responsible for claims review, monitoring of the levels of expenditures and applicable cost-sharing, and all necessary col-

lections. (An account separate from health care and administration expenditures would be maintained for the uncollected cost-sharing and finance charges received.)

11. *Premium Loans.* This system could also be utilized to administer loans to cover individual or family premium contributions during temporary periods of unemployment. care and administration expenditures would also lend itself to retroactive determinations of eligibility for greater premium subsidy or reduced cost sharing due to change in circumstances after enrollment.

13. *Tax Treatment.* A number of approaches to Federal income tax treatment of employer and employee expenditures under this system would be possible. One approach would be to allow employers to deduct whatever premium contribution they pay as an ordinary and necessary expense of conducting business, and to permit employees to exclude from income only the amount of that contribution attributable to the required minimum benefit level. Employees would be permitted to deduct their premium contributions attributable to the required basic coverage. Payment for higher levels of coverage would come from after-tax-dollars. Parallel treatment could be accorded health insurance purchasers who are not employees.

14. *Benefit Structure.* This system for handling enrollment, premium collection, provider payment, etc., is compatible with any benefit structure.

15. *Cost Estimates.* No cost estimates are provided because these would be determined by the benefit structure selected and by the level of subsidization selected for persons who are not economically self-sufficient.

Major Implications

1. It will make competition much more effective because:

a. the market, price and product differences will become clearer and easier to understand;

b. the ultimate consumer—individual or family unit—will be able to make an informed choice based on price and coverage desired;

c. traditional insurance marketing techniques would be largely eliminated and the administration simplified.

Because of the administrative economies as well as the more effective competition, carriers would have both the incentive and the ability to impact the efficiency and economy of the financing and delivery of health care services. Thus, as any benefit level and level of subsidization selected, the costs should be somewhat lower than would be the case under most alternative approaches.

2. This system would eliminate the need for "pool coverage" or similar special arrangements to extend coverage to "high risk" persons.

3. This system will assure that everybody, regardless of health status or nature of employment, will have an opportunity to obtain health insurance coverage at rates substantially equivalent to the rates available to large group purchasers.

4. Use of a "HealthCard" will yield the following advantages:

a. *To Consumers.* (1) Protects the privacy of individual financial status and provides more uniform purchasing power, and (2) minimizes financial disincentives to utilization, i.e., removes requirement for cash-on-hand, and facilitates budgeting.

b. *To Providers.* (1) Assures payment of bills (eliminates "uncollectables"), and (2) improves cash flow.

c. *To Carriers.* (1) Preserves a major role under National Health Insurance, and (2) establishes a new financing/lending business.

d. *To Government.* (1) Adds to the financial stability of providers and removes pressure from them to "discriminate" based on "bad risk" (financial or medical), (2) minimizes Federal involvement by utilizing existing administrative and review capabilities of carriers, and (3) facilitates accurate monitoring of health services utilization and expenditures; this provides the basis for improved planning and resource allocation.

Opponents of this system (a group that may be expected to include commercial insurance companies, many large employers, and possibly some large unions) will object strenuously on various grounds:

1. Beneficiaries of favorable rates under the current "experience rating" system (which applies to most large group business) will object to the cost subsidization which is implicit in the proposed "community rating" system.

2. The same interests are likely to object to disruption of established nationwide fringe benefit arrangements.

3. Commercial insurance companies, in particular, will strongly resist disruption of established relationships with their major customers.

4. Many people, including the majority of financial analysts in the insurance field, seriously doubt that a competitive system can be maintained when the insurer must charge the same rate to all persons in the community who seek coverage regardless of their health status.

Recommendations

C recommends that options D (NHISA/MLHI combination) and F (FEHB model) be further developed. They are particularly concerned that whatever NHI proposal is adopted be highly administrable, preferably using some form of modified income tax/payroll deduction mechanism to collect premiums, determine eligibility and income of beneficiaries, etc. They note that option D has the virtue of relying heavily on the private sector but may be difficult to administer. They view option F as by far the most desirable administrative arrangement but question whether the community rating method can work in the presence of competition. Furthermore, the effects on the present health insurance system may be unacceptable. Thus, options D and F should be further developed to try to find solutions to the major weaknesses of each. In their view, the basic NHIPA proposal (options A and B) has too many deficiencies to be acceptable and option E (Medicaid plus NHISA) is inequitable.

GC favors either improving NHIPA (option B) or the MLHI/NHISA combination (option D) and recommends that the Secretary not decide between these two options until further staffwork is presented. GC further says that "We have . . . consistently maintained that universal access to a means of financing health care costs is a key to assuring that adequate health care is available to every individual. The memorandum demonstrates that NHIPA will not, without substantial change, accomplish that objective. For that reason, the reintroduction of NHIPA in its present form (option A) is not a viable option. . . . It seems to me that the Secretary is in a position to reject options A and E, and I urge that he do so." GC also urges that options C (MLHI) and F (FEHB model) not receive further consideration because they are contrary to the posture of the Administration of relying on mixed public-private financing and would require drastic restructuring of the current health insurance system.

H favors option F (FEHB model) as providing the best conceptual framework for NHI and recommends that further development and consideration be given to this option. "It is the only one presented that satisfies all of the following principles: universal coverage in a unified system; mixed financing minimizing new tax dollars; administrative feasibility with preservation of the private insurance industry; consumer choice; and cost containment through carrier and provider competition." However, recognizing the degree of departure from the past Administration proposal that this approach represents, H also recommends that suggested modifications and continued refinement of NHIPA be pursued. They support option D (MLHI/NHISA combination) because it would achieve universal coverage but note that options B (improving NHIPA) and D (MLHI/NHISA combination) are conceptually similar. Therefore, H recommended that further staffwork proceed on both options.

In responding to an earlier draft of this memo, LH indicated a preference for option B and also recommends further development of option D. L has not formally responded to the current memo.

SSA favors option B (improved NHIPA) as "realistically the most acceptable alternative."

SRS favors option E (NHISA plus improved Medicaid) and believes that the major thrust of the Administration's proposals at this time should be to improve coverage for the nonpoor population, such as through NHISA. They further argue that Medicaid is superior to FHIP because it entails an effective State-Federal partnership; provides broader benefits, including covering long-term and chronic care; and, generally, has more liberal eligibility standards. As funds become more available, Medicaid could be expended to cover male-headed low income families and singles and childless couples.

P's principal objective is to achieve coverage that is nearly as universal as possible, taking Federal budget constraints into account. It prefers MLHI (option C) because it would achieve universal entitlement through a unified insurance system. However, since budget constraints may preclude MLHI, P would support option D (MLHI/NHISA combination) which would also achieve universal entitlement but would entail lower Federal outlays and failing that, option B (improved NHIPA). P recommends that, if MLHI is not selected, the choice be narrowed to options B and D and further staffwork be performed on these two options. P recommends against further consideration of options A, E, and F. The current bill (option A) is deficient. Option E would simply establish minimum standards for employed populations and does not constitute NHI. P contends that the community rating feature of option P (NEHB model) is unworkable in the absence of full Federal funding of a system franchising insurance carriers within given regions.

Decision

A. NHIPA as drafted ———

B. NHIPA with structural improvement ———

C. MLHI (or similar Federally-financed catastrophic plan) ———

D. Combination of Federally-financed catastrophic coverage and mandated plan ———

E. NHISA plus improved Medicaid ———

F. FEHB model ———

V. Crosscutting issues

This section addresses the following crosscutting issues that are relevant to whatever approach to NHI is adopted:

A. Tax subsidies for health insurance and medical expenses

B. The role of the States in financing NHI

C. The future of Medicare

D. The future of VA medical programs

In some cases, additional staffwork will be needed for the option(s) that you select.

A. Tax Subsidies for Health Insurance and Medical Expenses

Federal tax policies provide substantial indirect subsidies for purchasing health insurance and for personal medical and dental expenditures. Health insurance premium payments made by employers are not considered to be personal income for tax purposes, although most other noncash income payments

are taxable. In addition, one-half of premium payments by individuals may be taken as an itemized deduction. Finally, out-of-pocket medical expenses plus the other half of individually paid premiums in excess of 3% of income are deductible.

These tax subsidies resulted in an estimated revenue loss of $3.8 billion in 1970 as shown below:

Health insurance premium deduction:

	Billion
Personally-paid	$0.6
Employer-paid	1.9
Direct medical and dental expenses	1.3
Total	3.8

The revenue loss for 1975 is projected at $6.8 billion, thus exceeding anticipated Federal Medicaid expenditures.

The health insurance premium deduction of $2.5 billion annually more than offsets the administrative costs of insurance as shown below (1970 data):

	Billions
Premium Payments	$17.2
Less: Deductions for premium payments	2.5
Premiums net of deductions	14.7
Insurance benefits paid	15.8

Thus, as a direct consequence of the deduction, every dollar invested in insurance returns an average more than a dollar in benefit payments, thereby encouraging the purchase of insurance when the individual should reasonably be expected to self-insure.

In addition, the deductions are highly regressive, benefiting as they do primarily higher income groups. The tabulation below shows for 1970 the mean subsidy per taxpayer resulting from these deductions as a function of annual family income. The tabulation does not include the subsidies for employer-paid premiums, but these follow a similar pattern:

Annual family income	Subsidy for premiums	Subsidy for medical expenses
5,000 to 6,000	$5	$14
$10,000 to $11,000	10	20
$15,000 to $20,000	18	30
$20,000 to $25,000	23	41
$25,000 to $30,000	31	70

These deductions may be undesirable because (1) they provide an incentive for the sale of first-dollar coverage, thus contributing to medical care price inflation and (2) the benefits accrue principally to higher income groups. Whether these undesirable features are important enough to suggest that the deductions be eliminated regardless of whether NHI is enacted is an important issue in its own right. More germane is whether the deductions should be continued if a true NHI program is enacted, since the $6.8 billion tax subsidy could be reallocated to filling in the most glaring weakness of our current health insurance system.

Recommendations

C favors terminating the income tax deductions in principle, but defers taking a final position pending basic decisions on NHI.

GC recommends that the Secretary defer decisions on this and the three other cross-cutting issues until further staffwork on NHI is completed.

H views the tax subsidy issue as significant but defers making a recommendation pending basic decisions on NHI.

LH favors terminating the insurance deduction, thus treating employer contributions to premiums as wages. They also favor terminating the medical expenditure deduction, but only for services that NHI would cover.

P recommends that the Department support terminating income tax deductions for insurance and medical expenditures as part of the Administration's proposals for NHI.

SSA and SRS have not taken positions.

Decision

Agree in principle to terminate the tax subsidies.

Concur ——— Nonconcur ———.

B. Role of State financing in NHI

Most of the NHI options under consideration would provide the States with varying amounts of fiscal relief depending on which components of Medicaid are terminated. Twin issues are (1) whether States should be expected to share in the costs of the publicly financed component of NHI and (2) whether Medicaid should be continued.

Since minimizing the impact of NHI on the Federal budget is a major concern, one approach is to have the publicly financed component of NHI be State administered with joint State-Federal financing. Unlike Medicaid, however, there would be a single benefit package, and the program would operate under strong Federal direction. As in Medicaid, the States would have strong incentives to control program costs if the programs were jointly funded.

The following are the disadvantages of this approach:

1. The tax burden would simply be shifted from the Federal Government to the States while leaving total public expenditures unchanged.

2. A few States may choose not to participate. (Currently, only Arizona does not participate in Medicaid.)

3. Program differences will inevitably develop as a result of variations in administrative practices among States.

Decisions regarding Medicaid are clearly related both to the basic approach to NHI that is selected and to whether the public component of that approach relies partially on State financing rather than being fully Federally funded. Although FHIP would appear to provide nearly $2 billion in fiscal relief to the States, it also fails to cover several Medicaid services, particularly drugs and long-term care. Currently, nursing home and ICF (intermediary care facility) care account for about 32% of all Medicaid expenditures, with substantial variation among States (e.g., from 1% to more than 40%). Outpatient drugs account for another 7%. The Administration's current proposals would replace Medicaid for the AFDC population by FHIP. Thus, the States would be required to bear fully the costs of long-term care for the AFDC population. However, as long as some fiscal relief is provided, few States would be likely to institute major program reductions, at least in the short run, despite their having to pay the full cost. Whether they would continue to tie eligibility to the categorical welfare program or determine eligibility on some other basis (e.g., coordinated with FHIP eligibility) is less predictable.

Possible options, which can be developed in more detail, include the following:

1. Retain the current Medicaid program, including for populations that would be covered under NHI. This approach would encourage States to maintain their full Medicaid program for services and persons not covered by NHI, but would entail substantial Federal support.

2. Terminate Medicaid for populations covered under NHI. This is the approach taken for FHIP. The major argument for this approach, other than financial, is that the appropriate Federal role in financing medical services should be determined and funded entirely by the Federal Government; the States should fully fund any additional programs they choose to establish.

3. Terminate Medicaid regardless of NHI coverage. The argument for this approach is similar to that for (2).

4. Establish a residual program for nursing home services and/or other services not covered under NHI. Medicaid would be retained in full for populations not covered under NHI. The residual program could be restricted to long-term care, where cost control is a major problem that the States may be better equipped to handle than the Federal Government.

Recommendations

Issue (1): NHI

C, H, LH, and P favor full Federal funding of NHI. However, P would prefer a jointly funded program that achieves universal entitlement to a Federal program that leaves substantial groups without coverage.

SSA defers taking a position until basic decisions are made on NHI.

Issue (2): Medicaid

C and P favor terminating Medicaid for populations covered by NHI (option 2). However, if budget pressures permit, P would favor a residual State-Federal program for long-term care and related services (option 4). C recommends consideration of options to direct State funds now used for Medicaid matching to provide long-term care for low income populations. However, this should be pursued as a separate issue from NHI.

H and LH favor a residual Medicaid program for persons who are uncovered by NHI and to covered services, particularly long-term care, that NHI does not cover (option 4 below).

SRS favors retaining a Medicaid program, including for populations that would be covered by NHI (option 1).

SSA defers taking a position.

Decision

Issue (1): NHI

1. Adopt a jont Federal-State program———
2. Maintain full Federal funding———

Issue (2): Medicaid

1. Retain the current Medicaid program, including for populations that would be covered under NHI ———
2. Terminate Medicaid for populations covered under NHI ———
3. Terminate Medicaid regardless of NHI coverage ———
4. Establish a residual program for nursing home services and/or services not covered under NHI. Retain Medicaid in full for populations not covered under NHI ———

C. Medicare

Although the structure of Medicare made substantial sense when the program was first designed, changes may be desirable in the context of the Administration's NHI proposals. Criticisms of Medicare include the following:

1. Its being financed largely through the payroll tax results in only a weak relation between contributions and benefits.

2. A unified approach to NHI is desirable, and differences in the benefit package between the Administration's NHI proposals should be eliminated unless they are justified on the basis of their covering different age groups.

Alternatives to the current approach include:

1. Terminating Medicare and relying on a unified NHI approach, thus not using age as a criterion for determining eligibility. One argument against this approach is that most workers have already contributed to the Social Security Trust Fund for Medicare coverage.

2. Make the Medicare benefit package the same as NHISA's. This would introduce greater cost sharing on services that Medicare currently covers and would presumably lead to a reduction in the Medicare payroll tax. At the same time, if a Federally funded catastrophic program were enacted, it would cover the elderly. Thus, the elderly would receive fewer benefits from the Medicare pro-

gram but increased benefits from the catastrophic program.

A major restructuring of Medicare would raise considerable political opposition, and the issue may not be worth addressing. At this time we are only requesting guidance on whether you want further analyses conducted.

Recommendations

C, H. LH, and P want the Administration to develop a unified NHI plan that would subsume Medicare. Consequently, they recommend that the option of restructuring or terminating Medicare be analyzed.

SSA views the question of restructuring Medicare as superfluous since it is constantly studying ways to improve the program.

SRS has not taken a position.

Decision

1. Do not consider restructuring Medicare in the context of the NHI staffwork———

2. Analyze options for restructuring or terminating Medicare———

D. Veterans Administration (VA) medical programs

The VA operates its own system of 169 hospitals and other facilities. VA outlays for medical programs are budgeted at $2.4 billion in 1974. VA patients fall into two categories: (1) veterans with service-connected disability, and (2) low income veterans without service-connected disabilities, who receive services on a space available basis. Some 64% of hospitalized VA patients fall in the second category. When NHI becomes a reality, particularly if universal entitlement is achieved, a strong argument can be made for restricting special VA medical programs to veterans with service-connected disabilities, since other veterans would be covered under general programs. The estimated budget savings of such a change would be over $1 billion annually.

[From the Washington Post, May 21, 1973]

U.S. Studies Alternates for National Health Plan

(By Stuart Auerbach)

The Nixon administration has abandoned the national health insurance plan it sent to Congress two years ago and is considering two alternatives—including one that would give every person a credit card for medical and hospital bills.

Caspar W. Weinberger, Secretary of the Department of Health, Education and Welfare, has asked his health planners to develop specifics on the two new insurance proposals by June 1.

The more likely proposal was suggested by the White House Office of Management and Budget's chief health official, Paul O'Neill. It would combine a catastrophic health insurance plan tied to income with a federal requirement of health insurance for all workers.

The government would finance catastrophic health insurance, which would cover all medical and hospital costs for the poor. Middle and upper income persons, however, would depend on a government specified level, currently unstated, of private health insurance financed by workers and employers. These policies would be comprehensive enough to cover all but the most catastrophic of illnesses. The program would cost the government an estimated $9 billion in the fiscal year to begin July 1, 1974.

"The benefits of catastrophic coverage," wrote HEW's deputy secretary for health planning, Scott Fleming, in a memo to Weinberger, "would be restricted to persons who cannot obtain coverage privately—the poor and the sick. Most of the insurance system would remain privately financed, but universal coverage would be achieved."

Under that plan, Medicaid—the federal-state program to provide health care for the poor—would be ended. So would federal income tax deductions for health insurance and medical expenses.

Through those cuts, Fleming wrote, the plan "could realistically be nearly self financing."

The other approach Weinberger asked to be developed is more controversial and less likely to win approval—especially since it would disrupt the private health insurance industry.

This plan is modeled after the federal employee health program. It would divide the country into health insurance regions with a limited number of insurance companies allowed to write policies. These policies would have to meet minimum federal standards and, as in federal employee health plans, they could offer higher-priced options.

The premiums would be collected by the government through payroll deductions the same way it withholds income taxes.

Individuals would get a "healthcard"—a credit card that would be used to charge medical and hospital bills. The insurance company would pay the doctor or the hospital, and then send a bill to the patient for the part not covered by the insurance policy.

"When seeking services," Fleming wrote, "the individual would need only to present his 'healthcard' to the provider. The provider would furnish a record of any charges; no cash payment or complicated credit document would be needed."

While the plan itself may not survive, the "healthcard" concept is likely to be a part of any administration proposal because of its simplicity, universal appeal and ease in accounting.

Although HEW aides insist that President Nixon's National Health Insurance Partnership Act submitted to Congress two years ago is not completely dead, the strong criticisms of it contained in Fleming's memo to Weinberger make it unlikely that it will be revived.

That plan called for all employers to provide a minimum standard of health insurance for all their workers, financed by employer and employee. Health insurance companies, supervised by federal or state governments, would supply the policies. The federal government would buy health insurance for members of poor families with children (but not the unmarried poor or families without children). In his memo, Fleming pointed out that there are many gaps in its coverage, coverage differs for the rich and the poor, and that everyone is not entitled to health insurance.

The administration proposals under study are less comprehensive than the cradle-to-grave national health insurance plan proposed by Sen. Edward M. Kennedy (D-Mass.) and Rep. Martha Griffiths (D-Mich.) and supported by organized labor.

Under that plan almost all health costs would be paid through the government's Social Security system and financed by increased taxes on workers and employees and from general federal revenues.

The plan would cost between $40 billion and $60 billion, but Kennedy says Americans would no longer have to pay the $83.4 billion that now goes for health care costs—one of the fastest rising components of the cost-of-living index.

ECOCIDE IN INDOCHINA

Mr. NELSON. Mr. President, Dr. Arthur H. Westing, of Windham College, Vermont, has made an invaluable contribution to the world's understanding of the destructive impact of U.S. military activity on the land and people of Southeast Asia. He had conducted studies of the ecology of South Vietnam and Cambodia in connection with the Herbicide Assessment Commission of the American Association for the Advancement of Science, and he has visited the area independently with Dr. Egbert Pfeiffer. He has provided essential statistical data, scientific judgment, and—in the form of photographs and films—pictorial evidence which has brought the awful truth back to America of what he calls "Ecocide: Our Last Gift to Indochina."

Mr. President, I request unanimous consent to have his latest article appearing in the May issue of Environmental Quality magazine printed in the RECORD.

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

Ecocide: Our Last Gift to Indochina

(By Arthur H. Westing)

January 1973 marked the end of more than eight years of brutal assault on the ecology of Indochina, a tropical, Texas-sized region half way around the world from us. The sustained punishment received during this period by a region as large as Indochina has no precedent in military history. From early 1965 through early 1973, the land of South Vietnam and its three neighbors was subjected to the most intensive aerial bombing, massive military poison spraying, and widespread military land clearing programs ever mounted by man. Moreover, there were major continuing efforts, with undisclosed results, to modify regional weather patterns.

Thus, whether by accident or design, the Second Indochina War will go down in history as the first antienvironmental war. The following is a description of the major programs that have earned it this ignominious epithet. I make no attempt to evaluate the justification or military efficacy of these programs; I also largely avoid the issue of whether their anti-ecological effects were an intentional aspect of U.S. strategy in Indochina or merely an unfortunate side effect. Moreover, my purpose is not to chronicle the immense social disruption and human suffering associated with this seemingly endless war. It is, however, necessary to point out that the vast majority of the 45 million Indochinese are (or were) peasant farmers directly dependent upon the now partially war ravaged land. In fact, one of the saddest aspects of the war is that it has served to separate a high proportion of the indigenous population from the land.

My conclusions are based in large part on personal observations during three brief tours of the war zones of Indochina, in 1969, 1970 and 1971. I also lean upon the observations of other scientists. The numerical data presented are based almost entirely upon figures released from time to time by our Department of Defense (DoD).

30 BILLION POUNDS OF BOMBS

The U.S. attempts at neutralizing a widely dispersed and elusive enemy by denying it freedom of movement in the Indochina hinterland were primarily based on long-distance bombing, shelling and rocketing. These conventional weapons of war were employed with an abandon that cannot be readily comprehended. DoD admits to a munitions expenditure during the eight-year period 1965–1972 of more than 30 billion pounds.

How can one grasp the enormity of 30 billion pounds of munitions? I have tried in various ways to translate this sum into more comprehensible terms. Basically, 30 billion pounds of munitions represents an explosive energy equivalent to 545 Hiroshima or Nagasaki bombs—one every 5½ days during the entire eight-year period. In terms of the peoples; of all Indochina, this sum represents 673 pounds per person—better than one 500-pound bomb for every man, woman, and child. Including Indochina's land, it represents 163 pounds per acre. Finally, in terms of frequency throughout this eight-year pe-

riod, this sum represents 119 pounds per second.

Each of these calculations tells us something. What they should add up to is a more accurate feeling for the lavish nature of munitions expenditures by the U.S. during its overt participation in the Second Indochina War.

Although DoD has made public that just under half (49%) of the 30 billion pounds of expended munitions were aerial, the rest surface, and has given a breakdown by years, it has told us little else. However, on the basis of a series of widely scattered DoD releases compiled largely by Raphael Littauer and his colleagues at Cornell University, one can estimate that about 82% of all the U.S. munitions expenditures were in South Vietnam, 13% in Laos, 4% in North Vietnam, and 1% in Cambodia. Moreover, when these country-by-country expenditures are examined on a per-acre basis, South Vietnam stands out even more prominently.

Within South Vietnam itself, it was the Third Military Region that was hit hardest, with the First Military Region not far behind. The Third Military Region comprises the eleven provinces roughly centered around Saigon; it includes War Zones C and D and the Iron Triangle. The First Military Region is composed of the five northern provinces and contains much of the Central Highlands. Of the remaining two military regions, the Second was hit moderately hard, whereas the Fourth (coinciding with the Mekong Delta) was affected least severely. I have seen occasional scattered craters almost everywhere I have been in Indochina; in all four military regions of South Vietnam, and in southeastern and northeastern Cambodia. Large areas of intense craterization can be found in various places. In the Third Military Region, they are particularly pronounced in the provinces of Tay Ninh (War Zone C), Long Khanh (War Zone D), and Gia Dinh (Rung Sat Special War Zone). I am told that vast moonscapes have been created in Quang Tri province (in the Demilitarized Zone), in southern Laos (along the so-called Ho Chi Minh trail region), and elsewhere.

NO HABITAT SPARED

No type of habitat seems to have been spared from craterization, including forests and swamps, fields and paddies. Indeed, the most important ecological aspect of the U.S. bombing and shelling program in Indochina—aside from its sheer enormity—was the nature of the most usual target. In my Indochinese travels I was continually impressed by the locations of the many crater fields I encountered: They almost always seemed to be in the middle of nowhere, as if the target were the land itself.

In further pursuing this ecologically disquieting matter of target location, it turned out that the vast preponderance of the U.S. munitions expenditures over the years was for harassment and interdiction, that is, for area denial. Throughout the war the U.S. had physical, on-the-ground control of only a tiny and relatively unchanging fraction of Indochina's land area. However, a continuing attempt was made to keep much of the rest inhospitable to the other side through, among other activities, repeated area bombings. This long-term and large-scale strategy of area denial was never publicized by the U.S. DoD has been consistently unwilling to release the geographic extent of the so-called free-fire zones, although it is known that during much of the war they covered a large proportion of the total land area of Indochina.

How does one approach the problem of assessing the ecological impact of an expenditure of 30 billion pounds of munitions over a period of eight years in a rural region the size of Texas? There appear to be no prior assessments to lean upon from other wars, and it has so far been impossible to do the problem justice in Indochina. On the other hand, it is not impossible to at least approximate the overall dimensions of the problem.

In the absence of DoD information regarding a breakdown of the 30 billion pounds of munitions by type, I am forced to make a number of assumptions. First, I'm assuming (on the basis of personal experience and unofficial interviews with various military personnel in Indochina) that half of all the air and ground munitions expended were of the sort that produce craters. Second, I'm arbitrarily assuming, for the purpose of simplifying my calculations, that all of this crater-producing ordnance was delivered in the form of 500-pound bombs. This second assumption results in an underestimate of the number of craters, but presumably not in their combined dimensions or impact. Third, I'm assuming that the zone of flying metal fragments, or "shrapnel" associated with each crater is 1¼ acres. Finally, on the basis of actual measurements by E. W. Pfeiffer of the University of Montana and myself, I'm assigning a value of 30 feet to the diameter of the average crater and a maximum depth of 15 feet, and thus a volume of 131 cubic yards.

LANDSCAPE TORN AS IF BY AN ANGRY GIANT

Granting the above premises, one can make a number of first approximations regarding the environmental impact of U.S. munitions on Indochina. To begin with, we are attempting to assess the impact on the land of over 30 million crater-producing explosions. As seen from the air, Indochina's crater fields have often been likened to lunar landscapes. For a ground level impression I can quote an official military observer: ". . . the landscape (was) torn as if by an angry giant. The bombs uprooted trees and scattered them in crazy angles over the ground. The tangled jungle undergrowth was swept aside around the bomb craters. . . ."

First, let's consider the flying metal at the time of the explosion. This so-called shrapnel indiscriminately kills wildlife and punctures trees. Such trees become subject to fungal infection which in tropical Indochina usually leads to the death of the tree within several years thereafter. The 38 million acres which were saturated with flying shards at one time or another represent 20% of the land surface of Indochina, making this a potentially significant aspect of ecological debilitation.

The explosions and resulting craters destroy the thin layer of humus and topsoil, which disrupts the nutrient cycles of the affected ecosystem. However, since the combined surface area of the craters amounts to only about one-half million acres (about 0.3% of Indochina's land surface), this would become an important factor of ecological degradation only in local regions that had been subjected to intense bombardment.

Cratering exposes and to some extent scatters the infertile and highly acid subsoil. Much of the displaced soil appears to be compacted into the sides of the crater. This displacement of the soil warrants careful evaluation because of its sheer magnitude. During the eight-year period 1965–1972, U.S. bombing and shelling displaced approximately four billion cubic yards of soil, an average of 16 cubic yards per second. This awesome amount would have been sufficient to fill and refill the White House once every hour and twenty minutes throughout the entire period.

Many of the craters remain filled with water during much or all of the year. The possibility exists that evaporation from the land is accelerated and the water table thus lowered. Craterization also disrupts local drainage patterns. Moreover, the water-filled craters throughout Indochina are providing additional millions of small aquatic habitats suitable for the proliferation of mosquitoes, the vectors for a number of serious tropical disease organisms.

IRREVERSIBLE EROSION

Craterization destroys an ecosystem in a number of other important ways. Crater fields make an area difficult to traverse for both man and beast. Exposure of soil to the elements provides the opportunity for irreversible hardening—a possibility with certain tropical soils. Soil erosion is always a serious consequence of heavy bombing or shelling in hilly terrain. This not only debilitates the cratered area, but also causes additional damage downstream.

Craters fill in very slowly via natural processes. I have observed craters in flat terrain at least four or five years old with less than three feet of soil washed into the bottom. Indeed, I have recently had described to me craters of World War II vintage on tropical islands such as Okinawa and Eniwetok that have maintained their integrity for decades.

Although any small number of craters can be filled in with relative ease, I fear that many millions of craters will simply become semi-permanent additions to the Indochinese landscape. In fact, even when the resources are available, it may not be desirable to fill in the craters, since one would have to sacrifice significantly large surrounding areas of topsoil—a fragile and thus valuable commodity in the tropics.

Consequently the countless craters may well turn out to be the least recognized though most serious long-term legacy of the Second Indochina War.

One of the most distasteful aspects of the war in the eyes of the world was the massive U.S. chemical warfare program with anti-plant agents. This widespread revulsion seemed, in fact, to contribute to the termination of the program well before the end of other overt U.S. military activities in Indochina.

Vast areas of forest were sprayed with herbicides, particularly during the four-year period, 1966–1969. This program, confined largely to South Vietnam, was meant to deny forest cover and sanctuary to the enemy—another area denial weapon. All told, more than 5 million acres were sprayed representing 12% of South Vietnam.

POISONING FOR PEACE

The herbicidal damage to South Vietnam has been of monumental proportions. In the 3½ million acres of upland forests that were subjected to one spraying, some 10% to 30% of the overstory trees were killed. In those that were subjected to more than one spraying (an estimated additional one million acres), at least half, and sometimes all, of the trees were killed. Thus, at least 32% of South Vietnam's 14 million acres of dense upland forests were sprayed one or more times.

Ecological debilitation has been particularly severe in the multiply-sprayed areas. The soil has been depleted of its mineral nutrients through a phenomenon referred to as nutrient dumping. Nutrient dumping occurs at the time of the herbicide-caused leaf drops because tropicals soils cannot hold the abundance of nutrients being released by the rapidly decomposing amount of leaf litter. For such a tropical forest ecosystem to regain its former nutrient capital, it will take one and possibly two decades.

Where much of the overstory has been destroyed there will be an invasion of certain tenacious pioneer grasses. These can either be shrubby bamboos or the herbaceous grass, *Imperata*. In either case, the invaders (weeds) can be expected to dominate the site for several decades, preventing the natural regeneration of the hardwood species. The quality of the resulting ecosystem will be considerably reduced by the ecologically inferior and economically useless invaders.

If we now consider the coastal mangrove forest, which occupies more than a million acres, at least 25% has been chemically destroyed. For obscure *physiological* reasons even one spraying totally kils the mangroves.

Moreover, for obscure *ecological* reasons, such devastated sites are not naturally reoccupied by fresh vegetation for many years. The mangrove ecosystem, perhaps the most productive in the world, provides the breeding or nursery grounds for most offshore fish and crustaceans, and for many fresh water ones as well. The degree to which the fishery resource has been damaged by the loss of these grounds could be considerable. Mangroves also protect the shoreline from coastal erosion, acting as a buffer between land and sea. Without this buffer, the shoreline will be cut back, particularly owing to the numerous typhoons of the region.

The anti-plant agents have, of course, debilitated a significant percentage of the vegetation of South Vietnam's ecosystems. What may not be so readily apparent, however, is that they have also raised havoc with the faunal component. Quite simply, wildlife cannot survive without food and shelter. Both of these basic necessities are largely derived, directly or indirectly, from plant life. In fact, a major fraction of the animal species found in the tropics live high in the crowns of the forest trees—the most prominent victim of the herbicidal atacks.

The preceding summarizes the obvious and immediate effects of the massive and unprecedented chemical intrusion of the Vietnamese environment. What remains to be recorded are the subtle and long-term effects that will continue to manifest themselves in the years to come.

LAND-CLEARING LUNACY

Between 1968 and 1972 the U.S. developed and put into practice a conceptually simple and straight-forward approach to denying its enemy forest cover and sanctuary: Total forest removal.

In the land-clearing program scores of giant tractors equipped with special blades ("Rome plows") were employed to literally shove away one militarily troublesome forest after another. At the height of the program more than a thousand acres a day were obliterated. All told, more than one million acres were leveled, apparently all in South Vietnam. This represents 2% of the land surface of that country. A significant portion of Rome plowing was concentrated in the Third Military Region, where it was considered to be playing an instrumental role in "securing" that region.

The ecological impact of removing virtually all the vegetation and exposing the soil on thousands of contiguous acres at a time is phenomenal. The soil immediately becomes subject to massive erosion, particularly in hilly terrain. That soil which remains in place loses a high proportion of its soluble minerals through nutrient dumping. Wildlife habitat is destroyed instantly and completely. Sooner or later the cleared region is invaded by weeds, most likely by the pernicious Imperata grass.

Here again, a means of area denial has served to convert vast tracts of Indochina into what might well be referred to as a semi-permanent green desert. I use the term "semi-permanent green desert" judiciously, because of the severe site degradation, the decreased ecosystem productivity, the enormously restricted wildlife carrying capacity, and the expectation of exceedingly slow recovery.

The use of Rome-plow-equipped tractors for the complete elimination of immense forest tracts demonstrates rather well the insensitivity of the DoD to long-term ecological concerns.

CHEMICAL WEATHER MODIFICATION

Cloud seeding with silver iodide and other chemicals to increase rainfall, which began on a small scale in 1963, has been carried out extensively throughout Indochina by the U.S. The apparent primary purpose for this operation was to destroy roads and trails, thereby disrupting the enemy's logistics. Additional objectives included the reduction of enemy radar efficiency and the instigation of floods. One of the major emphases, beginning in 1967, was the attempt to render impassible the so-called Ho Chi Minh trail region in southern Laos.

No information has been made available by DoD on either the magnitude or the success of its Indochinese weather modification operations. However, one can assume at least partial success because the program was steadily intensified from 1967 through early 1972.

The meteorological and broader environmental impact of such weather modification, either local or regional, is essentially unknown. Yet the possibility of undesirable long-term influences cannot be ruled out. Beyond the possibility of direct toxicity to biota from the cloud-seeding agents themselves, the amplification of rainfall increases the rate of soil erosion and may trigger floods. Moreover, the rate of erosion is greatly increased on land previously disrupted by bombing, Rome plowing, etc.

Water-dependent disease carriers are, of course, aided by additional rainfall. These weather modification operations could lead to epidemics among wildlife, domestic livestock, and humans. More subtly, modification of rainfall patterns can undermine the harmony of local ecosystems by disrupting the reproductive cycle of local flora and fauna.

These weather modification operations by the U.S. provide yet another example of the casual disregard, if not contempt, by the DoD for broad ecological concerns.

THE PRESENT AND FUTURE

To fully comprehend the impact these military operations had on Indochina is exceedingly difficult, if not impossible, at this time, First of all, there is a great diversity of ecosystems in Indochina, few of them studied to any great extent in the past. Also, the scarcity of pre-damage comparison data is a serious drawback. Secondly, DoD has released only a minimal amount of pertinent data as to the types, intensities and locations of its various operations. Third, the realities of the military situation have thus far prevented any serious, systematic, on-site examinations. Finally, there are no analogous damage studies to fall back upon. Indeed, there is simply no precedent for such massive and widespread environmental intrusion via bombs, chemicals, or tractors.

Estimates of how long it might take for substantial ecological recovery would be even more foolish to attempt at this time. Rate of recovery depends not only upon a variety of natural factors, but also upon the extent of human involvement, either positive or negative.

At this writing, it is unclear whether or not a careful and complete investigation will ever be made of the ecological effects of the Second Indochina War. DoD stands alone among our federal agencies in being exempt from having to make environmental impact statements for its activities. This may be a short-sighted policy in view of current capabilities and the ever more precarious state of the ecology of our earth.

In partial recognition of the necessity for such an ecological evaluation, in 1970 the 91st Congress instructed the National Academy of Sciences to investigate the ecological effects of the chemical warfare program with antiplant agents. And, Senator Gaylord Nelson [D-Wisc.] recently introduced Senate Bill No. 365 (since referred to the Committee on Foreign Relations) which would provide for an investigation to assess the extent of the damage done to the environments of South Vietnam, Laos, and Cambodia as the result of all of the various operations of the U.S. armed forces in those countries. Such an examination would be of great importance not only in behalf of Indochina and its hapless inhabitants, but also because it would provide a clearer picture of the consequences to be expected when a major nation wages counter-guerrilla warfare in this day and age.

It may not be too far-fetched to hope for eventual international recognition of the necessity to proscribe environmental warfare. The draft treaty by Senator Claiborne Pell [D-R.I.], submitted to the 92nd Congress last year as Senate Resolution No. 281, provides for the complete cessation of geophysical modification activity as a weapon of war. Adoption of this treaty would certainly be a step in the right direction.

Finally, I must reiterate the fundamental importance of the land in providing the natural resources upon which an agrarian society depends for its very existence. I appeal, therefore, to the community of scientists to make available as needed their expertise to the peoples of Indochina in their efforts to reconstruct their war-ravaged land.

U.S. MUNITION EXPENDITURES IN INDOCHINA—BASED ON U.S. DEPARTMENT OF DEFENSE RELEASES

[In billions of pounds]

Year	Air munitions	Surface munitions	Total munitions
1961 to 64	?	?	?
1965	0.6	?	0.6
1966	1.0	1.2	2.2
1967	1.9	2.4	4.3
1968	2.9	3.0	5.9
1969	2.8	2.8	5.6
1970	2.0	2.4	4.3
1971	1.5	1.7	3.2
1972	2.2	1.8	4.0
Total	14.8	15.2	30.0

MAJOR U.S. ANTIPLANT AGENTS SPRAYED IN INDOCHINA

(Based on U.S. Department of Defense Releases)

AGENT ORANGE

Composition: 1.1 mixture of 2,4-D and 2,4,5-T

Active ingredients: 8.5 lb. per gallon

Application: Undiluted at 3 gallons per acre

Major target: Forest vegetation

AGENT WHITE

Composition: 4:1 mixture of 2,4-D and picloram (Tordon)

Active ingredients: 2.5 lb. per gallon

Application: Undiluted at 3 gallons per acre

Major target: Forest vegetation

AGENT BLUE

Composition: Dimethyl arsenic (cacodylic) acid

Active ingredients: 3.1 lb. per gallon

Application: Undiluted at 3 gallons per acre

Major target: Rice and other food crops

IMPLEMENTATION OF THE FEDERAL ADVISORY COMMITTEE ACT

Mr. PERCY. Mr. President, the implementation of the requirements of the Federal Advisory Committee Act of 1972 guaranteeing public access to advisory committee meetings, minutes and other documents not of a sensitive nature has at best seemed to be spotty. I have received a number of reports from a variety of groups that indicate that the openness provisions of the act are not being implemented in accord with the letter or spirit of the act.

Prof. William H. Rogers of the Georgetown University Law Center has called to my attention his correspondence with two agencies, the Environmental Protec-

tion Agency and the Department of the Interior, with regard to the operation of EPA's Hazardous Materials Advisory Committee, and Interior's General Technical Advisory Committee, which deals with coal research. This correspondence demonstrates the kinds of problems interested citizens have been having in using the provisions of the act. These and other complaints demonstrate the need for overview hearings by the Government Operations Committee in order to pinpoint shortcomings in agency implementation of the act's provisions.

I ask unanimous consent that the correspondence referred to be printed in the RECORD.

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

GEORGETOWN UNIVERSITY
LAW CENTER,
Washington, D.C., January 29, 1973.

Hon. ROGERS MORTON,
Secretary of the Interior, Department of the Interior, Washington, D.C.

DEAR SECRETARY MORTON: I am distressed to report that your department is off to a slow start in coming to grips with the Federal Advisory Committee Act. As you are well aware, the Act represents the first effort by the Congress to pierce the shroud of secrecy that hides the operations of the thousands of advisory committees that participate daily in making policy for the federal government. Few are more important than the General Technical Advisory Committee, which guides the Office of Coal Research in a research effort with aims no less important than the production of clean fuels from our vast domestic coal supplies.

Curiously, it seems that the General Technical Advisory Committee held two meetings at the Department of Interior on January 16, 1973, the first at 9 a.m. behind closed doors in the offices of the Director of Coal Research, the second at 10 a.m. before the public at the regularly scheduled session. I search in vain for an exception to the open door policies of the Advisory Committee Act for meetings convened by the Director himself.

Interestingly, one of the first items on the agenda at the public session was an explanation by Mr. Francis Grumbo of the Office of the Solicitor, of the meaning and purposes of the Federal Advisory Committee Act. Mr. Grumbo properly pointed out that perhaps one day's notice in the Federal Register wasn't the type of "timely notice" Congress had in mind under § 10(a)(2) of the Act. Mr. Grumbo had more difficulty in explaining why the afternoon session of the Technical Advisory Committee also would be off the record. Not counting lunch and any post-meeting meetings, by my calculations the Committee worked for two hours on the record, and two hours off the record.

One reason for excluding the public in the afternoon was that the Committee would be talking about the President's Fiscal Year 1974 Budget. Since nobody, the Congress included, is allowed access to the Budget, that was thought to be reason enough for keeping out the public. The Committee had a need to know and got information. Once again, there is not the flimsiest of legal grounds, in the Advisory Committee Act or the Freedom of Information Act, for denying public access to this information gladly handed over to the industrial advisors.

No violation of an open door policy could be without its trade secret defense, and the Technical Advisory Committee was not. Another item on the afternoon agenda was a discussion of contracts under negotiation or planned. The contractor would have to show his secrets to the likes of Consolidation Coal Company, Kennecott Copper Corporation and the Anthracite Institute, but the public was thought to pose a competitive risk. Conceivably, even if a trade secret could be detected in these contractual discussions, the way to handle it would be a brief request of non-members to step out of the room before resuming the meeting. A blanket exclusion appears unnecessarily heavyhanded.

I should say also that the Committee members seemed not at all hostile to the idea of an open proceeding. The initiative to bar the public came from Department of Interior representatives. A discouraging start for open meetings, wouldn't you agree?

Yours very truly,
WILLIAM H. RODGERS, Jr.

U.S. DEPARTMENT OF THE INTERIOR,
Washington, D.C., February 26, 1973.

Mr. WILLIAM H. RODGERS, Jr.,
Georgetown University Law School, Washington, D.C.

DEAR MR. RODGERS: I have your letter of January 29, 1973, addressed to Secretary Morton in regard to the meeting of the General Technical Advisory Committee (GTAC). It has been referred to me for reply.

You indicate that information with respect to the President's fiscal year 1974 budget, before it was submitted to the Congress, was given to industrial advisors, and that contractor secrets may have been shown "to the likes of Consolidation Coal Company, Kennecott Copper Corporation, and the Anthracite Institute."

The members of the General Technical Advisory Committee are hired as consultants and as such are special Government employees. It is in the members' capacities as special Government employees that such information is revealed to them.

Our regulations forbid the improper use of such information, as provided in 43 CFR 20.735–33(a):

"A special Government employee shall not use inside information obtained as a result of his Government employment for private gain for himself or another person either by direct action on his part or by counsel, recommendation, or suggestion to another person, particularly one with whom he has family, business, or financial ties. For the purpose of this paragraph 'inside information' means information obtained under Government authority which has not become part of the body of public information."

All committee advisory members are advised of the regulation and upon entering on duty are given a booklet entitled, "Regulations Governing Responsibilities and Conduct of Employees." A copy is enclosed for your information.

Although the General Technical Advisory Committee meets three times a year, usually in Washington, there is no set meeting place. To make it easier for the members to get to the different meeting rooms where the meetings are held, the members usually first go to the Office of Coal Reesarch the morning of a meeting, arriving at different times, and then go to the actual meeting room a few minutes before the meeting. For the most recent meeting the Director formalized the practice and invited the members to his Office. You are cordially invited to also visit the Director's Office before the next Washington meeting, if you wish.

I regret that the meeting of the committee on January 16, 1973, was not as open as you would have preferred. This was the first meeting held in the Department after the new Federal Advisory Committee Act became effective on January 6, 1973. I am asking the Office of Coal Research and other elements of the Department to make every effort to reduce to a minimum the portion of any future meetings of various committees that are conducted in closed session. Possibly in many cases this can be done as you suggest, by having the nonmembers step out of the room before resuming the meeting.

Sincerely yours,
RAYMOND C. COULTER,
Deputy Solicitor.

U. S. ENVIRONMENTAL
PROTECTION AGENCY,
Washington, D.C., March 16, 1973.

Mr. WILLIAM H. ROGERS, Jr.
Visiting Professor of Law, Georgetown University Law Center, Washington, D.C.

DEAR MR. ROGERS: I am writing with regard to your verbal request to Mr. Talbot of this office to read the minutes of the Hazardous Materials Advisory Committee.

Among other assignments, the Environmental Protection Agency utilizes the advice and recommendations of the Hazardous Materials Advisory Committee in carrying out review functions in the area of grants administration.

While the Agency has a policy of the fullest possible disclosure of records pursuant to the Freedom of Information Act, the Administrator has determined that certain internal memoranda, written views, and judgements of members are exempt from disclosure in the area of grants review.

Portions of the minutes of many Hazardous Materials Advisory Committee meetings fall into this exempt category. I must ask that you forward a written request for the minutes of the meeting you desire.

The Staff Office will immediately process your request in accordance with EPA regulations published in the Federal Register December 3, 1971. There will be a charge which must be borne by you.

Every effort will be made to provide the information as rapidly as possible.

Sincerely yours,
WINFRED F. MALONE, Ph. D.,
Staff Science Advisor.

GEORGETOWN UNIVERSITY LAW CENTER,
Washington, D.C., April 10, 1973.

WINFRED F. MALONE, Ph. D.,
Staff Science Advisor, Office of Research and Monitoring, Environmental Protection Agency, Washington, D.C.

DEAR DR. MALONE: Needless to say, I was disappointed with your letter of March 26 posing unexpected hurdles to my unexceptional request to examine the minutes of EPA's Hazardous Materials Advisory Committee.

My request, which was made perfectly clear to Mr. Talbot, was to read the complete minutes of each and every meeting of the Hazardous Materials Advisory Committee. The only exceptions to this request are the minutes of the meeting of January 22, 1973, which have previously been supplied by your office. The Committee, I understand, was established on May 21, 1971 and has met perhaps twelve to fourteen times since then. I mention this to indicate we are not talking about hundreds of meetings extending over years of time.

As for the objection that "portions" of the minutes are thought to be exempt "in the area of grants review," I suggest that steps be taken to cover what you consider to be privileged communication so that I might examine what remains. This procedure surely is to be preferred to withholding all the information.

As for the "charge" for the documents let me reiterate the suggestion that I examine the material in your offices to avoid the necessity for any duplication costs.

Finally, let me specify several other documents and work of the Committee which I would like to examine in your office:

1. The report "Policy and Guidelines for Registration of Disinfectants and Sanitizing Agents."

2. The report "Status of Toxaphene."

3. The report "Pest Control in Food Processing Plants and Other Food Handling Areas."

4. A summary report on the role of biological control.

5. A summary and status report on pesticide and pesticide container disposal.

6. A committee study of the environmental impact of the compounds hexachlorobenzene and hexacholorobutadiene.

7. A committee evaluation of the evidence of thyroid carcinogenicity of ethylene thiourea.

8. Results of a Committee assessment of the dangers of freon propellants.

9. EPA's Report on Cadmium.

10. A committee study of nitrates, nitrites and nitrosamines.

11. An overall study of herbicide uses.

12. A review of the extent and significance of phthalates and plasticizers in the environment.

13. A proposed system of integrated insect population control, to reduce use of hazardous control chemicals.

14. A report on the progress of the establishment of the National Center for Toxicological Research.

15. A critique of the office of Water Program's "Designation of Hazardous Substances" (required relative to application of the Water Quality Improvement Act).

16. The Committee's opinions on the draft proposal "Guidelines for evaluating the Safety of Pesticidal Chemicals," requested by the Office of Pesticides Programs.

17. The Committee's review and criticisms of the draft document "Pesticides in the Aquatic Environment."

18. A compilation of information resources for hazardous and related materials prepared relative to "clearinghouse" needs.

19. An outline for a proposed Supplement to the Report of the *Secretary's Commission on Pesticides and Their Relationship to Environmental Health.*

20. The Committee's assessment of the enviromental research that is conducted by the principal laboratories of the Agency.

21. The Committee's proposed approach to a ranking of relative hazards of toxic materials.

I await your response to my requests for this material. Thank you.

Yours very truly,

WILLIAM H. RODGERS, Jr.

SIR GEORG SOLTI, "THE FASTEST BATON IN THE WEST"

Mr. PERCY. Mr. President, Sir Georg Solti has been the conductor of the Chicago Symphony Orchestra since 1968. In the years since then, the orchestra has risen to a position of national preeminence. Time magazine's music critic, Mr. William Bender, rates Chicago among the country's top three orchestras, praising it as "sine qua non."

Members and admirers of the world of music are already well aware of Solti's talent and accomplishments and of the rapport he enjoys with his orchestra and audiences. And now Time Magazine has brought the magic of Solti to the attention of the Nation and world at large with its recent cover story on Chicago's remarkable maestro.

I am delighted that Solti has been so recognized and so honored, for his work with the Chicago Symphony is noteworthy indeed. Time says:

Indeed there has not been such excitement about a marriage of conductor and orchestra in the U.S. since the golden days of the 1930s when Toscanini led the New York Philharmonic, Stokowski the Philadelphia and Koussevitzky the Boston.

I ask that the entire article on Sir Georg Solti, Chicago's spectacular conductor, be printed in the RECORD.

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

SOLTI AND CHICAGO: A MUSICAL ROMANCE

The idealized symphonic conductor has Leonard Bernstein's flair, Herbert von Karajan's grace and Zubin Mehta's youth. But when the directors of the Chicago Symphony Orchestra cast around for a conductor to save their troubled orchestra in 1968, they threw out all the stereotypes and selected a man who looked, according to one Chicago musician, like a "tennis player or shortstop or golfer" on the podium. He was also bald and aging. Looks aside, Sir Georg Solti and the Chicago Symphony were made for each other. Together they are producing some of the world's most exciting music.

In the relatively brief span of four seasons, Solti (pronounced *Sholtee*) has brought the Chicago back to the pre-eminence of its days under Fritz Reiner (1953–1963). The Solti sound, not the sound of trouble, is the talk of the music world. Indeed there has not been such excitement about a marriage of conductor and orchestra in the U.S. since the golden days of the 1930s when Toscanini led the New York Philharmonic, Stokowski the Philadelphia and Koussevitzky the Boston. In recent years, only George Szell and the Cleveland Orchestra have approached the august virtuosity, combustible power and quartet-like intimacy that Solti has established with the Chicago Symphony. The advent of Solti in Chicago, as he himself puts it with characteristic bluntness, "was like awakening the sleeping princess." At age 60, Solti may be forgiven for depicting himself as Prince Charming for the simple reason that almost everyone agrees with him.

HOSANNAS

Until his arrival the Chicago, heavy with German tradition, was known as a great orchestra that only rarely gave a great performance. Now it is an ensemble that Solti can (as he did two seasons ago) take into such musical bastions as Vienna, Berlin and Hamburg, and win standing ovations from the public and hosannas from the stuffiest critics. The money for that European tour was raised largely by Symphony Board Chairman Louis Sudler, as part of a campaign to publicize the board's selection of Solti. That choice was made, says Sudler, a Chicago realtor, on the basis of "just what a good businessman would do. First you get the best possible product, then you let the world know that you have the best possible product." The first dividend was a homecoming parade in 1971, arranged for the entire orchestra. It was enthusiastically promoted by Mayor Richard Daley, with Solti riding high and proud in a lead car—and not all that common in Chicago, folks actually carrying violins in their violin cases.

Then the money—lack of which had put the orchestra on a disaster alert prior to Solti's arrival—began to come in. Annual donations by individuals rose dramatically from $425,919 in 1968 to $1,607,846 last year, corporate contributions from $60,000 in 1966 to $500,000. As a result, the orchestra's endowment fund is now comfortably at a level of $7 million, and last year's deficit was a mere $74,000, lowest since the pre-crisis year of 1963. Last week, the city's music lovers were crammed excitedly into Orchestra Hall for Solti's concert performance of Act III of Wagner's *Die Götterdämmerung.*

They witnessed a true musical event. Tenor Jess Thomas died magnificently as Siegfried, and the audience could almost feel the flames as Soprano Helga Dernesch submitted herself to Brünnhilde's immolation. It was a remarkable performance, a fitting finish to Solti's successful spring stint in Chicago. If Chicagoans needed any reminder, the spirited and darkly dramatic rendition of *Götterdämmerung* demonstrated anew that there is not an opera house orchestra anywhere that can match the Chicago under Solti.

Solti's love for the orchestra, and its for him, is obvious. "It's a marvelous thing to be musically happily married," he says. "I am and I know. I'm a romantic type of musician, and this is a romantic orchestra. That is our secret: at a time when everybody is doing exactly the opposite, we are unafraid to be romantic."

Romantic for Solti means a predominance of German and Austrian music (ranging all the way from Haydn to Wagner, Mahler and Strauss), plus an orchestral tone that is big and red-blooded but not as luxuriant, say, as the Philadelphia Orchestra under Eugene Ormandy. As much as he relishes the Sequoia-like majesty of the Chicago's brass section, and its evergreen forest of strings. Solti is equally partial to the meadowed tranquillity of the woodwinds. The delicate lyricism he conjures up between oboe and English horn in the pastoral movement of Berlioz's *Symphonie Fantastique* would be welcome at a chamber music recital. Yet for all his romantic predilections, Solti expertly manipulates the arcane configurations of such moderns as Arnold Schoenberg and Elliott Carter.

Solti is an orchestra architect much in the Toscanini mold. He is not one to pause sentimentally over a favorite melody or chord. The long line is everything. Such basic tools as rhythm and dynamic shading are used to sculpt breathtaking new shapes. His phrasing is at times so tight that it often seems the music is moving more quickly than it actually is. "The things that intrigue me are how to make forms clear," he says, "how to hold a movement together, or if I am conducting opera, how to build an act or a scene." These are traits that produce masterfully cohesive performances of old masters like Wagner, or such *Angst*-prone post-romantics as Mahler and Bruckner. It was Mahler's craggy *Fifth Symphony* that gave Solti and the Chicago Symphony the first chance to demonstrate their extraordinary combined talents to New York audiences. So stunningly powerful was their 1970 performance in Carnegie Hall that the Manhattanites yelled, stomped and cheered for 20 minutes: it might have gone on all night had not Solti led the concertmaster offstage with one grateful but resolute wave.

Such ovations have become familiar to Solti throughout the U.S. and Europe. In addition to conducting the Chicago Symphony for twelve weeks this season, he devoted ten weeks to the Orchestra de Paris (he also serves as its music director). A month ago, at the 700-seat Opéra Louis XV at the Versailles Palace, he led an exquisitely wrought performance of Mozart's *Marriage of Figaro* by the Paris Opéra (he serves as that company's music adviser). In London, which he calls home these days. Solti regularly guest-conducts the London Philharmonic for a month each year.

STARBURST

In virtually every musical capital of the world, the sight of Solti conducting is a familiar one. It is quite a spectacle: head down, baton held high, tails flying, he seems to spring from the wings. The leap to the podium is agile and sure; the bow to the audience curt, formal and, in the European tradition, from the waist, with the heels brought together in something just this side of a click. At this point, a Stokowski would spin showily and attack immediately. Not Solti. He turns thoughtfully, spreads his feet and shoots slitty glances around to make sure all is ready. Then, with a slashing, totally unexpected paroxysm involving every part of his body, he gives the downbeat. Throughout the performance, Solti's body language is dramatically explicit. The violins

are brought in with huge lefthanded scoops to the floor. The trumpets are cued by the riveting spear of an arm and index finger. A starburst of fingers summons the crash of the cymbals. Moments of lyrical romance come with the left hand cradled near the heart, the right hand beating coronas of love high above. Passages of staccato brilliance are paced by chopping up and down with both arms. A furious backhand indicates a *sforzando* attack; a hand moving slowly across his mouth implores the players to give him a soft sound.

His gestures may at times seem overlarge, but they are no mere sideshow to titillate the audience. Solti is all business on the podium, his energies totally focused on the orchestra. He eschews any useless movement. A purring passage that does not have any tricky entrances usually finds Solti barely conducting at all. Says Chicago Oboeist Ray Still, "When everything is going fine, he doesn't interfere with the orchestra by going into a lot of acrobatics to make the audience think it's his struggling which is producing such fine music."

Often, though, his hours on the podium are indeed a struggle—in unexpected ways. The years of conducting with arms carried high in tension, or head held tilted back to watch his performers on operatic nights, have produced extensive muscle damage to Solti's shoulders and neck. If he sometimes does a spectacular 180° leap from the violins way off on the left to the double basses on the right, it is because he has to. "I can not move my head more than a few inches to the left or right without turning by body," he says. There are other problems too. Solti was flailing away so furiously during a recording session of *Parsifal* last year that he stabbed himself in the left hand with his baton and had to be rushed to a hospital to have the point removed.

On the podium, Solti defies a current vogue: he regularly conducts from a score. That any number of young and not-so-young conductors think they must conduct from memory, he blames on Toscanini: "Why did Toscanini conduct from memory? Because he was nearsighted. Of course, he had that fabulous memory, but that wasn't really why he never used a score. Today we have an entire generation of young conductors who think they must conduct from memory—all because Toscanini was nearsighted. It is total lunacy."

Such commonsensical candidness has endeared Solti to musicians; that endearment goes a long way toward explaining his success. Without the loyalty and respect of his musicians, no conductor can long preside over an orchestra—much less produce great music. Musicians are notoriously independent, as the old saw about the French flutist demonstrates. Ordered by a conductor to play in certain style, the musician said: "Very well, I'll play it his way at rehearsal, but just wait till the concert. After all, *mon ami*, it's my flute." With Solti, it is different. Says Orchestre de Paris Flutist Michel Debost: "I may not like his music making, but I play it the way he wants because I can't resist him." Apart from his candor, orchestras respond to Solti partly because of his personal combination of warmth and frost, partly because of his seemingly endless store of energy and intensity. "With Solti there's always this momentum going," says Jay Friedman, principal trombonist of the Chicago.

"The architecture of a piece of music always comes across. Even in very slow passages you're never standing still. I think it's because something metaphysical happens. The music he makes seems to transcend what he does physically." So much so, notes one Chicago woodwind player, that "during rehearsals Solti gets so worked up, the motion is so violent, that his navel is almost always exposed."

If Solti has a weakness it is that as a colorist he prefers primary hues to the shades in between. The delicate pastels of French impressionists like Debussy and Ravel simply seem to be beyond him. Yet one can never rule out any possibility with Solti—even his becoming a master of the tender brush stroke. The Beethoven represented by his new recording with the Chicago of the *Ninth Symphony* (London) is significantly deeper and technically nearer perfection than the Beethoven he recorded more than ten years ago with the Vienna Philharmonic. This week London issues his *Parsifal*. Serene, mystical, glowingly colored and, by the way, the slowest in stereo, it is a pantheonic accomplishment he could not have matched a decade ago.

Solti today has a depth, a broader grasp and surer hand than ever. Still intense and energetic by any standards, he nonetheless is mellower, more at ease. Birgit Nilsson, the supreme Wagnerian soprano, notes: "In his early days he was so energetic, so impulsive. He built one climax on top of another. You felt like you were going to explode. Now he knows how to relax."

No two musicians ever look at a conductor in exactly the same way. Where Friedman sees the metaphysical and Nilsson a mellower Solti, Flutist Debost sees the diabolical: "There is something of the wolf or the Hun about Solti. As he conducts, his eyes turn into cracks, his ears become pointed, and you can sort of imagine him riding a horse bareback across the steppes."

That sort of fancy is based on the knowledge that Solti is a native of Hungary, the land of Magyars. He comes from a family of bakers who had lived in the small Hungarian village of Balatönfokájar since the 16th century. His father Mores left the village in search of opportunities in the grain business and then real estate ("both with very little success," his son recalls); he set himself up in Budapest, where Gyuri (the diminutive of the Hungarian version of George) Solti was born Oct. 21, 1912.

At the age of five or six, it was discovered that Gyuri had absolute pitch. That prompted his teachers to send word home that the boy ought to have music lessons. Mores and Momma Theres scraped together enough money for an old piano, and Gyuri went at it with his typically fierce intensity. "I was—and am—a very determined little fellow," says Solti. By the time he was twelve, the prodigy was giving recitals. At 13 he enrolled in the Franz Liszt Academy, Hungary's leading college of music, where he studied with Ernst von Dohnányi and Béla Bartók. The latter would eventually become one of the century's leading composers, and Solti one of his major interpreters.

DIRTY JOBS

As a prodigy of the piano, says Solti, "it was absolutely logical that I should become a pianist." Instead, at age 18 he went to work at the Budapest State Opera to become a conductor. Why? "I can only say that deep in your heart, if you are a sensitive person, you know what your strength is. And I knew mine was conducting."

Deep in his heart was where the conducting had to stay for some time. For much of the next decade, he worked in the opera house doing "all the dirty jobs," coaching singers, positioning scenery, accompanying the nonorchestral stage rehearsals. Solti got his first big break in Budapest on March 11, 1938, when he was allowed to conduct Mozart's *The Marriage of Figaro*. The first act went well, Solti recalls, but with the start of the second act, the singers started making mistakes while the audience grew raucously restless. To his relief Solti later learned that his conducting was not the cause; word had reached the audience that Hitler was on his way into Vienna, only 130 miles away.

A Jew, Solti fled to Switzerland in 1939 and lived out the war there, boning up on his piano, winning first prize in the Concours International at Geneva, and developing a reputation as both soloist and chamber-music player. In 1945, then 33, desperately in search of an opportunity to conduct, Solti got word that Pianist Edward Kilenyi, an American who had studied in Budapest back in the 1920s (and whom Solti had got to know then), was the music-control officer for the U.S. occupation forces in Bavaria. Solti shot off a letter to Kilenyi and ended up with the job of music director of the Munich State Opera. Though his experience was practically nonexistent for such a position, there were few other conductors around who could pass the Allies' denazification screening. As head of a major European opera house, Solti had exactly one work in his conducting repertory—the 1938 *Figaro*. No one in Munich knew that except Solti and, as he recalls now, "I took great care to conceal my rather limited repertory. It was not for several years that Munich began to discover that I was conducting everything for the first time."

By 1948 Solti was guest-conducting in Italy and Vienna. Two years later he conducted the London Philharmonic, and in 1952 he moved from Munich to become general music director of the Frankfurt Opera. He had nine good years there (44 new productions), but in terms of his international career, it was records that brought him prominence. His 1957 recording of Wagner's *Die Walküre* with Kirsten Flagstad, Set Svanholm and the Vienna Philharmonic, was so successful that it prompted English Decca (London Records in the U.S.) to engage him to embark upon the complete *Ring* cycle, a prodigious undertaking that was not completed until 1965.

OUTRAGED

Though Solti first visited the U.S. in 1953 to conduct the San Francisco Opera, it was not until 1960 that he was offered an American orchestra. The experience was a disaster. Solti was hired by the Los Angeles Philharmonic as chief conductor, only to learn that a young conductor from India named Zubin Mehta had been chosen as his assistant—without his consent. Solti quit. Nothing against Mehta, says Solti, but a matter of principle. "If I had given in on this one point, it would never have been the same. I wasn't happy then at all, no, not a bit. But today I am grateful. Because if I'd stayed on at Los Angeles, I wouldn't have Chicago, and where would I be then?"

His humiliation was considerably soothed by his ascendancy to the directorship of England's Royal Opera at Covent Garden in 1961. Still something of a diamond in the rough, the *Generalmusikdirektor* of the Munich and Frankfurt operas had trouble adjusting to the British predilection for requesting rather than demanding. Recalls John Culshaw, producer of the Solti *Ring* cycle: "With such a bundle of energy who drives himself so hard, you either give him total loyalty or you can't stand him." Among those who could not stand him at first were the members of the chorus, outraged that he refused to meet their delegates for discussions of working conditions. The audiences were at times as difficult. They would treat Solti to an occasional heckle and boo, and one night during *Der Rosenkavalier* a cabbage plunked down on the stage with the inscription: "Solti must go."

Solti did not go. In fact, it quickly became clear that he was not quite the ogre his Germanic brusqueness suggested. The musicians soon realized his remarkable talents and total dedication. They fondly began collecting "Soltiisms" that result from his frenzied blend of Hungarian, German and English. Examples: "Dis is it as ve vould never did it." To signify that the chorus was a bit muddy: "Here we have ze svimming." Running up to compliment a stand-in singer on his performance, he cried: "Congratulations, I thought it would be twice as bad."

Under Solti, Covent Garden had its most dynamic presence since the days of Sir Thomas Beecham in the 1930s. Aside from Karajan at Vienna, no other opera house was headed by a musician of Solti's caliber. When he took over, Solti proclaimed that "I have only one desire: to make Covent Garden the best opera house in the world." By the time he left in 1971, he had almost succeeded, and there was no one to dispute his right to the knighthood bestowed by the Queen a year later, shortly after he had become a British citizen.

Throughout his tour at Covent Garden, Solti was taking on polish—largely due to his first wife Hedi whom he had met during the war in Switzerland. Hedi was formal, proper, acutely aware of class structure; once they were situated in London, she began seeing to it that Solti mingled with the right titles. Friends recall the day that Solti was to have tea in a lordly London home. Hedi had spent all day rehearsing him on the fine points of an English tea. Except, that is, for the sugar tongs: Solti squeezed them too lightly, and his sugar cube popped into the breast pocket of Covent Garden's administrator, the late Sir David Webster.

Hedi managed him, mothered him—and watched their marriage fall apart. "We were still young when we married, and we just grew in different ways," says Solti today. Whatever the reason, Solti was soon known as the possessor of a wandering eye. All the old jokes about the casting couch were dragged out. There was gossip that he gave his paramours a white fur coat—and that there was an exorbitant number of white-coated women around London.

His eye finally settled in 1964 when, at 52, he met and fell in love with Valerie Pitts, 27, a reporter sent to interview him for BBC-TV. They lived together for two years ("It was a violent affair," understates Solti) until Hedi and Valerie's husband James Sargant, a theater executive, obtained divorces in 1966. Solti and Valerie married the next year. Hedi now is married to Patrick O'Shea, a landowner in Ireland.

Hedi had begun the taming of the Magyar and Valerie now completed the process. When he was in one of his intense moods, relaxed, unassuming Valerie went her own sweet way, and that, surprisingly, unwound him. She never debunked him and, more important, never inflated him. In short, says Solti's American Manager Ann Colbert, "Valerie took him off the pedestal." The aura of happy domesticity sits well on Solti these days. He has even been known to end an evening's rehearsal early to go home and tuck his first child, Daughter Gabrielle, now 3, into bed.

Though spectacular on the podium, he is just plain Georg in real life. Where Karajan tools around in a flashy sports car, Solti drives a Volvo sedan. Where Bernstein emerges from a concert in a flowing cape, Salti strolls out in a faded turtleneck. He prefers mineral water to wine, and his daily drink is usually a Scotch just after the concert and before his late-night supper; he never eats before conducting.

Night life for him means his concert or a small meal and game of bridge with friends. He abhors the violence on American TV—but is consumed by the violence of English football. When in London he can regularly be found watching soccer on the BBC.

He also watches the stock market. That is not surprising, considering his wealth. Solti's combined earnings from concerts and recordings now probably exceed a quarter-million dollars a year. Royalties from his disks, spurred by the popularity of his *Ring* and Mahler cycles, have risen drastically in the past several years; he is comforted by the knowledge that if anything happened to him ("Look, I am 60 after all"), future royalties would certainly assure his young family a good income for at least the next 15 years. Yet signs of wealth are extremely hard to detect in his life-style. When they come, extravagances are usually a $50 clock for Gabrielle, or the $1,000 phone bill he racks up each month when on tour, partly for business but partly also to hear his daughter say "Da da."

Solti talks regularly of slowing down. He notes that Gabrielle will be five in 1975 and ready for a stable home and school life. Also, he and Valerie are expecting a second child this month. Like fatherhood, though, Solti's biggest successes have come late in life and, while mellower now, he is going as hard today as he did as a handyman at the Budapest opera 40 years ago. This week he brings the Chicago into New York for two sold-out concerts at Carnegie Hall, then on to Texas, Arizona, New Mexico and California. In July he will be back in the pit at Covent Garden conducting Bizet's *Carmen*. He will stay on in London to record Mozart's *Così fan tutte* and Puccini's *La Bohème;* then after a month's vacation he will return to Chicago for concerts, and begin recording more Beethoven symphonies. On it goes. His engagements already run into 1977. Perhaps then he will be ready to slow down, but no one is betting on it. After all, notes a friend. Toscanini is one of Solti's heroes—and he conducted until he was 87.

REFORM OF THE FEDERAL BUDGET

Mr. PERCY. Mr. President, the Congress is presently engaged in an historic effort to achieve meaningful reform of congressional budget processes. It is an effort to produce a rational national budget which reflects the priorities of both the executive and legislative branches while maintaining the proper balance between the constitutional powers of each branch.

My colleagues on the Committee on Government Operations and I have been working to develop legislation to implement such a congressional budget process, building on the recommendations of the Joint Study Committee on Budget Control. We have had excellent bipartisan cooperation on this bill in the committee, and I would hope that this same spirit will continue when the legislation reaches the floor of the Senate.

Arthur F. Burns, the widely respected Chairman of the Board of Governors of the Federal Reserve System, recently discussed congressional budget reform in a commencement address before the School of Government and Business Administration of the George Washington University.

In his address, Chairman Burns notes that while Members of Congress can vote for or against cleaner air, better schools, or a host of other good things that Government can help to provide, they have no opportunity to vote on what total outlays should be, or whether funds for a particular purpose are needed badly enough to raise taxes or to offset reductions in other areas. Chairman Burns states:

> Yet choices of this type are far more important to the electorate as a whole than the single proposals on which Congressional voting takes place.

The thrust of his speech is that budgetary reform has become essential to the restoration of lost confidence in government, indeed even to the resurgence of our democracy.

Mr. President, I commend Arthur Burns for his speech and ask unanimous consent that it be printed in the RECORD.

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

REFORM OF THE FEDERAL BUDGET

(Address by Arthur F. Burns)

I deeply appreciate the privilege of addressing this graduating class, for—despite the difference in our ages—I feel that we have much in common. Both you and I have spent some years in the lively atmosphere of a university. Both you and I have been concerned with problems of economics, finance, and administration. Both you and I, as residents of this fascinating city, have had the opportunity of observing at close range the understanding, selflessness, and compassion that government officials usually bring to their daily tasks; but we have also had the disquieting experience of witnessing some abuses of governmental power.

As graduates of this School of Government and Business Administration, you are embarking on your careers at a moment in history that is fortunate in numerous respects. Our nation is again at peace, the economy is again prospering, the number of good jobs is expanding rapidly, industrial strife is at a minimum, and civil order is returning to our schools and cities. By every reasonable criterion, so it would seem, you can—and should—look forward with confidence to the future of our country and its economy. And yet, if I read the nation's mood correctly, a spirit of unease and even frustration is now widespread.

There are numerous causes of the concern and scepticism with which many Americans, especially young men and women, now view the contemporary scene. But I believe that most of these causes can be captured in two broad generalizations. First, the American people have come to feel that their lives, their fortunes, and their opportunities are increasingly beyond their control, and that they are in large part being shaped for them by their government. Second, more and more Americans have also come to feel that their government lacks either the knowledge or the competence to make good on the promises that it holds out to the people.

It is this simultaneous dependence on government and diminishing confidence in government that is at the heart of the disquiet that so many Americans are experiencing. I wish I could say that this mood will pass quickly, but I cannot do so. Building confidence in social and political institutions is inevitably a long process, and it can only be accomplished if thoughtful citizens are willing to devote their minds and energy to the task.

When I was your age, the problem that particularly concerned university students was the periodic recurrence of economic depressions that wiped out business profits, caused widespread bankruptcy, and brought mass unemployment to wage-earners. This problem no longer afflicts our society on anything like its earlier scale; and we have made even more marvelous advances in conquering disease, prolonging human life, and reducing the drudgery of physical labor. We have made progress in these fields by diligent application of thought and reason—that is, by identifying each problem, diagnosing its causes, and seeking constructive solutions. It took the best effort of many thoughtful and earnest men to solve the problems that stirred social and political unrest in the past. And it will likewise require much thoughtful and earnest effort to regain the confidence in government which is so essential to our own and our country's future.

In my own profession of economics I have seen large advances in knowledge and also substantial improvements in the application of this knowledge to public policy. I can assure you that those who participated

in these developments have found the experience richly rewarding. And it is precisely because you graduates may be able to contribute to the improvement of our political processes that I want to discuss with you today one of the issues that has brought us much trouble and agony in recent years—namely, the need to achieve rational control over the Federal budget.

Those who administer the affairs of government share a common problem with business executives: no private enterprise and no government can do everything at once. Both must choose among many desirable objectives, and the degree to which their efforts prove successful depends largely on their skill in concentrating available resources on those objectives that matter most. That is the very purpose of budgets. The fact that the Federal budget has in recent years gotten out of control should therefore be a matter of concern to all of us. Indeed, I believe that budgetary reform has become essential to the resurgence of our democracy.

Fortunately, political leaders of every persuasion are by now convinced that Congress must change its procedures if it is to exercise effective control over the Government's domestic and international policies. The old debate between free-spending "liberals" and tight-fisted "conservatives" is dying away. For the most part, liberals as well as conservatives realize that the level of Federal spending, and whether it is financed by taxes or by borrowing, have a powerful effect on jobs, prices, and interest rates.

In the Employment Act of 1946 Congress declared it to be the responsibility of the Federal Government to "promote maximum employment, production, and purchasing power." The authors of this legislation were well aware that a stimulative fiscal policy can be useful in taking up slack in the economy, and that a restrictive fiscal policy can help to cool an economy that is overheating. Yet, despite the prosperity that our nation has generally experienced since the enactment of that statute, budget deficits have greatly outnumbered surpluses. Experience has thus demonstrated that failure to attend properly to governmental priorities leads to excessive fiscal stimulus, and that this in turn is more apt to produce inflation than jobs.

Recognizing this fact, the Congress is now seeking a way to determine an overall limit on Federal outlays that will be rationally related both to expected revenues and to economic conditions. This is essential not only to achieve overall stabilization objectives, but also to enable Congress to play its expected role in determining national priorities. Early in this session of Congress, Senator Mansfield disclosed that all of the newly elected Senators had written to him and to Senator Scott urging reform of the budgetary process because "Congress has the obligation to set priorities . . . and present procedures do not in fact achieve that aim." Their unanimous conclusion was that the "first step toward establishing priorities has to be setting a ceiling on appropriations and expenditures;" and that unless this is done at an early stage of each session, the Congress is "not really budgeting at all."

The budget that the President recommends to Congress at the beginning of each session is the product of a systematic process aiming to establish an overall limit on outlays and to determine priorities within that limit. This process, however, has no counterpart in the Congress. Instead, Congressional decisions that determine the ultimate shape of the budget are taken by acting separately—or at times by taking no action—on a hundred or more entirely independent measures. It is only after separate votes have been taken on housing, education, defense, welfare, and whatnot that we can put the pieces together and discover what kind of a budget has emerged.

Thus, members of Congress now vote for or against cleaner air, for or against better schools, and for or against a host of other good things that Government can help to provide. But they have no opportunity to vote on what total outlays should be, or whether an appropriation for a particular purpose is needed badly enough to raise taxes or to make offsetting reductions in other appropriations. Yet choices of this type are far more important to the electorate as a whole than the single proposals on which Congressional voting takes place.

This fragmented consideration of the elements that make up the budget is largely responsible for an almost uninterrupted succession of deficits. Since 1960, we have had a deficit in every year except 1969. Some of these deficits have occurred because of efforts to use the Federal budget as a means of stimulating a lagging economy, but for the most part we have allowed deficits to happen without plan or purpose.

Both the Legislative and Executive Branches of the Government have from time to time recognized the need for reform. In 1946, for example, Congress included provisions for better budget control in the Legislative Reorganization Act but the experiment was abandoned after a brief trial. Expenditure ceilings enacted for fiscal years 1969 and 1970 again proved ineffective since they could be readily adjusted to accommodate increases in spending. These rubbery ceilings did, however, help to prepare the ground for more meaningful reform. When the President called for a rigid limit of $250 billion on outlays for fiscal 1973, both the House and the Senate accepted the expenditure ceiling. But they were unable to agree on a method for reducing the previously enacted spending authority so that the $250 billion limit could in fact be realized.

Actions subsequently taken by the President to hold outlays for fiscal 1973 to $250 billion have been criticized on the ground that impounding of funds enables the Administration to substitute its priorities for those established by the Congress. Concern over possible usurpation of Congressional prerogatives is entirely understandable. However, this controversy should not divert our attention from the broad political consensus that has already emerged on the need to limit outlays. If the Congress does the job itself, there will be no occasion in the future for the Administration to cut billions out of authorized outlays in order to achieve the overall level of spending that Congress agrees is appropriate.

Although last year's efforts to impose a legislative budget ceiling proved disappointing, they did prompt the Congress to ponder closely the need for budgetary reform and to create a Joint Study Committee on Budget Control.

This Committee has made excellent use of the brief time it has been in existence. In a recently released report, it recommends specific and practical procedures by which Congress could control the level of Federal outlays, the priorities among programs, and the size of any deficit or surplus. Bills to carry out these recommendations have now been introduced in both the House and Senate, with support from all members of the Joint Committee, as well as others in the Congress.

It would seem, therefore, that prospects for meaningful budget reform are now very good, perhaps better than at any time since the Budget and Accounting Act of 1921. I find the Joint Study Committee's recommendations most encouraging, but I also think that they need to be supplemented with systematic and frequent review of the effectiveness of Federal programs.

Traditionally, officials in charge of an established program have not been required to make a case for their entire appropriation request each year. Instead, they have had to justify only the increase they seek above last year's level. Substantial savings could undoubtedly be realized by zero-base budgeting, that is, by treating each appropriation request as if it were for a new program. Such budgeting will be difficult to achieve, not only because of opposition from those who fear that it would mean loss of benefits they now enjoy, but also because it would add heavily to the burdens of budget-making. It may be, therefore, that Congress will rely initially on procedures that ensure reappraisal of each program only every two or three years. But whatever form it takes, a method must be found for screening out programs whose costs clearly exceed their benefits, while assuring a satisfactory level of performance for programs that contribute significantly to the general welfare.

The day is past—if indeed, it ever really existed—when only the well-to-do need concern themselves with economy in government. Perhaps there was a time when those who benefited from the status quo could block social reform by inveighing against governmental spending. But today Big Government is no longer a slogan for appealing to some and frightening others. For better or worse, it has become part of our lives. And those who would use government as an instrument of reform have perhaps a larger stake in eliminating wasteful programs than those who resist change.

We have passed the point where new programs can be added to old ones and paid for by heavier borrowing. With the economy expanding vigorously, with inflation persisting stubbornly, with our balance of payments in serious trouble, with two devaluations of the dollar just behind us, we clearly cannot afford to continue large budget deficits. It is sobering to reflect that in spite of the President's determined efforts to hold down Federal spending, the budget he originally presented for this fiscal year called for outlays that exceeded estimated receipts by about $25 billion.

In principle, taxes can always be raised to pay for more public services, but the resistance to heavier taxation has become enormous. If we count outlays by all governments, State and local as well as Federal, we find an increasingly large fraction of the wealth our citizens produce being devoted to the support of government.

In 1929, total government spending came to about 10 per cent of the dollar value of our national output. Since then the figure has risen to 20 per cent in 1940, 30 per cent in 1965, and 35 per cent in 1972. I believe that most citizens feel that one-third of our national output is quite enough for the tax collector, particularly since the expansion in government outlays has not produced the kind of benefits they have a right to expect.

The key to rebuilding confidence in government is improved performance by government, and budgetary reform can move us powerfully toward this goal. Rational control of the budget by the Congress should improve our economic stabilization policies. It should facilitate judicious choice among governmental activities. It should improve evaluation of governmental performance. It should help us avoid abuses of power—whether they arise in the world of business, or labor, or government itself. And it should restore to the Congress some of the prestige that it has lost as a result of many years of neglect.

I trust that the members of this graduating class will join other citizens throughout the country to see to it that budgetary reform is carried out with the promptness and on the scale that this nation's interests require. Let us always remember that budgets

are a means for promoting national objectives. For those of you who enter public service, better budgeting can offer more meaningful and rewarding careers. For all Americans, it can mean a rejuvenation of spirit as government becomes more responsive to our aspirations and more effective in fulfilling them.

IMPLEMENTATION OF LEGISLATION ON THE SELECTION OF ARCHITECTS AND ENGINEERS BY FEDERAL AGENCIES

Mr. PERCY. Mr. President, on October 14, 1972, the Senate passed H.R. 12807, a bill to establish a procedure for the selection of architects and engineers by Federal agencies, of which I was principal Republican sponsor in the Senate. A central objective of mine during our consideration of the bill was that all architects and engineers have a chance to be considered for Government contracts by requiring in the bill that Government agencies advertise all of their needs for architect/engineer services. This requirement was in fact included in the bill, and shortly after it was signed into law, I requested the Comptroller General to monitor the implementation of the public advertising requirement of the bill by the Federal agencies. I am very pleased with the subsequent diligent cooperation of the Comptroller General's staff, and representatives of the GAO and the minority staff of the Government Operations Committee have consulted on agency progress several times. I expect a final report from the Comptroller General within several weeks.

In general, I am able to report that the implementation of the public advertising provision of the Act has been to date satisfactory with some problems which I hope will shortly be corrected. The Commerce Department staff has indicated a willingness to improve the format and inclusiveness of Commerce Business Daily, a major source of information about Government procurements for businesses throughout the United States. I have direct evidence that the act has already been useful to architects in a letter of April 6 from Patricia Moore, of the firm of Arthur Cotton Moore and Associates, a well-known Washington architectural firm. Mrs. Moore writes that:

> As a subscriber to Commerce Business Daily for many years, I was impressed by the speed with which the law was put in practice, and the immediate visibility that a change in operation had taken place.

This report is encouraging because it was Mrs. Moore who initially called to my attention the fact that only a relatively small number of the Government's requirements for A/E services were ever publicly advertised. My active cooperation in enacting H.R. 12807 was indeed conditioned on the requirement for public advertising that is now contained in section 902 of the act, and I will continue to work with the General Accounting Office to ensure that it is fully implemented.

I ask unanimous consent that the letter referred to above be printed in the RECORD.

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

ARTHUR COTTON MOORE ASSOCIATES,
April 6, 1973.

Hon. CHARLES H. PERCY,
U.S. Senate,
Washington, D.C.

MY DEAR SENATOR PERCY: I would like to not only compliment you, but thank you, for the bill and amendment requiring publication of Federal Government architectural projects. As a subscriber to Commerce Business Daily for many years, I was impressed by the speed with which the law was put in practice, and the immediate visibility that a change in operation had taken place.

Your efforts and interest mean very much to architectural firms across the country who now will at least have a chance for Government work.

Very truly yours,

PATRICIA MOORE.

MEAT CEILING

Mr. BARTLETT. Mr. President, on March 29 of this year the President made a decision to impose a ceiling on certain meat prices. His decision was a difficult one because of his opposition to price controls.

I have written the President today asking him to remove the present ceiling on meat prices.

At a time when this country's farmers and ranchers were just beginning to reach the income they realized 20 years ago, it is unfair for them to be forced to absorb the increasing costs of feed and production. American farmers have produced more high quality food at a lower cost with less manpower than at any other time in our history.

Americans today are eating more meat than ever before. We are eating almost twice as much beef per person as 20 years ago—from approximately 62 pounds per capita per year in the early 1950's to approximately 117 pounds per capita in 1972.

According to Secretary of Agriculture, Earl Butz, the chief reasons for doubling our demand for beef are:

First. The rising affluence of the American consumer. This is by far the greatest single factor in increased beef consumption.

Real disposable income per person in the first quarter of 1973 is estimated to be 6.8 percent higher than the first quarter in 1972, and 4.7 percent higher than all of 1972.

Second. Substantial increases in the food stamp program. Food stamp expenditures have leaped from $250 million in fiscal year 1969 to $1.9 billion during fiscal year 1972—a 660 percent increase.

I ask unanimous consent to print the full text of that speech in the RECORD at the conclusion of these remarks.

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

(See exhibit 1.)

Mr. BARTLETT. Also there is an upsurge in worldwide demand for food as people around the world are becoming more affluent. We are eating more prepared, convenience food and we are eating more meals away from home.

All these factors contribute to higher food prices in general and higher meat prices in particular.

The American farmer has responded to the country's rising demand for higher quality beef. In 1972 about 65 percent of the beef produced was prime and choice—this is nearly four times more than was produced in 1952.

The American farmer has always responded to the needs and demands of the American consumer.

The present ceiling, if continued, could change all this.

Since the imposition of the ceiling price, livestock feed cost has shot up at an unprecedented rate which has sharply eroded the profitability of livestock production.

Examples are the cost of hog production which has increased 24 percent, cattle feeding 4 percent, and broilers 22 percent.

Since the price ceiling was announced, commercial slaughter of cattle and hogs has been 15 percent and 13 percent respectively under year earlier levels. Farmers and ranchers are beginning to liquidate breeding herds.

During the month of April, the number of cattle placed on feed in seven major feeding States was down 20 percent from last year at the same time. Overseas marketing of domestic cattle becomes more and more attractive to the producer. As an example, in Tokyo, the price of certain cuts of beef is more than $11 per pound.

This tends to increase rather than decrease our existing shortage.

The ceiling the President saw fit to implement last March has now become counter-productive and is working to the detriment of both the American food producers and American consumer.

EXHIBIT 1

ANATOMY OF THE BEEF PRICE SITUATION

We've been fighting a rather extended public and private battle these last few months over food prices, meat prices specifically, and beef prices in particular. The charges and the counter-charges in the controversy sometimes have been as thick as victory claims before a primary election. I've made it quite clear where I stand on the matter.

When cattle prices in Omaha reached the level of 20 years earlier, I said—it's about time! and I meant it. After all, during the same period, farm production costs doubled and hourly wages of the Nation's labor force more than doubled.

When the Price Commission wanted to investigate beef prices, I said—go ahead! And I meant it. I know farmers and ranchers have nothing to hide. And, as the facts have been examined, the beef producer has grown in stature in the eyes of the public as the public gained a better understanding of the farmer's contribution to the economy, his magnificent performance in feeding the nation, and his burdensome problems.

Most important of all, the increased understanding of the basic soundness of the beef producer's position prevented controls from being placed on meat prices. I'm proud to have been in this fight. Shortly after the Academy Awards were presented, the Newspaper Farm Editors of America presented me with a symbolic "Wounded Steer Award" for my efforts to fight off beef price controls. And that trophy sits proudly behind my desk.

No fierce competitor can afford to stand—or sit—on his laurels, however. After a couple of month's decline in meat prices, there was a slight upward movement again in late May. The Price Commission and the cheap-food advocates are growing restless again, so I'm now back on my horse again,

riding the same trail—firing the same facts—seeking public understanding of beef prices and beef production. Tonight, at this great livestock gathering, in this great cattle state, I want to set forth some hard facts and a very straightforward explanation of the reasons why beef prices have improved and what we can expect in beef prices down the road.

To begin with, let's take a look at beef prices. Beef prices are demand-dominated prices. In the short run, you just can't get any more beef—the supply is invariable because beef is so perishable. Price, then, at the moment is basically determined by consumer demand. If demand surges upward, beef prices will climb. If demand falls off, beef prices will drop.

This is in contrast with something like refrigerators which are supply-dominated. Refrigerators are made at a factory and factory prices reflect all the costs of production along the way as well as a profit for the manufacturer. Refrigerators won't spoil. They can be stored or moved from San Diego to Sacramento. If demand is off, the refrigerators are held. If demand is up, more refrigerators can be brought from the warehouses or can be built quickly. Another fact: Refrigerator prices climb each year, usually with a new model, but they seldom fall. These are hard consumer costs—they are firm—they keep moving up. Meat prices are soft consumer costs; they fluctuate; they move up and down.

So, the beef price situation is affected by this fundamental principle—*beef is a demand-dominated market.*

Farmers and ranchers have increased their beef production by a magnificent 2½ times in the last twenty years—from 8.8 billion pounds in 51 to 21.9 billion pounds in 1971. Now that's a tremendous increase. Normally, an increase of 2½ times in beef production—while the population increased by only about one-third—would tend to depress beef prices. But it has not.

Beef prices have not been depressed because this increase in production has been in response to a remarkable increase in beef demand. In fact, in the last 20 years, annual beef consumption per person in this country has doubled—from 56 pounds per person 20 years ago to 115 pounds per person today.

Several factors are responsible for doubling our demand for beef:

The rising affluence of the American Consumer—Rising real wages have had a marked effect upon buying habits. People want beef—and, as they have enjoyed more and more real wages, they have been buying more and more beef—and better quality beef, too. This is by far the greatest single factor in increased beef consumption.

Substantial increases in the Food Stamp Program—Food Stamp expenditures have leaped from $250 million in fiscal year 1969 to $1.9 billion during fiscal year 1972—a 660% increase. In April of 1972, 11.5 million people were participating in the Food Stamp Program. One of the first items purchased with added dollars in the food budget by consumers eligible for Food Stamps is meat, preferably beef.

Widespread boosts in welfare payments—Programs at all levels of government have vastly increased welfare payments to those on the lower end of the economic ladder. The tendency to transform added income into an improved diet is greater at lower income levels. So, a substantial portion of each welfare dollar goes for good food. In a preponderance of cases—that means an increase in meat purchases, beef wherever possible.

This is as it should be. Not only are we dedicated to eliminating hunger, we also want people to enjoy the great productive affluence of this nation.

Since beef is a demand-controlled market, it is only reasonable that the constantly increasing affluence of the American consumer, abrupt increases in Food Stamp use in the last three years, and rising welfare benefits would have a marked upward effect on beef prices. This is precisely what has happened. The supply of beef could not change quickly. The only way supply could really have increased measurably in the short run would have been to slaughter cows and heifers. And when that happens the piper really has to be paid 18 months later. Instead, prices have increased—giving signals through the market to the beef producer that increased supplies are needed. *In a nut-shell, beef prices have risen because of increased consumer demand, and this is a market signal to induce increased beef production.*

To better understand the beef supply situation, let's look at how farmers have increased beef production by 2½ times in the last 20 years, and meat imports as well:

Increased Beef Cow Numbers—The size of our beef cow herd has expanded over the past 20 years. The number of beef cows was about 20 million in 1952. Cow numbers now total nearly 39 million. That has been a gradual increase—but it's been a key factor in increasing beef supplies.

Switches from Dairy to Beef Production—In the last 20 years, the number of milk cows has dropped from 21 million to just over 14 million. Some cows once kept for dairy purposes—and entire herds in many cases—have been replaced by beef animals.

Increased Beef Feeding—This is by far the largest single factor in increasing our beef production. Evidence is clear—20 years ago only ⅓ of our beef was Choice grade; now 60% is Choice grade. Whereas about ⅓ of our beef was fed beef in the mid-40's, and less than half was fed beef 20 years ago, more than three-quarters of it is fed beef today.

We've got to where we feed almost anything that can hold a mouthful of feed. We used to knock some dairy bull calves in the head—now we feed them. We used to slaughter the meatier dairy calves for veal at 150 pounds—now we feed many of them to 1,000 pounds. Veal production has dropped drastically—from nearly one billion pounds in 1951 to just over a half billion pounds in 1971.

Increased Beef Imports—Beef and veal imports have increased even faster than our beef production—they are 3.7 times larger than 20 years ago. However, beef imports amount to only a small percentage of our total U.S. beef consumption—less than 5%.

Now, the real question is, given our sources of increasing beef supply, how do things look down the road? First of all, to get the full picture, we need to look at projected consumption trends.

Annual beef consumption per person will soon reach 120 pounds, and the projection for 1980 is 130 pounds per person. This, coupled with the projected population increase, will demand a one-fourth increase in beef tonnage in just the next eight years.

No matter how we slice it, that increased beef tonnage is going to be hard to come by. To see why, let's look closely at the potential in the various sources of increased beef supply:

We don't have a place for very many more cows—We can't add too many to the range where grass is already short and where the water supply is limited. In the Corn Belt, on level land where corn is king and soybeans are queen, beef cows can't really compete; the economic facts are that Corn Belt farmers can make more profit per acre raising corn and soybeans than beef calves. Some increase in cow numbers is possible in the fringe area of the Corn Belt—at the margin we say. These are usually rough areas where some years a farmer can make more money with corn and beans, and other years beef cattle would be more profitable. He will go with the one that looks like the best bet—so there is marginal potential for increasing cow numbers on the fringe of the Corn Belt. The South is the primary area where cow numbers are likely to increase.

We have made most of the shift from dairy to beef—Most of the marginal dairy cows have been culled and most of the marginal dairy herds have already given way to beef herds. This transformation is nearly completed.

We have closed the greatest part of the feeding gap—The prospects for increasing beef production through feeding really boil down to increases in efficiency. Probably we cannot achieve the increases in efficiency through feeding which we have in the last twenty years—though it is possible to make further improvements.

Meat import supplies just aren't there—Even without meat import quotas, it would be difficult to import more beef and nearly impossible to get the more costly high quality beef the American consumer prefers. Worldwide meat demand has escalated in relation to supply. The European Community has become an extremely competitive market for the major beef exporters—Argentina, Australia, and New Zealand. United Kingdom beef markets are taking Irish beef which might have come to us. Internal beef demand in Canada will reduce potential Canadian shipments to the U.S. And New Zealand's beef supply is down. And around the world, because of attractive prices, cattle producers are holding back cows and heifers for herd building that might otherwise have been slaughtered. It is simply a fact that a cow produces just one calf a year, and in times like these modern livestock industries save females for breeding.

So, the prospects down the road are for beef prices to be strong as long as beef demand is strong. In the long run, increased beef production will occur at the margins: 1) in those fringe areas of the Corn Belt and elsewhere as beef production is weighed against other attractive alternatives; 2) in shifts from dairy to beef production, which from now on will be limited; 3) at the feeding margin where maximum efficient feeding periods and maximum feeding efficiency have been early reached; and 4) in the international market as the growing worldwide demand for beef makes other markets an increasingly better outlet for beef export nations.

No matter which margin is approached, there must be ample inducement if beef production is going to be increased. That inducement must come in the form of beef prices—prices substantial enough to induce the Corn Belt farmer to raise cows and calves instead of corn and soybeans, prices substantial enough to make beef production more profitable than dairying, prices substantial enough to make longer feeding pay, prices substantial enough to outbid beef buyers in other parts of the world.

The chief source of increased beef production will be in this country, with the people who are now in the beef business. But it must be clearly understood that increased beef production will not be automatic. There must be profit in it. If we are going to get more beef production—it's got to be profitable enough to pull the resources involved—financing, land, labor, equipment, and management—away from other alternatives.

I'm really saying that the facts of the matter don't indicate markedly cheaper meat prices down the road. But the way to increase meat supplies is to have strong prices. That will induce gradually increased beef production.

But beef prices are not high! Every American needs to understand that fact. What has happened with meat prices happens all the time with other goods we buy. We demand better quality in a product—greater safety, more convenience, freedom from pollution. These items cost more, and when they are built in, we pay for them. This is true with

services, too. We expect it. We know that if we're willing to pay more, we'll get more.

Well, it's time that every citizen faced the same cold facts in agriculture—in the food industry, especially with meat. It we want more meat—and we seem to—then we've got to pay a fair price for it if we expect the farmer to produce it. It's as simple as that.

Looking still further down the road, if we want to assure a still larger supply of good meat for the increased numbers of our children and grandchildren who are growing up, the best way to achieve that will be to put a little profit on the range and in the feed lot. In this respect, the beef industry is just like every other sector of our great American economy.

Mr. BARTLETT. A document which is most pertinent to this issue is "What's Happened to Food Prices?" published by the U.S. Department of Agriculture.

I ask unanimous consent for this document to be printed in full in the RECORD.

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

(See exhibit 2.)

EXHIBIT 2

WHAT'S HAPPENED TO FOOD PRICES?

(U.S. Department of Agriculture, Office of Communication, April 1973)

In view of the present interest in food prices, I think that you will find this material particularly helpful in assessing the situation.—EARL L. BUTZ, Secretary of Agriculture.

HOW MUCH HAVE FOOD PRICES GONE UP?

The retail price of food in February 1973 averaged 7.3 percent higher than a year earlier. The rise in prices is expected to ease off in the second half of the year.

In 1972, the prices of all food increased 4.3 percent. This includes food purchased for use in the home and the total cost of meals eaten out.

The average person spent 8.2 cents more per day for his food in 1972, compared with 1971. Of that increase, slightly more than half (4.6 cents) was spent for meat.

The average retail price of Choice beef—the "Cadillac" of food—increased 9½ cents per pound in 1972 over 1971. Since people eat an average of 3⅓ ounces of Choice beef per day, the 1972 increase in Choice beef cost the average shopper about 2 cents more per day. Since some of this increased cost went for higher marketing costs, the average shopper paid farmers 1.3 cents per day more for Choice beef in 1972 than in 1971.

WHY HAVE FOOD PRICES GONE UP?

There is an extremely strong demand for food. More people are working and bringing home a paycheck. Wages have gone up. The economy is booming. Real disposable income per person in the first quarter of 1973 is estimated to be 6.8 percent higher than the first quarter of 1972, and 4.7 percent higher than all of 1972.

We are eating more meat than ever before and we are bidding up the price. For example, we are eating almost twice as much beef per person as 20 years ago. We are bidding strongly for beef in our purchases at stores and in meals eaten out, yet we are inclined to think of beef prices as the yardstick for all food costs.

Beef prices are up even though supplies were up 2 percent for January through mid-March 1973 compared with 1972. Part of the reason for the rise in beef prices is that pork supplies are 4 percent smaller than last year, putting greater pressure on the beef supplies. Pork production is down as a result of low hog prices in late 1970 and 1971, causing farmers to cut back their production.

Our Food Stamp and Food Distribution programs are now helping 15 million lower-income people—more than twice as many as three years ago—so that they, too, are eating better and are adding to the demand for food. Government expenditures on these food programs increased about 13 percent in 1972 and are now three times higher than three years ago. In 1972, government expenditures on food programs amounted to $3.5 billion.

There is an upsurge in world-wide demand for food as people around the world are becoming more affluent. The volume of food eaten per person will hit a new high in the United States in 1973—up 7 percent from 10 years ago.

We are eating more prepared, convenience foods with more of the kitchen work already completed and built into the food. This saves work in the home, but costs money. The cost of this built-in service has gone up more than the cost of the food ingredients in the prepared, convenience foods.

We are eating more meals out of the home where the cost of personal food service has risen much more rapidly than the price of the food. In 1972 expenditures on meals eaten away from home rose almost 8 percent, twice the rate of increase in the price of those meals.

WHAT ARE WE DOING ABOUT FOOD PRICES?

Price ceilings at processor, wholesaler, and retail levels have been placed on beef, veal, pork, and lamb. Wage increases in the food industry must be cleared with the Cost of Living Council. Economic controls have been retained on the mark-up of processed foods. These controls have helped hold the increase in prices of food at home, excluding red meat, to a 2.3 percent increase between August 1971 and December 1972. This was a smaller increase than for non-food consumer items; red meat prices, however, increased 11.4 percent in this period.

All quotas have been removed on meat imports. We can bid freely for the world's meat supplies, and we are the world's largest beef importers, taking nearly one-third of the world's beef exports. However, beef prices are higher most everywhere else and foreign citizens are bidding against us. Still we have increased meat imports by 38 percent in the last five years.

The Department of Agriculture has released government-owned stocks of feed grain for livestock and poultry feed to be converted into meat, milk and eggs. Soon the government will have released all, or almost all, of the feed grain that it accumulated during periods of low prices in the past.

Farm programs have been changed so that farmers will plant substantially larger acreages of wheat, feed grains, and soybeans in 1973. These crops will be converted into larger supplies of flour, meat, milk and eggs.

Export subsidies on agricultural products have been discontinued. The Department of Transportation is tackling the bottleneck in rail transportation. Import quotas have been raised on non-fat dry milk.

FARMERS ARE RESPONDING TO THE STIMULATION OF HIGHER PRICES AND CHANGES IN FARM PROGRAMS

On March 1, 8 percent more beef cattle were on feed in the major feeding states than a year earlier. On Jan. 1, 6 percent more beef cows and 7 percent more beef heifers were in breeding herds. This means larger supplies of beef ahead.

Farmers plan to raise more pigs in the first half of this year, so pork supplies will be 4 to 6 percent higher in the second half of 1973 compared with the last half of 1972.

Broiler supplies in 1973 will be about the same as in 1972; but turkey supplies will run about 4 percent higher than a year ago.

WHAT YOU BUY WITH YOUR FOOD MONEY

Here is what a typical household bought at the grocery store with $10 spent for farm-produced foods in 1972:

Meat, $3.22; Dairy, $1.75; Bakery and cereal goods, $1.47; Processed fruits and vegetables, .98; Fresh vegetables, .67; Fresh fruits, .45; Poultry, .39; Fats and oils, .34; Eggs, .29; and Miscellaneous foods. 44.

DESPITE SHORT-TERM SWINGS UP OR DOWN, THE LONGER-RUN CHANGE IN THE RETAIL PRICE OF FOOD IS MUCH MORE MODERATE

Any given month can provide a dramatic but misleading shift in food prices which will moderate over the span of a year. It is unrealistic to multiply a one-month change in food prices by 12 to suggest an anticipated annual rate of change.

Retail food price changes during the last 5 years proved to be far less dramatic than if changes in a single month had been multiplied by 12 to project a possible change for the year;

CHANGE IN RETAIL FOOD PRICES

[In percent]

Year	Actual annual change	Largest monthly increase times 12	Largest monthly decline times 12
1968	+3.6	+9.3	−3.4
1969	+5.1	+17.3	−3.3
1970	+5.5	+6.3	−6.2
1971	+3.0	+12.1	−9.0
1972	+4.3	+19.0	−1.0

FOOD PRICES HAVE GONE UP MUCH LESS THAN SUCH THINGS AS HEALTH CARE AND SHELTER

Prices for all consumer items rose by 58 percent between 1952 and 1972; retail food went up 47 percent; housing prices climbed by 64 percent.

The price of medical care increased 123 percent during the same 20-year period, while transportation climbed 55 percent.

THE PRICE OF FOOD HAS RISEN MUCH LESS THAN WAGES

Average wages increased so that they are nearly 2½ times higher than 20 years ago. The price of food eaten at home increased less than 40 percent; the price of food at home and away increased a total of 47 percent.

In the past 5 years, the price of food at the retail store has gone up 22 percent. Wages are up by more than a third in the past 5 years.

CHANGE IN FOOD PRICES AND WAGES

[In percent]

	Food at home	Food away from home	All food	Hourly wages
1962–72	34	54	37	64
1967–72	22	31	24	36
1952–72	38	90	47	140

WHAT IF FOOD PRICES HAD GONE UP AS MUCH AS WAGES?

Average hourly wages in industry increased from $1.52 per hour in 1952 to $3.65 in 1972. If food prices had gone up at the same pace (2.4 times their 1952 level) your food bill would be much higher. Here are a few comparisons:

IF FOOD PRICES HAD GONE UP AS MUCH AS WAGES

[In cents]

	1952 annual average price	1972 annual average price	1973 February average price	Today's food prices [1]
White bread, 1 lb	16	25	25	38
Milk, quart at store	23	30	31	55
Round steak, 1 lb	111	148	168	267
Eggs, 1 doz	67	52	69	161
Tomatoes, 1 lb	27	47	52	65
Frying chicken, 1 lb	61	41	46	146
Hamburger, 1 lb	63	74	84	151
Canned peas, 1 lb	21	26	26	50
Potatoes, 1 lb	8	9	11	19

[1] If the food prices had gone up as much as wages in the past years (1952–72).

Twenty years ago, the typical household spent $985 a year for farm produced foods at the supermarket. In 1972 this "market basket" of food cost $1,311—or one-third more. If food prices had risen as much as industrial wages, farm-grown food would cost the typical household $2,365 today—an extra $1,054 per year per household

WHAT IF WAGES HAD GONE UP A LITTLE AS FOOD?

If wages had gone up no faster than food prices in the last 20 years, the average industrial worker would be earning $2.23 an hour, not $3.65. This would amount to a 39 percent cut in 1972 wages.

INDUSTRIAL WAGES HAVE CONSISTENTLY OUTPACED THE RISE IN FOOD PRICES

Through the years, wages for major groups of industrial workers have advanced more rapidly than the price of food.

Here are a few examples of the increase in industrial wages compared with the increase in food prices:

CHANGE IN HOURLY EARNINGS AND FOOD PRICES

[In percent]

	Railroad workers	Transportation equipment workers	Contract construction workers	Auto workers	Rubber workers	Food and kindred workers	Prices for all food	Prices for food at home
1952–57	23	23	27	20	23	28	1	−1
1957–62	20	22	22	22	16	21	6	4
1962–67	19	18	24	19	12	18	11	10
1967–72	52	38	47	44	31	36	24	22
1952–72	169	143	185	149	111	150	47	38

DESPITE THE RISE IN PRICES, FOOD TAKES A SMALLER SHARE OF THE AVERAGE INCOME

We spent an average of $596 per person on food in 1972, 1.71 times the amount twenty years earlier. But our after-tax incomes are 2.51 times greater.

Thus, the food bill, which took 23 percent of the average after-tax disposable income in 1952, took 15.7 percent of the after-tax disposable income in 1972 and is expected to take an even smaller part of after-tax income in 1973.

PER CAPITA INCOME AND SPENDING FOR FOOD

	Before-tax income per person	After-tax income per person	Spent for food per person	Food as percent of before-tax income	Food as percent of after-tax income
1952	$1,736	$1,518	$348	20.0	23.0
1957	2,050	1,801	373	18.2	20.7
1962	2,373	2,064	398	16.8	19.3
1967	3,167	2,749	473	14.9	17.2
1970	3,935	3,366	557	14.2	16.6
1971	4,160	3,595	566	13.6	15.8
1972	4,482	3,807	596	13.3	15.7

AFTER PAYING FOR OUR FOOD WE HAVE MORE MONEY TO SPEND ON OTHER THINGS

Since the portion of our total income spent for food today is smaller than it was 20 years ago, there is an extra $2,041 per person to spend today on all other goods and services we want.

THE MONEY LEFT OVER PER PERSON AFTER FOOD AND TAXES

	1952	1972	Percent change
Total income before direct Federal, State, and local taxes	1,736	4,482	158
Direct Federal, State, and local taxes	218	675	210
Disposable income (after tax)	1,518	3,807	151
Cost of food	348	596	71
Discretionary income (after food and taxes)	1,170	3,211	174

The cost of food rose 71 percent in the 20 year period, while food prices rose only 47 percent, a difference which works out to $84 per person. Part of the difference is the result of increased consumption and the rest is largely the result of the shift to more expensive foods such as higher priced cuts of meat and more convenience products.

THE FOOD WE EAT AT HOME TAKES AN EVEN SMALLER PART OF OUR INCOME

15.7 percent of the average after-tax pay went for food at home and away from home in 1972, but only 12.3 percent of after-tax income was spent to buy food at the supermarket for home use.

Farmers receive only 4.9 percent of the average person's after-tax income to produce that person's food supply.

THE LARGER THE INCOME, THE SMALLER THE SHARE TAKEN BY FOOD

One study shows that families with annual incomes of $15,000 and over spend about 12 percent of their after-tax incomes for food.

Families with incomes below $3,000 may spend more than 50 percent of their after-tax incomes on their food needs; however they can get food assistance.

ALTHOUGH WE SPEND LESS OF OUR INCOMES FOR FOOD, WE ARE SPENDING MORE FOR SUCH THINGS AS HOUSING, FURNITURE, MEDICAL SERVICES, AND DURABLE GOODS

Out of every $100 of after-tax income, the average person spends:

	1952	1972	Percent change
Medical care	$4.00	$5.90	48
Other services	8.00	10.80	35
Automobiles, transportation, gas and oil	10.60	12.50	18
Housing, furniture, household operations	21.80	24.90	14
All other	6.70	7.00	4
Other nondurable goods	9.10	8.50	−7
Personal savings	7.60	6.90	−9
Clothing, shoes	9.20	7.80	−15
All food	23.00	15.70	−32
Total	100.00	100.00	

THE AMOUNT OF MONEY WE SPEND ON FOOD INCLUDES THE COST OF EATING OUT

In 1952, the nation spent $11.6 billion on eating out at restaurants, lunch counters, and at other away-from-home eating places. That is an average of $74 per person.

By 1972 we were spending nearly $27 billion on food away from home. An average of $128 per person, a 73 percent increase.

[In billions]

	Total spent for food	Spent for food away from home	Spent for food at home
1952	$54.7	$11.6	$43.1
1962	74.4	14.1	60.3
1972	124.6	26.8	97.8

The total amount spent for food away from home increased 131 percent between 1952 and 1972; money spent for food at home increased 127 percent.

WE ARE EATING MORE BEEF AND WE ARE EATING MORE OF THE BEST QUALITY

The farmer is working hard to give us what we want. Between 1952 and 1972 he increased his production of all beef 2.3 times.

In 1972 about 65 percent of the beef he produced was Prime and Choice, the two top grades. He produced nearly 4 times more Prime and Choice beef than he did in 1952.

WE AREN'T THE ONLY ONES WHO LIKE BEEF

People over much of the world are eating more beef, and most are paying higher prices for it; higher than in the United States. Not only are beef prices in other countries higher than here, but they have gone up faster in most other countries.

Beef prices in other countries

Retail meat prices in selected cities in mid-March, in dollar equivalent.

City, cut of beef, and price per pound

Washington, D.C., Sirloin steak, $1.69.
London, England, Sirloin steak, $1.88.
Bonn, Germany, Roast Beef, $2.08.
Paris, France, Top round, $2.57.
Rome, Italy, Sirloin steak, $2.79.
Tokyo, Japan, Beef loin, $11.90.

Because of differences in cuts and quality, prices are not strictly comparable.

WHEN YOU SPEND A DOLLAR FOR FARM-PRODUCED FOOD, HOW MUCH OF IT DO FARMERS GET?

In 1972 farmers received an average of 40 cents of the dollar you spend for farm-produced foods at the store. Farmers get less for some products, more for others. Here is the farmer's share of the dollar you spent for some representative foods at the retail food store in 1972:

Farmer's share of retail dollar spent for food

[In cents]

Canned corn	11
White bread	15
Frozen peas	16
Canned peaches	19
Potatoes	27
Lettuce	34
All food	40
Dried beans	43
Frying chicken	49
Milk in stores	51
Eggs	57
Choice beef	64

THE PRICE THAT YOU PAY FOR FOOD HAS INCREASED FASTER THAN THE FARMER'S SHARE

The retail cost of a "market basket" of food—indicative of what the typical household spends at the store for its year's supply of U.S. farm-produced foods—was $1,311 in 1972. The same amount of food cost $985 in 1952—an increase in 20 years of 33 percent.

The farmer's share of the money spent for this typical "market basket" of farm-produced foods rose from $463 in 1952 to $521 in 1972, an increase in 20 years of 13 percent.

The processing and marketing spread between the farm cost and the retail cost of the "market basket" was $522 in 1952. This went up to $790 in 1972, an increase in 20 years of 51 percent.

MARKET BASKET OF U.S. FARM-PRODUCED FOODS

	Dollars		Percent change
	1952	1972	1952–72
Retail cost	$985	$1,311	33
Farm-to-retail spread	522	790	51
Farm share	463	521	13

FLUCTUATING FARM PRICES

The prices that the farmer receives for his products fluctuate widely. When his prices go up—they usually come down later. The prices of most everything else tend to stay up.

Farm prices fluctuate widely, due to forces largely beyond the individual farmer's control: Weather, yields, pests, total plantings, feed supplies, foreign trade—all can have a rather sudden and substantial impact on farmers' prices. Often these changes bring farm prices down as suddenly as they go up. Since 1952, average farm prices have declined or remained unchanged in 10 of the 20 years. Overall, farm prices have increased a total of 12 percent in those 20 years.

Unlike farm prices, the prices for industrial commodities usually stay up, once they go up. Between 1952 and 1972 wholesale prices for industrial commodities increased in 16 of the 20 years—for a total increase of 40 percent. Therefore, wholesale industrial prices increased 3.3 times more than farm prices between 1952 and 1972.

The overall cost of services are even more inclined to go up and stay up. In the last 20 years service costs have increased every year. The total increase between 1952 and 1972 is 107 percent.

	Number of years prices increased	Number of years prices unchanged or decreased	1952–72 increase in prices (percent)
1952–72:			
Farm prices	10	10	12
Industrial prices	16	4	40
Service charges	20	0	107

FARM PRICES OFTEN CHANGE SHARPLY FROM ONE YEAR TO ANOTHER

Broiler prices advanced 7 percent in 1969—then retreated 11 percent in 1970.

The farm price of eggs went up 18 percent in 1969—but by 1971, they had dropped 17 percent.

Average farm corn prices increased 16 percent in 1970—then fell 19 percent in 1971.

Average farm hog prices rose 20 percent in 1969, increased another 2 percent in 1970—then dropped 21 percent in 1971.

SHORT-TERM CHANGES IN FARM PRICES EVEN MORE DRAMATIC

In 1972, for example, farmers' cattle prices dropped from $38.62 per hundredweight on July 11 to $34.00 on August 23—a 20 percent drop in 6 weeks.

In 1972 the farm prices of eggs dropped even faster, going from 41 cents a dozen on September 19, 1972 to 31.50 cents on October 11, 1972—a 23 percent drop in just one month.

Broiler prices slid from 31.57 cents a pound on July 10, 1972 to 27.00 cents on August 4, 1972—a fall of 14 percent.

Produce items also have sharp ups and downs. For instance, the farm price of iceberg lettuce dropped from $5.00 a carton on January 12, 1973 to $2.50 a carton on January 18—a 50 percent drop in just one week.

OVER THE LONG RUN DECLINES LARGELY OFFSET THE GAINS IN FARM PRICES—SOMETIMES THEY CANCEL THEM OUT ALTOGETHER

The man who produces the Choice grade of beef that Americans enjoy saw the price he receives for his beef cattle rise only 9 percent in the 20 years between 1952 and 1972.

Farm prices for frying chicken dropped one half during those 20 years—from about 29 cents per pound in 1952 down to 14 cents by the end of 1972.

The farm price for eggs fell almost as much, dropping from about 42 cents per dozen in 1952 to 29 cents in 1972—a 31 percent decline.

CHANGES IN FARM PRICES SHOW UP IN THE SUPERMARKET, BUT NOT SO SUDDENLY, NOR ALWAYS IN THE SAME DIRECTION

In 1953 average farm prices dropped 12 percent for the year, while your food prices declined only 1.5 percent.

In 1957 farm prices dropped 4.8 percent while food prices climbed 3.3 percent.

Farm prices dropped 4.8 percent in 1967 though your food prices increased 1 percent.

And in 1971, while farm prices were up 1.8 percent your food prices increased 3.0 percent.

The price of a food such as bread—where the cost of processing is much higher than the cost of the farm products in the loaf—tends to rise more steadily, much as nonfood products.

AVERAGE ANNUAL RETAIL STORE PRICES FOR SELECTED FOODS

[In cents]

	1952	1957	1962	1967	1970	1971	1972
White bread, 1 lb	16.0	18.8	20.4	22.2	24.3	25.0	24.7
Hamburger, 1 lb	63.3	42.0	52.1	54.6	66.2	68.1	74.4
Milk, ½ gal	42.1	44.5	47.4	51.6	57.4	58.9	59.8
Eggs, 1 doz., large	67.3	57.1	53.5	49.2	61.2	52.8	52.4
Apples, 1 lb	13.4	16.8	16.8	20.5	21.8	23.4	24.6
Frozen orange juice, 6 oz	18.8	18.1	20.5	18.3	22.5	23.4	25.0

FARMERS ARE ONLY NOW RECOVERING FROM YEARS OF LOW FARM PRICES, THOUGH EXPENSES HAVE BEEN CLIMBING STEADILY

Farm prices in 1972 were up 26 percent over 1967, but were only 12 percent higher than in 1952. As pointed out earlier, farm prices either declined or remained static in 10 of the last 20 years.

While farmers were experiencing static or declining farm prices, expenses were rising steadily.

Farmers are paying 2.4 times higher wages for help than 20 years ago.

Farm machinery price levels are nearly double what they were 20 years ago (1.96 times higher).

The level of all prices that farmers pay has gone up 51 percent from 20 years ago, and farmers' total production costs more than doubled (2.1 times more.)

Farm real estate taxes are 3.7 times higher per acre than 20 years ago.

Farmers are less able to pass along their costs than other major economic groups. Farmers are not protected by franchises, patents, licenses, or by seniority. They do not enjoy industry-wide contracts, nor escalator clauses nor the economic ability to force higher prices and hold them. They deal largely in perishable products that must be sold when ready.

THE INVESTMENT IN FARMING IS MUCH HIGHER TODAY

Farm investment in land, buildings, livestock, and equipment has doubled in 20 years, rising from $167 billion in 1952 to $339 billion on Jan. 1, 1972.

This plant's resources must be conserved and the growing investment needs must be supplied from farm net income, which has increased about a third since 1952.

Farm debts are nearly 4.5 times larger than 20 years ago. The amount of debt owed by farmers has risen from $14.7 billion in 1952 to $66.9 billion in 1972.

MEANTIME, FARM PRODUCTIVITY IS AN EXAMPLE TO THE NATION

Output per man hour on farms is 3.1 times higher than 20 years ago. In manufacturing industries, output per man hour is 1.7 times as great as 20 years ago. Thus output per man hour on farms is increasing nearly twice as fast as in industry—an unmatched record for efficiency.

In 1952, one farm worker supplied 16 people with food. Now he produces enough for 51 people, or three times as many as 20 years ago. This is unmatched anywhere else in the world, or ever before in history.

In 1952 one person out of 7 was living on a farm, producing agricultural products. Now one person in 22 lives on a farm. This has released people to produce other wealth and services and is primarily responsible for the unequaled affluence of the nation.

BEEF PRODUCTION IS A GOOD EXAMPLE OF HOW FARMERS HAVE RESPONDED

A good sign of the nation's increasing affluence is the amount of beef people eat. In 1952 we were consuming 62 pounds of beef per person. That was 32 percent higher than 20 years earlier in 1932.

Since 1952, incomes have climbed rapidly—and so has our beef consumption. In 1972 we ate 116 pounds of beef per person—87 percent more per person than 20 years ago.

Farmers had to produce that beef before people could eat it.

BEEF CONSUMPTION PER PERSON

	Pounds	Percent change
1932	47	
1952	62	
1972	116	32
1932–52		87
1952–72		

WHILE THE FARMER IS PRODUCING MORE FOOD—FOR LESS OF OUR INCOMES—HE IN TURN IS NOT SHARING FULLY IN THE BENEFITS OF HIS OWN PRODUCTIVITY

In the most recent 10-year period farmers have averaged only a 3.9 percent return on the equity of their capital investment in farming.

In terms of disposable income, the average income of farm people still lags 17 percent behind the average income of nonfarm people. And nearly half of the income of farm people comes from off-farm sources. If farmers had to rely solely on income from farming, the average income of farm people would be only 47 percent of the average income of nonfarm people.

THE FARMER'S PRODUCTION EFFICIENCY AND LOW RETURNS IN THE 1950'S AND 1960'S HAVE BEEN A MAJOR FACTOR IN KEEPING THE COST OF LIVING FOR CONSUMERS FROM RISING FASTER

Farm food has been plentiful—often in surplus—and the price of farm-raised food has gone up more slowly than other prices over the years.

In the 1950's, the after-tax income of farm people averaged only 54 percent as much as the average for nonfarm people. In the 1960's, the after-tax income of farm people averaged only 67 percent as much as the nonfarm average.

Between 1950 and 1960, farm prices actually declined 7.8 percent, while food prices

rose 18 percent and the cost of living increased 23 percent. Between 1960 and 1970, farm prices rose 17.0 percent, but food prices went up by 30.6 percent, and the cost of living increased 31 percent.

The present period that we are in is acting much like the Korean War inflationary period 20 years ago. Between 1950 and 1952, farm prices climbed 10.8 percent and retail food prices climbed 13.2 percent. Between 1970 and 1972, farm prices climbed 14.6 percent and retail food prices climbed 7.5 percent. The Korean War inflation cooled off in 1953 and it was 20 years before farm prices regained their 1952 level.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Is there further morning business? If not, morning business is concluded.

STRUCTURE AND REGULATION OF FINANCIAL INSTITUTIONS

The ACTING PRESIDENT pro tempore (Mr. HASKELL). Under the previous order, the Senate will resume the consideration of the unfinished business, S. 1798, which the clerk will state.

The assistant legislative clerk read as follows:

A bill (S. 1798) to extend for 1 year the authority for more flexible regulation of maximum rates of interest or dividends payable by financial institutions, to amend certain laws relating to federally insured financial institutions.

The ACTING PRESIDENT pro tempore. Debate on this bill is under a time limitation. The time on each amendment in the first degree is limited to 1 hour, time on each amendment in the second degree, debatable motion, or appeal, is limited to 30 minutes, and time on the bill is limited to 2 hours.

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum, with the time not taken from either side.

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

The second assistant legislative clerk proceeded to call the roll.

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

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

PRIVILEGE OF THE FLOOR

Mr. BROCK. I ask unanimous consent with respect to the consideration of S. 1798, that the following staff members be permitted to remain on the floor: Dudley O'Neal, T. J. Oden, Tony Wood, Tony Cluff, Tommy Brooks, Ken McLean, Pat Abshire, Carolyn Jordan, Hal Wolman, Ed Kemp, and Rod Solomon.

The ACTING PRESIDENT pro tempore (Mr. HASKELL). Without objection, it is so ordered.

Mr. BROCK. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. On whose time?

Mr. BROCK. I ask unanimous consent that the time not be charged to either side.

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

The second assistant legislative clerk proceeded to call the roll.

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

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

Mr. SPARKMAN. Mr. President, has the bill been called up?

The PRESIDING OFFICER. The bill is now before the Senate.

Mr. SPARKMAN. It is the pending business?

The PRESIDING OFFICER. That is correct.

Mr. SPARKMAN. Mr. President, this bill, S. 1798, is a comprehensive bill dealing with the structure and regulation of financial institutions. It was reported out of the Committee on Banking, Housing and Urban Affairs after very careful consideration. It contains a number of sections dealing with various matters affecting our financial institutions.

Section 1 of the bill relates to the extension of the flexible interest rate authority, the so-called regulation Q rate ceiling. This is the authority granted to the Board of Governors of the Federal Reserve System, the Board of Directors of the Federal Deposit Insurance Corporation, and the Federal Home Loan Bank Board to regulate in a flexible manner the interest rates or dividends payable by insured banks on time and savings deposits and by members of the Federal Home Loan Bank System on deposits, shares, or withdrawable accounts. This flexible rate control was first enacted by Congress in September 1966. On five different occasions Congress has extended this provision for varying and consecutive periods of time, and unless further extended, it will expire on May 31, 1973.

The original basis for enacting this provision was a finding by the Congress that interest rate competition was putting an enormous upward pressure on savings rates paid by thrift institutions beyond their ability to pay such rates. Through this rate control authority, the Federal bank regulatory agencies have established interest rate differentials between commercial banks and competing thrift institutions. The committee in this bill recommends a 1-year extension of this authority until May 31, 1974.

During the committee's examination of this matter, testimony was received regarding a new banking service presently being offered to customers of mutual savings banks in Massachusetts and New Hampshire. These new accounts are referred to as NOW—negotiable order of withdrawal—accounts. Under this new device a depositor may remove funds from a savings account through the use of a negotiable order of withdrawal. At the present time NOW accounts are being offered only by State-chartered mutual savings banks in Massachusetts and New Hampshire and there are approximately 45,000 people having such accounts. To put this in perspective, as of March 1, 1973, 56 out of the 167 State-chartered mutual savings banks in Massachusetts were offering NOW accounts and the funds in those accounts represented three-fourths of 1 percent of total mutual savings deposits in Massachusetts with balances of slightly more than $1,900 per account. As of the same date, 11 out of the 30 State-chartered mutual savings banks in New Hampshire were also offering NOW accounts with deposits representing one-seventh of 1 percent of total saving deposits and the average balance in those accounts was $550.

The committee received testimony from commercial banks and savings and loan associations indicating concern that, if NOW accounts were allowed to continue, serious competitive disruptions and inequities would occur. We also received testimony from the FDIC, the Treasury Department, Federal Reserve Board, and the Federal Home Loan Bank Board which indicated that at this time there was not sufficient evidence of disintermediation to warrant the prohibition of NOW accounts. The committee carefully considered this matter and included in this section of the bill a provision giving the FDIC the authority over the rate of interest paid on NOW accounts. While this action does not limit the continuation and possible expansion of NOW accounts, it does provide the FDIC with clear authority to cover all federally insured and noninsured banks throughout the country that presently offer such services or are commenced by other financial institutions in the future. The committee in its report instructed the FDIC to monitor closely the effect that NOW accounts have on competition among various financial institutions and to move sufficiently to take correctible action if warranted.

Section 2 of the bill would amend the National Housing Act to prohibit the Federal Home Loan Bank Board and the Federal Savings and Loan Insurance Corporations until December 31, 1974, from approving conversions from mutual to stock form by savings and loan associations the accounts of which are insured or would become insured by the corporation. By administrative action the Board has maintained a moratorium on such conversion since December 5, 1963. In general, this amendment would impose moratorium by statute. In April 1971, the Federal Home Loan Bank Board recommended legislation which would authorize Federal stock associations either by de novo chartering or by conversion from existing mutual associations. Following hearings on this recommendation, the committee concluded that the procedure for effecting conversions needed to be spelled out in greater detail in the legislation. The Board has been working on revised legislation, but it has not yet submitted any recommendation to the Congress. Hopefully, this will be submitted promptly.

Along with the preparation of this legislation, the Board has been moving toward termination of its administrative moratorium. Under existing law a mutual to stock conversion can occur only as the resulting association is chartered under

State law. Thus, as the Board's moratorium is terminated and if a large number of associations choose to convert, the federal system would be diminished and it would be difficult to deny Federal associations the right to convert to Federal stock associations. This temporary moratorium provided in this section is desirable in order to protect the federal system to prevent any irreversible precedent from being established so that the Congress will have a free hand in considering the Board's revised legislation.

Section 3 of the bill would authorize Federal savings and loan associations and national banks to invest in State housing corporations incorporated in the State in which the savings and loan or bank is located. Such corporations would be established for the limited purpose of providing housing and incidental services particularly for low- and moderate-income families. This provision would encourage the Nation's financial institutions to invest more actively in low- and moderate-income housing. This provision will also give an opportunity for more extensive cooperation between State housing agencies and financial institutions.

Section 4 of the bill would amend section 404 of the National Housing Act to establish a new procedure for payment by insured savings and loan associations of premiums to the reserve fund of the Federal Savings and Loan Insurance Corporation. Basically this section would eliminate the prepayment of additional payments and restructure the regular insurance premium payment system to eliminate wide fluctuations in the flow of premiums into the reserve fund and to provide for a more orderly payment system.

Section 5 of the bill would direct the Advisory Commission on Intergovernmental Relations to make a study of all pertinent matters relating to the application of State "doing business" taxes on out.of State depositories. The Commission is directed to report to the Congress its suggestions and recommendations for legislation by December 31, 1974. This amendment would impose a moratorium until December 31, 1975, on taxation on interstate transactions. During this moratorium States would be permitted to impose with one additional tax, the restricted list of taxes which a State was permitted to impose on any insured depository not having its principal office within such State under the so-called temporary amendment found in Public Law 91-156. This temporary amendment expired December 31, 1972. The additional tax pertains to payroll taxes based on persons employed in such jurisdiction.

Taxation of the transactions of out-of-State depositories raises a number of difficult legal questions as well as operating and administrative problems. The committee believes that the Advisory Commission on Intergovernmental Relations is eminently qualified to assume this task and to furnish to the Congress its recommendations regarding this very important matter.

Mr. President, I hope that the Senate will approve this bill.

Mr. PROXMIRE. Mr. President, I have an amendment at the desk that I would like to offer——

Mr. SPARKMAN. Mr. President, is the time fixed on this bill?

The PRESIDING OFFICER. The time is 2 hours on the bill.

Mr. PROXMIRE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. On whose time?

Mr. PROXMIRE. Is there a time limitation on the bill?

The PRESIDING OFFICER. There is a 2-hour time limitation on the bill.

Mr. PROXMIRE. Then I yield the floor, Mr. President.

The PRESIDING OFFICER. Who yields time?

Mr. SPARKMAN. Mr. President, the Senator from Tennessee (Mr. BROCK), I believe, is in control of the time on the minority side.

Mr. BROCK. Mr. President, for the purpose of discussion, I suggest the absence of a quorum, and ask unanimous consent that the time be charged to neither side.

Mr. SPARKMAN. I wonder whether we could not agree that the Senator have half the time and I have the other half.

Mr. BROCK. Mr. President, I withdraw the unanimous-consent request, and suggest the absence of a quorum.

The PRESIDING OFFICER. On whose time?

Mr. BROCK. To be equally divided.

The PRESIDING OFFICER. Without objection, it is so ordered, and the clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BROCK. 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. BROCK. Mr. President, I yield to the Senator from Arizona.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

LEAVE OF ABSENCE

Mr. GOLDWATER. Mr. President, I ask unanimous consent that I may absent myself from the Senate from the beginning of the recess until June 4, 1973, for the purpose of representing the President at the Paris Air Show.

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

QUORUM CALL

Mr. GOLDWATER. Mr. President, I suggest the absence of a quorum, the time to be charged equally to both sides.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Who yields time?

STRUCTURE AND REGULATION OF FINANCIAL INSTITUTIONS

The Senate continued with the consideration of the bill (S. 1798) to extend for 1 year the authority for more flexible regulation of maximum rates of interest or dividends payable by financial institutions, to amend certain laws relating to federally insured financial institutions.

Mr. SPARKMAN. Mr. President, the Senator from Utah has an amendment to offer.

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

The PRESIDING OFFICER. The clerk will read the amendment.

The legislative clerk read the amendment, as follows:

On page 2, beginning with comma on line 20, strike out all through the comma on line 22.

On page 2, line 24, immediately before the period, insert a comma and add the following: "or to approve conversions from the Federal mutual to the stock form of organization pursuant to § 5(i) of the Home Owners Loan Act of 1933, as amended, if an application was filed with the Federal Home Loan Bank Board on or after July 26, 1972 and prior to September 22, 1972."

Mr. MOSS. Mr. President, I ask unanimous consent that the Senator from Utah (Mr. BENNETT) and the Senator from Montana (Mr. METCALF) be shown as cosponsors of this amendment.

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

Mr. MOSS. Mr. President, section 2 of S. 1798, the Interest Rate Control Act, would prohibit—until December 31, 1974—the Federal Home Loan Bank Board from approving conversions by mutual savings and loan associations into capital stock companies. This prohibition would preclude "approval of any application for such conversion pending on the date of enactment."

The amendment I am proposing would permit one type of exception to this moratorium. Under this exception, the Bank Board would be allowed to consider and act upon those applications for conversion that are currently pending. This amendment would not grant approval to such applications—in fact, any application might well be rejected if the Board finds that the conversion plan is not in the interest of the shareholders or in the public interest. The amendment would only allow the Board to complete consideration of the applications now before it. According to the Board, there are five such applications that are now pending.

If this amendment is accepted, the main purpose of the moratorium on conversions would remain intact. For some time, the Federal guidelines on conversions have been, at best, murky and, at worst, contradictory. The moratorium will enable Congress to make a careful study of this tangled area with a view toward some definitive action. But even though the proposed moratorium makes very good sense for all new applications for conversion, it would be highly unfair to include in the moratorium those

associations that have already submitted applications.

On July 26, 1972, the Federal Home Loan Bank Board announced that it would accept applications from mutual companies that wished to convert to capital stock companies. A number of savings and loan associations did so and have already spent considerable sums in applying for conversion. It would be extremely unfair for Congress now to foreclose the possibility of final determination for those associations. One association in Utah, for example, has spent almost $200,000 in the past 9 months preparing a plan for conversion. Certainly this firm, as well as the others that now have applications pending are entitled to a full hearing and full consideration.

In the interests of equity, acts of Congress often contain "grandfather clauses" to preserve the rights of those who have relied upon a set of circumstances that will be changed by the new law. Our proposal is such a clause for the sake of equity. The associations that applied for conversion after the announcement last July did so in good faith, and had every reason to believe that their applications would receive a full and fair consideration. The following set of facts strongly supports the claim of good faith.

First, in filing applications, the associations acted under congressional mandate authorizing conversions. Section 5(i) of the Home Owners Act of 1933 as amended in 1948 reads as follows:

> In addition to the foregoing provision for conversion upon a vote of the members only *any association* chartered as a Federal savings and loan association . . . *may convert itself* into a State institution upon an equitable basis, subject to approval, by regulations or otherwise, by the Home Loan Bank Board and by the Federal Savings and Loan Insurance Corporation; (Emphasis added.)

Second, until December 1963, it was clearly the policy of the Home Loan Bank Board to accept conversions. Between 1945 and 1963, there were 58 conversions of insured savings and loan associations to capital stock companies.

Third, despite an administrative moratorium on conversions beginning on December 5, 1963, the Board approved the conversion of San Francisco's Citizens' Federal Savings on February 2, 1972. This was a clear indication that the administrative moratorium—which possibly was illegal in the first place—was no longer in effect.

Finally, on July 26, 1972, the Bank Board announced that it would accept applications for conversion. Less than 2 months later, however, the Board flipflopped back to its old position, and announced that it would be accepting no more applications. Unfortunately, five firms had taken the July 26 announcement in good faith and had begun conversion proceedings. Clearly, the associations that applied during this period are entitled to have their applications fully processed and decided. They should not be penalized for a series of confusing and contradictory actions by the Federal Home Loan Bank Board.

Mr. President, I wish to emphasize that this amendment would only permit consideration of pending applications. And consideration is certainly not tantamount to approval. In fact, it is conceivable that none of the applications will be approved. We would not expect the Board to approve of any conversion that is contrary to the public interest. The purpose of the amendment is simply to insure completion of a process that began in good faith and full legality, and in accordance with announced administrative policy.

I hope that this amendment will be adopted. I would hope that the manager of the bill could accept the amendment and that it could be made part of the pending bill.

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

Mr. MOSS. Mr. President, I will be glad to yield to the Senator from Alabama.

Mr. SPARKMAN. Mr. President, let me say that I understand the problem fully. Under the bill we continued the moratorium until December 31, 1974. Had we been able to work out language with reference to this peculiar situation in Utah and with reference to some five or six other savings and loan associations, we would have been glad to do so. However, we have decided—at least I have decided, and I hope that the Senator from Texas (Mr. TOWER) goes along with me——

Mr. TOWER. Mr. President, I always go along with my chairman.

Mr. SPARKMAN. Mr. President, I appreciate that. The Senator from Wisconsin (Mr. PROXMIRE) is prepared to offer an amendment which we will certainly be glad to accept. That amendment would cut the moratorium time down to December 31 this year.

I received a call this morning from the Chairman of the Federal Home Loan Bank Board, Mr. Kamp. He told me that if we set a moratorium date of December 31, 1973, instead of 1974 as we have, we would not have to worry about this situation. He said that that would take care of the whole thing. I have absolute faith in his statement, and I think that we can safely rely upon it.

I hope that the Senate will agree to go along with that, because Mr. Kamp has assured me that there will be nothing done that will harm the Utah situation or any of the other situations.

Mr. MOSS. Mr. President, does that mean that there will continue to be a moratorium for the remainder of this year?

Mr. SPARKMAN. Up to December 31, 1973; that is correct.

Mr. MOSS. Would there be nothing done by the Board in the interim in reference to considering applications?

Mr. SPARKMAN. I do not know. I will not say that they could not consider them. In fact, they placed on the moratorium for the purpose of giving them time to study the matter. He did not tell me that they could not complete the study before December 31, 1973. I did not ask him and I do not know. However, I on my own account assumed that they will not finish it by December 31, 1973.

Mr. MOSS. It would be the opinion then of the Senator from Alabama that immediately after the moratorium ceased and after the study in the interim, if things were found to be regular, it would be issued very shortly after then?

Mr. SPARKMAN. If the moratorium should be lifted and they proceed with the program of conversion, it would seem to me that it would move pretty fast. However, I do not run those things.

Mr. MOSS. I understand. However, the thing that concerns me is that this company, having received assurances, has proceeded in good faith. And the time limit was legal. In fact, they really were invited to proceed. They proceeded with a lot of actions, including the printing of letters and sending them to all depositors and getting replies back. They spent pretty close to $200,000 to bring this matter back to when a freeze was placed on it.

Mr. SPARKMAN. Mr. President, I realize the position of the Senator from Utah, and I am in sympathy with it. I wanted to be assured myself. I did not call Mr. Kamp. He called me, and he told me that if we would change the date to December 31, 1973, we need not be concerned about this. I believe strongly that the situation will be satisfactory.

Mr. MOSS. Mr. President, of course I have had no time to consult with the people who are immediately concerned. If I could feel assured that this will give them some real opportunity to complete their conversions in a reasonable period of time, I am sure they would be in agreement.

Mr. SPARKMAN. Of course, none of us can know what the final decision of the board is going to be.

Mr. MOSS. The Senator is correct.

Mr. SPARKMAN. However, Mr. Kamp told me that the thing they were working on primarily was the setting up of their conversion plans. That is what I understood him to say.

I would gather that they are rather confident that they are going to set up a conversion program. And if that is done, I would say that just as soon as the ban is lifted, they will be ready to proceed.

Mr. MOSS. Am I correct in understanding that the Board itself has a sort of administrative moratorium, and that this now is going to be a legislative moratorium up until the 31st of December of this year?

Mr. SPARKMAN. That is correct.

Mr. MOSS. I therefore would understand that the lawsuit was about whether or not an administrative moratorium was a proper means of holding up the action.

Mr. SPARKMAN. I do not think we can control the lawsuit.

Mr. MOSS. No, I am sure we cannot control it.

Mr. SPARKMAN. That is in court, and they would control it.

Mr. MOSS. I am just trying to determine what the purpose is.

Mr. SPARKMAN. I assure the Senator there would be no problem if we change the date to December 31, 1973, and I would assure the Senator also—and this is as far as I can go—that if it does not work out completely satisfactorily, I should be very glad to line right up with him.

Mr. MOSS. On the assurance of the

chairman that this suggests at least a tentative solution, I would be willing to withdraw the amendment for now, to see whether the other amendment is offered and accepted.

Mr. SPARKMAN. Yes.

Mr. MOSS. And if so, then I would have to accept that.

Mr. President, I yield to my colleague from Utah.

Mr. BENNETT. Mr. President, I just want to take 1 minute to associate myself with my junior colleague, and to express my appreciation to the Senator from Wisconsin for suggesting a way out of this impasse. The situation was difficult within the committee. There was an area of misunderstanding as to what the committee had really done, and I think under all the circumstances this may be the simplest way to solve the problem, because, as I understand it, after January 1 of next year the suit could continue to establish whether or not this is a lawful moratorium.

While I am not a lawyer, and do not know all the intricacies of the situation, I imagine that it might take the rest of the year to hear the suit and bring us to the same point at which we might arrive by this means.

Mr. SPARKMAN. Let me say this: I am a lawyer. I do not claim to have any particular prowess in law; it has been a great many years—36 years—since I practiced law. But I am aware of the opinion that we cannot do anything about the oourt, anything that would limit its powers at all. I am not sure whether the Senator was here when I made this statement: Mr. Kamp, the acting chairman——

Mr. BENNETT. Yes, I heard the Senator's statement.

Mr. SPARKMAN. He says that if we accept the December 31, 1973, cutoff date, that would cure the whole thing.

Mr. BENNETT. I imagine that the court in Utah would also suspend hearing this case until December 31.

Mr. SPARKMAN. Of course, that would be up to the judge.

Mr. BENNETT. Yes.

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

Mr. SPARKMAN. I yield to the Senator from Texas.

Mr. TOWER. Mr. President, I would like to associate myself with the position expressed by the chairman. I think the most orderly way to proceed on this matter is to accept the amendment that is to be offered by the Senator from Wisconsin, and I would like to suggest further to my colleagues from Utah that should that proposal not be passed, I would certainly take the same position they have taken; but I have no fear that we cannot act favorably on the amendment of the Senator from Wisconsin.

Mr. SPARKMAN. I think so, too.

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

Mr. SPARKMAN. I yield such time as he may require to the Senator from Arizona.

Mr. GOLDWATER. Mr. President, I had prepared an amendment quite similar to that of the Senator from Utah. I discussed the matter with the distinguished chairman, and he pointed out quite readily that while the amendment might solve the problems of Arizona, Utah, a little bit of Texas, and a part of Nevada, it would result in unfairness generally across the board.

I am aware of Mr. Kamp's statement. My people in Arizona savings and loan associations, too, are perfectly willing to have that date changed, and it will make them extremely happy, because they know they can live with it.

I shall not offer my amendment, and I have asked the Senator from Wisconsin if he would include my name on his amendment when he offers it, but just to give an idea of what we have as a problem out there, we have the fastest growing building area in the United States. The First Federal Savings & Loan Association in Phoenix has $270 million of mortgages going into housing this year alone. They must expand in order to lend more, or cut down on their housing lending.

The Tucson Federal Savings & Loan Association is in the same situation. It will have to cut down on housing lending unless it can get extensions to its net worth. To do that, both associations must convert to capital stock associations. They have started to do that, as have the organizations in Utah, but they tell me that moving the date up to the end of this year is close enough so that they feel justice will be done, and they can move.

I thank the chairman for his fairness and courtesy in pointing out the deficiencies an amendment such as mine might create, and I am grateful to the Senator from Wisconsin for, as the Senator from Texas said, giving us an out.

Mr. SPARKMAN. I thank the Senator from Arizona.

Mr. MOSS. Mr. President, may I ask the chairman one more question?

Mr. SPARKMAN. Yes.

Mr. MOSS. Does the committee anticipate acting on changes in the terms of conversion? Is that a part of a study going on?

Mr. SPARKMAN. Well, that is within the Board, and we are not legislating on that. But we are cutting off the moratorium as of December 31, 1973, if the amendment of the Senator from Wisconsin is agreed to.

Mr. MOSS. Very well. With that understanding, I withdraw my amendment.

The PRESIDING OFFICER. The amendment is withdrawn.

Mr. SPARKMAN. Mr. President, I would like my name to be added as a cosponsor of the Proxmire amendment.

Mr. TOWER. I should like mine added as well.

Mr. MOSS. Mr. President, will the Senator place my name on it as well?

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

Mr. SPARKMAN. Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

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

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

On page 2, line 15, strike "December 31, 1974" and insert in lieu thereof: "December 31, 1973".

Mr. PROXMIRE. Mr. President, this amendment has already beeen discussed. All it would do is change the date from December 31, 1974, to December 31, 1973, for the expiration of the moratorium on conversions.

Mr. President, I am opposed to the Moss-Bennett amendment and if it is defeated, I intend to offer a substitute. The effect of the Moss-Bennett amendment would authorize the Home Loan Bank Board to approve up to five conversions of mutual savings and loan associations to stock associations prior to the expiration of the moratorium on such conversions which occurs on December 31, 1974. My amendment would simply move the expiration date of the moratorium up to December 31, 1973.

I believe there is much merit to the argument that associations which have submitted conversion applications in good faith are entitled to a decision on the merits on their applications. However I also feel that the conversion issue raises important questions of public policy which should be decided by the Congress. I do not believe we should permit any conversions to take place until Congress has formally decided that conversions are in the public interest and that appropriate safeguards are in place to protect the interests of depositors.

If we permit a limited number of conversions to take place prior to a final congressional determination of the issue we involve ourselves in two needless difficulties:

First, we would create a precedent which makes it difficult for the Congress to exercise an independent judgment on the desirability of extending the privilege to the entire savngs and loan industry; and

Second, we run the risk of conferring a special privilege on a few associations which could be denied to all other associations if Congress ultimately concludes that conversions are not in the public interest. There are many associations which would like to convert to stock associations if ultimately permitted, including one prominent association in my own State. It would not be fair to single out a few associations which would be permitted to convert while the possibility exists that similar privileges would be denied to the rest of the industry.

Mr. President, I have formed no final opinion on the desirability of savings and loan stock conversions. I have listened to many good arguments on both sides of the issue. But whatever decision is reached, I feel strongly that Congress should make it. At the same time, I believe we have a responsibility to the associations which want to convert and have prepared plans for converting. They are entitled to a prompt decision from the Congress as to whether conversions will be permitted or whether they will be prohibited. It is unfair to keep the industry guessing as to what Congress will ultimately decide.

The Senator from Arizona, I think, put it very well when he said that it is not fair to proceed with a proposal that

would simply make it possible for a very few asosciations to convert. Many associations would like to convert, including one very prominent one in Wisconsin—and I am sure there are others in many other States.

For these reasons, I have offered an amendment to move the expiration of the moratorium on conversions from December 31, 1974, to December 31, 1973. This will demonstrate to those associations affected by the moratorium that Congress is proceeding to a prompt decision on the issue. These associations are entitled to an up or down vote from Congress on the question of stock conversions. It is not my purpose to delay or postpone a congressional decision on the matter.

It is my understanding that the Home Loan Bank Board can supply the committee with draft legislation authorizing Federal associations to convert to Federal stock associations in the very near future. The committee's action on this legislation should serve as a precedent for conversions into State stock associations as well. Thus, one way or the other, the issue can be decided for the entire industry.

Mr. President, the Federal Home Loan Bank Board is in strong opposition to the amendment offered by the two Senators from Utah. The Board feels that if Congress establishes a moratorium in order to gain time to consider the conversion issue, the moratorium should apply to all associations without exceptions. Let me quote briefly from the testimony of Carl O. Kamp, Acting Chairman of the Bank Board before the House Banking Committee yesterday:

> The Board is strongly of the view that any temporary statutory moratorium should be uniformly applied. There should be no special deals for individual associations. If there is adequate justification for a temporary moratorium, that justification must hold true for everybody. I don't see how it is possible to select the associations which are excepted without being unfair to the associations which are not excepted.

Mr. President, the matter could not be put more succinctly. It is a matter of simple fairness. If we establish a moratorium on conversions, it should apply to everyone. There should be no special deals. The amendment offered by the two Senators from Utah amounts to a special deal for a maximum of five and probably only one association. In view of the strong position taken by the Home Loan Bank Board, I hope the two distinguished Senators from Utah will support my amendment.

This amendment is to give Congress time to act. This is something that has not been decided, and it would be unfortunate if we permitted a few associations to come in under the gun, and then Congress decided not to permit stock associations.

So, to permit a fair resolution of the situation, it seems to me that this provision, which would move the date of conversion back to December 31, 1973, does help us solve our problem.

Mr. TOWER. Mr. President, on behalf of the minority, I am prepared to accept the amendment.

Mr. SPARKMAN. So am I.

Mr. PROXMIRE. Mr. President, I yield back the remainder of my time.

Mr. SPARKMAN. And I yield back the remainder of mine.

The PRESIDING OFFICER. All remaining time having been yielded back, the question is on agreeing to the amendment of the Senator from Wisconsin.

The amendment was agreed to.

Mr. TOWER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

Mr. SPARKMAN. Mr. President, I suggest the absence of a quorum, the time to be charged equally between the two sides on the bill.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

Mr. BROCK. Mr. President, I have an amendment at the desk which I ask be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

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

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

The text of the amendment is as follows:

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

PROHIBITION ON CERTAIN ACTIVITIES BY DEPOSITORY INSTITUTIONS

SEC. 2. (a) No depository institution shall allow the owner of a deposit or account on which interest or dividends are paid to make withdrawals by negotiable or transferable instruments for the purpose of making transfers to third parties, except that such withdrawals may be made in the States of Massachusetts and New Hampshire.

(b) For purposes of this section, the term "depository institution" means—

(1) any insured bank as defined in section 3 of the Federal Deposit Insurance Act;

(2) any State bank as defined in section 3 of the Federal Deposit Insurance Act;

(3) any mutual savings bank as defined in section 3 of the Federal Deposit Insurance Act;

(4) any savings bank as defined in section 3 of the Federal Deposit Insurance Act;

(5) any insured institution as defined in section 401 of the National Housing Act;

(6) any building and loan association or savings and loan association organized and operated according to the laws of the State in which it is chartered or organized; and, for purposes of this paragraph, the term "State" means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands;

(7) any Federal credit union as defined in section 101 of the Federal Credit Union Act; and

(8) any State credit union as defined in section 101 of the Federal Credit Union Act.

(c) Any depository institution which violates this section shall be fined $1,000 for each violation.

(d) This section expires on the same date as in prescribed in section 7 of the Act of September 21, 1966 (Public Law 89-597; 80 Stat. 823), as amended.

On page 2, line 12, strike out "SEC. 2." and insert "SEC. 3.".

On page 3, line 7, strike out "SEC. 3." and insert "SEC. 4.".

On page 6, line 10, strike out "SEC. 4." and insert "SEC. 5.".

On page 13, line 16, strike out "SEC. 5." and insert "SEC. 6.".

Mr. BROCK. Mr. President, the amendment to S. 1738 which I am offering has as its purpose the confining to the States of Massachusetts and New Hampshire a practice under which mutual savings banks in those States are offering the public an interest return on checking accounts—NOW accounts—to the competitive disadvantage of commercial banks, cooperative banks, and savings and loan associations. This amendment would prevent any further unregulated proliferation of what is in fact the payment of interest on checking accounts.

This practice was characterized by Federal Reserve Board Governor Mitchell—speaking at the committee hearings for the Board—as "intolerable." Governor Mitchell stated that:

> The Board shares the concern of those who feel that the developments in New England have occurred without the needed guidance from Congress to insure competitive equality.

This practice should be limited until the Congress can examine the competitive situation, and the more basic question of whether, or the extent to which, existing law and regulation should be modified to permit the payment of interest on checking accounts. This practice has been outlawed since the passage of the Glass-Steagall Act in 1933—following the undesirable consequences of such payment of interest during the years leading to the great financial crisis of the early 1930's. Although the Federal Reserve Board recommended that Congress consider legislation to permit all financial intermediaries to offer interest payments on a type of checking account characterized as a "family account," the Board stated clearly that the granting of such powers should be accompanied by the imposition of comparable responsibilities and regulatory responsibilities upon the competing institutions. Our committee has not yet considered fully these recommendations of the Board.

By failing to confine the NOW account practice to the two States of New Hampshire and Massachusetts, S. 1798 leaves the door open for the practice to spread to other States. There are indications that similar moves may be made by mutual savings banks in Pennsylvania, New York, Connecticut, Vermont, and other States where mutual savings banks are chartered under State law. The spreading of what Governor Mitchell called an "intolerable" competitive situation should be stopped until the Congress can examine fully all the ques-

tions involved in granting comparable powers and imposing comparable responsibilities and burdens upon competing financial intermediaries.

Mr. President, let me add further that in the House of Representatives, the Banking Committee voted out a bill which was seriously challenged on the floor of the House. They debated whether any NOW accounts should be allowed in this country until a complete review under the Hunt Commission report could be made of our financial institutions. The House voted 264 to 98 to prohibit NOW accounts in their entirety and to eliminate them even from the States which have them now.

I honestly believe that is excessive action because there is logic in the Federal system and there is logic in the duality of a banking institution with the opportunity that duality and that competitive situation allows us in terms of testing the new concepts.

My amendment would allow the test to continue but in a specifically delineated area—that is only in those two States where they now exist.

I am afraid that if the amendment does not pass, we run the rather sizable risk that the accounts will streamroll across the States to the point where we have allowed, by our nonaction, a fundamental shift of the balances in our financial structure. That is dangerous. It is dangerous in terms of the small banks who with only interest rates on saving accounts lack the resources to compete with an institution that can pay interest on a checking account.

Mr. President, I would ask that this amendment, which is a reasonable compromise, receive the support of the Senate.

Mr. TOWER. Mr. President, the mutual savings banks in question operate under State charters in two of the Northeastern States, New Hampshire and Massachusetts. These States are not presently prohibited by Federal law from permitting these institutions to offer negotiable orders of withdrawal or to pay interest on them. Savings and loans cannot offer such a checking account service and commercial banks cannot pay interest on their checking accounts. So the mutual banks, in these instances, can have a distinct advantage in obtaining deposits with their NOW account powers. But in spite of this theoretically unequal advantage for mutual savings banks, the Treasury Department has indicated that the actual problem is not serious and has advocated that NOW accounts be allowed to continue for the time being, in order to gain national experience in the operation of, first, interest-bearing demand accounts and second, demand accounts in savings institutions. The committee refused to prohibit them. The committee simply voted to confer authority on the FDIC to apply regulations to interest rates on NOW accounts in noninsured institutions—in mutual savings banks—but not on their normal savings accounts, if the FDIC feels it is necessary. That power can resolve the advantage the mutual banks have over commercial banks in regard to interest paid on demand accounts. It does not resolve the basic issue of whether thrift institutions should be allowed to offer demand accounts in the first place. That will be dealt with in the Hunt Commission legislation that will come up subsequently. The Treasury Department maintains that the NOW accounts are not now a current threat to competitive equilbrium in the financial industry, and I therefore urge the Senate to support the committee position.

I therefore hope that the amendment offered by the distinguished Senator from Tennessee will be rejected.

Mr. PROXMIRE. Mr. President, will the Senator yield me 2 or 3 minutes?

Mr. SPARKMAN. I yield 3 minutes to the Senator.

Mr. PROXMIRE. Mr. President, I join the Senator from Texas in urging that this amendment not be accepted.

What the NOW account does is that it permits one to earn interest on his demand deposit. It is an innovation; it is something different; and it is shocking to many bankers. It is done, as the Senator from Texas has said, by mutual savings banks in only two States—Massachusetts and New Hampshire.

What the committee did was to provide that the Federal Deposit Insurance Corporation has the authority to regulate interest rates in this respect; so that they could provide, for example, that the NOW accounts could only pay interest of 4 percent, 3 percent, 2 percent, 1 percent, or even zero, if they felt that this was something that interfered with the solvency of the banks or if it were unfair from a competitive standpoint.

What we are doing if we adopt the Brock amendment is directly interfering with State's rights. Why should not the State of Wisconsin or the State of Oklahoma or the State of Alabama or the State of Tennessee have the right, if it wished to do so, to permit this?

The bankers are not inarticulate. They are not bashful, if they want to make their view known to the State legislatures.

Furthermore, the committee did vote 14 to 2 against this amendment when it was offered in committee.

What convinced me, especially, is that although we have had NOW accounts in Massachusetts for some time, there is no record of abuse. The bankers who appeared from Massachusetts were unable to show that there was any adverse competitive effect.

Certainly, we ought to permit this kind of innovation. It may not be practical; it may not work out. But why not permit it to be tried by other States, if they wish, when it is something new that could be useful, advantageous, and convenient for tens of millions of savers in our country?

So I hope the Brock amendment is not accepted.

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

Mr. SPARKMAN. I yield to the Senator from Massachusetts such time as he requires.

Mr. BROOKE. Mr. President, the bill before the Senate today offers the continuation of NOW accounts, a new and somewhat controversial approach to savings account withdrawals. In effect, these accounts permit a depositor in a mutual savings bank to remove funds from his account through the use of a negotiable order of withdrawal—thus, the acronym NOW. The Committee on Banking, Housing and Urban Affairs in its deliberations on this matter has taken action with respect to NOW accounts which recognizes and attempts to continue the potential benefits that an individual customer could receive from these accounts. This action of the committee was taken after careful deliberation and full consideration of the testimony and evidence presented at the hearing conducted by the committee's Subcommittee on Financial Institutions. However, legislation that would ban interest-paying NOW accounts entirely has already been passed by the House of Representatives. Accordingly, I believe that the Senate should be fully aware of the consumer advantages of NOW accounts as it proceeds to consider this important legislation.

CONSUMER BENEFITS OF NOW ACCOUNTS

It would be particularly unwise for the Senate to take hasty action to limit or prohibit NOW accounts at this time, particularly, in view of the widely recognized benefits of the NOW account service for consumer-savers and prospective home mortgage borrowers. In its report on S. 1798, the committee stated that it:

> . . . recognized the potential benefits that an individual customer could receive by way of payment of interest on an account by which funds can also be withdrawn through the use of negotiable orders of withdrawal.

Consumer-savers clearly benefit from an interest-paying savings account that permits them the added convenience of making withdrawals, and transferring funds to third parties if they desire, by means of negotiable withdrawal orders.

The record shows that these income and convenience features of NOW accounts are particularly beneficial to consumers whose financial service needs are too often neglected, and who have relatively limited funds transfer needs—the young, the aged, the infirm.

It should be emphasized that NOW accounts differ from demand deposit checking accounts, not only in legal terms, but in economic terms as well.

At the end of March, for example, the average balance in NOW accounts at Massachusetts savings banks was almost $2,000, and the average number of withdrawals per account during the month was about 5—far less than the typical activity in commercial bank checking accounts, where the number of monthly checks drawn runs to about 15–20 on average.

These facts demonstrate that savers do not regard NOW accounts as substitutes for traditional checking accounts, but as complements. And they reinforce the conclusion that NOW accounts are very attractive to consumers who have only limited funds transfer requirements.

NOW accounts also have obvious benefits to prospective home mortgage borrowers. It was brought out in the committee's hearings that savings banks in Massachusetts and New Hampshire are

the leading source of housing credit in their own States. Home mortgage borrowers can only benefit from an attractive financial service that will permit these institutions to attract savers' funds for mortgage lending.

The conclusion that NOW accounts may be a boon to mortgage borrowers is clearly borne out by the actual performance of savings banks in Massachusetts and New Hampshire since NOW accounts were introduced last year. For example, in Massachusetts, between the end of May 1972 and the end of March 1973, savings banks placed an amount equivalent to 70 percent of their total asset growth in mortgage loans. In the comparable May 1971–March 1972 period—when Massachusetts savings banks were not offering NOW accounts—mortgage loans accounted for a far smaller share of total asset growth—51 percent.

These state-wide trends are further substantiated by the experience of individual banks holding relatively large amounts of NOW accounts. Analysis of a sample of seven Massachusetts savings banks, which currently hold about 26 percent of NOW accounts in the State, shows that these banks channeled an amount equivalent to 74 percent of their combined asset growth into mortgages between the end of May 1972 and the end of March 1973, compared with 55 percent over the comparable May 1971–March 1972 period, when NOW accounts were not offered.

In short, the share of savings bank funds allocated to mortgages has increased in Massachusetts during the same period when banks in these States were introducing and promoting NOW accounts. It also bears particular emphasis that the administrative costs of NOW accounts are fully covered by service charges—in Massachusetts, savings banks typically charge depositors 15 cents for each NOW draft that is drawn. As a result, the costs of these accounts most emphatically are not passed on to mortgage borrowers, as some opponents of the NOW account have alleged.

In this regard, it is highly significant that interest rates on home mortgage loans in the Boston area—where the largest dollar amount of NOW accounts is concentrated—remain among the lowest in the Nation. Data published by the Federal Home Loan Bank Board reveal that the average effective conventional mortgage interest rate on newly built single family homes in the Boston area was only 7.34 percent in April 1973. This was one of the lowest rates for any of the 18 areas covered by the Board's report, and was almost three-eighths of 1 percent less than the national average rate of 7.70 percent. And the data reveal a similar pattern for mortgage rates on previously occupied homes.

Aside from the obvious fact that NOW accounts may well be in the interest of consumers, it bears emphasis that S. 1798 would reinforce the FDIC's existing powers, moreover, by giving the FDIC new authority to regulate the rate of interest that non-federally insured banks may pay on NOW accounts.

In addition, the committee's report on this legislation specifically instructed "the FDIC to monitor closely the effect that NOW accounts have on competition among the various financial institutions and to move swiftly to take corrective action if warranted."

In summary, there is absolutely no need at all for Federal legislation to inhibit an obviously beneficial consumer financial service like the NOW account. The Senate should, therefore, I believe, endorse the action taken by its Committee on Banking, Housing and Urban Affairs.

Mr. President, Massachusetts was the first State to permit NOW accounts. As has been stated by both the Senators from Texas and Wisconsin. Not only have they not had a negative effect, but they have had a positive effect as well. I think that NOW accounts have been very beneficial to the consumers of Massachusetts, particularly the elderly people, who many times are shut in, have their money in savings banks and cannot get down to the bank to draw it by use of their passbook. With a NOW account they can write out a negotiable order of withdrawal.

As has been pointed out, we have had hearings in the Committee on Banking, Housing and Urban Affairs. We have had deliberative discussions. As the Senator from Texas has said, there was a vote of 14 to 2 to, in effect, continue NOW accounts. Written into the measure is protection given to other banks by virtue of the control given to the FDIC in certain instances to see that no advantage is taken of commercial banks. The effect upon smaller commercial banks was of deep concern to the committee when it had its markup session.

It should be clear that NOW accounts have proved to be beneficial. They are relatively new so far as the Nation is concerned, with only Massachusetts and New Hampshire having NOW accounts at the present time. We do not know whether it is going to spread across the country or not, but I think the Senate should be aware of the value of NOW accounts to the consumer.

I appreciate that the Senator from Tennessee has excepted Massachusetts and New Hampshire from his amendment. He has shown an awareness and a sensitivity to the situation that exists in Massachusetts and New Hampshire.

I would, however, like to question the Senator from Tennessee about a particular point in his amendment.

I read from the definitions, paragraph 8, section (d):

> This section expires on the same date as is prescribed in section 7 of the act of September 21, 1966, Public Law 89–597.

Would the Senator from Tennessee explain what effect his amendment would have on NOW accounts in Massachusetts and in New Hampshire after that date?

Mr. BROCK. Before I respond, Mr. President, I ask for the yeas and nays on the amendment.

The yeas and nays were ordered.

Mr. BROCK. The bill, as reported, would have a 1-year extension. The logic of that would be that we expect the Hunt Commission recommendations to come down from Treasury in legislative form, hopefully, in the next few weeks. That should give us an opportunity for a full review of all our financial institutions and the regulations that we empower over them to govern their specific activities.

Obviously, this problem must be considered in the context of the whole; and in the overall review of our financial institutions, we anticipate that the NOW accounts will be very much part of the consideration.

The House version, I should point out, had a 28-month termination point. That is something that would be resolved in conference. What I am saying is that we are trying to allow for a continuation of these two States to operate as they do today.

Mr. BROOKE. Until the expiration date as set forth in the amendment?

Mr. BROCK. Frankly, until we have reviewed the overall problem of our regulatory statutes with regard to financial institutions, which I think will come before that point.

Mr. BROOKE. In view of what has taken place in the House, as the Senator from Tennessee has correctly described it, it would seem to me that we would want as much flexibility as possible in conference with the House on this question. Frankly, I was rather surprised by the House action and the vote taken in the House on this matter.

Mr. BROCK. That has been my intent, and I think that is the way the Senator will find the amendment reads.

We have tried to design it to be as flexible and responsive as we can. I have no intention of trying to cut off the operation of these accounts in the very limited period of time which would, in effect, eliminate any operation today if we tried to do that. I think it is perfectly logical and rational to try to insure that any overall reevaluation of our financial institutions includes an adequate and thorough consideration of the NOW account problem.

Mr. BROOKE. I thank the Senator from Tennessee.

This is a very serious matter, as the Senator from Tennessee well knows, because he participated in the debate in the Committee on Banking, Housing and Urban Affairs.

He knows of the unique situation in both Massachusetts and New Hampshire, and it would be rather disastrous for all of these accounts in Massachusetts savings banks at the present time if in the conference NOW accounts were no longer possible in either of these two States. We have a considerable number of them; we have worked with them for a long period of time. I think the evidence will indicate that commercial banks, in the main, have not been injured in Massachusetts by the NOW accounts. Therefore, I am hopeful that we would be flexible in going to conference with the Senate bill.

Mr. BROCK. I have tried to accomplish that but in all honesty I do see a need for an end point that is foreseeable in the future. It would be terribly wrong for this body either by overt action or deliberate inaction to avoid this matter. We must deal with the question the NOW account raises, insofar as whether or not it does create a com-

petitive disadvantage for a small commercial bank that is in the same area, and whether or not we, as the Government, have a right to allow that to go on without dealing with it, either by obviating the opportunity for NOW accounts or alternatively allowing commercial banks to have the same competitive opportunity.

But we cannot continue to tolerate for long a situation in which by statute there is a built-in discriminatory situation.

Mr. BROOKE. As the Senator knows, I do not think our committee wants to give mutual savings banks or any other banks a competitive advantage over the other. On the other hand, we are going to do all we can to give consumers the opportunity to get the best banking services that the consumer can get.

Mr. BROCK. May I say to the Senator from Massachusetts that he has raised one of the most pertinent points in this entire presentation. Most consumers are debtors and not creditors. If the effect of the NOW account is to raise the interest cost that all borrowers pay for consumer goods, whether it be a home, an automobile, whatever is purchased, whatever advantage he may gain in the checking account will not be meaningful to him. As a matter of fact, it seems to me the definite advantage lies with the wealthy and not the poor, because they have rather considerable sums of money that they can and do leave in a checking account to draw interest. It is rarely the poor or middle-income people who maintain a sizable balance.

Mr. BROOKE. In Massachusetts $2,000 is the average amount of money in a NOW account. I do not think it is the wealthy who are using NOW accounts. I think it is elderly people who have, in the main, small savings, and they want to get some interest on their savings and at the same time have the advantage of being able to use a check rather than having to go down to the bank with a passbook. Those are not the wealthy people who put the maximum amount of money in a savings bank in the State.

Mr. BROCK. I cannot speak for Massachusetts, but I can guarantee the Senator it is not the average family in Tennessee that is affluent enough in today's high cost of living to maintain a $2,000 balance.

Mr. BROOKE. That is above the average, but there are many senior citizens who have perhaps only several hundred dollars to put into the accounts. I did want to negate the impression that NOW accounts are being used as a device by wealthy people to save their money at high interest rates. In addition, I want to point out that it is costing about 15 cents per check, as the Senator knows, for these NOW accounts.

They are not getting any real advantage. I think this helps commercial banks, so there is some equity involved. It is not all one sided. They now can deposit and get an advantage such as a depositor who uses a commercial checking account.

Mr. BROCK. I am delighted that the Senator has raised the point. I understand what he is saying. I am not trying to debate with him the virtue of necessity or question of having NOW accounts. I am trying to point out that where we have a statutory discrimination, either present or potential, that is something that Congress has the responsibility to deal with.

Mr. BROOKE. Does not the Senator feel that the Committee on Banking, Housing and Urban Affairs dealt with the problem adequately when it provided that the FDIC would control?

Mr. BROCK. No, I honestly do not. Because there are a number of States which could go into NOW accounts under the present language of the bill without my amendment. It takes the FDIC a good deal of time to react, frankly.

Mutual banks are allowed up to a half point interest right off the top. Thus, they start with one advantage over a commercial bank. Then they pay interest on a checking account, which is prohibited by law for their competitors. That is a competitively disadvantageous situation. It is something that I think we ought to deal with, because the committee bill allows that situation to spread across the 50 States. Whether it will or not, is something else.

This is a case where we must protect the potential user. What the Senator from Utah and I are trying to say is that this situation is of sufficient importance in strengthening the control of our financial structure that we will allow the States to operate as they are operating now, so that we can have a test; but we have limited it as to two States, Massachusetts and New Hampshire. We do not allow it for the rest of the States until we know what the situation will be.

Mr. BROOKE. Did not the competition in Massachusetts and New Hampshire provide that information, at least as to what has happened in those two States?

Mr. BROCK. The Senator from Massachusetts must admit that I am not doing violence to the States of Massachusetts or New Hampshire, or to any of the others.

Mr. BROOKE. The State of Wisconsin might want to have NOW accounts, because of the benefits of such accounts, and might want them, because they have learned of the benefits Massachusetts and New Hampshire have derived from them.

Mr. BROCK. I am delighted to have two new friends in the council of State rights.

Mr. BROOKE. The Senator's argument is against State rights. I am now in the unique position of arguing for State rights.

Mr. BROCK. We have had Federal responsibility in the monetary affairs of the Nation for a long time. We have the FDIC, the Federal Home Loan Bank Board, the Federal Farm Credit Administration——.

Mr. BROOKE. They are for protection.

Mr. BROCK. The Senator is correct—for protection against the kind of problems that could confront us. To say that we are going to have a State rights monetary system at this time is to go back 200 years, or to President Andy Johnson's national bank bill. I think we have too much at stake. I think we can do this. We have too much national security for our savings accounts to want to go back to 50 individual banking systems.

Mr. BROOKE. Is it the position of the Senator from Tennessee that NOW accounts are not beneficial?

Mr. BROCK. I do not take that position at all. I am not in a position to make that judgment.

Mr. BROOKE. And it is the position of the Senator from Tennessee that the opportunity for other States other than Massachusetts and New Hampshire should not be granted?

Mr. BROCK. That is correct.

Mr. BROOKE. And it is further his position that we should wait until the date included in his amendment?

Mr. BROCK. That is right.

Mr. BROOKE. During which time what would be done? A study would be made as to what the effect would be nationally if NOW accounts are allowed in the other 48 States of the Union?

Mr. BROCK. Unless we act sooner. I would be distressed if I thought it would take 12 months, much less 24, to undertake a thorough review of our entire financial institutions, as proposed by the Hunt Commission. I certainly think it warrants intensive study by both Houses of Congress and action under the law, and that would include a full investigation of NOW accounts provided by mutual savings banks, as well as savings and loan institutions.

Mr. BROOKE. Is it the position of the Senator from Tennessee that there is sufficient flexibility in this bill as amended by his amendment so that the Senate could go to conference with the House and preserve the institution of NOW accounts in the States of Massachusetts and New Hampshire?

Mr. BROCK. Absolutely. If that were not so, I would be offering a different amendment, because I think the Senator has a right to pursue this step.

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

Mr. BROOKE. I yield.

Mr. TOWER. I am delighted to see the Senator from Massachusetts drape himself in the Confederate flag. I must say he wears it with great distinction.

Mr. BROOKE. For this issue only. I want the RECORD to show that.

Mr. TOWER. But there is a constitutional question involved, it seems to me, because in singling out two States in this way it does violence to the Constitution, if not to the letter, then to the spirit of the Constitution. Would the Senator from Massachusetts care to comment on that?

Mr. BROOKE. Yes, I certainly would I think it must be remembered that Massachusetts thrift institutions are quite different than institutions in other States. Our banking system is quite different. We have a strong State bank regulatory agency there. It has worked. It is working well.

I think this applies to New Hampshire. I see my colleague from New Hampshire present on the floor, and I will not comment further on it as it applies to New Hampshire, but it is a unique situa-

tion which I think the Committee on Banking, Housing and Urban Affairs has, to its credit, recognized for years.

The NOW accounts originated in the Commonwealth of Massachusetts as a device which would be helpful to consumers. They have been permitted there. This question has been taken to the Supreme Judicial Court of Massachusetts and found to be constitutional and they are proceeding under the ruling of its highest court. So I do not think there is any question of constitutionality or legality.

As I understand it, what the Senator from Tennessee is trying to do by his amendment is merely to restrict other States from permitting NOW accounts, which, in the Senator's opinion, could be competitively disadvantageous to other banking institutions, primarily small banking institutions——

Mr. BROCK. And savings and loan associations.

Mr. BROOKE. And savings and loan associations, of course. I think that is what the Senator from Tennessee is attempting to do by his amendment.

Mr. BROCK. That is right.

Mr. BROOKE. This was discussed at great length in the Committee on Banking, Housing and Urban Affairs, where a somewhat different version of the Senator's amendment was defeated by a vote of 14 to 2, the only 2 voting for it being the Senators who propose the amendment now pending.

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

Mr. BROOKE. I yield.

Mr. BENNETT. The Senator from Utah, who is supporting the amendment, is not going to have any time to comment on it. The Senator from Massachusetts is using the opponents' time.

Mr. TOWER. Mr. President, I yield time under the control of the manager of the bill to the Senator from Tennessee.

Mr. BROOKE. I certainly want to hear the Senator from Utah.

Mr. President, how much time is remaining?

Mr. TOWER. Mr. President, I will yield the Senator time out of the time controlled by the Senator from Alabama on the amendment.

The PRESIDING OFFICER. Twenty-one minutes remain to the opposition.

Mr. BENNETT. Mr. President, I would like the floor. I will retire until the discussion of the Senator from Massachusetts has ended. Then I would like the floor.

Mr. BROOKE. Mr. President, I yield to the Senator from New Hampshire.

The PRESIDING OFFICER. Who yields time?

Mr. TOWER. Mr. President, I yield time, in opposition to the amendment, to the Senator from New Hampshire.

Mr. McINTYRE. Mr. President, the Senator is yielding me time in opposition to the amendment. I am chairman of the Subcommittee on Financial Institutions, which held hearings on this matter for 3 days. I heard my good friend the junior Senator from Tennessee tell this assembled body he did not feel we dealt adequately with this subject. I would like to call attention to the fact that the Banking, Housing and Urban Affairs Committee, by a vote of 14 to 2, decisively defeated the very thoughts being expressed in the amendment being offered by the Senator from Tennessee. What he has offered this afternoon for the consideration of the Senate is a modified version. The primary difference between the amendment presently before the Senate and the one that was rejected by the Committee by a vote of 14 to 2 is that in the present amendment NOW accounts could continue in the States of New Hampshire and Massachusetts as long as flexible interest rate authority is continued.

The amendment considered in committee would have allowed the States of New Hampshire and Massachusetts to continue to have NOW accounts for 1 year while prohibiting these accounts in all other States.

Senator BROCK's amendment is basically the same proposal in that the bill presently before us extends flexible interest rate authority to the Federal agencies for only 1 year as is contained in section 1(a) of the legislation, S. 1798.

In considering the merits of the amendment offered by the Senator from Tennessee (Mr. BROCK) we must first concern ourselves with exactly what a NOW account is.

What are these accounts that the Senator from Massachusetts and the Senator from Tennessee and the Senator from Utah and the Senator from Texas have been discussing?

These are savings accounts. These are savings accounts which are presently being offered by the mutual savings banks in the States of New Hampshire and Massachusetts. I might say that only 18 States of this great country of ours have mutual savings banks.

Mutual savings banks are State-chartered institutions that are basically regulated by State banking authorities.

Now accounts provide a means whereby a savings account holder may withdraw funds from his account by means of negotiable orders of withdrawal; hence, the term "Now." These are separate accounts from the mutual passbook savings account, but since they are a savings account, the funds in the account are entitled to interest payments. The negotiable order of withdrawal is simply a substitute for a passbook.

As a general rule, when a savings account holder wants to withdraw funds from his account, he must personally appear at the financial institution and present his passbook in order to withdraw his savings funds. Through the use of a negotiable order of withdrawal, a savings account holder, in effect, instructs the savings institution to pay a third person out of his savings account.

This new negotiable order-of-withdrawal concept gives to the savings account holder a new convenient method of withdrawing savings account funds and also gives him the added benefit of receiving interest on the funds in his account.

During the committee's hearings on this NOW account issue, testimony was received from the Federal Reserve Board, the Federal Home Loan Bank Board, the Federal Deposit Insurance Corporation, and the Department of the Treasury and not one witness representing these Federal regulatory agencies recommended prohibiting NOW accounts. In fact, the Deputy Under Secretary of the Treasury, Mr. Smith, in his testimony stated that—

> The NOW account represents a competitive break-through which many commentators of the financial community will argue is inevitable with the growing role that technology is playing in the transfer of funds process. The benefit to the smaller consumer-saver seems obvious. We do not yet have sufficient empirical evidence to judge the impact on the offering institution.

Both Mr. Smith of Treasury and FDIC Chairman Frank Wille testified that there is no need for Federal intervention against NOW accounts. Mr. Smith testified that—

> We are not convinced by the data which we have thus far seen with respect to the development of the NOW accounts in both Massachusetts and New Hampshire that there is a solid case for federal intervention at this moment. We do not see a competitive disruption of such magnitude, if indeed there is a competitive disruption at all, which would suggest that the federal government is compelled to intervene.

And Mr. Wille concluded, with regard to the situation in Massachusetts, that—

> We have no data indicating a significant competitive impact vis-a-vis commercial banks and savings and loan associations.

The proponents of this amendment have cited the views of Federal Reserve Board Gov. George W. Mitchell that NOW accounts have created an "intolerable" situation for competing types of institutions in Massachusetts and New Hampshire. Mr. Mitchell cited no evidence of an actual adverse effect, but merely speculated that the effects of NOW accounts could become serious.

In citing Mr. Mitchell's views, moreover, the proponents of this amendment have failed to emphasize the primary thrust of his testimony—that the NOW account is a useful financial innovation, and that ways should be found to permit the broader use of NOW accounts. Testifying on behalf of the Federal Reserve Board, Mr. Mitchell most emphatically did not recommend a Federal prohibition of NOW accounts.

In fact, not one of the administration or Federal or State regulatory agency witnesses at the Senate or House hearings testified in favor of Federal intervention to prohibit NOW accounts. This highly significant fact was specifically noted by the Senate Banking Committee in its report on S. 1798, and has been ignored by the proponents of this amendment.

The committee similarly concluded that Federal intervention against a consumer financial service that has been upheld as legal under State law by the highest court in Massachusetts and by the New Hampshire bank commissioner is not needed or desirable at this time. In its report on S. 1798, the committee stated that—

> The localized nature of NOW accounts convinced the Committee that at the pres-

ent time the issue is one primarily of State rather than Federal jurisdiction. The Committee concluded that in view of the fact that these accounts presently exist in only two States that a case for Federal intervention is not justified.

The proponents of this amendment have pointed to the possibility that the introduction of NOW accounts may be imminent in a number of other States, and that Federal legislation is needed to prevent the "unregulated proliferation" of NOW accounts. But they have failed to provide any proof for their assertion that institutions in other States are planning to introduce NOW accounts, or that there is legal authority for them to do so.

Aside from the obvious fact that the spread of NOW accounts may well be in the interest of consumers, the proponents of this amendment have completely ignored the fact that the Federal and State regulatory agencies, under existing law, presently have the powers needed to regulate NOW accounts.

S. 1798 would reinforce the FDIC's existing powers, moreover, by giving the FDIC new authority to regulate the rate of interest that nonfederally insured banks may pay on NOW accounts.

In addition, the Senate should note that in its report on S. 1798, the banking, Housing, and Urban Affairs Committee specifically instructed "the FDIC to monitor closely the effect that NOW accounts have on competition among the various financial institutions and to move swiftly to take corrective action if warranted."

But the real underlying issue concerning the existence of NOW accounts has not been based on whether this service benefits the consumer. The arguments against NOW accounts have been consistently based on competition among various competing financial institutions, but mainly between commercial banks and mutual savings banks.

One might ask how did these NOW accounts develop. And the answer is they developed, because of competition.

I noted, Mr. President, that in the colloquy with the distinguished Senator from Massachusetts, the Senator from Tennessee cited various advantages the savings banks would have over commercial banks. Actually, the evidence today is that any commercial bank that gives a person a checking account without any charges is rendering a service to him of about 2.5 percent in interest. That is a pretty good advantage that the commercial banks have at the outset.

In their attempt to compete with commercial banks, mutual savings banks have found it necessary to develop some type of third-party payment system. A checking account is a third-party payment system offered by commercial banks, and a NOW account is a third-party payment system offered by a mutual savings bank and presently even more sophisticated electronic third-party payment systems are being developed whereby neither cash nor checks are necessary but where each financial transaction would take place by computer.

The problem that we have before us today regarding NOW accounts is a manifestation of a much more complex and difficult problem and that is the structure and regulation of financial institutions.

No new comprehensive banking legislation has been enacted into law in approximately the last 40 years. Since the depression of the 1930's, the structure and regulation of this country's financial industry has remained basically unchanged. There has been some legislation dealing with specific problems such as, for example, bank holding companies, but as far as the basic structure and regulation of the banking industry of this country no substantial changes have been made since the reforms initiated during the 1930's.

In response to the need for updating the structure and regulation of financial institutions, President Nixon commissioned a study in 1970 to develop substantive changes in the banking industry. The report of the President's Commission on Financial Structure and Regulation was filed on December 22, 1971.

This Commission made a number of far-reaching recommendations, the goal of which was to make the various financial institutions in this country—mainly commercial banks, mutual savings banks, savings and loan associations, and credit unions—more competitive. At the present time, each of these financial institutions serve basically one identifiable group of customers and to a great extent competition is relatively limited in a number of areas. Where one institution is allowed to perform one function, other institutions are denied being able to offer that service, and so it is with third-party payment systems.

At the present time, commercial banks are basically the only institutions that offer this service. But the need to compete in today's market and the need for structural change in today's market is being clearly shown on the Senate floor today in our discussion with NOW accounts.

In examining the question of third-party payment systems, the President's Commission on Financial Structure and Regulation recommended in December of 1971, that both mutual savings banks and savings and loan associations be granted demand deposit rights or, to put it another way, that these two institutions should be able to offer checking accounts.

What we are debating today is an attempt by a number of mutual savings banks in the New England area—namely, Massachusetts and New Hampshire—to obtain what the President's Commission recommended; that is, some form of third party payment system.

The only reason why this issue is on the Senate floor today is because no action has been taken by the executive branch to implement by way of legislative proposal any of the recommendations contained in the Commission's report to the President.

For the last 17 months, our committee has been waiting for the President to submit his legislative recommendations in conjunction with the Commission's report, and this report recommended exactly what we are discussing today; that mutual savings banks be granted third party payment systems.

It is obvious that if the President does not move to implement the Commission's recommendations then Congress will have to do so on its own initiative. In exactly what we are discussing today: There can be no doubt that the issue of NOW accounts is not only the developing of a new banking innovation but is also a clear signal that the old banking rules and regulations that have served this country well for the last 40 years must be reconsidered in light of today's needs.

NOW accounts are not something in my opinion that should be prohibited but, to the contrary, are something that should be encouraged. It shows that there remains a competitive vitality in an industry that is probably regulated more than any other single industry in this country.

Congress rather than discouraging competition should be encouraging it, and this is why the Senate today should endorse the action taken by its Committee on Banking, Housing and Urban Affairs and reject this amendment.

Mr. BENNETT. Mr. President, will the Senator from Tennessee yield?

Mr. BROCK. Mr. President, I yield to the Senator from Utah.

Mr. BENNETT. Mr. President, I was surprised to hear the Senator from New Hampshire say that what we are debating today is the right of the mutual savings banks in New Hampshire and Massachusetts to pay interest on NOW accounts. They have that right, and they would have it under the amendment of the Senator from Tennessee.

What we are concerned about is whether this should be proliferated across the country before we have had a chance to face the basic problem which the action of the mutual savings banks of Massachusetts and New Hampshire have opened up.

Personally, I feel that we will end up with a system under which there will be some kind of a program for paying interest on certain types of accounts that are subject to withdrawals. However, what that system should be and how it should be organized today we really do not know.

I agree that we have waited too long for consideration of the Hunt report. I hope that we can get to it, because I think that when we consider the Hunt report, we should consider on a national basis the question of whether we should establish a kind of a family account on which the depository could pay interest.

The statement that we are being unfair to the mutual savings banks in New Hampshire and Massachusetts does not ring true, because we are preserving their right by this amendment to do what they are doing.

The Senator from New Hampshire says that only 18 States in the Union have mutual savings banks. We are saying that 32 States of the Union have no institution which may pay interest on a savings deposit and still permit it to be

withdrawn by some kind of third party payment arrangement.

My interest in supporting this amendment is to confine the problem to its present area and allowing the mutual savings bankers in Massachusetts and New Hampshire to keep the freedom they now have until we get a chance to figure out the best basis on which to implement the suggestion that the Federal Reserve, the FDIC and the other regulatory agencies say is a program that should be looked at. Under the pending bill, it would be confined to mutual savings banks which the Senator says only exist in 18 States.

We are saying to the commercial banks and to the savings and loan associations that compete for the saver's dollar in 50 States that they may not match this. That is available only to an organization organized at this particular time and, as I say, it exists only in 18 States.

I think it is wiser—and that is the reason I offered a version of this amendment in the committee, even though it was defeated—to have this experiment confined where we can look at it and see the extent to which moneys are flowing out of the savings departments in the commercial banks and how the moneys are flowing out of the checking accounts in the commercial banks as a result of this particular privilege.

We are also debating a very serious principle which has concerned the banking industry since the early 1930's. That is, whether it is safe to allow banks to compete on the basis of interest paid on checking accounts and whether it is a safe situation to allow that not only by banks systems, but also by our savings and loan institutions.

The number of banks in Massachusetts and New Hampshire is very small compared to the total number of savings and loan associations across the country that are going to be affected by this situation.

If we allow NOW accounts to go across the country in the States where they are legal—and we already have a different method of calculating interest in New Hampshire than we have in Massachusetts—are we going to have dozens of different systems and programs built up?

If we do, those of us in the banking committees of Congress are going to have a very much tougher time trying to write legislation which will set up national norms and national restrictions on the proliferation of these NOW accounts.

My interest in this thing is not to kill the NOW accounts. My interest is to keep the fire under control until we can have time to determine the best way in which we can allow it to spread across the country.

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

The PRESIDING OFFICER. Who yields time?

Mr. BENNETT. I am sorry, I have not finished.

Mr. President, I believe that the amendment which Senator BROCK has offered is a reasonable and logical measure. It would allow mutual saving banks in Massachusetts and New Hampshire to continue offering so-called NOW accounts as long as interest rate controls on desposits remain in effect.

At the present time, NOW accounts are confined to these two States. The amendment which has just been introduced would prevent it from spreading elsewhere, until Congress has at least had time to review the administration's proposals with regard to the President's Commission on Financial Structure and Regulation.

The President's Commission has recommended that the privilege of offering third party payment services, such as NOW accounts, be extended to mutual savings banks and savings and loan associations, providing that all institutions offering such services operate under the same regulatory safeguards and be subject to the same relative tax burdens. Those conditions are not presently being met in Massachusetts and New Hampshire, and the competitive balance between various institutions in those two States has been substantially altered. It threatens to be altered elsewhere if the practice is not now confined to those two States. The measure just introduced would provide Congress with the time it needs to determine what the appropriate regulatory safeguards and tax policy should be before sanctioning the extension of third party payment services by similar institutions elsewhere.

In this regard, I think that it is a logical step to link the expiration of the prohibition on NOW accounts outside the States of Massachusetts and New Hampshire with the expiration of interest rate controls on deposits. The President's Commission has recommended that these controls be phased out over time. If, after examining the commission's recommendations, Congress should extend the privilege of offering third party payment services to these institutions, it would do so only after approving the elimination of interest rate controls, as well as adopting the other many recommendations of the commission which would allow third party payment services to be extended in a way that is fair and equitable to all concerned. If, on the other hand, Congress decides that the practice should not be extended to these institutions, it will be easier to undo what has been done if the practice is now confined to the two States in which the service is presently being offered.

Let me also point out that the Senator from Massachusetts, in his individual views on this bill, said:

> Mutual savings banks currently enjoy some competitive advantages over their Federally chartered or insured competitors (e.g., the authority to sell life insurance, mutual funds, to invest in common stocks for their own account, and to offer corporate savings accounts), which have contributed to the substantial growth experienced by mutual savings banks in recent years.

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

Mr. SPARKMAN. Does the Senator wish more time?

Mr. BENNETT. Two more minutes, and I will be through.

Mr. SPARKMAN. I yield the Senator 2 minutes.

Mr. BENNETT. Mr. President, I think I have made the point. The Senator from Massachusetts goes on to say that he has tried, within Massachusetts, to correct these inequities, but he has not been successful. I do not think we should continue to support the inequities here on the floor of the Senate. I believe the logical thing to do is to confine this situation to these two States until we have had a chance to study the potential effect on the whole system of depositories and legislate new programs which, as far as I am concerned, can provide the same privilege to all depository institutions in the country. But I do not like to see this thing start up in an uncontrolled manner at the present time.

Mr. McINTYRE. Mr. President, will the Senator from Alabama yield me 1 minute?

Mr. SPARKMAN. Yes.

Mr. McINTYRE. Mr. President, in reply to the distinguished Senator from Utah, let me just say that the Banking Committee after hearings and executive sessions, felt the testimony of the administration and other knowledgeable agencies indicated that there was no great, fearsome danger involved here. There was some testimony that small commercial banks might suffer, and as a result it was the decision of the full Banking Committee that we would assign to the FDIC interest rate authority over NOW accounts, and allow these accounts to go their way in New Hampshire and Massachusetts, but that at any time they should threaten to get out of control, the Federal agency monitoring them could take appropriate actions to maintain a competitive balance.

For that reason, I feel that the position of the Committee on Banking, Housing and Urban Affairs should be upheld, and the NOW accounts permitted to continue.

Mr. BROCK. Mr. President, will the Senator from Texas yield me 3 minutes?

Mr. TOWER. I yield 3 minutes to the Senator from Tennessee.

Mr. BROCK. Mr. President, I think we have discussed this issue rather thoroughly, and can bring it to a close.

Let us be sure what we are voting on here. We are not voting on NOW accounts. There has been no effort since the outset to debate that question. If there had been, I think we would have seen a different kind of debate.

As the Senator from New Hampshire pointed out, we have not had a revision of the Glass-Steagall Act since it was passed. One of the planks of the Glass-Steagall Act was that we should not have payment of interest on demand deposits because of the possibility of high-risk situations. That was exactly why we got into the situation we had in 1933, with all the moratoriums that went on then.

We are not even debating the situation of banks as savings or mutual associations. What we are debating is whether discrimination allowed under Government regulation, as we have it today should be permitted to extend into other States—discrimination on the part of one institution as against all competing institutions, including savings and loan associations, and nondiscrimination. It is

a choice between what the Senator from Utah and I have proposed as a fair test of a concept that deserves a fair test, or a washing of Federal hands of any responsibility in the area, and saying we are just going to allow unregulated growth.

It is a choice between the consumer, if you want to bring it down to that level, as a debtor or a creditor. Which is he? All the Senator from Utah and I have tried to say is that if we are going to explore this new concept, let us do it rationally.

Let us do it where it exists today. Let us see how it works, and let us do it within the context of an overview of our entire structure of financial institutions under the Hunt Commission report, but let us not allow growth to go unchecked to the detriment of the borrowers or potential consumers of the credit institutions of this country.

MORE CAREFUL STUDY NEEDED ON "NOW" ACCOUNTS

Mr. HRUSKA. Mr. President, I support the Junior Senator from Tennessee (Mr. BROCK) in his effort to amend S. 1798 to confine NOW or Negotiable Order of Withdrawal accounts to existing conditions in the States of Massachusetts and New Hampshire.

Congress should move with great caution at any time in initiating sweeping measures which affect the competitive situation in banking. Current business and economic conditions plainly call for special caution.

The Congress needs to study this situation further. As the junior Senator from Tennessee and the senior Senator from Utah (Mr. BENNETT) have clearly stated in their additional views to the committee's report, we need to examine all the questions involved in granting comparable powers and imposing comparable responsibilities and burdens upon competing financial intermediaries.

Mr. President, a number of distinguished Nebraska bankers have expressed to me their strong well-reasoned objection to any expansion of NOW accounts to States other than Massachusetts and New Hampshire. I ask unanimous consent that their comments be included at this point in the RECORD:

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

MAY 16, 1973.

Hon. ROMAN L. HRUSKA,
Capitol Hill, Washington, D.C.

I urge that you support the Brock amendment to S. 1789. This is very important.

PAUL M. HEFTI,
Guardian State Bank.

THE FARMERS NATIONAL BANK OF GRANT,
Grant, Nebr., May 17, 1973.

Hon. ROMAN HRUSKA,
U.S. Senate Office Building,
Washington, D.C.

DEAR SENATOR HRUSKA: Included in HR 6370 is a provision to ban NOW accounts as used by Mutual Savings Banks. This bill will be presented to the Senate in the near future.

My reasons for writing you is to enlist your support for the banishment of NOW accounts and are as follows:

1. Mutual Savings Banks are now permitted to do so on an unfair basis.

2. Mutual Savings Banks are permitted to pay a higher rate of interest on these accounts than commercial Banks are permitted to pay on Savings Accounts.

3. Mutual Savings Banks do not have the same reserve requirement as do banks.

4. Mutual Savings Banks do not have as heavy a tax burden as to banks.

5. Mutual Savings Banks do not have the same or similar regulatory requirements as do banks.

6. The NOW account is the same as paying interest on checking accounts. Banks have been prohibited by Federal law since the 1930's from doing this.

I do not mind fair competition in business but I feel that Commercial Banks are being taken advantage of by permitting the Mutual Savings Banks to pay interest on NOW accounts.

I trust that you will be able to vote with the banks on this and against the Mutual Savings Banks.

Yours very truly,

F. W. JACKMAN,
Chairman and CEO.

BANK OF GERING,
Gering, Nebr., May 16, 1973.

Hon. ROMAN L. HRUSKA,
U.S. Senator,
Russell Senate Office Building,
Washington, D.C.

DEAR SENATOR HRUSKA: Debate is expected soon on S–1789 the extension of the Interest Rate Control Act, and relating to the controversial NOW accounts.

Senator Brock will offer an amendment to this bill to prohibit the opening of NOW accounts in states other than Massachusetts and New Hampshire until the expiration of the bill in May, 1974.

In my opinion, I feel that the payment of interest on checking accounts, or any plan that resembles the payment of interest on demand deposits, is not in the best interest of the industry, I hope that you can support the Brock Amendment S–1789.

Spring has finally come to Western Nebraska—we have all the sugar beets planted and most of the corn. Looks like we have a good start, and we all hope that Mother Nature sees fit to give us another good crop year.

Kindest personal regards.

Very truly yours,

H. L. MCKIBBIN,
Executive Vice President.

FARMERS AND MERCHANTS BANK,
Milligan, Nebr., May 8, 1973.

Senator ROMAN HRUSKA,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HRUSKA: I am writing to you pertaining to current legislation on the matter of NOW accounts.

If NOW accounts were authorized it would mean that checking accounts would become interest bearing accounts which banks are prohibited from using at this time and have been since the crash of 1933.

I was in the banking business during the crash of 1933 and at that time our city correspondent banks were paying us interest on our checking accounts. It was then determined that interest bearing checking accounts were unsound and were therefore prohibited.

Now we are back to those days and we are commencing to do a lot of unsound things and this proposal is one of them.

I hope you will give this some very careful study before you vote in favor of this proposal.

Very truly yours,

J. J. KLIMA.

THE OMAHA NATIONAL BANK,
May 16, 1973.

The Honorable ROMAN L. HRUSKA,
U.S. Senator,
Senate Office Building,
Washington, D.C.

DEAR ROMAN: The errand of this letter is to summarize my conversation with Dave Tishendorf this morning.

Senate Bill 1789 provides for the extension of the Interest Rate Control Act to May 31, 1974. The House has already passed a similar bill, and the House version of the bill carries a rider which prohibits savings banks from establishing NOW accounts. A NOW account is a savings account on which interest is paid and on which negotiable orders of withdrawal are accepted. A negotiable order of withdrawal is essentially a check, and therefore this permits savings banks to pay interest on checking accounts. Commercial banks, of course, are not permitted to do this.

Senator Brock will introduce an amendment to S. 1789 which would be similar to the amendment already adopted by the House. We urge your support of the amendment offered by Senator Brock and the bill so amended.

We understand that the Administration is preparing a bill to carry out some of the provisions of the Hunt Commission Report. One of the main points of the Hunt Commission Report was that financial institutions offering similar services should be treated similarly. We believe in that principle and believe that savings banks should not be permitted to pay interest on accounts subject to third party transfer until banks are permitted to do likewise.

Do not hesitate to get in touch with me if I can give you any further information on this subject.

Sincerely,

MORRIS F. MILLER, *Chairman.*

AMES PLAZA BANK,
Omaha, Nebr., May 10, 1973.

The Honorable ROMAN HRUSKA,
Senate Office Building,
Washington, D.C.

DEAR SENATOR HRUSKA: One of the most basic concepts of our democratic government is equality before the law with its corollary principle that free enterprise must not be destroyed by granting special competitive advantages to certain groups. Constant vigilance must be maintained to guard against any attack attempted against these principles.

Such an attack is represented by the effort of mutual savings banks to establish their N-O-W accounts (Negotiable Order of Withdrawals.) Stripped of verbiage, a N-O-W account becomes simply an interest bearing checking account.

The danger involved is the destruction of free enterprise, *by law*, in the following ways:

1. Mutual banks would be permitted to pay a higher interest rate on accounts than commercial bank savings accounts. Commercial banks in suburban and rural areas will lose substantial funds for no valid business reason and this raiding on deposits would be legalized.

2. Mutual savings banks do not share the tax load equally, with commercial banks carrying the heavier portion, nor do the mutual savings banks have the same reserve requirements as commercial banks.

3. Mutual savings banks have neither the same nor similar requirements nor regulations as do commercial banks.

4. Commercial banks couldn't even compete because by law they are prohibited from paying any interest on checking accounts, yet the granting of N-O-W accounts would enable mutual savings banks to do so.

From a practical view, payment of interest on checking accounts must necessarily be followed by charging higher interest rates to carry this new cost load.

Free competition cannot be maintained by granting special "game-rules" to one group while "ham-stringing" the competitive groups. We abhor such practice particularly at a time when the American philosophy of fairness, justice, and equality calls for strong affirmation.

We hope you will make every effort to prohibit N-O-W accounts and put all mutual savings banks under F.D.I.C. deposit rate set-

ting authority. Your support will help maintain our democratic principles and protect your constituents.

Respectfully submitted,

EDWARD D. BRODKEY,
President, Ames Plaza Bank.

SECURITY STATE BANK,
Oxford, Nebr., May 18, 1973.

Senator ROMAN HRUSKA,
U.S. Senate Building,
Washington, D.C.

DEAR SENATOR HRUSKA: I am writing to you concerning S. 1798, authorizing mutual savings banks to adopt and use (NOW accounts), Negotiable Orders of Withdrawal. We previously contacted our Congressman and thus in our own small way helped to produce a rejection in the House by a decisive vote of 264 to 98.

I am sure you are aware NOW accounts are interest bearing checking accounts. During House debate, NOWs were termed a dangerous and ominous trend for America's financial institutions.

I wish to express our complete opposition to this bill from myself and the other eleven banks in this state that we are involved in.

I urge you to vote against S. 1798.

Thank you for your consideration.

Very truly yours,

D. L. HOLBEIN,
Vice President.

JOHNSON COUNTY BANK,
Tecumseh, Nebr., May 18, 1973.

Senator ROMAN HRUSKA,
Senate Office Building,
Washington, D.C.

MY DEAR SENATOR: It will be appreciated if you do not support the legislation on Now accounts which will come before you shortly.

Also, your support of HR 6370 will be appreciated.

My sixty years in banking dictates to me that these measures are not necessary. S 1798 authorizing savings banks to adopt Now accounts is not beneficial in any way to your constituency.

Very respectfully,

J. V. JOHNSON.

FIRST NATIONAL BANK,
Wayne, Nebr., May 16, 1973.

Senator ROMAN L. HRUSKA,
Senate Office Building,
Washington, D.C.

DEAR SENATOR HRUSKA: This is to request your consideration and, hopefully, support for an amendment to S. 1789, which will be offered by Senator Brock. The effect of the Brock Amendment will be to prohibit establishment of negotiable order of withdrawal accounts in states other than Massachusetts and New Hampshire until May 31, 1974.

The N.O.W. type of account impresses me as a vehicle giving unfair competitive advantage to those financial institutions allowed to use it, in that it amounts to an interest bearing checking account. As you know, payment of interest on regular checking accounts in commercial banks is prohibited by law. While this is not an immediate problem in Nebraska, it seems likely that if the practice is allowed to continue, it will very likely spread rapidly to all states. I hope that you will agree and will find it possible to support Senator Brock's amendment.

Sincerely,

ADON JEFFREY,
President.

FIRST NATIONAL BANK,
West Point, Nebr., May 18, 1973.

Senator ROMAN L. HRUSKA,
Senate Office Building,
Washington, D.C.

DEAR SENATOR HRUSKA: The purpose of this letter is to respectfully request that you oppose S 1798 authorizing mutual savings banks to use (NOW) Negotiable Orders of Withdrawal accounts.

Should it pass, it would violently upset the payments mechanisms that are allready realing from international payments problems, devaluation and the like. In my judgement, the payment of interest on demand deposits would create a situation akin to the 30's when bankers were paying interest on demand deposits, and in order to pay that interest were making unsound loans and investments which ultimately led to disaster! Further, Savings Banks allready have a decided competitive edge in their favored tax role, with which I know you are familiar.

I would urge you instead, to support Alternate Bill 6370 banning NOW accounts. The need is urgent.

Thanking you for your consideration, I am,

Respectfully yours,

ELDON G. FREUDENBURG,
President.

THE 1ST NATIONAL BANK OF YORK,
York, Nebr., May 18, 1973.

Hon. ROMAN HRUSKA,
Senate Office Building,
Washington, D.C.

DEAR SENATOR HRUSKA: This letter is to request your support for HR-6370 in whatever form it reaches the Senate floor. This is the bill which would eliminate negotiable orders of withdrawal (NOW) accounts for various savings institutions.

I am sure you are aware that this legislation is necessary to eliminate the inequities that have arisen because a few of the states have permitted these accounts without taking the necessary action to fit them into the overall banking structure.

Sincerely,

M. C. BONHAM, *President.*

FARMERS STATE BANK,
Douglas, Nebr., May 18, 1973.

Hon. ROMAN HRUSKA,
Washington, D.C.

DEAR MR. HRUSKA: It has come to my attention that a bill is or shortly will be out in the Senate which is asking for "Now" bank accounts in Savings and Loan and Building and Loan Associations.

In my opinion this would be a very bad thing for the country and a hardship on Banks, we just cannot pay interest on Checking accounts and survive. The Savings Banks due to various advantages possibly can. I respectfully ask that you vote against any bills that would allow interest to be paid on checking accounts.

While I am writing I also wish to express my opinion on another matter and that is raising the limit on Time Deposit Interest.

As far as I know there is no bill in regard to this but should there be I wish to state that it would be the end of Country Banks, we cannot pay 6% and 7% like City Banks are doing and at that kind of interest it would be no time until the increased interest paid by City Banks would drain the money to the City, where it would stay the "Farmers Friend" the country bank would be out of business and the farmer out of a source of credit.

Thank you.

Yours truly,

M. W. DUNLAP, *President.*

RICHARDSON COUNTY BANK
AND TRUST COMPANY,
Falls City, Nebr., May 18, 1973.

The Honorable ROMAN HRUSKA,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HRUSKA: The House of Representatives very recently passed legislation prohibiting NOW accounts, and I applaud this action vigorously.

I understand that amendments will be offered on the floor of the Senate to the Interest Rate Control Bill which was recently reported by the Senate Banking Committee to prohibit the opening of NOW accounts anywhere after May 15, 1973 (with a phase out period for those which were in existence on May 15, 1973). I ask your strong support of this amendment to prohibit NOW accounts at this time.

Cordially,

JOHN H. MOREHEAD, *President.*

P.S. As you are probably aware, the savings and loan associations are in accord with the commercial banks' stand on this matter—a refreshing contrast to the normal position of the two types of institutions, but one that should make it easier for you in this particular case.

SCOTTSBLUFF NATIONAL BANK
AND TRUST CO.,
May 18, 1973.

The Honorable ROMAN HRUSKA,
U.S. Senator,
Washington, D.C.

DEAR ROMAN: I wish to make my views known on the legislation on interest rate control reported by the Senate Banking Committee—particularly to an amendment which has been, or will be, introduced to prohibit NOW accounts. We, of course, hope that NOW accounts will be prohibited and the views of Senators Bennett and Brock as printed in the Senate Report are consistent with our approach to this matter.

The NOW account is similar to paying interest on a checking account—a practice that has been prohibited since the 30's. The institutions involved already enjoy advantages in reserve requirements, taxes, and regulatory matters which should be considered and until these matters are settled on a basis which is equitable for all other financial institutions, the NOW account should be prohibited.

Your consideration of this view would be appreciated.

Kindest regards.

Sincerely,

H. D. KOSMAN, *President.*

Mr. MUSKIE. Mr. President, the Senate Banking, Housing and Urban Affairs Committee has reported to the full Senate a bill containing a sound and judicious position on NOW accounts. The legislation they reported continues the present regulatory arrangements under which two New England States—Massachusetts and New Hampshire—have allowed mutual savings banks to offer consumers savings accounts on which negotiatable orders of withdrawal, similar to checks, can be drawn.

The NOW accounts offered in Massachusetts and New Hamphsire have evidently been welcomed by banking customers in those States as an alternative form of banking service. It offers those with little need for a full checking account the advantages of paying their bills from their savings accounts directly to a third person. This new service is especially valuable to the young, the aged, and the infirm, who might otherwise be burdened by administrative complications of handling their financial affairs from a savings account alone. Although these accounts represent no more than 1 percent of the deposits of commercial banks, and the assets of mutual savings banks, in these States, they are filling a need of many banking customers.

The position taken by the committee mandates full regulatory protection of the consumers, and of the banking industry, from the experiment of NOW accounts. The State banking author-

ities in Massachusetts and New Hampshire retain control of NOW accounts in their States. And the committee bill gives the FDIC authority to regulate the interest rates paid on NOW accounts.

Finally, the committee's direction to the FDIC to monitor closely the operations of NOW accounts promises to guard against any injurious effects of this experiment.

I support the position of the committee, and urge the Senate to reject the amendment of Senators BROCK and BENNETT which would prohibit this worthwhile banking service.

Mr. HUMPHREY. Mr. President, I wish to offer some observations on the amendment by the Senator from Tennessee (Mr. BROCK), which would confine to the States of Massachusetts and New Hampshire a practice under which State-chartered mutual savings banks in these States are offering the public an interest return on checking accounts, known as NOW accounts, where a depositor may remove funds from a savings account through the use of a negotiable order of withdrawal to a third party.

I am not persuaded by arguments that this recent practice will upset the competitive balance between financial institutions. I believe that adequate provision has been made in S. 1798 for monitoring the effect that NOW accounts may have on competition among the various financial institutions, through giving the Federal Deposit Insurance Corporation clear authority to cover, with respect to the rate of interest paid, all federally insured and noninsured banks throughout the country that presently offer such services or are commenced by other financial institutions in the future.

The Committee on Banking, Housing and Urban Affairs, prior to reporting the legislation before the Senate to extend for 1 year the authority for more flexible regulation of maximum rates of interest or dividends payable by financial institutions, rejected a similar amendment to confine the availability of NOW accounts, by a vote of 14 to 2. I concur with the committee's judgment that this matter presently is primarily one of State rather than Federal jurisdiction, and that NOW accounts offer an individual customer an important convenience in withdrawing funds from his savings account. The committee intends to examine the question of extending this type of account to all competing financial institutions, during its consideration of the President's legislative proposals, anticipated in the near future, and based upon the findings of the Commission on Financial Structure and Regulation.

In conclusion, it should be noted, first, that NOW accounts are not demand deposit accounts—an important distinction—and second, that the availability of such accounts is presently exceptionally limited, as indicated by the fact that there are mutual savings banks in only 17 States, including the State of Minnesota, which has only one savings bank.

Mr. SPARKMAN. Mr. President, I am ready to yield back the remainder of my time. I call attention to the fact that we have to finish by 4 o'clock because of a previous order.

I yield back the remainder of my time.

The PRESIDING OFFICER (Mr. HELMS). All remaining time on the amendment having been yielded back, the question is on agreeing to the amendment of the Senator from Tennessee. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the role.

Mr. PASTORE (when his name was called). PASTORE votes "present."

Mr. GURNEY (when his name was called). I vote "present."

Mr. SCOTT of Pennsylvania (when his name was called). On this vote, I have in the name of myself and my wife, bank stock in a national bank. Although I would be inclined to vote "nay" in any event, I nevertheless feel that I should withhold my vote and should vote present. I therefore vote "present."

Mr. FULBRIGHT (when his name was called). Having shares in a commercial bank, I therefore vote "present."

Mr. PELL (when his name was called). Having an interest in a commercial bank, I vote "present."

Mr. INOUYE (after having voted in the affirmative). Having an interest in banking operations, I prefer to vote "present."

Mr. CASE (after having voted in the negative). Having an interest in banking operations, I prefer to vote "present."

Mr. BURDICK (after having voted in the affirmative). As long as I hold some stock in a commercial bank, I prefer to vote "present."

Mr. ROBERT C. BYRD. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from Idaho (Mr. CHURCH), the Senator from Iowa (Mr. CLARK), the Senator from Washington (Mr. MAGNUSON), the Senator from Wyoming (Mr. MCGEE), and the Senator from South Dakota (Mr. MCGOVERN) are necessarily absent.

I further announce that the Senator from New Jersey (Mr. WILLIAMS) is absent on official business.

I also announce that the Senator from Mississippi (Mr. STENNIS) is absent because of illness.

I further announce that, if present and voting, the Senator from Iowa (Mr. CLARK) would vote "nay."

Mr. GRIFFIN. I announce that the Senator from New York (Mr. JAVITS) is absent because of death in the family.

The Senator from Arizona (Mr. FANNIN) is absent on official business.

The Senator from Colorado (Mr. DOMINICK), the Senator from Hawaii (Mr. FONG), the Senator from Idaho (Mr. MCCLURE), the Senator from Oregon (Mr. PACKWOOD), and the Senator from Illinois (Mr. PERCY) are necessarily absent.

The Senator from Maryland (Mr. BEALL) is detained on official business.

The result was announced—yeas 43, nays 33, as follows:

[No. 149 Leg.]

YEAS—43

Allen	Byrd, Harry F., Jr.	Eastland
Baker	Cannon	Ervin
Bartlett	Chiles	Goldwater
Bayh	Cook	Griffin
Bellmon	Cranston	Hansen
Bennett	Curtis	Hartke
Bentsen	Dole	Helms
Bible	Domenici	Hollings
Brock	Eagleton	Hruska
Buckley	Fong	Long
Byrd, Robert C.	Gravel	Mathias
Cotton	Hart	McClellan
Dominick	Haskell	Nunn
Fannin	Hatfield	Pearson
Fulbright	Hathaway	Ribicoff
Gurney	Huddleston	Roth
Hansen	Hughes	Saxbe
Helms	Humphrey	Scott, Va.
Hollings	Inouye	Stafford
Jackson	Johnston	Stevens
Javits	Kennedy	Taft
Johnston	Mansfield	Talmadge
Kennedy	McGee	Thurmond
Long	McGovern	Tunney
Mansfield	McIntyre	Weicker
McGee	Metcalf	Young
McGovern	Mondale	
McIntyre	Montoya	
Metcalf	Moss	
Mondale	Muskie	
Montoya	Nelson	
Moss	Proxmire	
Muskie	Randolph	
Nelson	Schweiker	
Proxmire	Sparkman	
Randolph	Stevenson	
Schweiker	Symington	
Sparkman	Tower	
Stevenson		
Symington		
Tower		

NAYS—33

Aiken	Hathaway	Montoya
Biden	Huddleston	Moss
Brooke	Hughes	Muskie
Buckley	Humphrey	Nelson
Byrd, Robert C.	Jackson	Proxmire
Cotton	Johnston	Randolph
Eagleton	Kennedy	Schweiker
Gravel	Mansfield	Sparkman
Hart	McIntyre	Stevenson
Haskell	Metcalf	Symington
Hatfield	Mondale	Tower

ANSWERED "PRESENT"—8

Burdick	Gurney	Pell
Case	Inouye	Scott, Pa.
Fulbright	Pastore	

NOT VOTING—16

Abourezk	Fong	Packwood
Beall	Javits	Percy
Church	Magnuson	Stennis
Clark	McClure	Williams
Dominick	McGee	
Fannin	McGovern	

So Mr. BROCK's amendment was agreed to.

Mr. TOWER. Mr. President, I yield 1 minute to the Senator from Montana.

ORDER FOR A COMMUNICATION TO BE HELD AT THE DESK

Mr. MANSFIELD. Mr. President, I ask unanimous consent—this has been cleared all around—that upon its receipt, the communication on minority business enterprises be held at the desk until further action is agreed upon.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

STRUCTURE AND REGULATION OF FINANCIAL INSTITUTIONS

The Senate continued with the consideration of the bill (S. 1798) to extend for 1 year the authority for more flexible regulation of maximum rates of interest or dividends payable by financial institutions, to amend certain laws relating to federally insured financial institutions.

Mr. TOWER. I yield myself such time on the bill as I may require.

Mr. President, I had considered offering an amendment here today regarding the repayment of excess premium payments into the secondary reserve of the FSLIC to the appropriate savings and loan associations, most of which are located in the rapid growth States of recent years, such as Texas and California. However, it is my understanding that the Office of Management and Budget and the Federal Home Loan Bank Board will propose a plan to retire the excess reserves over a period of time, and I will therefore withhold my proposal for this same purpose. The matter is very complex, and it is appropriate to await technically accurate legislation from the administration.

My understanding is that the administration is of the opinion that the excess funds should and will be rebated, but the question is merely as to the proper mechanics of carrying this out.

Mr. President, I yield such time on

the bill as the Senator from Wisconsin requires.

Mr. PROXMIRE. Mr. President, I believe there is considerable merit to the amendment that was to be offered by the Senator from Texas. It would provide for a cash rebate to those savings and loan associations whose balances in the secondary reserve fund are so large that they would never be phased out under the new premium plan contained in section 4 of the bill. This is because the interest received on these balances is greater than the cash premium payments required to be paid into the primary insurance fund.

Although I believe the amendment has merit, I believe it is premature. The amendment would make sense if Congress had made a decision to abolish the secondary reserve insurance fund. However, the bill reported by the committee does not abolish the secondary reserve fund. It merely stops the fund from growing. Therefore, I believe it would be premature to authorize a cash rebate to a designated group of institutions until we decide upon the ultimate fate of the secondary reserve fund.

Mr. President, we are not talking about trivial amounts. The Tower amendment would require a cash rebate of $53 million to about 300 associations. More than $37 million would go to just 55 California associations. The rebate would be paid from FSLIC insurance funds on January 1, 1976.

I am not opposed in principle to a cash rebate to these associations even though it might increase the budget deficit. Secondary reserve balances are treated as an asset on the books of savings and loan associations. In a very real sense, the money belongs to the associations although the insurance fund has first claim on it. If the secondary reserve fund is to be phased out over time, a cash rebate may be necessary to those associations with substantial balances.

The key point, however, is that there has been no decision on phasing out the secondary reserve fund. Under the bill reported by the committee, it is entirely possible for the secondary reserve fund to be as large or larger on January 1, 1976, as it is today. If this were to occur, how can we justify giving a cash rebate to 300 associations when the rest of the industry has had no reduction in their reserve balances? Why should we sign a blank check for these associations until we know what the rules of the game are?

Mr. President, the amendment is opposed by the administration. Let me quote a letter on the amendment from the Office of Management and Budget:

The Administration is unable to support this proposed amendment. The problem of the secondary reserve balances held by the FSLIC is much too extensive and complex to be susceptible of solution by a series of partial amendments, of which this is one. We believe the necessary and desirable solution will be best achieved through carefully developed legislation which will address the entire problem, and provide for the appropriate phasing of any repayments over time. Therefore, we are in agreement with you that the proposed amendment is premature: the Board has not yet drafted legislation for an eventual abolition of the secondary reserve fund. We have indicated to the Board, however, that the development of such an item of legislation should have a high priority in the coming year.

Mr. President, I ask unanimous consent that my correspondence relative to this matter with the Office of Management and Budget be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. PROXMIRE. To summarize the arguments against the amendment—first, it is premature and could lead to serious inequities within the savings and loan industry by favoring one group of claimants on the secondary reserve fund ahead of all others; second, it is opposed by the administration; and third, it would increase the budget deficit in future years by $53 million.

In view of the strong position taken by the administration against the amendment and the likelihood of future legislation to solve the problem, I am glad the Senator from Texas has not pressed his amendment.

EXHIBIT 1

APRIL 3, 1973.

Mr. ROY L. ASH,
Director, Office of Management and Budget, Executive Office Building, Washington, D.C.

DEAR MR. ASH: Legislation introduced by Senators Sparkman and Tower at the request of the Federal Home Loan Bank Board (S. 892) would restructure the system for making payments into the FSLIC insurance fund on the part of Federally insured savings and loan associations. This legislation would discontinue premium prepayments into the secondary reserve and permit secondary reserve balances to be credited towards payments into the primary reserve. The Committee ordered this legislation reported on April 17, and it is expected that the legislation will be considered by the Senate in the very near future.

I am attaching a copy of a proposed amendment to S. 892 which may be offered on the floor of the Senate. As I understand the effect of the amendment, it would require cash payments from the secondary reserve fund to those associations whose secondary reserve balances exceeded 1% of their deposits as of December 31, 1974. The cash payments would be made on January 1, 1976 and would be equal to the amount of secondary reserve balances in excess of 1%.

If this amendment were adopted, it would require cash payments of approximately $53 million to about 350 associations. The bulk of payments, $37 million, would go to 55 California associations.

The amendment is apparently premised on the assumption that S. 892 provides for the ultimate abolition of the secondary reserve in the FSLIC. However, in reading the legislation I find no procedures for insuring that the secondary reserve fund will in fact be phased out. According to projections supplied by the Federal Home Loan Bank Board, it is entirely possible that the secondary reserve fund can be maintained at its current level for an indefinite period of time if the Bank Board chooses to require that 70% of an association's primary premium payments be in cash, as authorized by the legislation.

If the proposed amendment to S. 892 is adopted, it could result in the anomalous situation of requiring a cash rebate to a select group of savings and loan associations, notwithstanding the fact that there has been no reduction in the aggregate level of secondary reserve balances.

For these reasons, I am concerned that the proposed amendment might be premature since the Home Loan Bank Board and the Office of Management and Budget have not yet developed a plan for the eventual abolition of the secondary reserve fund. Accordingly, I would appreciate your comments on the concern I have expressed in this letter together with your recommendations concerning the attached amendment.

With best wishes, I am

Sincerely,

WILLIAM PROXMIRE,
United States Senate.

OFFICE OF MANAGEMENT ANE BUDGET,
Washington, May 11, 1973.

HON. WILLIAM PROXMIRE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR PROXMIRE: Thank you for your letter with the amendment to S. 892 which may be offered on the Senate floor. Your understanding of the effect is correct: it would require cash payments from the secondary reserve fund to those associations whose secondary reserve balances exceed 1% of their deposits as of December 31, 1974. The cash payments would be made on January 1, 1976 and would be equal to the amount of secondary reserve balances in excess of 1%.

In addition, you are correct that the Administration—proposed legislation to restructure the system for making payments into the Federal Savings and Loan Insurance Corporation Fund does not include a provision for eventually abolishing the secondary reserve. The legislation, depending on the percentage premium payment to be required in cash, does provide that we can stop the secondary reserve from growing. This was one of the major considerations the Federal Home Loan Bank Board had in mind in the lengthly drafting of its legislation.

As we indicated in our letter to Acting Chairman Kamp (copy attached), the Administration is unable to support this proposed amendment. The problem of the secondary reserve balances held by the FSLIC is much too extensive and complex to be susceptible of solution by a series of partial amendments, of which this is one. We believe the necesary and desirable solution will be best achieved through carefully developed legislation which will address the entire problem, and provide for the appropriate phasing of any repayments over time.

Therefore, we are in agreement with you that the proposed amendment is premature; the Board has not yet drafted legislation for an eventual abolition of the secondary reserve fund. We have indicated to the Board, however, that the development of such an item of legislation should have a high priority in the coming year.

Accordingly, we would appreciate your not supporting this partial and premature amendment to S. 892. Thank you for the timely opportunity to provide our views on this matter.

Sincerely,

WILFORD H. ROMMEL,
Assistant Director for Legislative Reference.

HON. CARL O. KAPP, JR.
Acting Chairman, Federal Home Loan Bank Board, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your letter of April 11, 1973, which proposed an additional amendment to Section 404 of the National Housing Act (12 U.S.C. 1727). This amendment would be added to the amendment proposed by the Board in January 1973, as cleared by this office on January 19, 1973.

As drafted, the proposed additional amendment would add a new subsection (1) to Section 404 of the National Housing Act, and would provide for a direct repayment of a portion of the secondary reserve balancing

of the Federal Savings and Loan Insurance Corporation. The repayment would be based upon a refund of that portion of an insured association's secondary reserve which exceeded one percent of the savings capital held by the insured association, and would be made on January 1, 1976.

The Administration is unable to support the proposed amendment. The problem of the secondary reserve balances held by the Federal Savings and Loan Insurance Corporation is much too extensive and complex to be susceptible of solution by a series of partial amendments, of which this is one. We believe the necessary and desirable solution will be best achieved through carefully developed legislation which will address the entire problem, and provide for the appropriate phasing over time of any repayments.

If it would be appropriate for the Board to so indicate to the Committees of the Congress involved in considering this legislation, the Administration would have no objection to the Board stating that legislation will be developed by the Board this year to deal with the entire problem of the secondary reserve balances. The Administration would also have no objection to the Board indicating that the phasing over time of such a solution would not exceed ten years.

Sincerely,

WILFRED H. ROMMEL,
Assistant Director for Legislative Reference.

Mr. TOWER. Mr. President, I yield such time on the bill as the Senator from California requires.

Mr. CRANSTON. I thank the Senator for yielding.

Mr. President, I rise in support of Senator TOWER'S proposed amendment which provides that the Federal Savings & Loan Insurance Corporation would have the authority to pay a small group of savings and loan associations their part of the secondary reserve above 1 percent. There are about 600 savings and loan institutions nationwide and 55 in California who have accumulated sufficiently large balances in the secondary reserve that it is unlikely their shares will be amortized within a reasonable period of time even under the revised premium payment structure.

To give an example, Atlantic Savings & Loan Association in Los Angeles, Calif. has $4,200,000 backed up in secondary reserves being held by the Federal Savings & Loan Insurance Corp. Last year the corporation paid 5.7 percent interest on those reserves, but instead of paying the interest to the savings association, it credited it to Atlantic's secondary reserve account. Atlantic has accumulated $153 million in savings which it has loaned to home buyers. The regular annual insurance premium on that $153 million is one-twelfth of 1 percent, or $130,000. The maximum that this bill will allow to be taken from the secondary reserves to apply on that annual premium is 70 percent of the $130,000, $91,000. The interest on the total of $4,200,000 that Atlantic has in the secondary reserve is $239,400, which means that the interest accrual is larger than that allowed to be applied to the regular FSLIC premium.

This means that Atlantic as well as 54 other savings and loans in California may never get their money back; that the money tied up in the secondary reserve fund will continue to grow, but not be available for housing.

It hardly seems fair or reasonable that these institutions, who paid in excessive amounts because of their high rate of growth, should be penalized for doing an aggressive job in the thrift and home-ownership market.

In addition, the Internal Revenue Service declares that the secondary reserves really belong to the savings associations; therefore, such payment cannot be deducted as a cost of doing business.

I realize that this is a very technical situation and that perhaps further study should be done in committee; however, it is an inequitable situation which the Federal Home Loan Bank Board and the Office of Management and Budget should address itself to in restructuring the premium payment system.

Mr. HARTKE. Mr. President, I call up my amendment No. 142.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

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

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

The amendment, ordered to be printed in the RECORD, is as follows:

On page 16, line 16, insert the folowing new sections:

SEC. 6. (a) For the purpose of this section—

(1) "Board" means the Board of Governors of the Federal Reserve System;

(2) "individual" means a natural person;

(3) "individual savings deposit" means (a) any deposit or account in a savings institution which consists of funds deposited to the credit of one or more individuals or in which the entire beneficial interest is held by one or more individuals, and upon which earnings are payable, or (b) shares in a savings institution which are issued for the savings of its members and upon which earnings are payable, or (c) any evidence of indebtedness issued by a savings institution to one or more individuals or in which the entire beneficial interest is held by one or more individuals, and upon which earnings are payable. Such term includes regular, notice, and time deposits, and share accounts, and any other such deposits and accounts, whether or not evidenced by an instrument;

(4) "earnings" means any amount accruing to or for the account of any individaul as compensation for the use of funds constituting an individual savings deposit. Such term includes dividends and interest on any individual savings deposit;

(5) "payable", when used with respect to a certain date or period of time, means the date on which or the period of time after which an absolute right to earnings exists, regardless of whether the earnings are actually paid;

(6) "savings institution" means any person, firm, corporation, association, or organization which in the regular course of business receives and holds or issues individual savings deposits and pays earnings thereon;

(7) any reference to this Act, to any requirement imposed under this Act, or to any provision thereof includes reference to the regulations of the Board under this Act or the provision thereof in question.

(b) Nothing in this Act applies to any transaction involving—

(1) a deposit of funds if the principal purpose of that deposit is to secure or guarantee the performance of a contract or the conditions of a contract for the sale or use of goods, services, or property;

(2) interest payable on premiums, accumulated dividends, or amounts left on deposit under an insurance contract;

(3) any obligation issued by any Federal, State, or local government, or any agency, instrumentality, or authority thereof, except that the Board shall prescribe rules and regulations to require disclosures by any agency, instrumentality, or authority of the Federal Government.

(c) Periodic percentage rate is the rate applied each period to the principal amount for that period to determine the amount of earnings for that period and may be referred to as the periodic percentage rate. If the period is less than one day, for purposes of disclosure, the period shall be construed to be either one day or the actual time interval after which earnings are payable, whichever is less, and the rate to be disclosed in lieu of the true periodic percentage rate shall be the factor used to determine the amount of earnings for a one-day period.

(d) Annual percentage rate is the periodic percentage rate multiplied by the number of periods in a calendar year of three hundred and sixty-five days for all years including leap year, and may be referred to as the annual percentage rate.

(e) Annual percentage yield is the amount of earnings which accrue in one year to a principal amount of $100 as the result of the successive applications of the periodic percentage rate at the end of each period to the sum of the principal amount plus any earnings theretofore credited and not withdrawn during that year, and may be referred to as the annual percentage yield.

(f) The Board shall prescribe regulations to carry out the purposes of this Act. These regulations shall provide for clear, concise, and uniform disclosures of information required by this Act, and many contain such classifications, adjustments, and exceptions as the Board determines are necessary or proper to effectuate the purposes of this Act. All disclosures required by this Act shall be made only in terms as defined or used in this Act, as defined or used in the Truth in Lending Act or in regulations prescribed under that Act, or as such terms are further defined by the regulations of the Board. The Board may authorize the use of tables or charts for the disclosure of information required by this Act.

(g) The Board may prescribe such other rules and regulations as it determines to be necessary or appropriate to carry out the purposes of this Act.

(h) Each savings institution shall make available in writing to any individual upon request, and at the time he initially places funds in an individual savings deposit in such savings institution, the following information with respect to individual savings deposits:

(1) The annual percentage rate;

(2) the minimum length of time a deposit must remain on deposit so that earnings are payable at that percentage rate;

(3) the annual percentage yield;

(4) the periodic percentage rate and the method used to determine the balance to which this rate will be applied;

(5) the number of times each year earnings are compounded;

(6) the dates on which earnings are payable;

(7) any charges initially or periodically made against any deposits;

(8) any terms or conditions which increase or reduce the rate of earnings payable as disclosed under item (1) or (3); and

(9) any restrictions and the amount or method of determining the amount of penalties or charges imposed on the use of funds in any deposit.

(i) Each savings institution shall disclose annually and at the time any earnings report

is made to an individual in person, or by mailing to his last known address, with respect to his individual savings deposit—

(1) the amount of earnings paid;

(2) the annual percentage rate;

(3) the periodic percentage rate;

(4) the principal balance to which the periodic percentage rate was applied, and the method by which that balance was determined;

(5) any charges made against the account during the period covered for purposes of computing the payment of earnings and making the report; and

(6) any other terms or conditions which increased or reduced the earnings payable under conditions as disclosed under item (1) or (3) of subsection (a).

(j) The Board may, by regulation, authorize or publish tables of periodic factors which reflect compounding, and such other information as it determines to be necessary or appropriate in order to facilitate the individual's ability to verify the computation of earnings payable on any individual savings deposit.

(k) Not less than ten days before a saving institution adopts any change with respect to any item of information required to be disclosed under this section, that institution shall notify each individual depositor of each such change, unless such change is directed by regulatory authority.

(l) Every advertisement relating to the earnings payable on an individual savings deposit shall state in print of equal prominence the annual percentage rate and the annual percentage yield. If that rate is payable only on a deposit which meets certain minimum time or amount requirements, those requirements shall be clearly and conspicuously stated.

(m) No such advertisement, announcement, or solicitation shall—

(1) include any indication of any percentage rate or percentage yield based on a period in excess of one year or on the effect of any grace period; or

(2) make use of the term "profit" in referring to earnings payable on such deposits.

(n) Compliance with the requirements imposed under this Act shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act, in the case of—

(A) national banks, by the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), by the Board;

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), by the Board of Directors of the Federal Deposit Insurance Corporation;

(2) section 5(d) of the Home Owners' Loan Act of 1933, section 407 of the National Housing Act, and sections 6(i) and 17 of the Federal Home Loan Bank Act, by the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions; and

(3) the Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any insured credit union.

(o) For the purpose of the exercise by any agency referred to in subsection (n) of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this Act shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of the law specifically referred to in subsection (n), each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this Act, any other authority conferred on it by law.

(p) Except to the extent that enforcement of the requirements imposed under this Act is specifically committed to some other Government agency under subsection (a), the Federal Trade Commission shall enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement imposed under this Act shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person with the requirements imposed under this Act, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act.

(q) The authority of the Board to issue regulations under this Act does not impair the authority of any other agency designated in this section to make rules respecting its own procedures in enforcing compliance with requirements imposed under this Act.

(r) Except as otherwise provided in this section, any savings institution which fails in connection with any transaction subject to this Act to disclose to any individual any information required under this Act to be disclosed to that individual is liable to that individual for the damage sustained which—

(1) shall not be less than $100 nor greater than $1,000; and

(2) in the case of any successful action to enforce the foregoing liability, the costs of the action together with a reasonable attorney's fee as determined by the court.

(s) An institution has no liability under this section if within fifteen days after discovering an error, or upon receipt of written notice of an error and prior to the bringing of an action under this section the institution notifies the individual concerned of the error and makes whatever adjustments are appropriate and necessary.

(t) An institution may not be held liable in any action brought under this section for a violation of this Act if the institution shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(u) Any action under this section may be brought in any United States district court, or in any other court of competent jurisdiction, within one year from the date of the occurrence of the violation.

(v) Whoever willfully and knowingly (1) gives false or inaccurate information or fails to provide information which he is required to disclose under the provisions of this section, or (2) otherwise fails to comply with any requirement imposed under this section shall be fined not more than $5,000.

(w) In the exercise of its functions under this section, the Board may obtain upon request the views of any other Federal or State agency which, in the judgment of the Board, exercises regulatory or supervisory functions with respect to any class of savings institutions subject to this section.

(x) This section does not annul, alter, or affect, or exempt any savings institution from complying with, the laws of any State relating to the disclosure of information in connection with individual savings deposits, except to the extent that those laws are inconsistent with the provisions of this section or regulations promulgated under this section, and then only to the extent of the inconsistency.

(y) This section does not otherwise annul, alter, or affect in any manner the meaning, scope, or applicability of the laws of any State, including, but not limited to, laws relating to the types, amounts or rates of earnings, or any element or elements of earnings, permissible under such laws in connection with individual savings deposits, nor does this section extend the applicability of those laws to any class of persons or transactions to which they would not otherwise apply.

(z) Except as specified in subsection (v), this section and the regulations promulgated under this section do not affect the validity or enforceability of any contract or obligation under State or Federal law.

Mr. HARTKE. Mr. President, the amendment I call up at this time embodies a proposal which has been before the Senate for more than 2 years. It is a proposal which is embodied in S. 1052 which I introduced earlier this year, and in S. 1848 which I introduced during the last Congress.

In brief, my amendment requires all savings institutions to disclose vital information about the earnings rates of their savings accounts to potential and existing depositors.

Americans place more than $40 billion of disposable income into savings each year. This is money saved for emergencies, for children's education, for a new home, and for many other purposes. Yet, few Americans realize the importance of the decision to place their money into a saving institution. Just as an individual shops for the best buy when purchasing a new car or a washing machine, so must he shop when opening a savings account.

Unfortunately, at the present time, the consumer does not have adequate information at his disposal before he opens an account. He is confronted by confusing claims in newspaper advertisements and a variety of technical information which is difficult to understand. According to a recent study of the American Banking Association, there may be more than 100 different methods of earnings computation in use today. They include LIFO/FIFO, low balance, day-of-deposit to day-of-withdrawal accounts, daily interest and grace days combined with the infinite possibilities of compounding which include semiannually, quarterly, daily, and continuously. While I do not suggest that the Federal Government impose uniformity in earnings calculation methods, I urge that the Congress enact legislation which will make it possible for the consumer to compare and choose the most advantageous opportunity for investing his money consistent with his needs and preferences.

Differences in earnings rates and methods of calculation are important to the average consumer. Mere differences in the method of calculating earnings can result in a monetary difference of as much as 180 percent over a 6-month period. In light of this, the consumer must have information at his command which makes it possible for him to make a rational judgment on the best institutions with which to place his funds.

One of the major sources for consumer confusion can be found in the use of such terms as "annual percentage rate" and "annual percentage yield."

The term "annual percentage rate" means the nominal annual percentage rate used to compute earnings. Use of this term assists the consumer to under-

stand the concept of rates as applied both to savings and credit. Credit and savings are mirror images of each other. The credit consumer borrows from the savings institution; the savings institution borrows from the consumer. The use of common terminology is, therefore, logical, and desirable.

"Annual percentage yield," on the other hand, includes the resulting effect of the compounding of earnings. Whether earnings are compounded on a daily, monthly, quarterly, or semiannual basis will affect this annual percentage yield measurably.

My amendment, therefore, makes it a requirement that each savings institution disclose to potential depositors its annual percentage rate, its annual percentage yield, the minimum length of time a deposit must remain on deposit to earn the periodic percentage rate and the method used to compute the balance to which this rate will be applied, the number of times within a year that interest is earned, and the dates on which earnings are payable. Each of these disclosures involves basic information which must be made available in order for the consumer to invest his money wisely.

The amendment also requires the institutions to disclose their periodic percentage rate. It is this figure which is critical if a consumer is to understand the true potential earnings for his money. If the savings institution compounds earnings daily, then the periodic percentage rate will be a daily rate; if it compounds quarterly, the periodic rate will be a quarterly rate; and so on. Armed with this information, and with the knowledge of what earnings calculation method a savings institution uses, the consumer can make an informed choice from among several savings alternatives.

Some savings institutions make provision for grace days. Under this option, a consumer may place a deposit in the institution after the first of the month and yet that deposit will accumulate earnings as if it had been deposited on the first of the month. Other institutions impose a charge on excessive withdrawals from an account. My amendment requires that this type of information must also be disclosed to the potential depositor.

In addition to making such basic information available to the consumer who has yet to open an account, my amendment also requires that disclosures be made to existing depositors.

At the present time, the consumer has very little information at his disposal to verify bank earnings calculations. He may send in his passbook to have earnings credited to his account, but how does he know that a mechanical or human error has not been made by the savings institution? In fact, most regulatory agencies rely on consumers to verify their own accounts and do not include such verification in their routine examinations. Since consumers must bear the responsibility of verification, they must have the facts this amendment puts at their disposal.

To minimize the possibility for error and misunderstanding, my amendment requires that savings institutions make annual disclosures to their depositors of the amount of earnings payable, the annual percentage rate, and the method used to calculate the amount of interest payable.

Most depositors are unaware of which method their bank is using and are, therefore, unable to verify the amount of earnings credited to their accounts.

At this point in my statement, Mr. President, I ask unanimous consent to have printed in the RECORD two exhibits to illustrate the importance of knowing by which method a savings institution calculates earnings. The information contained in the two exhibits comes from a master's thesis done by Miss Jackie M. Pinson, of the Department of Family Economics of Kansas State University. Working under the supervision of the head of her department, Prof. Richard L. D. Morse, Miss Pinson was able to highlight the confusion confronting consumers. She developed her comparisons using the hypothetical account in exhibit A and a 6-percent annual interest rate.

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

EXHIBIT A

Balance, without interest

Jan. 1, 1970	$1,000
Deposit Jan. 10, 1970	2,000
Total	3,000
Deposit Feb. 6, 1970	1,000
Total	4,000
Withdrawal Mar. 5, 1970	1,000
Total	3,000
Withdrawal Mar. 20, 1970	500
Total	2,500
Withdrawal Mar. 30, 1970	500
Total	2,000
Apr. 1, 1970	2,000
July 1, 1970	2,000

Although Miss Pinson applied forty different methods of interest calculation to this hypothetical account, Exhibit B makes use of only seven of these.

EXHIBIT B

System	*Yield*
Low balance: Compounded and credited semiannually	$29.75
Low balance: Compounded quarterly and credited semiannually	29.97
Low balance: Compounded and credited quarterly	44.93
First in—first out applied to beginning balance: Compounded and credited quarterly	52.44
First in—first out applied to first deposits: Compounded and credited quarterly	$53.93
Last in—first out: Compounded and credited quarterly	58.44
Day of deposit to day of withdrawal: Compounded and credited quarterly	75.30

Mr. HARTKE. Mr. President, using these seven examples, there is a 150-percent difference in earnings over a 6-month period. While a different pattern of deposits and withdrawals could alter these findings, these two exhibits make it clear that the policies of savings institutions do differ and that these differences are quite important to the consumer.

To supplement the disclosure requirements of my amendment, basic requirements are also established for advertising. All advertisements relating to earnings payable on an individual savings deposit must state with equal prominence the annual percentage rate and the annual percentage yield as well as any minimum amount and time requirements. No advertisement will be permitted to include any indication of percentage rate or percentage yield which is based on a period in excess of 1 year or on the effect of any grace period. These requirements are in accord with existing Federal Reserve regulations.

Mr. President, the American public deserves to have all the facts needed to make a prudent choice among savings institutions. This amendment puts such information at their disposal. It is based on the premise that the best protected consumer is the best informed consumer. In no way does it tell financial institutions what they should pay or how they should pay it. They are free to compete. It merely provides that financial institutions tell in clear and meaningful language what they are doing for the consumer.

Mr. President, the substance of my amendment has been endorsed by a variety of groups who are most concerned about this problem.

The 1971 White House Conference on Aging made the following statement:

> Truth-in-savings should be required, telling consumers in standard terms the annual percentage rate, the conditions under which interest will be paid and is paid, and any limitations on interest or liquidity of funds.

The Federal Trade Commission, commenting on S. 1848, stated:

> To whatever extent consumers either lack information requisite to the making of an intelligent choice as to which savings institutions should be the depositories of their funds, or are confused as to the substance and significance of the information presently made available to them, this bill, if enacted, should substantially eliminate such consumer problems.

The Consumer Federation of America.

The National Association of Mutual Savings Banks, in a letter dated May 26, 1971, said:

> We would certainly endorse the purpose of this legislation.

The Kansas Citizens Council on Aging, in a resolution adoption on May 9, 1973, endorsed S. 1052, the Consumer Savings Disclosure Act.

The American Association of Retired Persons and the National Retired Teachers Association have also endorsed S. 1052. A letter dated May 21, 1973, stated:

> Our associations are in full support of the consumers savings disclosure legislation which you introduced on February 28th of this year. Full disclosure of the methods used in computing earnings on savings deposits would be especially helpful to older persons, many of whom rely heavily on their savings during their retirement years.

Mr. President, the comments of these groups and agencies testify to the sup-

port for the provisions of the amendment I offer today. People who place their life savings in an account deserve to know every bit of pertinent information about that account. While I am not suggesting that any savings institution attempts to mislead the public, it is clear that they fail to provide potential and existing depositors with all the information the public needs to make rational choices among various savings alternatives and to check the bank's periodic earnings calculations.

In a letter dated September 15, 1971, the Federal Deposit Insurance Corporation made the following statement:

The Corporation, of course, favors the full disclosure to depositors of the applicable rates of interest and of the other terms and conditions governing their deposits. We believe, however, that the Corporation's Board of Directors, the board of Governors of the Federal Reserve System, and the Federal Home Loan Bank Board presently have statutory authority sufficiently broad to enable them to adopt any regulations necessary to acomplish the bill's objectives with respect to insured banks and savings and loan associations.

Mr. President, it has been almost 2 years since that letter was written, but the regulatory agencies have failed to assume the responsibility which the FDIC, in its letter of 1971, stated it already possessed.

The adoption of my amendment today will make it clear to the regulators that they not only have the power, but the responsibility as well, to see that consumer depositors have all the information about savings accounts that they need.

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

Mr. HARTKE. I yield.

Mr. PROXMIRE. Mr. President, as chairman of the Subcommittee on Consumer Credit of the Committee on Banking, Housing and Urban Affairs, I would very much appreciate the opportunity to hold hearings on this proposal, which has merit, and which is based on the principle of disclosure, which I strongly support.

The Senator referred to Professor Morris, of Kansas University, who played a part in drafting the amendment. He also played a very important part in drafting the truth-in-lending legislation, and is one of the ablest consumer advocates in the country.

So this matter should go forward, but I do think the committee should have an opportunity to hold hearings on it and get views both for and against it, and get the views of the administration, and those of the regulatory agencies, and those of the consumer groups, so we might have a record on which to act.

Would the Senator from Indiana consider withdrawing his amendment if the Senator from Wisconsin, as chairman of the Subcommittee on Consumer Credit, would commit himself to hearings on the proposal?

Mr. HARTKE. I would consider such a proposal. How soon does the Senator think the committee could really hold hearings; After all, this measure is not new, because it was introduced in the early part of 1971. Here we are almost 2 years and 2 months later and no hearings have been held. I know the committee is busy, but this is a matter of importance, and I would hope we could have assurances that we would have hearings before the August recess.

Mr. PROXMIRE. I will commit myself, as chairman of the subcommittee, to scheduling a hearing before the August recess. I think that is a fair enough request. I will be glad to commit myself to that.

Mr. HARTKE. I think there should be hearings held on it. I really do not think we should be legislating on the floor of the Senate without having had hearings on the measure. At the same time, with this long delay, I felt somewhat compelled to offer the amendment at this time.

Mr. President, on the agreement of the Senator from Wisconsin, I withdraw the amendment.

The PRESIDING OFFICER. The amendment is withdrawn.

Mr. BELLMON. Mr. President, I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The clerk will state the amendment.

The legislative clerk proceeded to read the amendment.

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

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

The amendment is as follows:

At the end of the bill, add the following new section:

SEC. —. That paragraph "Seventh" of section 5136 of the Revised Statutes (12 U.S.C. 24) is amended by adding at the end thereof the following: "Notwithstanding any other provision in this paragraph, the association may purchase for its own account shares of stock issued by a corporation organized solely for the purpose of making loans to farmers and ranchers for agricultural purposes, including the breeding, raising, fattening, or marketing of livestock. However, unless the association owns at least 80 per centum of the stock of such agricultural credit corporation the amount invested by the association at any one time in the stock of such corporation shall not exceed 20 per centum of the capital stock of the association actually paid in unimpaired and 20 per centum of the unimpaired surplus of the association.

Mr. BELLMON. Mr. President, during the 92d Congress I introduced S. 3540 in an effort to improve the availability of credit to the agricultural sector of our economy. A favorable report from the Department of the Treasury was received on this legislation, but unfortunately came too late in the session for Congress to act on this bill. The amendment which I am proposing today is identical to the language of this bill. It would authorize national banks to join together in forming corporations engaged solely in providing credit to farmers and ranchers for agricultural purposes.

Under existing law and regulations, a national bank can only invest in an agricultural credit corporation if it controls a majority of the stock in such corporation. This amendment would remove that prohibition and allow any number of national banks to join together to form such corporations, with the provision that a single bank can invest no more than 20 percent of its unimpaired capital and surplus in stocks, bonds, or other obligations of the corporation.

Mr. President, low-lending limits, coupled with the accelerating size of farm units, have created the necessity for farmers and ranchers to seek credit from institutions outside of their local area. Most would prefer to do business with their local banker. Passage of this amendment would allow these local banks to combine their assets in an agricultural credit corporation and then discount loans made by the corporation with the Federal intermediate credit banks. This would allow the farmer and rancher to continue to do business with his local banker and at the same time give his local banker access to additional capital to lend.

I ask that a copy of the letter from the Treasury Department in support of S. 3540 be printed following my remarks, and urge favorable action by the Senate in order to make this new credit tool available to the agricultlural sector of our economy.

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

SEPTEMBER 19, 1972.

Hon. JOHN SPARKMAN,
Chairman, Committee on Banking, Housing and Urban Affairs, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of this Department of S. 3540, "To permit national banks to invest in agricultural credit corporations."

The proposed legislation would amend section 5136 of the Revised Statutes (12 U.S.C. 24) to permit a national banking association to purchase stock of corporations organized solely for the purpose of making loans to farmers and ranchers for agricultural purposes. It would provide that unless the association owns at least 80 percent of the stock of such corporation, the amount invested by such association at any one time in the stock of such corporation shall not exceed 20 per centum of the capital stock of the association actually paid in unimpaired surplus of the association.

The Department would have no objection to the proposed legislation.

The Department has been advised by the Office of Management and Budget that there is no objection from the standpoint of the Administration's program to the submission of this report to your Committee.

Sincerely yours,

ROY T. ENGLERT,
(Acting) General Counsel.

Mr. SPARKMAN. Mr. President, I yield myself such time as I may need.

I have discussed the amendment with the able Senator from Oklahoma. As a matter of fact, as he has stated, he introduced the amendment in the form of a bill last year, late in the session. I was impressed with it at that time, but I had business in my State during most of the remaining time and was not able to hold hearings on the bill last year.

I do not fully understand the amendment, but it sounds to me as though it is a good proposal. I have assured the Senator from Oklahoma that we would hold hearings within the first 2 weeks in June, although a definite date has

not been set. I am told by the Senator from Oklahoma that he does not think very much time would be required. I suggested 2 days; he suggested that the hearing might be held in 1 day. I hope that is satisfactory to the Senator from Oklahoma.

Mr. BELLMON. That is entirely satisfactory. I greatly appreciate the chairman's consideration. With that understanding, I will withdraw the amendment.

The PRESIDING OFFICER. The amendment is withdrawn.

Mr. TOWER. Mr. President, I am prepared to move that the bill be read the third time.

The PRESIDING OFFICER. Are there further amendments? If there be no further amendments to be proposed, the question is on the engrossment and third reading of the bill.

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

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass? Do the Senators yield back their time?

Mr. JACKSON. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. There is not a sufficient second.

Mr. JACKSON. Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time for the quorum call be divided equally between the two sides.

Mr. SPARKMAN. Mr. President, I suggest to the Senator from Washington that we shall have to surrender the floor in 20 minutes, and we may not be able to get a quorum.

Mr. JACKSON. Mr. President, I ask unanimous consent that the quorum call be limited to 10 minutes. 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. TOWER. 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. TOWER. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. TOWER. Mr. President, I yield back the remainder of my time.

Mr. SPARKMAN. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time having been yielded back, the question is, Shall the bill pass?

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. PASTORE (when his name was called). Mr. President, I vote "present."

Mr. SCOTT of Pennsylvania (when his name was called). As I stated before, I own national bank stocks. I therefore withhold my vote and vote "present."

Mr. INOUYE (when his name was called). Mr. President, on this matter I have some interest in a banking operation. I therefore vote "present."

Mr. BAKER (when his name was called). Mr. President, on this vote I am the owner of common stock in a national bank incorporated under the laws of America and doing business in the State of Tennessee. For that reason, I vote "present."

Mr. GURNEY (when his name was called). Mr. President, as I stated before, I own banking stocks. I therefore vote "present."

Mr. FULBRIGHT (when his name was called). On this vote, having a share in a commercial bank, I vote "present."

Mr. PELL (when his name was called). On this vote, since I share in the advantage of the bill, I vote "present."

Mr. CASE (after having voted in the affirmative). Mr. President, I vote "present."

Mr. ROBERT C. BYRD. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from Idaho (Mr. CHURCH), the Senator from Iowa (Mr. CLARK), the Senator from Washington (Mr. MAGNUSON), the Senator from Wyoming (Mr. McGEE), and the Senator from South Dakota (Mr. McGOVERN), are necessarily absent.

I further announce that the Senator from New Jersey (Mr. WILLIAMS) is absent on official business.

I also announce that the Senator from Mississippi (Mr. STENNIS) is absent because of illness.

I further announce that, if present and voting, the Senator from Iowa (Mr. CLARK), and the Senator from Washington (Mr. MAGNUSON) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from New York (Mr. JAVITS) is absent because of death in the family.

The Senator from Arizona (Mr. FANNIN) and the Senator from Ohio (Mr. SAXBE) are absent on official business.

The Senator from Colorado (Mr. DOMINICK), the Senator from Hawaii (Mr. FONG), the Senator from Idaho (Mr. McCLURE), the Senator from Oregon (Mr. PACKWOOD), and the Senator from Illinois (Mr. PERCY), are necessarily absent.

The result was announced—yeas 76, nays 0, as follows:

[No. 150 Leg.]

YEAS—76

Aiken	Eastland	Mondale
Allen	Ervin	Montoya
Bartlett	Goldwater	Moss
Bayh	Gravel	Muskie
Beall	Griffin	Nelson
Bellmon	Hansen	Nunn
Bennett	Hart	Pearson
Bentsen	Hartke	Proxmire
Bible	Haskell	Randolph
Biden	Hatfield	Ribicoff
Brock	Hathaway	Roth
Brooke	Helms	Schweiker
Buckley	Hollings	Scott, Va.
Burdick	Hruska	Sparkman
Byrd, Harry F., Jr.	Huddleston	Stafford
	Hughes	Stevens
Byrd, Robert C.	Humphrey	Stevenson
Cannon	Jackson	Symington
Chiles	Johnston	Taft
Cook	Kennedy	Talmadge
Cotton	Long	Thurmond
Cranston	Mansfield	Tower
Curtis	Mathias	Tunney
Dole	McClellan	Weicker
Domenici	McIntyre	Young
Eagleton	Metcalf	

NAYS—0

ANSWERED "PRESENT"—8

Baker	Gurney	Pell
Case	Inouye	Scott, Pa.
Fulbright	Pastore	

NOT VOTING—16

Abourezk	Javits	Percy
Church	Magnuson	Saxbe
Clark	McClure	Stennis
Dominick	McGee	Williams
Fannin	McGovern	
Fong	Packwood	

So the bill (S. 1798) was passed, as follows:

S. 1798

An act to extend certain laws relating to the payment of interest on time and savings deposits, to prohibit depository institutions from permitting negotiable orders of withdrawal to be made with respect to any deposit or account on which any interest or dividend is paid, to authorize Federal savings and loan associations and national banks to own stock in and invest in loans to certain State housing corporations, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That

EXTENSION OF AUTHORITY FOR THE FLEXIBLE REGULATION OF INTEREST RATES OR DIVIDENDS PAYABLE BY FINANCIAL INSTITUTIONS

SECTION 1. (a) Section 7 of the Act of September 21, 1966 (Public Law 89-597; 80 Stat. 823), as amended, is further amended by striking out "1973" and inserting in lieu thereof "1974".

(b) Section 18(g) of the Federal Deposit Insurance Act (12 U.S.C. 1828(g)) is amended by striking out the period at the end of the tenth sentence and inserting in lieu thereof the following: ": *Provided,* That the authority conferred by this subsection shall apply to deposits held by any noninsured bank in any account with respect to which such bank permits withdrawals, by means of negotiable of non-negotiable orders or otherwise, in favor of any person other than the depositor or his legal representative."

PROHIBITION ON CERTAIN ACTIVITIES BY DEPOSITORY INSTITUTIONS

SEC. 2. (a) No depository institution shall allow the owner of a deposit or account on which interest or dividends are paid to make withdrawals by negotiable or transferable instruments for the purpose of making transfers to third parties, except that such withdrawals may be made in the States of Massachusetts and New Hampshire.

(b) For purposes of this section, the term "depository institution" means—

(1) any insured bank as defined in section 3 of this Federal Deposit Insurance Act;

(2) any State bank as defined in section 3 of the Federal Deposit Insurance Act;

(3) any mutual savings bank as defined in section 3 of the Federal Deposit Insurance Act;

(4) any savings bank as defined in section 3 of the Federal Deposit Insurance Act;

(5) any insured institution as defined in section 401 of the National Housing Act;

(6) any building and loan association or savings and loan association organized and operated according to the laws of the State in which it is chartered or organized; and, for purposes of this paragraph, the term "State" means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands;

(7) any Federal credit union as defined in section 101 of the Federal Credit Union Act; and

(8) any State credit union as defined in section 101 of the Federal Credit Union Act.

(c) Any depository institution which vio-

lates this section shall be fined $1,000 for each violation.

(d) This section expires on the same date as is prescribed in section 7 of the Act of September 21, 1966 (Public Law 89-597; 80 Stat. 823), as amended.

CONVERSION OF MUTUAL SAVINGS AND LOAN ASSOCIATIONS INTO STOCK ORGANIZATIONS

SEC. 3. Section 402 of the National Housing Act (12 U.S.C. 1725) is amended by adding at the end thereof the following new subsection:

"(j) Until December 31, 1973, the Corporation shall not approve, under regulations adopted pursuant to this title or section 5 of the Home Owners' Loan Act of 1933, by order or otherwise, a conversion from the mutual to the stock form of organization involving or to involve an insured institution, including approval of any application for such conversion pending on the date of enactment of this subsection, except that this sentence shall not be deemed to limit now or hereafter the authority of the Corporation to approve conversions in supervisory cases. The Corporation may by rule, regulation, or otherwise and under such civil penalties (which shall be cumulative to any other remedies) as it may prescribe, take whatever action it deems necessary or appropriate to implement or enforce this subsection."

AUTHORITY FOR FEDERAL SAVINGS AND LOAN INSTITUTIONS AND NATIONAL BANKS TO INVEST IN STATE HOUSING CORPORATIONS

SEC. 4. (a) The Congress finds that Federal savings and loan associations and national banks should have the authority to assist in financing the organization and operation of any State housing corporation established under the laws of the State in which the corporation will carry on its operations. It is the purpose of this section to provide a means whereby private financial institutions can assist in providing housing, particularly for families of low- or moderate-income, by purchasing stock of and investing in loans to any such State housing corporation situated in the particular State in which the Federal savings and loan association or national bank involved is located.

(b) Section 5(c) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464(c)) is amended by adding at the end thereof the following new paragraph:

"Subject to regulation by the Board but without regard to any other provisions of this subsection, any such association whose general reserves, surplus, and undivided profits aggregate a sum in excess of 5 per centum of its withdrawable accounts is authorized to invest in, to lend to, or to commit itself to lend to any State housing corporation incorporated in the State in which the home office of such association is situated, in the same manner and to the same extent as the statutes of such State authorize a savings and loan association organized under the laws of such State to invest in, to lend to, or commit itself to lend to such State housing corporation, but loans and loan commitments under this sentence shall be subject to appropriate limitations prescribed by the Board, and no association may make any investment, other than loans and loan commitments, under this sentence if its aggregate outstanding direct investment under this sentence, determined as prescribed by the Board, would thereupon exceed one-fourth of 1 per centum of its assets."

(c) Paragraph seventh of section 5136 of the Revised Statutes (12 U.S.C. 24) is amended by adding at the end thereof the following: "Notwithstanding any other provision of this paragraph, the association may purchase for its own account shares of stock issued by any State housing corporation incorporated in the State in which the association is located and may make investments in loans and commitments for loans to any such corporation: *Provided*, That in no event shall the total amount of such stock held for its own account and such investments in loans and commitments made by the association exceed at any time 5 per centum of its capital stock actually paid in and unimpaired plus 5 per centum of its unimpaired surplus fund."

(d)(1) The Federal Savings and Loan Insurance Corporation with respect to insured institutions, the Board of Governors of the Federal Reserve System with respect to State member insured banks, and the Federal Deposit Insurance Corporation with respect to State nonmember insured banks shall by appropriate rule, regulation, order, or otherwise regulate investment in State housing corporations.

(2) A State housing corporation in which financial institutions invest under the authority of this section shall make available to the appropriate Federal supervisory agency referred to in paragraph (1) such information as may be necessary to insure that investments are properly made in accordance with this section.

(e) For the purposes of this section and any Act amended by this section—

(1) The term "insured institution" has the same meaning as in section 401(a) of the National Housing Act.

(2) The terms "State member insured banks" and "State nonmember insured banks" have the same meaning as when used in the Federal Deposit Insurance Act.

(3) The term "State housing corporation" means a corporation established by a State for the limited purpose of providing housing and incidental services, particularly for families of low or moderate income.

(4) The term "State" means any State, the District of Columbia, Guam, the Commonwealth of Puerto Rico, and the Virgin Islands.

PREMIUM PAYMENTS BY INSURED SAVINGS AND LOAN ASSOCIATIONS TO THE FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

SEC. 5. The text of section 404 of the National Housing Act (12 U.S.C. 1727) is amended to read as follows:

"SEC. 404. (a)(1) The Corporation shall establish a primary reserve which shall be the general reserve of the Corporation and a secondary reserve to which shall be credited the amounts of the prepayments made by insured institutions pursuant to former provisions of subsection (d) and the credits made pursuant to the first sentence of subsection (e).

"(2) The Corporation may accomplish the purposes and provisions of this section by rules, regulations, orders, or otherwise as it may consider necessary or appropriate.

"(b)(1) Each institution whose application for insurance is approved by the Corporation shall pay to the Corporation, in such manner as it shall prescribe, a premium for such insurance equal to one-twelfth of 1 per centum of the total amount of all accounts of the insured members of such institution. Such premium shall be paid at the time the certificate is issued by the Corporation under section 403, and thereafter annually, except that under regulations prescribed by the Corporation such premium may be paid semiannually.

"(2) If, at the close of any December 31, the primary reserve equals or exceeds 2 per centum of the total amount of all accounts of insured members of all insured institutions as of such close, no premium under paragraph (1) of this subsection shall be payable by any insured institution with respect to its premium year beginning during the year commencing on May 1 next succeeding such December 31, except that the foregoing provisions of this sentence shall not be applicable to any insured institution with respect to any of the twenty premium years beginning with the premium year commencing with the date on which such certificate is issued.

"(c) The Corporation is further authorized to assess against each insured institution additional premiums for insurance until the amount of such premiums equals the amount of all losses and expenses of the Corporation; except that the total amount so assessed in any one year against any such institution shall not exceed one-eighth of 1 per centum of the total amount of the accounts of its insured members.

"(d)(1) The Corporation shall not, on or after the date of enactment of this sentence, accept or receive further payments in the nature of prepayments of future premiums as was formerly required by this subsection (including any such payments which have accrued or are payable under such former provisions). When no insured institution has any pro rata share of the secondary reserve, other than any such share immediately payable to it, the Corporation may take such steps as it may deem appropriate to close out and discontinue the secondary reserve.

"(2) The Corporation may provide for the adjustment of payments made under former provisions of this subsection or made or to be made under subsections (b) and (c) of this section in cases of merger or consolidation, transfer of bulk assets or assumption of liabilities, and similar transactions, as defined by the Corporation for the purposes of this paragraph.

"(e) The Corporation shall credit to the secondary reserve, as of the close of each calendar year a return on the outstanding balances of the secondary reserve, during such calendar year, as determined by the Corporation, at a rate equal to the average annual rate of return to the Corporation during the year ending at the close of November 30 of such calendar year, as determined by the Corporation, on the investments held by the Corporation in obligations of, or guaranteed as to principal and interest by, the United States. Except as provided in subsections (f) and (g), the secondary reserve shall be available to the Corporation only for losses of the Corporation and shall be so available only to such extent as other accounts of the Corporation which are available therefor are insufficient for such losses. No right, title, or interest of any institution in or with respect to its pro rata share of the secondary reserve shall be assignable or transferable whether by operation of law or otherwise, except to such extent as the Corporation may provide for transfer of such pro rata share in cases of merger or consolidation, transfer of bulk assets or assumption of liabilities, and similar transactions, as defined by the Corporation for purposes of this sentence.

"(f) If (i) the status of an insured institution as an insured institution is terminated pursuant to any provision of section 407 or the insurance of accounts of an insured institution is otherwise terminated, (ii) a conservator, receiver, or other legal custodian is appointed for an insured institution under the circumstances and for the purpose set forth in subdivision (d) of section 401, or (iii) the Corporation makes a determination that for the purposes of this subsection an insured institution has gone into liquidation, the Corporation shall pay in cash to such institution its pro rata share of the secondary reserve, in accordance with such terms and conditions as the Corporation may prescribe, or, at the option of the Corporation, the Corporation may apply the whole or any part of the amount which would otherwise be paid in cash toward the payment of any indebtedness or obligation, whether matured or not, of such institution to the Corporation, then existing or arising before such payment in cash: *Provided*, That such payment or such application need not be made to the extent that the provisions of

the exception in the last sentence of subsection (e) are applicable.

"(g) If, at the close of December 31 in any year after 1971, the aggregate of the primary reserve and the secondary reserve equals or exceeds 1¼ per centum of the total amount of all accounts of insured members of all insured institutions but the primary reserve does not equal or exceed 2 per centum of such base, each insured share of the secondary reserve shall, during the year beginning with May 1 next succeeding such close, be used, to the extent available, to discharge such institution's obligation for its premium under subsection (b) for the premium year beginning in such year, but only to the extent of such percentage, to be the same for all insured institutions and to be not less than 30 nor more than 70 per centum of such premium, as the Corporation may determine; and the use of such pro rata shares as provided in this sentence shall continue unless and until the next sentence or the last sentence of this subsection shall become operative. If, at the close of any December 31 occurring before the last sentence of this subsection shall become operative, the aggregate of the primary reserve and the secondary reserve is not at least equal to 1¼ per centum of the total amount of all accounts of insured members of all insured institutions, the use of any insured institution's pro rata share of the secondary reserve under the first sentence of this subsection shall terminate with respect to its premium under subsection (b) for the premium year beginning during the calendar year commencing on May 1 next succeeding such December 31, and such termination shall continue unless and until the first sentence of this subsection shall become operative. If, at the close of any December 31, the primary reserve equals or exceeds such 2 per centum, the Corporation shall, at such time (which shall be the same for all insured institutions and shall not be later than May 1 next succeeding such close) and in such manner as the Corporation shall determine, pay in cash to each insured institution its pro rata share of the secondary reserve.

"(h)(1) Each insured institution shall make such deposits in the Corporation as may from time to time be required by call of the Federal Home Loan Bank Board. Any such call shall be calculated by applying a specified percentage which shall be the same for all insured institutions, to the total amount of all withdrawable or repurchasable shares, investment certificates, and deposits in each insured institution. No such call shall be made unless such Board determines that the total amount of such call, plus the outstanding deposits previously made pursuant to such calls, does not exceed 1 per centum of the total amount of all withdrawable or repurchasable shares, investment certificates, and deposits in all insured institutions. For the purposes of this subsection, the total amounts hereinabove referred to shall be determined or estimated by such Board or in such manner as it may prescribe.

"(2) The Corporation shall credit as of the close of each calendar year, to each deposit outstanding at such close, a return on the outstanding balance, as determined by the Corporation, of such deposit during such calendar year, at a rate equal to the average annual rate of return, as determined by the Corporation, to the Corporation during the year ending at the close of November 30 of such calendar year, on the investments held by the Corporation in obligations of, or guaranteed as to principal and interest by, the United States.

"(3) The Corporation in its discretion may at any time repay all such deposits, or repay pro rata a portion of each of such deposits, in such manner and under such procedure as the Corporation may prescribe. Any procedure for such pro rata repayment may provide for total repayment of any deposit, if total repayment of any and all deposits of equal or smaller amount is likewise provided for.

"(4) The provisions of subsection (f) of this section and of the last sentence of subsection (e) of this section shall be applicable to deposits under this subsection, and for the purposes of this subsection the references in such subsection (f) and such last sentence to the prepayments and the pro rata shares therein mentioned shall be deemed instead to be references respectively to the deposits under this subsection and the pro rata shares of the holders thereof, and the reference in such subsection (f) to that subsection shall be deemed instead to be a reference to this subsection."

STATE TAXATION OF FEDERAL INSURED FINANCIAL INSTITUTIONS

SEC. 6. (a) This section may be cited as the "State Taxation of Depositories Act".

(b) Recognizing that the several States should be allowed the greatest degree of autonomy in formulating their tax policies, the Congress finds that the national goals of fostering an efficient banking system and the free flow of commerce among the States will be furthered by clarifying the principles governing State taxation of interstate transactions of banks and other depositories. Application of taxes measured by income or receipts, or other "doing business" taxes, in States other than the States in which depositories have their principal offices should be deferred until such time as uniform and equitable methods are developed for determining jurisdiction to tax and for dividing the tax base among States.

(c) The legislature of a State may impose, and may authorize any political subdivision thereof to impose, the following taxes and only such taxes on any insured depository not having its principal office within such State:

(1) sales taxes and use taxes complementary thereto upon purchases, sales, and use within such jurisdiction;

(2) taxes on real property or on the occupancy of real property located within such jurisdiction;

(3) taxes (including documentary stamp taxes) on the execution, delivery, or recordation of documents within such jurisdiction;

(4) taxes on tangible personal property (not including cash or currency) located within such jurisdiction;

(5) license, registration, transfer, excise, or other fees or taxes imposed on the ownership, use, or transfer of tangible personal property located within such jurisdiction; and

(6) payroll taxes based on persons employed in such jurisdiction.

(d) For the purpose of this section—

(1) The term "insured depository" means any bank the deposits of which are insured under the Federal Deposit Insurance Act, any institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation, and any thrift and home financing institution which is a member of a Federal home loan bank.

(2) The term "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(e)(1) The Advisory Commission on Intergovernmental Relations shall make a study of all pertinent matters relating to the application of State "doing business" taxes on out-of-State commercial banks, mutual savings banks, and savings and loan associations. Such study shall include recommendations for legislation which will provide equitable State taxation of out-of-State commercial banks, mutual savings banks, and savings and loan associations. Such recommendations shall include, but shall not be limited to, the matter of the proper allocation, apportionment, or other division of tax bases and such other matters relating to the question of multistate taxation of commercial banks, mutual savings banks, and savings and loan associations as the Commission shall determine to be pertinent. In conducting the study, the Commission shall consult with the Secretary of the Treasury, the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, appropriate State banking and taxing authorities, and others as needed.

(2) The Commission shall make a report to the Congress of the results of its study and recommendations not later than December 31, 1974.

(3) There are authorized to be appropriated to the Commission such sums as may be necessary to carry out the provisions of this subsection.

(f)(1) The provisions of this section shall take effect on the date of enactment of this Act.

(2) The provisions of this section shall terminate December 31, 1975.

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

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

The motion to lay on the table was agreed to.

Mr. SPARKMAN. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 6370, the companion bill passed by the House of Representatives.

The PRESIDING OFFICER (Mr. HELMS) laid before the Senate H.R. 6370, which was read twice by title, as follows:

An act (H.R. 6370) to extend certain laws relating to the payment of interest on time and savings deposits, to prohibit depository institutions from permitting negotiable orders of withdrawal to be made with respect to any deposit or account on which any interest or dividend is paid, to authorize Federal savings and loan associations and national banks to own stock in and invest in loans to certain State housing corporations, and for other purposes.

The PRESIDING OFFICER. Is there objection to the request of the Senator of Alabama.

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

Mr. SPARKMAN. Mr. President, I move to strike out all after the enacting clause of H.R. 6370, and insert in lieu thereof the language of S. 1798, as passed.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Alabama.

The motion was agreed to.

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

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

The bill was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, shall it pass?

The bill (H.R. 6370), as amended, was passed.

Mr. SPARKMAN. Mr. President, I move that the Senate insist on its amendment and request a conference with the

House of Representatives thereon, and that the Chair be authorized to appoint the conferees on behalf of the Senate.

The motion was agreed to, and the Presiding Officer appointed Mr. SPARKMAN, Mr. PROXMIRE, Mr. WILLIAMS, Mr. MCINTYRE, Mr. TOWER, Mr. BENNETT, and Mr. BROOKE conferees on the part of the Senate.

Mr. SPARKMAN. Mr. President, I ask unanimous consent that the action of the Senate in passing S. 1798 be vitiated.

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

Mr. SPARKMAN. I move that S. 1798 be indefinitely postponed.

The motion was agreed to.

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Hackney, one of its reading clerks, announced that the House had disagreed to the amendment of the Senate to the bill (H.R. 2246) to amend the Public Works and Economic Development Act of 1965 to extend the authorizations for a 1-year period; asked a conference with the Senate on the disagreeing votes of the two Houses thereon, and that Mr. BLATNIK, Mr. JONES of Alabama, Mr. JOHNSON of California, Mr. HARSHA, and Mr. HAMMERSCHMIDT were appointed managers on the part of the House at the conference.

The message also announced that the House had agreed to the amendments of the Senate to the bill (H.R. 6077) to permit immediate retirement of certain Federal employees, with an amendment, in which it requested the concurrence of the Senate.

DIRECTOR AND DEPUTY DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET—VETO

The PRESIDING OFFICER (Mr. HELMS). The hour of 4 o'clock p.m. having arrived, under the previous unanimous-consent agreement, the Chair lays before the Senate the President's veto message on S. 518, abolish the offices of Director and Deputy Director of the Office of Management and Budget, to establish the Office of Director, Office of Management and Budget, and transfer certain functions thereto, and to establish the Office of Deputy Director, Office of Management and Budget, which the clerk will state.

The assistant legislative clerk read as follows:

A veto message on S. 518.

(The text of the President's veto message is printed at pp. 16194–16195 of the CONGRESSIONAL RECORD for May 21, 1973.)

The Senate proceeded to reconsider the bill.

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum, with the time to be taken out of both sides.

The PRESIDING OFFICER. Without objection, the clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. MANSFIELD. Mr. President, I ask unanimous consent that rule XII be waived and that instead of the vote occurring at 5 p.m., the vote occur at 4:45 p.m.

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

Mr. MANSFIELD. Mr. President, I ask that attachés on both sides of the aisle notify their respective Senators.

The PRESIDING OFFICER. Does the Senator desire the remaining time to be divided equally?

Mr. MANSFIELD. Yes, indeed.

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

Mr. MANSFIELD. Mr. President, will the distinguished Senator from North Carolina yield to me for 5 minutes?

Mr. ERVIN. I yield 5 minutes to the Senator from Montana.

The PRESIDING OFFICER. The Senator from Montana is recognized for 5 minutes.

Mr. MANSFIELD. Mr. President, this body now faces one of its most severe tests on the question of whether Congress is ready, willing, and able to restore its essential status as a coequal branch of Government.

On the surface the issue before us concerns the responsibility of the Senate to confirm a Presidential nominee to an office within the Federal bureaucracy. It is the position of Director and Deputy Director of the Office of Management and Budget.

But more deeply this issue affects squarely the very nature of the balance between the executive and the legislative branches. At stake is not just the decision about who is to be in charge of just any independent agency of Government. At stake is the direction of what has grown to be perhaps the most powerful single policymaking instrument within the entire governmental establishment. At stake are the decisionmakers who, more than anyone else, determine the entire structure of national priorities. At stake is whether Congress is to have any say-so in the selection of such men.

Without again belaboring the evolutionary rise of such a superagency as OMB, I would note that its policyformulating role today far exceeds the management-consultant job set up by the Congress back in 1921 when it passed the Budget and Accounting Act.

Without fear of contradiction I feel safe in saying that the OMB Director sits today without peer as a policymaker and policyimplementer whose jurisdiction is limited only by the bounds of total American Government involvement. That the Senate has no voice in appraising the qualifications or competence of such an individual is absurd. Indeed, such a responsibility is imperative if the Senate is to be considered seriously as a part of a constitutional coequal in the framework of Government.

The Senate confirms Cabinet officers, and ministers, ambassadors, and judges and all military officers down to second lieutenant. But it has absolutely no say in who is to fill the most important executive office of all—the Director of the Office of Management and Budget.

I urge the Senate to take this step today to restore its proper status. I urge the Senate to vote to override.

The PRESIDING OFFICER. Who yields time?

Mr. ERVIN. Does anyone wish to speak against overriding?

Mr. PERCY. Mr. President, I would like to ask my distinguished colleague at the appropriate time to yield to me for 5 minutes.

Mr. ERVIN. I yield 5 minutes to the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. PERCY. Mr. President, as the ranking Republican on the Committee on Government Operations, as a cosponsor of S. 518, and as the author of a bill to require confirmation of three other major officers of the statutory White House offices, I strongly support the requirement that the Director and Deputy Director of the Office of Management and Budget be confirmed by the Senate.

Requiring confirmation of these two key officials is entirely appropriate. It is required, I believe, by the overwhelming importance of the posts in question. I do not think it violates the Constitution. And I support the bill's reversal of section 101 of Reorganization Plan No. 2 of 1970, under which all statutory duties formerly assigned to the Director of the Bureau of the Budget were assigned to the President. Under the bill, the Director will again be directly responsible for implementation of laws.

Mr. President, the arguments of merit for and against S. 518 were made thoroughly in our previous debate on passage of the bill. What most concerns me now are the broader implications of our action today.

I regret that we are now discussing this question at all. I believe the President should have signed this bill. I would have hoped that he would have taken this opportunity to embrace it, because it goes right to the heart of the crisis of confidence we now face.

After his message of April 30, the President in several ways indicated his willingness to cooperate with Congress—to open his administration to divergent views, to become responsive to congressional opinion and congressional will. His veto clashes directly with his expressions of a new era of cooperation.

The bill raises a very simple issue—does the Congress have the right to require Senate confirmation of officials it determines are of such importance as to warrant it. Congress clearly has that right.

I would go so far as to say Congress has a duty and obligation to conduct itself in accordance with the Constitution, which in article 2, section 2, clearly requires Senate confirmation of officers of the Government prepared to be appointed by the President, except for such inferior officers as Congress delegates for appointment directly by the President or department heads. Who could conceivably maintain that the Director of Management and Budget is an inferior officer? Any Cabinet officer knows that the

man who occupies that post possesses far more power when it comes to the control of programs and money than perhaps any single Cabinet official.

Arguments of constitutionality seem, in this case, to be merely an effort to blur this central point.

In its amendment to S. 518 the House took care to meet the constitutional objection raised in the Senate. By abolishing, then immediately recreating, the Office of Management and Budget the bill conforms with a procedure used four times in the past.

I would like to respond directly to several arguments cited by the President in his veto message.

The President argues that because the position of Director of the Bureau of the Budget and its successor, the Office of Management and Budget have been established for over 50 years without confirmation, it should continue to be free of that requirement. In 1921, the Bureau of the Budget was established in the Treasury Department to aid the President. Since then its functions and duties have changed immeasurably. Congressman HOLIFIELD, chairman of the House Government Operations Committee, has stated that the OMB has responsibility for administering over 60 statutes. It has nearly 700 employees. It is more powerful than many Cabinet departments.

The President also argues that the bill is an effort to remove the incumbent officials, Mr. Ash and Mr. Malek. That is not its intent. S. 518 is neither political nor punitive in purpose. It is directed at the offices, not the men.

If the veto is overriden and Mr. Ash and Mr. Malek are nominated, I believe the Government Operations Committee would act with dispatch. Our distinguished chairman, Senator ERVIN, has said that the Senate would confirm both men. This is not an effort to ax Mr. Ash, a man I have known for many years as a former colleague in the business community, and a man of great ability.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. PERCY. May I have 3 minutes?

Mr. ERVIN. I do not believe we have any more time than that left.

Mr. President, how many minutes remain?

Mr. PERCY. May I have 1 additional minute?

Mr. ERVIN. Yes, one.

Mr. PERCY. Mr. President, this bill is not, as was argued in the House, an effort to politicize the OMB by making its top officers subject to confirmation. Is the Chairman, or either of the other two members of the Council of Economic Advisers "politicized" because all three must be confirmed? All told, 29 officers in the Executive Office of the President are already subject to Senate confirmation. What, conceivably, is so very special about the Director and Deputy Director of OMB that they are held above the Director of the Central Intelligence Agency, the Chairman of the Council of Economic Advisers, the Special Representative for Trade Negotiations, the Director of the Office of Economic Opportunity, the Chairman of the Council on Environmental Quality, and other important officials who are subject to confirmation?

Mr. President, I urge that we affirm the right of the Congress to require Senate confirmation of these positions of power and influence.

Mr. President, let me simply add in conclusion that this is not a case where there has been lack of communication between the executive and legislative branches. I have discussed this question at great length with Mr. Ehrlichman and directly with the President during the course of a leadership breakfast meeting at the White House. The President subsequently agreed that the Director of the Cost of Living Council should be submitted for confirmation, but he disagrees on the five other positions that have been specified in our two bills, including the one under consideration today.

I hope the Senate will override the veto.

Mr. ERVIN. Mr. President, I want to point out that the House amended the Senate bill to do exactly what the Senator from Michigan recommended when the original bill was before the Senate. He said:

I believe it would be more appropriate to abolish the office of OMB for a short period of time and then reestablish it. That, it seems to me, would be a constitutional way to require appointment and reconfirmation of the incumbent OMB Director, if that is the purpose here.

So the bill which was vetoed by the President did exactly what my friend from Michigan recommended should be done.

I want to make the point that there is no property right in the office. The law on this subject is stated in American Jurisprudence, first series, section 33, which appears in volume 42 of that publication at pages 904 and 905.

I ask unanimous consent that the entire paragraph 33 be printed at this point in the body of the RECORD.

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

§ 33. Modification or Abolition of Offices.—The power to create an office generally includes the power to modify or abolish it. The two powers are essentially the same. As stated above, the distinction drawn between offices of legislative creation and those created by the Constitution is one of location of power to alter or abolish. A constitutional office cannot be legislated out of existence, although a constitutional office or any other office may be abolished by constitutional provision. But where the office is of legislative creation, the legislature may, unless prohibited by the Constitution, control, modify, or abolish it whenever such course may seem necessary, expedient, or conducive to the public good. The power extends to the consolidation of offices, resulting in abolishing one and attaching its powers and duties to another. Even as to such offices, however, the circumstances may create an exception, as where the legislature makes a contract with the officer at a stipulated salary for his services during a specified period. Congress may, within constitutional limitations, abolish offices created by it, or offices in territory ceded to the United States by a foreign power.

The power to abolish an office may be exercised at any time and even while the office is occupied by a duly elected or appointed incumbent, for there is no obligation on the legislature or the people to continue a useless office for the sake of the person who may be in possession thereof. By abolishing the office, the legislature does not deprive the incumbent of any constitutional rights, for he has no contractual right or property interest in the office. He accepts it with the understanding that it may be abolished at any time, and the tenure of the office is not protected by constitutional provisions which prohibit impairment of the obligation of contract. Clauses in a Constitution respecting the holding of offices in general by incumbents during their terms do not as a rule prevent the abolition of an office. Tenure of office and civil service statutes do not prevent a bona fide abolition of office.

The right to delegate power to create a public office is generally denied and this is also true in respect to delegation of power to abolish an office. A county empowered by the legislature to create an office may, if unrestricted, abolish it, and the same is true of a township or of a city.

Mr. ERVIN. I wish to read just one part relating to the fact that Congress may abolish at any time, within constitutional limitations, offices created by it:

By abolishing the office, the Legislature does not deprive the incumbent of any constitutional rights, for he has no contractual right or property interest in the office. He accepts it with the understanding that it may be abolished at any time, and the tenure of the office is not protected by constitutional provisions which prohibit impairment of the obligation of contract.

So there is no doubt of the constitutional power of the Congress to do what it did in this bill.

Furthermore, the distinguished Senator from Illinois has just stated this is a constitutional question. The Constitution provides expressly, in section 2 of article II, that officers of the United States shall be nominated by the President and appointed by and with the advice and consent of the Senate. The only exception to that rule is that Congress may provide for the appointment of inferior officers in some other manner.

As the distinguished Senator from Montana has so well stated, no one can contend that the office of the Director of the Office of Management and Budget, or that of the Deputy Director, are inferior offices. As a matter of fact, these officers exercise more power than any man in Government in the executive branch except the President of the United States.

They even reserve the right to provide that no regulation of any other executive department or agency can go into effect until it has been approved by it. They also have the power to say that even a Member of the House or a Senator cannot get a letter from an executive agency without the approval of the Office of Management and Budget. So it is an absurdity to say that these offices are inferior.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. GRIFFIN. Mr. President, if the Senator wants more time, I yield him 2 minutes.

Mr. ERVIN. I thank the Senator.

Mr. President, I would like to say that the stake which is involved here is not who is going to be the occupants of these offices. The stake here is whether we are going to have government in the United States according to the Constitu-

tion of the United States. The Constitution of the United States says Congress cannot provide for the appointment of such officers without the advice and consent of the Senate of anyone who occupies any office except inferior offices.

If Senators believe we ought to return to constitutional government—something which has been sadly lacking in recent days—they should vote to override the veto and let Congress recapture its constitutional power to advise and consent to the appointment of men who occupy such high offices as these.

Mr. President, the Senate today is faced with the rather simple question of whether it will exercise the powers and prerogatives given it by the Constitution.

If we vote to override the President's veto of the OMB confirmation bill, and if the House of Representatives goes along with us, we will have done nothing more than exercise those powers.

The President himself, in his veto message, acknowledged that Congress has authority to abolish an office and to specify appropriate standards for Federal officers who serve in the offices that Congress chooses to create.

The sole objective of the bill that the President vetoed, S. 518, is to give the Senate an opportunity to inquire into the qualifications, background, and fitness of the men who are to fill two of the most powerful offices that Congress has chosen to create, and to advise and consent to their appointment.

It is a constitutional exercise of the power of Congress to create an office and, by the same token, to abolish an office. This is a legislative function, and the Constitution very clearly gives all legislative power to Congress.

The bill provides that the offices of Director and Deputy Director of the Office of Management and Budget would be abolished and that new offices would be immediately created which would require Senate confirmation.

Such an action is not novel. Four examples are in point:

First, Public Law 92–22 abolished the position of Assistant Secretary of the Interior for Administration, which was not subject to Senate confirmation, and created a new position of Assistant Secretary of the Interior, which is subject to Senate confirmation.

Second, Public Law 92–302 abolished the position of Assistant Secretary of the Treasury for Administration, appointed without Senate confirmation, and created an additional Assistant Secretary of the Treasury appointed with Senate confirmation.

Third, Public Law 91–469 abolished the position of Maritime Administrator and created in its place an Assistant Secretary of Commerce for Maritime Affairs, whom the statute designated as an ex officio Maritime Administrator.

Fourth, in 1954, Public Law 83–471—section 304—simultaneously abolished the position of Assistant Secretary of Commerce for Administration, an appointive position not requiring Senate confirmation, and created a new position of Assistant Secretary of Commerce requiring Senate confirmation.

In brief, Congress clearly has the constitutional authority to change the qualifications of a position in keeping with the changing times and needs of the Government.

More than 50 years ago, when the Bureau of the Budget was originally created, the Director of the Bureau was represented as the President's confidential advisor and hardly more than a clerical assistant to aide the President in the preparation of the budget.

Today it is as clear as the noonday sun in a cloudless sky that the Director and Deputy Director of OMB are men of great power in the Government. They direct a staff of almost 700 assistants, and they wield life and death powers over Federal programs.

OMB has developed into a super department with enormous authority over all of the activities of the Federal Government. Its Director has become, in effect, a Deputy President who exercises vast, vital Presidential powers.

OMB determines line by line budget limitations for each agency, including the regulatory commissions. Following authorization by the Congress of programs and activities, and the funding of such activities, the Office of Management and Budget develops impoundment actions, limiting the expenditures of funds for programs approved by law to those falling within the President's priorities, rather than those established by the Congress. By statute, the Director of OMB has authority to apportion appropriations, approve agency systems for the control of appropriated funds and establish reserves.

The Budget and Accounting Act, 1950, as amended, gave the Director important powers over agency accounting and budget systems and classifications, statistical performance and cost-information systems.

Under numerous other statutes, or by Presidential delegations, the Director of OMB has been given a vast number of additional functions. These include, but are not limited to, formulating and issuing rules and regulations relating to: First, coordination of Federal aid programs in metropolitan areas under the model cities legislation; second, the administration of grant-in-aid funds; third, special and technical services to State and local governments; fourth, formulation, evaluation, and review of Federal programs having a significant impact on area community development; fifth, policy guidelines relative to Government competition with private enterprise and the use of technical service contracts; sixth, user charges to be paid by individuals receiving special services from Government agencies; and seventh, Government employee training programs with regard to absorption of costs.

The Director of OMB also exercises control over the nature and types of questionnaires, surveys, reports, and forms which may be issued and utilized by Government agencies. In addition, together with the Chairman of the Civil Service Commission, he determines Federal pay comparability adjustments. Finally, the Director and his staff exercise oversight and control over the management of, and expenditures for, national security programs, international programs, defense expenditures, natural resources programs, and many others having a direct impact upon the economy and security of the Nation.

Mr. President, in his veto message the President referred to S. 518 as a "backdoor method of circumventing the President's power to remove" Federal executive officers. To my mind, this objection is not valid.

The intent of this bill is not to remove the incumbent Director and Deputy Director of OMB. The intent is merely to provide for Senate confirmation as a qualification and prerequisite for anyone holding these positions.

Congress has authority to establish these qualifications, and it has the authority to abolish any Federal position. If it abolishes any position, then the tenure of the incumbent necessarily is terminated. The only lifetime appointments in our Government belong to Supreme Court Justices and other Federal judges.

Mr. GRIFFIN. Mr. President, I yield myself such time as I may consume.

I am in the awkward position of controlling the time on this side.

As the Senator from North Carolina has indicated, the House did adopt the suggestion which I made when this bill was before the Senate, and which I sought unsuccessfully to sell my Senate colleagues. In the House, the bill was amended in a way I consider constitutional.

As I pointed out during the debate on the Senate bill on February 2. I believe the appointment by the President of the Director of OMB would be subject to Senate confirmation under article II of the Constitution even without the passage of such legislation. I was referring to that part of the Constitution which has already been referred to by the distinguished Senator from Illinois and the distinguished Senator from North Carolina. The precise language of the Constitution says that:

> The President shall nominate, and by and with the advice and consent of the Senate shall appoint, ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law.

The Office of Director of OMB was established by law. It is not an inferior office. As I have pointed out before it seemed to me that the committee having jurisdiction could have sent a notice to the appointee asking him to appear for confirmation hearings. If he refused to appear, it would be within the province of Congress not to vote him any salary.

However, by amending the bill in the House and abolishing the office and then reestablishing it, it seems to me that Congress constitutionally was taking a step that is unassailable. While I regret to oppose the President, I find I must do so on this particular occasion—and I shall vote to override the veto.

I am willing to yield to other Senators who may care to speak.

If there are none, 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. GRIFFIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. GRIFFIN. Mr. President, I yield to the distinguished Senator from Virginia.

Mr. HARRY F. BYRD, Jr. I thank the Senator from Michigan.

Mr. President, the Bureau of the Budget was established in 1921. The reason the Director of the Bureau was not made subject to confirmation by the Senate was that the Bureau at that time was made a part of the Treasury Department. The Secretary of the Treasury, of course, was subject to confirmation.

Then in 1939 the Bureau was moved to the White House. But the fundamental change came on July 1, 1970. On that date the name was changed from the Bureau of the Budget to the Office of Management and Budget.

Its functions were expanded, and its power was immensely increased, until now if any official of the Government should be subject to confirmation, certainly the Director and Deputy Director of the Office of Management and Budget should be subject to confirmation by the Senate.

I do not want to overstate the case. But I am inclined to the view that under the situation existing today, the Director of the Office of Management and Budget probably has more power than any Cabinet official.

It has become standard operating procedure in the Government now, when committees of Congress communicate with departments of Government, that in their replies, as a last paragraph, they insert words along this line:

> The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the administration's program.

The point I am suggesting, Mr. President, is that this new office, created on July 1, 1970, less than 3 years ago, has become perhaps the most powerful office in the Government today. It determines the administration's position on much if not most legislation.

If that is the case, and I believe it to be the case, most certainly it seems to me that nominations for Director and Deputy Director of that office should be subject to confirmation by the Senate.

Mr. President, I shall vote to override the President's veto.

CONGRESS MUST OVERRIDE OMB CONFIRMATION VETO

Mr. HUMPHREY. Mr. President, last Friday, the President of the United States vetoed legislation that would have required Senate confirmation of the Director and Deputy Director of the Office of Management and Budget.

This veto must not be allowed to stand. I have previously characterized it as an abuse of the veto power and an affront to the Congress.

Mr. President, all the Congress is asking the President to do is to submit his nominations for these high executive posts to the Senate for confirmation. That is all. These positions are extremely powerful. The Director of the Office of Management and Budget makes decisions affecting the lives of all Americans. He makes decisions on program funding levels, on regulations, on operating procedures. He makes decisions on health programs, defense, education, and transportation programs. And, he makes most of these decisions—spending billions upon billions of appropriated funds—in the utmost secrecy and without any accountability to the Congress of the United States or to the American people.

Mr. President, the Senator from Wisconsin (Mr. PROXMIRE) has raised questions regarding the fitness for this office of the present occupant of the directorship of the Office of Management and Budget. These questions have never been answered to my satisfaction. In fact, the questions have really never been explored—in the way that a confirmation hearing would explore them.

I am certain that the present occupant of the directorship would welcome the opportunity for the Senate to hold confirmation hearings on his fitness for public office.

Yet, there is another reason for the legislation—and perhaps a more crucial reason for confirmation procedures. The budget of the United States represents the priorities of a nation's leaders. It represents their thinking. It represents basic decisions over the allocation of a nation's resources.

But, the budget of the United States is presented in secret. It is prepared in secret. It is hidden from the public view.

As I said on February 5, 1973, "the budget process of the executive branch of Government makes a mockery of democracy." There is no room for citizens participation; there is no room for elected representatives.

Apparently, that is the way the Office of Management and Budget and its Director would like to continue—in secret, behind closed doors, away from the public, away from the press, away from the Congress, and away from accountability.

That is the message I receive from the President's veto, and that is the message I receive from the Office of Management and Budget in regards to legislation I have proposed that would open up the budget process.

In S. 1030, the Fiscal and Budgetary Reform Act of 1973, I proposed that the budget process be opened up, that secrecy come to an end, and that elected officials have the right to participate in the formulation of a national budget.

The Office of Management and Budget has objected. I quote now from page 2 of the letter of comments sent by OMB to the Government Operations Committee:

> The requirement to allow state and local officials to participate in the budget process and the proposal that the Executive Branch hold public hearings on budget request will further burden the already overburden budget process and will require the consumption of more time and effort.

Mr. President, all of us are concerned about paper work—needless paper work. All of us are concerned about efficiency. But, I believe that the advantages of having the budget process opened to public scrutiny and public participation outweigh any disadvantages that might make life somewhat more uncomfortable for the Office of Management and Budget.

Finally, Mr. President, perhaps if the Director of OMB had to be confirmed, he would be somewhat more responsive to the Congress, somewhat less contemptuous of the Congress, and more helpful to us, as elected officials.

If the Senate will recall, we passed legislation in October of 1972 requiring impoundment reports to be submitted to the Congress. It was over 4 months before the Office of Management and Budget saw fit to respond to that law. We had to pass special legislation to get the Office of Management and Budget to submit the required material to the Congress.

And, I also recall asking the Director of the Office of Management and Budget for detailed evaluations of the various program cuts proposed by the administration. The OMB responded but with documents that simply were unusable, incomplete, and unworthy of any executive submission to the Congress.

I am suggesting, Mr. President, that if the Director and Deputy Director were subject to confirmation, perhaps they would be more cooperative to the Congress. Perhaps they would extend themselves and consult with the Congress.

For these reasons, I urge Senators and Congressmen to unite in a bipartisan effort to override this veto, to assert congressional responsibility, and bring openness and public scrutiny to the Office of Management and Budget.

The PRESIDING OFFICER. Who yields time?

Mr. GRIFFIN. 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. SCOTT of Pennsylvania. 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. SCOTT of Pennsylvania. Mr. President, I hope that the veto can be sustained.

The President in his veto message has pointed up that the constitutional principle involved in the removal is not equivocal. It is deeply rooted in our system of government. The President has the power and authority to remove, or retain, executive officers appointed by the President, as affirmed in the decision of *Myers* v. *United States*, 272 U.S. 52, 122 (1926), which held that this authority is incident to the power of appointment and is an exclusive power that cannot be infringed upon by the Congress.

As the President points out, he does not dispute congressional authority to abolish an office or to specify appropriate standards by which the officers may serve. When an office is abolished, the tenure of the incumbent in that office ends. But the power of the Congress to terminate an office cannot be used as a back-door method of circumventing the President's

power to remove. With its abolition and immediate re-creation of two offices, S. 518 is a device—in effect and perhaps in intent—to accomplish congressional removal of the incumbents who lawfully hold these offices.

I think this is a very bad precedent to set. It is an attempt to get at somebody who is holding office and who has been appointed under the law as it exists. It is an attempt to change the law for that purpose, and that purpose only. The veto should be sustained.

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

All time having expired, the question now is, Shall the bill pass, the objections of the President of the United States to the contrary notwithstanding? The yeas and nays are required. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from Idaho (Mr. CHURCH), the Senator from Iowa (Mr. CLARK), the Senator from Washington (Mr. MAGNUSON), the Senator from Wyoming (Mr. MCGEE), the Senator from South Dakota (Mr. MCGOVERN), and the Senator from Alabama (Mr. SPARKMAN) are necessarily absent.

I further announce that the Senator from New Jersey (Mr. WILLIAMS) is absent on official business.

I also announce that the Senator from Mississippi (Mr. STENNIS) is absent because of illness.

I further announce that, if present and voting, the Senator from South Dakota (Mr. ABOUREZK), the Senator from Idaho (Mr. CHURCH), the Senator from Iowa (Mr. CLARK), the Senator from Washington (Mr. MAGNUSON), the Senator from South Dakota (Mr. MCGOVERN), and the Senator from New Jersey (Mr. WILLIAMS) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from New York (Mr. JAVITS) is absent because of death in the family.

The Senator from Arizona (Mr. FANNIN) and the Senator from Ohio (Mr. SAXBE) are absent on official business.

The Senator from Colorado (Mr. DOMINICK), the Senator from Hawaii (Mr. FONG), the Senator from Idaho (Mr. MCCLURE), and the Senator from Oregon (Mr. PACKWOOD) are necessarily absent.

On this vote, the Senator from Colorado (Mr. DOMINICK) and the Senator from New York (Mr. JAVITS) are paired with the Senator from Hawaii (Mr. FONG). If present and voting, the Senator from Colorado and the Senator from New York would each vote "yea" and the Senator from Hawaii would vote "nay."

The yeas and nays resulted—yeas 62, nays 22, as follows:

[No. 151 Leg.]

YEAS—62

Allen	Gravel	Metcalf
Bayh	Griffin	Mondale
Beall	Gurney	Montoya
Bentsen	Hart	Moss
Bible	Hartke	Muskie
Biden	Haskell	Nelson
Brooke	Hatfield	Nunn
Buckley	Hathaway	Pastore
Burdick	Hollings	Pearson
Byrd, Harry F., Jr.	Huddleston	Pell
Byrd, Robert C.	Hughes	Percy
Cannon	Humphrey	Proxmire
Case	Inouye	Randolph
Chiles	Jackson	Ribicoff
Cook	Johnston	Roth
Cranston	Kennedy	Schweiker
Eagleton	Long	Stevenson
Eastland	Mansfield	Symington
Ervin	Mathias	Talmadge
Fulbright	McClellan	Tunney
	McIntyre	Weicker

NAYS—22

Aiken	Dole	Stafford
Baker	Domenici	Stevens
Bartlett	Goldwater	Taft
Bellmon	Hansen	Thurmond
Bennett	Helms	Tower
Brock	Hruska	Young
Cotton	Scott, Pa.	
Curtis	Scott, Va.	

NOT VOTING—16

Abourezk	Javits	Saxbe
Church	Magnuson	Sparkman
Clark	McClure	Stennis
Dominick	McGee	Williams
Fannin	McGovern	
Fong	Packwood	

The PRESIDING OFFICER. On this vote the yeas are 62, the nays are 22. Two-thirds of the Senators present and voting having voted in the affirmative, the bill on reconsideration is passed, the objections of the President of the United States to the contrary notwithstanding.

ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, for the information of the Senate, there will be no further votes tonight.

THE WATERGATE

Mr. SCOTT of Pennsylvania. Mr. President, the President has today issued a statement regarding Watergate. I ask unanimous consent that the text of the statement and an accompanying summary be printed at this point in the RECORD.

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

ACCOMPANYING STATEMENT BY THE PRESIDENT

THE WHITE HOUSE

Recent news accounts growing out of testimony in the Watergate investigations have given grossly misleading impressions of many of the facts, as they relate both to my own role and to certain unrelated activities involving national security.

Already, on the basis of second and third-hand hearsay testimony by persons either convicted or themselves under investigation in the case, I have found myself accused of involvement in activities I never heard of until I read about them in news accounts.

These impressions could also lead to a serious misunderstanding of those national security activities which, though totally unrelated to Watergate, have become entangled in the case. They could lead to further compromise of sensitive national security information.

I will not abandon my responsibilities. I will continue to do the job I was elected to do.

In the accompanying statement, I have set forth the facts as I know them as they relate to my own role.

With regard to the specific allegations that have been made, I can and do state categorically:

1) I had no prior knowledge of the Watergate operation.

2) I took no part in, nor was I aware of, any subsequent efforts that may have been made to cover up Watergate.

3) At no time did I authorize any offer of Executive clemency for the Watergate defendants, nor did I know of any such offer.

4) I did not know, until the time of my own investigation, of any effort to provide the Watergate defendants with funds.

5) At no time did I attempt, or did I authorize others to attempt, to implicate the CIA in the Watergate matter.

6) It was not until the time of my own investigation that I learned of the break-in at the office of Mr. Elisberg's psychiatrist, and I specifically authorized the furnishing of this information to Judge Byrne.

7) I neither authorized nor encouraged subordinates to engage in illegal or improper campaign tactics.

In the accompanying statements, I have sought to provide the background that may place recent allegations in perspective. I have specifically stated that Executive privilege will not be invoked as to any testimony concerning possible criminal conduct or discussions of possible criminal conduct, in the matters under investigation. I want the public to learn the truth about Watergate, and those guilty of any illegal actions brought to justice.

Allegations surrounding the Watergate affair have so escalated that I feel a further statement from the President is required at this time.

A climate of sensationalism has developed in which even second- or third-hand hearsay charges are headlined as fact and repeated as fact.

Important national security operations which themselves had no connection with Watergate have become entangled in the case.

As a result, some national security information has already been made public through court orders, through the subpoenaing of documents and through testimony witnesses have given in judicial and Congressional proceedings. Other sensitive documents are now threatened with disclosure. Continued silence about those operations would compromise rather than protect them, and would also serve to perpetuate a grossly distorted view—which recent partial disclosures have given—of the nature and purpose of those operations.

The purpose of this statement is threefold:

First, to set forth the facts about my own relationship to the Watergate matter.

Second, to place in some perspective some of the more sensational—and inaccurate—of the charges that have filled the headlines in recent days, and also some of the matters that are currently being discussed in Senate testimony and elsewhere.

Third, to draw the distinction between national security operations and the Watergate case. To put the other matters in perspective, it will be necessary to describe the national security operations first.

In citing these national security matters, it is not my intention to place a national security "cover" on Watergate, but rather to separate them out from Watergate—and at the same time to explain the context in which certain actions took place that were later misconstrued or misused.

Long before the Watergate break-in, three

important national security operations took place which have subsequently become entangled in the Watergate case.

The first operation, begun in 1969, was a program of wiretaps. All were legal, under the authorities then existing. They were undertaken to find and stop serious national security leaks.

The second operation was a reassessment, which I ordered in 1970, of the adequacy of internal security measures. This resulted in a plan and a directive to strengthen our intelligence operations. They were protested by Mr. Hoover, and as a result of his protest they were not put into effect.

The third operation was the establishment, in 1971, of a Special Investigations Unit in the White House. Its primary mission was to plug leaks of vital security information. I also directed this group to prepare an accurate history of certain crucial national security matters which occurred under prior Administrations, on which the Government's records were incomplete.

Here is the background of these three security operations initiated in my Administration.

1969 WIRETAPS

By mid-1969, my Administration had begun a number of highly sensitive foreign policy initiatives. They were aimed at ending the war in Vietnam, achieving a settlement in the Middle East, limiting nuclear arms, and establishing new relationships among the great powers. These involved highly secret diplomacy. They were closely interrelated. Leaks of secret information about any one could endanger all.

Exactly that happened. News accounts appeared in 1969, which were obviously based on leaks—some of them extensive and detailed—by people having access to the most highly classified security materials.

There was no way to carry forward these diplomatic initiatives unless further leaks could be prevented. This required finding the source of the leaks.

In order to do this, a special program of wiretaps was instituted in mid-1969 and terminated in February, 1971. Fewer than 20 taps, of varying duration, were involved. They produced important leads that made it possible to tighten the security of highly sensitive materials. I authorized this entire program. Each individual tap was undertaken in accordance with procedures legal at the time and in accord with long-standing precedent.

The persons who were subject to these wiretaps were determined through coordination among the Director of the FBI, my Assistant for National Security Affairs, and the Attorney General. Those wiretapped were selected on the basis of access to the information leaked, material in security files, and evidence that developed as the inquiry proceeded.

Information thus obtained was made available to senior officials responsible for national security matters in order to curtail further leaks.

THE 1970 INTELLIGENCE PLAN

In the spring and summer of 1970, another security problem reached critical proportions. In March a wave of bombings and explosions struck college campuses and cities. There were 400 bomb threats in one 24-hour period in New York City. Rioting and violence on college campuses reached a new peak after the Cambodian operation and the tragedies at Kent State and Jackson State. The 1969–70 school year brought nearly 1800 campus demonstrations, and nearly 250 cases of arson on campus. Many colleges closed. Gun battles between guerrilla-style groups and police were taking place. Some of the disruptive activities were receiving foreign support.

Complicating the task of maintaining security was the fact that, in 1966, certain types of undercover FBI operations that had been conducted for many years had been suspended. This also had substantially impaired our ability to collect foreign intelligence information. At the same time, the relationships between the FBI and other intelligence agencies had been deteriorating. By May, 1970, FBI Director Hoover shut off his agency's liaison with the CIA altogether.

On June 5, 1970, I met with the Director of the FBI (Mr. Hoover), the Director of the Central Intelligence Agency (Mr. Richard Helms), the Director of the Defense Intelligence (General Donald V. Bennett) and the Director of the National Security Agency (Admiral Noel Gayler). We discussed the urgent need for better intelligence operations. I appointed Director Hoover as chairman of an interagency committee to prepare recommendations.

On June 25, the committee submitted a report which included specific options for expanded intelligence operations, and on July 23 the agencies were notified by memorandum of the options approved. After reconsideration, however, prompted by the opposition of Director Hoover, the agencies were notified five days later, on July 28, that the approval had been rescinded. The options initially approved had included resumption of certain intelligence operations which had been suspended in 1966. These in turn had included authorization of surreptitious entry—breaking and entering, in effect—on specified categories of targets in specified situations related to national security.

Because the approval was withdrawn before it had been implemented, the net result was that the plan for expanded intelligence activities never went into effect.

The documents spelling out this 1970 plan are extremely sensitive. They include—and are based upon—assessments of certain foreign intelligence capabilities and procedures, which of course must remain secret. It was this unused plan and related documents that John Dean removed from the White House and placed in a safe deposit box, giving the keys to Judge Sirica. The same plan, still unused, is being headlined today.

Coordination among our intelligence agencies continued to fall short of our national security needs. In July, 1970, having earlier discontinued the FBI's liaison with CIA, Director Hoover ended the FBI's normal liasion with all other agencies except the White House. To help remedy this, an Intelligence Evaluation Committee was created in December, 1970. Its members included representatives of the White House, CIA, FBI, NSA, the Departments of Justice, Treasury, and Defense, and the Secret Service.

The Intelligence Evaluation Committee and its staff were instructed to improve coordination among the intelligence community and to prepare evaluations and estimates of domestic intelligence. I understand that its activities are now under investigation. I did not authorize nor do I have any knowledge of any illegal activity by this Committee. If it went beyond its charter and did engage in any illegal activities, it was totally without my knowledge or authority.

THE SPECIAL INVESTIGATIONS UNIT

On Sunday, June 13, 1971, The New York Times pubished the first installment of what came to be known as "The Pentagon Papers." Not until a few hours before publication did any responsible Government official know that they had been stolen. Most officials did not know they existed. No senior official of the Government had read them or knew with certainty what they contained.

All the Government knew, at first, was that the papers comprised 47 volumes and some 7,000 pages, which had been taken from the most sensitive files of the Departments of State and Defense and the CIA, covering military and diplomatic moves in a war that was still going on.

Moreover, a majority of the documents published with the first three installments in The Times had not been included in the 47-volume study—raising serious questions about what and how much else might have been taken.

There was every reason to believe this was a security leak of unprecedented proportions.

It created a situation in which the ability of the Government to carry on foreign relations even in the best of circumstances could have beeen severely compromised. Other governments no longer knew whether they could deal with the United States in confidence. Against the background of the delicate negotiations the United States was then involved on a number of fronts—with regard to Vietnam, China, the Middle East, nuclear arms limitations, U.S.-Soviet relations, and others—in which the utmost degree of confidentially was vital, it posed a threat so grave as to require extraordinary actions.

Therefore during the week following the Pentagon Papers publication, I approved the creation of a Special Investigations Unit within the White House—which later came to be known as the "plumbers." This was a small group at the White House whose principal purpose was to stop security leaks and to investigate other sensitive security matters. I looked to John Ehrlichman for the supervision of this group.

Egil Krogh, Mr. Ehrlichman's assistant, was put in charge. David Young was added to this unit, as were E. Howard Hunt and G. Gordon Liddy.

The unit operated under extremely tight security rules. Its existence and functions were known only to a very few persons at the White House. These included Messrs. Haldeman, Ehrlichman and Dean.

At about the time the unit was created, Daniel Ellsberg was identified as the person who had given the Pentagon Papers to The New York Times. I told Mr. Krogh that as a matter of first priority, the unit should find out all it could about Mr. Ellsberg's associates and his motives. Because of the extreme gravity of the situation, and not then knowing what additional national secrets Mr. Ellsberg might disclose, I did impress upon Mr. Krogh the vital importance to the national security of his assignment. I did not authorize and had no knowledge of any illegal means to be used to achieve this goal.

However, because of the emphasis I put on the crucial importance of protecting the national security, I can understand how highly motivated individuals could have felt justified in engaging in specific activities that I would have disapproved had they been brought to my attention.

Consequently, as President, I must and do assume responsibility for such actions despite the fact that I, at no time approved or had knowledge of them.

I also assigned the unit a number of other investigatory matters, dealing in part with compiling an accurate record of events related to the Vietnam War, on which the Government's records were inadequate (many previous records having been removed with the change of Administrations) and which bore directly on the negotiations then in progress. Additional assignments included tracing down other national security leaks, including one that seriously compromised the U.S. negotiating position in the SALT talks.

The work of the unit tapered off around the end of 1971. The nature of its work was such that it involved matters that, from a national security standpoint, were highly sensitive then and remain so today.

These intelligence activities had no connection with the break-in of the Democratic headquarters, or the aftermath.

I considered it my responsibility to see that the Watergate investigation did not impinge adversely upon the national security area. For example, on April 18th, 1973, when I learned that Mr. Hunt, a former member of the Special Investigations Unit at the White House, was to be questioned by the U.S. Attorney, I directed Assistant Attorney General Petersen to pursue every issue involving Watergate but to confine his investigation to Watergate and related matters and to stay out of national security matters. Subsequently, on April 25, 1973, Attorney General Kleindienst informed me that because the Government had clear evidence that Mr. Hunt was involved in the break-in of the office of the psychiatrist who had treated Mr. Ellsberg, he, the Attorney General, believed that despite the fact that no evidence had been obtained from Hunt's acts, a report should nevertheless be made to the court trying the Ellsberg case. I concurred, and directed that the information be transmitted to Judge Byrne immediately.

WATERGATE

The burglary and bugging of the Democratic National Committee headquarters came as a complete surprise to me. I had no inkling that any such illegal activities had been planned by persons associated with my campaign; if I had known, I would not have permitted it. My immediate reaction was that those guilty should be brought to justice and, with the five burglars themselves already in custody, I assumed that they would be.

Within a few days, however, I was advised that there was a possibility of CIA involvement in some way.

It did seem to me possible that, because of the involvement of former CIA personnel, and because of some of their apparent associations, the investigation could lead to the uncovering of covert CIA operations totally unrelated to the Watergate break-in.

In addition, by this time, the name of Mr. Hunt had surfaced in connection with Watergate, and I was alerted to the fact that he had previously been a member of the Special Investigations Unit in the White House. Therefore, I was also concerned that the Watergate investigation might well lead to an inquiry into the activities of the Special Investigations Unit itself.

In this area, I felt it was important to avoid disclosure of the details of the national security matters with which the group was concerned. I knew that once the existence of the group became known, it would lead inexorably to a discussion of these matters, some of which remain, even today, highly sensitive.

I wanted justice done with regard to Watergate; but in the scale of national priorities with which I had to deal—and not at that time having any idea of the extent of political abuse which Watergate reflected—I also had to be deeply concerned with ensuring that neither the covert operations of the CIA nor the operations of the Special Investigations Unit should be compromised. Therefore, I instructed Mr. Haldeman and Mr. Ehrlichman to ensure that the investigation of the break-in not expose either an unrelated covert operation of the CIA or the activities of the White House investigations unit—and to see that this was personally coordinated between General Walters, the Deputy Director of the CIA, and Mr. Gray of the FBI. It was certainly not my intent, nor my wish, that the investigation of the Watergate break-in or of related acts be impeded in any way.

On July 6, 1972, I telephoned the Acting Director of the FBI, L. Patrick Gray, to congratulate him on his successful handling of the hijacking of a Pacific Southwest Airlines plane the previous day. During the conversation Mr. Gray discussed with me the progress of the Watergate investigation, and I asked him whether he had talked with General Walters. Mr. Gray said that he had, and that General Walters had assured him that the CIA was not involved. In the discussion, Mr. Gray suggested that the matter of Watergate might lead higher. I told him to press ahead with his investigation.

It now seems that later, through whatever complex of individual motives and possible misunderstandings, there were apparently wide-ranging effort to limit the investigation or to conceal the possible involvement of members of the Administration and the campaign committee.

I was not aware of any such efforts at the time. Neither, until after I began my own investigation, was I aware of any fund raising for defendants convicted of the break-in at Democratic headquarters, much less authorize any such fund raising. Nor did I authorize any offer of Executive clemency for any of the defendants.

In the weeks and months that followed Watergate, I asked for, and received, repeated assurances that Mr. Dean's own investigation (which included reviewing files and sitting in on FBI interviews with White House personnel) had cleared everyone then employed by the White House of involvement.

In summary, then:

(1) I had not prior knowledge of the Watergate bugging operation, or of any illegal surveillance activities for political purposes.

(2) Long prior to the 1972 campaign, I did set in motion certain internal security measures, including legal wiretaps, which I felt were necessary from a national security standpoint and, in the climate then prevailing, also necessary from a domestic security standpoint.

(3) People who had been involved in the national security operations later, without my knowledge or approval, undertook illegal activities in the political campaign of 1972.

(4) Elements of the early post-Watergate reports led me to suspect, incorrectly, that the CIA had been in some way involved. They also led me to surmise, correctly, that since persons originally recruited for covert national security activities had participated in Watergate, an unrestricted investigation of Watergate might lead to and expose those covert national security operations.

(5) I sought to prevent the exposure of these covert national security activities, while encouraging those conducting the investigation to pursue their inquiry into the Watergate itself. I so instructed my staff, the Attorney General and the Acting Director of the FBI.

(6) I also specifically instructed Mr. Haldeman and Mr. Ehrlichman to ensure that the FBI would not carry its investigation into areas that might compromise these covert national security activities, or those of the CIA.

(7) At no time did I authorize or know about any offer of Executive clemency for the Watergate defendants. Neither did I know until the time of my own investigation, of any efforts to provide them with funds.

CONCLUSION

With hindsight, it is apparent that I should have given more heed to the warning signals I received along the way about a Watergate cover-up and less to the reassurances.

With hindisght, several other things also become clear:

With respect to campaign practices, and also with respect to campaign finances, it should now be obvious that no campaign in history has ever been subjected to the kind of intensive and searching inquiry that has been focused on the campaign waged in my behalf in 1972.

It is clear that unethical, as well as illegal, activities took place in the course of that campaign.

None of these took place with my specific approval or knowledge. To the extent that I may in any way have contributed to the climate in which they took place, I did not intend to; to the extent that I failed to prevent them, I should have been more vigilant.

It was to help ensure against any repetition of this in the future that last week I proposed the establishment of a top-level, bipartisan, independent commission to recommend a comprehensive reform of campaign laws and practices. Given the priority I believe it deserves, such reform should be possible before the next Congressional elections in 1974.

It now appears that there were persons who may have gone beyond my directives, and sought to expand on my efforts to protect the national security operations in order to cover up any involvement they or certain others might have had in Watergate. The extent to which this is true, and who may have participated and to what degree, are questions that it would not be proper to address here. The proper forum for settling these matters is in the courts.

To the extent that I have been able to determine what probably happened in the tangled course of this affair, on the basis of my own recollections and of the conflicting accounts and evidence that I have seen, it would appear that one factor at work was that at critical points various people, each with his own perspective and his own responsibilities, saw the same situation with different eyes and heard the same words with different ears. What might have seemed insignificant to one seemed significant to another; what one who in terms of public responsibility, another saw in terms of political opportunity; and mixed through it all, I am sure, was a concern on the part of many that the Watergate scandal should not be allowed to get in the way of what the Administration sought to achieve.

The truth about Watergate should be brought out—in an orderly way, recognizing that the safeguards of judicial procedure are designed to find the truth, not to hide the truth.

With his selection of Archibald Cox—who served President Kennedy and President Johnson as Solicitor General—as the special supervisory prosecutor for matters related to the case, Attorney General-designate Richardson has demonstrated his own determination to see the truth brought out. In this effort he has my full support.

Considering the number of persons involved in this case whose testimony might be subject to a claim of Executive privilege, I recognize that a clear definition of that claim has become central to the effort to arrive at the truth.

Accordingly, Executive privilege will not be invoked as to any testimony concerning possible criminal conduct or discussions of possible criminal conduct, in the matters presently under investigation, including the Watergate affair and the alleged cover-up.

I want to emphasize that this statement is limited to my own recollections of what I said and did relating to security and to the Watergate. I have specifically avoided any attempt to explain what other parties may have said and done. My own information on those other matters is fragmentary, and to some extent contradictory. Additional information may be forthcoming of which I am unaware. It is also my understanding that the information which has been conveyed to me has also become available to those prosecuting these matters. Under such circumstances, it would be prejudicial and unfair of me to render my opinions on the activities of others; those judgments must be left to the judicial process, our best hope for achieving the just result that we all seek.

As more information is developed, I have no

doubt that more questions will be raised. To the extent that I am able, I shall also seek to set forth the facts as known to me with respect to those questions.

INTERIM APPORTIONMENT OF INTERSTATE AND OTHER HIGHWAY FUNDS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 151, S. 1808, and that it be laid before the Senate and made the pending business for tomorrow.

The PRESIDING OFFICER (Mr. JOHNSTON). The bill will be stated by title.

The assistant legislative clerk read as follows:

S. 1808, to apportion funds for the National System of Interstate and Defense Highways and to authorize funds in accordance with title 23, United States Code, for fiscal year 1974, and for other purposes.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

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

ORDER FOR RECOGNITION OF SENATORS GRIFFIN, RANDOLPH, AND MANSFIELD TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent, after the joint leaders or their designees have been recognized tomorrow, that the distinguished Senator from Michigan (Mr. GRIFFIN), the distinguished Senator from West Virginia (Mr. RANDOLPH), and the Senator from Montana now speaking, all be recognized for a period of not to exceed 15 minutes each.

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

ORDER FOR TRANSACTION OF ROUTINE MORNING BUSINESS TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent that, on tomorrow, there be a period for the transaction of routine morning business for not to exceed 30 minutes, with statements therein limited to 3 minutes.

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

ORDER FOR ADJOURNMENT

Mr. MANSFIELD. Mr. President, I ask unanimous consent that, when the Senate completes its business today, it stand in adjournment until 12 o'clock noon tomorrow.

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

VETO BY UNITED STATES AND GREAT BRITAIN IN UNITED NATIONS

Mr. HARRY F. BYRD, JR. Mr. President, today, the United States and Great Britain vetoed a resolution that would have extended to South Africa and Portugal the United Nations Security Council's economic sanctions against Rhodesia.

It was the fourth U.S. veto in Council history.

The other vetoes were on the questions of Rhodesia, the Middle East, and the Panama Canal.

Mr. President, this veto by the United States and Great Britain in the Security Council today is a very heartening one and a very important one. I hope it suggests that our representatives in the United Nations are now willing to show some courage and to stand up against the very foolish and unprincipled acts which have been advocated by many members of the United Nations.

I want to say on the floor of the Senate today that, in my judgment, the action taken by the Security Council, and subsequently by the President of the United States, in putting an embargo on trade with Rhodesia, is one of the most unprincipled acts ever taken by our Nation.

I applaud the action taken by our representatives today in the Security Council, where the United States and Great Britain joined to veto similar action which had been proposed for South Africa and Portugal.

We have no business attempting to dictate the internal policy of other countries of the world. From the beginning, I opposed the action taken aganst Rhodesia. I would strongly oppose any similar action that might be directed against South Africa or Portugal by the United Nations Security Council. The veto today obviates any such possibility.

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 legislative clerk proceeded to call the roll.

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

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

The Senator from Louisiana is recognized.

(The remarks Senator LONG made at this point on the introduction of S. 1869, dealing with procedures prescribed in making certain local contributions are printed earlier in the RECORD under Statements on Introduced Bills and Joint Resolutions.)

ADJOURNMENT

Mr. LONG. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the order previously entered, that the Senate stand in adjournment until 12 noon tomorrow.

The motion was agreed to; and at 5:10 p.m. the Senate adjourned until tomorrow, Wednesday, May 23, 1973, at 12 noon.

NOMINATIONS

Executive nominations received by the Senate May 22, 1973:

AGENCY FOR INTERNATIONAL DEVELOPMENT

Matthew J. Harvey, of Maryland, to be an Assistant Administrator of the Agency for International Development, vice Bert M. Tollefson, Jr., resigned.

GENERAL SERVICES ADMINISTRATION

Arthur F. Sampson, of Pennsylvania, to be Administrator of General Services, vice Robert L. Kunzig, resigned.

FEDERAL HOME LOAN BANK BOARD

Grady Perry, Jr., of Alabama, to be a member of the Federal Home Loan Bank Board for the term of 4 years expiring June 30, 1977, vice Thomas Hal Clarke.

U.S. AIR FORCE

The following officer to the grade indicated under the provisions of title 10, United States Code, chapters 839 and 841:

To be temporary major general

Maj. Gen. Earl O. Anderson, xxx-xx-xxxx xxx-... FV, Air Force Reserve.

HOUSE OF REPRESENTATIVES—*Tuesday, May 22, 1973*

The House met at 12 o'clock noon.

The Chaplain, Rev. Edward G. Latch, D.D., offered the following prayer:

As we have opportunity, let us do good to all men.—Galatians 6: 10.

Eternal Father of our spirits, in whom we find the love which casts out fear, with whom we walk in wisdom's ways, and from whom comes strength for daily tasks, lay Thy hand upon us as we pray and bless us with the peace of Thy presence and the glory of Thy goodness.

Take away from us the hatreds that hurt, the bitterness that blights, the misunderstandings that make life miserable, and the suspicions that sour our souls. By Thy grace may our hearts be united in a strong spirit of good will which will make us eager to serve our Nation and ready to make this world a better place in which men and women can learn to live together heartily, helpfully, and hopefully.

In the spirit of Christ we offer this our morning prayer. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Without objection, the Journal stands approved.

There was no objection.

CALL OF THE HOUSE

Mr. GROSS. Mr. Speaker, I make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

Mr. O'NEILL. Mr. Speaker, I move a call of the House.