SENATE—*Thursday, May 31, 1973*

The Senate met at 11 a.m. and was called to order by Hon. ERNEST F. HOLLINGS, a Senator from the State of South Carolina.

PRAYER

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

Most Merciful and Gracious God, who has led this Nation through turbulent times of the past, keep us this day from disappointment and discouragement at the long delay of the coming of Thy kingdom. Keep hope alive that out of the world's tragedies and tyrannies and from our mistakes and misfortunes the spirit of the Master will guide us to the truth and bring the final victory. Grant us a clear sense of duty and honor in every decision. May we live and work not alone or by our own efforts but in Thy strength and by Thy wisdom. May the justice, purity, and peace of the Man of Nazareth be the guide to making our policies and developing our plans until His kingdom comes and His will be done on earth.

We pray in Christ's name. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The second assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., May 31, 1973.

To the Senate:

Being temporarily absent from the Senate on official duties, I appoint Hon. ERNEST F. HOLLINGS, a Senator from the State of South Carolina, to perform the duties of the Chair during my absence.

JAMES O. EASTLAND,
President pro tempore.

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

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Berry, one of its reading clerks, announced that the House had passed the following bills, in which it requested the concurrence of the Senate:

H.R. 5857. An act to amend the National Visitor Center Facilities Act of 1968, and for other purposes; and

H.R. 5858. An act authorizing further appropriations to the Secretary of the Interior for services necessary to the nonperforming arts functions of the John F. Kennedy Center for the Performing Arts, and for other purposes.

HOUSE BILLS REFERRED

The following bills were each read twice by their titles and referred to the Committee on Public Works:

H.R. 5857. An act to amend the National Visitor Center Facilities Act of 1968, and for other purposes; and

H.R. 5858. An act authorizing further appropriations to the Secretary of the Interior for services necessary to the nonperforming arts functions of the John F. Kennedy Center for the Performing Arts, and for other purposes.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Wednesday, May 30, 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.

EXECUTIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider the nomination under Atomic Energy Commission.

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

The ACTING PRESIDENT pro tempore. The nomination on the Executive Calendar, under Atomic Energy Commission, will be stated.

ATOMIC ENERGY COMMISSION

The second assistant legislative clerk read the nomination of William E. Kriegsman, of Maryland, to be a member of the Atomic Energy Commission for the remainder of the term expiring June 30, 1975.

The ACTING PRESIDENT pro tempore. Without objection, the nomination is considered and confirmed.

LEGISLATIVE SESSION

Mr. MANSFIELD. Mr. President, I move that the Senate resume the consideration of legislative business.

The motion was agreed to, and the Senate resumed the consideration of legislative business.

HONOR AMERICA

Mr. SCOTT of Pennsylvania. Mr. President, I submit, on behalf of myself and the distinguished majority leader, a concurrent resolution and ask for its immediate consideration.

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

The legislative clerk read as follows:

Senate Concurrent Resolution 27, to declare a 21-day period as a period to honor America.

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

There being no objection, the concurrent resolution (S. Con. Res. 27) was considered and unanimously agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

Whereas it is the sense of Congress that 1973 be recorded as the year that all freedom loving Americans demonstrate a reaffirmation of their patriotism and love and respect for these United States of America upon the occasion of the 197th anniversary of its founding; and

Whereas the Congress is aware that while many of the problems confronting America may appear to be monumental, they are problems that are surmountable through the exercise of the American spirit and will; and

Whereas the rekindling of that spirit and will can begin by honoring America: Now, therefore, be it *Resolved in the Senate, (the House of Representatives concurring)*, That Congress declares the 21 days from Flag Day, June 14, 1973, to Independence Day, July 4, 1973, as a period to honor America, and let there be public gatherings and activities at which the people of the United States can celebrate and honor their country in appropriate manner.

Mr. SCOTT of Pennsylvania. I yield back the remainder of my time.

ORDER OF BUSINESS

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

PROTECTION OF THE UNBORN—INTRODUCTION OF A JOINT RESOLUTION

Mr. BUCKLEY. Mr. President, about 4 months ago, the Supreme Court, in a pair of highly controversial, precedent-shattering decisions, Roe against Wade and Doe against Bolton, ruled that a pregnant woman has a constitutional right to destroy the life of her unborn child. In so doing, the Court not only contravened the express will of every State legislature in the country; it not only removed every vestige of legal protection hitherto enjoyed by the child in the mother's womb; but it reached its result through a curious and confusing chain of reasoning that, logically extended, could apply with equal force to the genetically deficient infant, the retarded child, or the insane or senile adult.

After reviewing these decisions, I concluded that, given the gravity of the issues at stake and the way in which the Court had carefully closed off alternative means of redress, a constitutional amendment was the only way to remedy the damage wrought by the Court. My decision was not lightly taken for I believe that only matters of permanent and fundamental interest are properly the subject for constitutional amendment. I regret the necessity for having to take this serious step, but the Court's decisions, unfortunately, leave those who respect human life in all its stages from inception to death with no other recourse.

To those who argue that an amend-

ment to the Constitution affecting abortion and related matters would encumber the document with details more appropriately regulated by statute, I can only reply that the ultimate responsibility must be borne by the High Court itself. With Mr. Justice White, who dissented so vigorously in the abortion cases:

I find nothing in the language or history of the Constitution to support the Court's judgment.

The Court simply carved out of thin air a previously undisclosed right of "privacy" that is nowhere mentioned in the Constitution, a right of privacy which, oddly, can be exercised in this instance only by destroying the life and, therefore, the privacy of an unborn child. As Mr. Justice White remarked last January:

As an exercise of raw judicial power, the Court perhaps has authority to do what it does today; but in my view its judgment is an improvident and extravagant exercise of the power of judicial review which the Constitution extends to this Court.

In the intervening weeks since the Court's decisions, I have sought the advice of men and women trained in medicine, ethics, and the law. They have given me the most discriminating and exacting counsel on virtually every aspect of the issues involved and have provided invaluable assistance in drawing up an amendment that reflects the latest and best scientific fact, and that comports with our most cherished legal traditions.

Mr. President, before discussing the specific language of my proposed amendment, I believe it necessary first to analyze the effect and implications of Wade and Bolton, and then to place them in the context of current attacks on our traditional attitudes toward human life. At the outset, it is necessary to discuss with some care what the Court in fact held in its abortion decisions. This is, I must confess, not an easy task. For passing the Court's opinions in these cases requires that one attempt to follow a labyrinthine path of argument that simultaneously ignores or confuses a long line of legal precedent and flies in the face of well-established scientific fact.

The Court's labored reasoning in these cases has been a source of considerable puzzlement to all who have the slightest familiarity with the biological facts of human life before birth or with the legal protections previously provided for the unborn child. The Court's substantial errors of law and fact have been so well documented by others that it would be superfluous for me to attempt to add anything of my own. I shall simply refer Senators to the most incisive summary of the Court's errors that I have encountered. It is in the form of a legal brief filed by the attorneys in the Byrn case that was on appeal to the Supreme Court at the time it handed down its opinions in Wade and Bolton. It presents a devastating historical, legal and scientific indictment of the Court's errors of commission and omission. I ask unanimous consent that this document be printed at the end of my remarks as Appendix A, and urge Senators to give most careful study to its arguments.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. (See Appendix A.)

Mr. BUCKLEY. Mr. President, the full import of the Court's action is as yet incompletely understood by large segments of the public and by many legislators and commentators. It seems to be rather widely held, for example, that the Court authorized abortion on request in the first 6 months of pregnancy, leaving the States free to proscribe the act thereafter. But such is far from the truth. The truth of the matter is that, under these decisions, a woman may at any time during pregnancy exercise a constitutional right to have an abortion provided only that she can find a physician willing to certify that her "health" requires it; and as the word "health" is defined, that in essence means abortion on demand.

The Court's attempts to distinguish three stages of pregnancy, but upon examination this attempt yields, in practical effect, distinctions without a difference. In the first 3 months, in the words of the Court, "the abortion decision and its effectuation must be left to the medical judgment of the pregnant woman's attending physician." This means, for all intents and purposes, abortion on request. During the second trimester of pregnancy, the State may—but it need not—regulate the abortion procedure in ways that are reasonably related to maternal health. The power of the State's regulation here is effectively limited to matters of time, place and perhaps manner.

Thus, through approximately the first 6 months of pregnancy, the woman has a constitutionally protected right to take the life of her unborn child, and the State has no "compelling interest" that would justify prohibiting abortion if a woman insists on one.

After the period of "viability", which the Court marks at 6, or alternatively 7, months of pregnancy, the State "may"—but, again, it need not—proscribe abortion except "where it is necessary for the preservation of the life or health of the mother." This provision, which appears at first glance to be an important restriction, turns out to be none at all, as the Court defines health to include "psychological as well as physical well-being," and states that the necessary "medical judgment may be exercised in the light of all factors—physical, emotional, psychological, familial, and the woman's age—relevant to the well-being" of the mother. The Court, in short, has included under the umbrella of "health" just about every conceivable reason a woman might want to advance for having an abortion.

It is clear, then, that at no time prior to natural delivery is the unborn child considered a legal person entitled to constitutional protections; at no time may the unborn child's life take precedence over the mother's subjectively-based assertion that her well-being is at stake.

In reaching these findings, the Court in effect wrote a statute governing abortion for the entire country, a statute more permissive than that enacted by the hitherto most permissive jurisdiction in the country; namely, my own State of New York. Nor is that all. In the course of its deliberations, the Court found it necessary to concede a series of premises that can lead to conclusions far beyond the immediate question of abortion itself. These premises have to do with the conditions under which human beings, born or unborn, may be said to possess fundamental rights.

I shall have a good deal to say about these extended implications of the Court's decisions in the months ahead, but for the moment, I would like to touch briefly on one or two basic points:

First, it would now appear that the question of who is or is not a "person" entitled to the full protection of the law is a question of legal definition as opposed to practical determination. Thus, contrary to the meaning of the Declaration of Independence, contrary to the intent of the framers of the 14th amendment, and contrary to previous holdings of the Court, to be created human is no longer a guarantee that one will be possessed of inalienable rights in the sight of the law. The Court has extended to government, it would seem, the power to decide the terms and conditions under which membership in good standing in the human race is determined. This statement of the decisions' effect may strike many as overwrought, but it will not appear as such to those who have followed the abortion debate carefully or to those who have read the Court's decisions in full. When, for example, the Court states that the unborn are not recognized by the law as "persons in the whole sense," and when, further, it uses as a precondition for legal protection the test whether one has a "capability of meaningful life," a thoughtful man is necessarily invited to speculate on what the logical extension of such arguments might be.

If constitutional rights are deemed to hinge on one's being a "person in the whole sense", where does one draw the line between "whole" and something less than "whole"? It is simply a question of physical or mental development? If so, how does one distinguish between the child in his 23d week of gestation who is lifted alive from his mother's womb and allowed to die in the process of abortion by hysterotomy, and the one that is prematurely born and rushed to an incubator? It is a well known scientific fact that the greater part of a child's cerebral cortex is not formed, that a child does not become a "cognitive person", until some months after normal delivery. Might we not someday determine that a child does not become a "whole" person until sometime after birth, or never become "whole" if born with serious defects? And what about those who, having been born healthy, later lose their mental or physicial capacity? Will it one day be found that a person, by virtue of mental illness, or serious accident, or senility, ceases to be a "person in the whole sense", or ceases to have the "capability for meaningful life," and as such no longer entitled to the full protection of the law?

Mr. President, the list of such questions is virtually endless. The Court in attempting to solve one problem has

ended up by creating 20 others. One can read the Court's opinions in the abortion cases from beginning to end and back again, but he will not find even the glimmer of an answer to these questions; indeed, one will not even find the glimmer of an indication that the Court was aware that such questions might be raised or might be considered important.

A second general consideration I should like to raise, Mr. President, has to do with the Court's definition of "health" as involving "all factors—physical, emotional, psychological familial, and the woman's age—relevant to . . . well-being." It is a little remarked but ultimately momentous part of the abortion decisions that the Court, consciously or unconsciously, has adopted wholesale the controversial definition of "health" popularized by the World Health Organization. According to the WHO, "health" is "a state of complete physical, mental, and social well-being, not simply the absence of illness and disease." In this context, the Court's definition acquires a special importance, not only because it can be used to justify abortion any time a woman feels discomfited by pregnancy, but because the Court made pointed reference to the "compelling interest" of the State in matters of health in general and maternal health in particular. One is bound to wonder whether the State's interest in maternal health would ever be sufficiently "compelling" to warrant an abortion against a pregnant woman's will. This is no mere academic matter. An unwed, pregnant teenage girl was ordered by a lower court in Maryland just last year, against her will, to have an abortion. The girl was able to frustrate the order by running away. The order was later overturned by a Maryland appellate court; but the important point is that an analog to the compelling State interest argument was used by the lower court to justify its holding.

Let us consider, for example, the case of a pregnant mental patient. Would the State's compelling interest in her health ever be sufficient to force an abortion upon her? What of the unmarried mother on welfare who is already unable to cope with her existing children? Again, Mr. President, I am not raising an academic point for the sake of disputation. In the abortion cases, the Supreme Court breathed life into the notorious precedent of Buck against Bell. The Bell case, it will be recalled, upheld the right of a State to sterilize a mental incompetent without her consent.

The Court held in that case that—

> The principle that sustains compulsory vaccination is broad enough to cover cutting the Fallopian tubes.

One is necessarily bound to wonder whether, by analogous extension, the principle that sustains compulsory sterilization of mental patients is broad enough to cover compulsory abortion of mental patients; and if of mental patients, then why not, as the lower court in Maryland suggested, of unwed minor girls? And if of unwed minor girls, then why not of any other woman? Just how "compelling" is the state's interest in matters of "health"? Where does the power begin or end? In the abortion cases, Bell, curiously, is cited for the proposition that a woman does not have an unlimited right to her own body, whence the only inference to be drawn is that the reason she doesn't have an unlimited right is that the state may qualify that right because of its "compelling interest" in "health." I find that a strange doctrine to be celebrated by the proponents of women's liberation.

These larger and deeply troubling considerations, Mr. President, may in the long run be as important to us as the special concern that many of us have with the matter of abortion itself. Every premise conceded by the Court in order to justify the killing of an unborn child can be extended to justify the killing of anyone else if, like the unborn child, he is found to be less than a person in the "whole" sense or incapable of "meaningful" life. The removal of all legal restrictions against abortion must, in short, be seen in the light of a changing attitude regarding the sanctity of individual life, the effects of which will be felt not only by the unborn child who is torn from its mother's womb but as well by all those who may someday fall beyond the arbitrary boundaries of the Court's definition of humanity.

This wider context of the abortion controversy was brought to my attention most forcefully by an unusually candid editorial entitled "A New Ethic for Medicine and Society" that was published two and a half years ago in California Medicine, the official journal of the California Medical Association. It was occasioned, as I understand it, by the debate then taking place in our largest State regarding the liberalization of the abortion law.

The thrust of the editorial is simply this: That the controversy over abortion represents the first phase of a head-on conflict between the traditional, Judeo-Christian medical and legal ethic—in which the intrinsic worth and equal value of every human life is secured by law, regardless of age, health or condition of dependency—and a new ethic, according to which human life can be taken for what are held to be the compelling social, economic or psychological needs of others. Mr. President, I ask unanimous consent that the editorial referred to be printed in the RECORD at the conclusion of my remarks as appendix B.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. (See appendix B.)

Mr. BUCKLEY. Let me for a moment dwell on a crucial point in that editorial. The author writes:

> The process of eroding the old ethic and substituting the new has already begun. It may be seen most clearly in changing attitudes toward human abortion. In defiance of the long held Western ethic of intrinsic and equal value for every human life regardless of its stage, condition, or status, abortion is becoming accepted by society as moral, right, and even necessary. It is worth noting that this shift in public attitude has affected the churches, the laws and public policy rather than the reverse. Since the old ethic has not yet been fully displaced it has been necessary to separate the idea of abortion from the idea of killing, which continues to be socially abhorrent. The result has been a curious avoidance of the scientific fact, which everyone really knows, that human life begins at conception and is continuous whether intra- or extra-uterine until death. The very considerable semantic gymnastics which are required to rationalize abortion as anything but taking a human life would be ludicrous if they were not often put forth under socially impeccable auspices. It is suggested that this schizophrenic sort of subterfuge is necessary because while a new ethic is being accepted the old one has not yet been rejected.

Lest there be any ambiguity as to the ultimate thrust of the "new ethics," the California Medicine editorial went on to state the following in discussing the growing role of physicians in deciding who will and will not live:

> One may anticipate further development of these roles as the problems of birth control and birth selection are extended inevitably to death selection and death control whether by the individual or by society . . .

I find the editorial of a powerful, eloquent, and compelling statement of the ultimate questions involved in the abortion controversy. The question in issue—the Supreme Court to the contrary notwithstanding—is not to determine when life begins, for that is one of scientific fact requiring neither philosophical nor theological knowledge to answer. The question, rather, is what value we shall place on human life in general and whether unborn human life in particular is entitled to legal protection.

Whether or not our society shall continue its commitment to the old ethnic, or transfer its allegiance to the new, is not a question to be decided by a transitory majority of the Supreme Court, but by the people acting through their political processes. I concur in Mr. Justice White's condemnation of the Wade decision as "an exercise of raw judicial power" that is "improvident and extravagant." I concur in finding unacceptable the Court's action in "interposing a constitutional barrier to State efforts to protect human life and—in—investing mothers and doctors with the constitutionally protected right to exterminate it."

The majority of the Court, however, has rendered its decision. We as a people have been committed by seven men to the "new ethic"; and because of the finality of their decisions, because there are now no practical curbs on the killing of the unborn to suit the convenience or whim of the mother, those who continue to believe in the old ethic have no recourse but to resort to the political process. That is why I intend to do what I can to give the American people the opportunity to determine for themselves which ethic will govern this country in what is, after all, quite literally a matter of life or death. That is why I send my proposed Human Life Amendment to the desk and ask that it be printed and appropriately referred.

In doing so, Mr. President, may I say how deeply gratified I am to be joined in introducing this amendment by my distinguished colleagues from Oregon, Iowa, Utah, Nebraska, Oklahoma, and North Dakota. Senators HATFIELD, HUGHES, BENNETT, BARTLETT, CURTIS, and YOUNG are known in this body and elsewhere as exceptionally thoughtful and dedicated men whose day-to-day political activities are informed by devotion to

first principles. When such a geographically, ideologically, and religiously diverse group of Senators can agree on a major issue like this, it suggests that opposition to abortion is truly ecumenical and national in scope. These Senators honor me by their cosponsorship, and I consider it a privilege to work together with them in this great cause. I would simply like to take this occasion to extend to each of them my personal gratitude for their help and cooperation and to say how much I look forward to working jointly with them in the months ahead.

The text of our amendment reads as follows:

ARTICLE —

SECTION 1. With respect to the right to life, the word 'person', as used in this Article and in the Fifth and Fourteenth Articles of Amendment to the Constitution of the United States, applies to all human beings, including their unborn offspring at every stage of their biological development, irrespective of age, health, function or condition of dependency.

SEC. 2. This Article shall not apply in an emergency when a reasonable medical certainty exists that continuation of the pregnancy will cause the death of the mother.

SEC. 3. Congress and the several States shall have power to enforce this Article by appropriate legislation within their respective jurisdictions.

The amendment's central purpose is to create, or rather, as will be made clear below, to restore a constitutionally compelling identity between the biological category "human being" and the legal category "person". This has been made necessary by two factors: First, the more or less conscious dissemblance on the part of abortion proponents, by virtue of which the universally agreed upon facts of biology are made to appear as questions of value—a false argument that the Supreme Court adopted wholesale; and second, the holding of the Court in Wade and Bolton that the test of personhood is one of legal rather than of biological definition. The amendment addresses these difficulties by making the biological test constitutionally binding, on the ground that only such a test will restrain the tendency of certain courts and legislatures to arrogate to themselves the power to determine who is or who is not human and, therefore, who is or is not entitled to constitutional protections. The amendment is founded on the belief that the ultimate safeguard of all persons, born or unborn, "normal or defective, is to compel courts and legislatures to rest their decisions on scientific fact rather than on political, sociological, or other opinion."

Such a test will return the law to a position compatible with the original understanding of the 14th amendment. As the debates in Congress during consideration of that amendment make clear, it was precisely the intention of Congress to make "legal person" and "human being" synonymous categories. By so doing, Congress wrote into the Constitution that understanding of the Declaration of Independence best articulated by Abraham Lincoln; namely, that to be human is to possess certain rights by nature, rights that no court and no legislature can legitimately remove. Chief among these, of course, is the right to life.

On the specific subject of abortion, it is notable that the same men who passed the 14th amendment also enacted an expanded Assimilative Crimes Statute, April, 1866, which adopted recently passed State antiabortion statutes. These statutes, in turn, had been enacted as a result of a concerted effort by medical societies to bring to legislators' attention the recently discovered facts of human conception. The Court's opinion in Wade totally misreads—if the Court was aware of it at all—the fascinating medico-legal history of the enactment of 19th century antiabortion statutes, and ignores altogether the fundamental intention which animated the framers of the 14th amendment.

Section 1 of the proposed amendment would restore and make explicit the biological test for legal protection of human life. The generic category is "human being," which includes, but is not limited to, "unborn offspring—at every stage of their biological development." It is a question of biological fact as to what constitutes "human being" and as to when "offspring" may be said to come into existence. While the basic facts concerning these matters are not in dispute among informed members of the scientific community, the ways in which these facts are to be ascertained in any particular case will depend on the specifications contained in implementing legislation passed consistent with the standard established by the amendment. Such legislation would have to consider, in the light of the best available scientific information, the establishment of reasonable standards for determining when a woman is in fact pregnant, and if so, what limitations are to be placed on the performance of certain medical procedures or the administering of certain drugs.

Some proponents of abortion will seek to characterize the amendment as prohibiting methods of contraception. To such charge, the answer is twofold:

First, there is nothing in the amendment which would, directly or indirectly, expressly or impliedly, proscribe any mode of contraception;

Second, under the amendment, the test in each case will be a relatively simple one; that is, whether an "unborn offspring" may be said to be in existence at the time when a potentially abortive technique or medicine is applied. Particular standards on this point are to be worked out in implementing legislation.

Section 1, it will also be noted, reaches the more general case of euthanasia. This is made necessary because of the widespread and growing talk of legalizing "death with dignity," and because of the alarming dicta in the Wade opinion by which legal protection seems to be conditioned on whether one has the "capability of meaningful life" or whether one is a "person in the whole sense." Such language in the Court's opinion, when combined with the Court's frequent references to the State's "compelling interest" in matters of "health," is pointedly brought to our attention by the revival in Wade of the notorious 1927 case of Buck against Bell—which upheld the right of the State to sterilize a mentally defective woman without her consent. The Wade and Bolton opinions taken as a whole seem to suggest that unborn children are not the only ones whose right to life is now legally unprotected. Thus, the proposed amendment explicitly extends its protections to all those whose physical or mental condition might make them especially vulnerable victims of the "new ethic."

Regarding the specific subject of abortion, section 2 makes an explicit exception for the life of the pregnant woman. There seems to be a widespread misimpression that pregnancy is a medically dangerous condition, when the truth of the matter is that under most circumstances a pregnant woman can deliver her child with minimal risk to her own life and health. There is, however, an exceedingly small class of pregnancies where continuation of pregnancy will cause the death of the woman. The most common example is the ectopic or tubal pregnancy. It is our intention to exempt this unique class of pregnancies, without opening the door to spurious claims of risk of death.

Under the amendment, there must be an emergency in which reasonable medical certainty exists that continuation of pregnancy will cause the death of the woman. This is designed to cover the legitimate emergency cases, such as the ectopic pregnancy, while closing the door to unethical physicians who in the past have been willing to sign statements attesting to risk of death when in fact none exists or when the prospect is so remote in time or circumstance as to be unrelated to the pregnancy. Contrary to the opinion of the Supreme Court, which assumes that pregnancy is a pathological state, modern obstetrical advances have succeeded in removing virtually every major medical risk once associated with pregnancy. As Dr. Alan Guttmacher himself remarked nearly a decade ago, modern obstetrical practice has eliminated almost all medical indications for abortion. In certain limited instances, however, a genuine threat to the woman's life remains, and it is felt that excepting such situations is compatible with longstanding moral custom and legal tradition.

Mr. President, there is today a broad and growing concern over the consequences of the Wade and Bolton decisions. Scarcely 4 months have passed since the Court's ruling, but already 10 States have petitioned the Congress to adopt an amendment to nullify their effect. They are Maine, North Dakota, South Dakota, Maryland, Utah, Indiana, Nebraska, Minnesota, New Jersey, and Idaho. Moreover, within a few days after the ruling, 17 States joined as amicus curiae in a petition filed by the State of Connecticut seeking, in effect, a reversal of Wade and Bolton. They were Arizona, California, Colorado, Georgia, Kentucky, Louisiana, Massachusetts, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Ohio, Rhode Island, Utah and West Virginia. Several States have refused to adopt new laws to conform with the dictates of the Supreme Court, their legislators being simply unwilling to bring themselves to ratify the Court's actions.

A number of constitutional amendments have already been introduced into the House of Representatives designed to restore protection to the unborn. One of these, the amendment introduced by Congressman LAWRENCE J. HOGAN of Maryland, has already drawn widespread national attention. It seems clear, in short, that the Supreme Court has done anything but "settle" the abortion issue, as some had hoped.

I therefore urge the Committee on the Judiciary to schedule early hearings on my proposed amendment, as well as the Hogan and other amendments which seek to restore the full protection of the law for human life at every stage of development from the time a distinct biologically identifiable human being first comes into existence.

I know there are those, Mr. President, who would argue that it would simply be a waste of time to schedule hearings on proposals for a human life amendment. It is continually being asserted these days that public opinion on the abortion issue has turned the corner, that the Supreme Court decisions in fact reflect current American acceptance of abortion-on-demand. Thus, it is argued, any serious attempt to enact a corrective constitutional amendment would be an exercise in futility.

Some polls have been cited in support of this contention, but these are refuted by the most detailed study of the matter made in recent months. I speak of the one conducted by the University of Michigan's Institute of Social Research last fall which found, among other things, that 58 percent of Americans continue to oppose liberalized abortion, as do a majority of non-Catholic Americans. I mention this last fact in passing, because so many today have "bought" the charge made by the proabortionists that only Roman Catholics today oppose what the Supreme Court has accomplished through judicial fiat. For the benefit of those, Mr. President, who may nevertheless feel that the impetus behind the antiabortion movement is exclusively Catholic, I ask unanimous consent that there be printed in the RECORD, at the conclusion of my remarks, as appendix C, excerpts from various non-Catholic sources affirming the rights of the unborn and condemning liberalized abortion. I also ask unanimous consent that an article in the April 17, 1973, issue of the Washington Star-News describing the University of Michigan study be printed in the RECORD at the conclusion of my remarks as appendix D.

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

(See appendix C and D.)

Mr. BUCKLEY. Mr. President, of much greater significance than this study, Mr. President, are the results of referendums last November in which the people of two States, Michigan and North Dakota, were asked to vote on the adoption of liberalized abortion laws. The issue was widely debated, and on election day the people spoke with a decisive voice. They voted to reject permissive abortion by a margin of 3 to 2 in the case of Michigan, and of 3 to 1 in the case of North Dakota.

These votes are of particular significance, because they indicate that the commitment of Americans to the traditional Judeo-Christian ethic is apt to be strengthened after the public has had the advantage of the intensive educational process that results from any actively debated issue. The voters of Michigan and North Dakota came to know the biological facts of human development. By the time they cast their ballots, they had absorbed a knowledge of the subject of abortion and of its implications that is shared today by too few Americans.

Mr. President, I profoundly believe that such popularity, as the idea of abortion as acquired, derives from the ability of the proponents of abortion to dissemble the true facts concerning the nature of unborn life and the true facts concerning what is actually involved in abortion. I further believe that when these facts are fully made known to the public, they will reject abortion save under the most exigent circumstances; that is, those in which the physical life of the mother is itself at stake. In recent weeks, in discussing this matter with friends and colleagues, I have found that, like many of the rest of us, they labor under certain misimpressions created by the proponents of permissive abortion. I, therefore, believe that it would be useful for me to call our colleagues' attention to clinical evidence upon these points.

First, I will quote a particularly felicitous description of the biological and physical character of the unborn child by Dr. A. W. Liley, research professor in fetal physiology at National Women's Hospital, Auckland, New Zealand, a man renowned throughout the world as one of the principal founders and masters of the relatively new field of fetology. Dr. Liley writes:

> In a world in which adults control power and purse, the fetus is at a disadvantage being small, naked, nameless and voiceless. He has no one except sympathetic adults to speak up for him and defend him—and equally no one except callous adults to condemn and attack him. Mr. Peter Stanley of Langham Street Clinic, Britain's largest and busiest private abortorium with nearly 7,000 abortions per year, can assure us that "under 28 weeks the foetus is so much garbage—there is no such thing as a living foetus." Dr. Bernard Nathanson, a prominent New York abortionist, can complain that it is difficult to get nurses to aid in abortions beyond the twelfth week because the nurses and often the doctors emotionally assume that a large foetus is more human than a small one. But when Stanley and Nathanson profit handsomely from abortion we can question their detachment because what is good for a doctor's pocket may not be best for mother or baby.
>
> Biologically, at no stage can we subscribe to the view that the foetus is a mere appendage of the mother. Genetically mother and baby are separate individuals from conception. Physiologically, we must accept that the conceptus is, in very large measure, in charge of the pregnancy, in command of his own environment and destiny with a tenacious purpose.
>
> It is the early embryo who stops mother's periods and proceeds to induce all manner of changes in maternal physiology to make his mother a suitable host for him. Although women speak of their waters breaking or their membranes rupturing, these structures belong to the foetus and he regulates his own amniotic fluid volume. It is the foetus who is responsible for the immunological success of pregnancy—the dazzling achievement by which foetus and mother, although immunological foreigners, tolerate each other in parabiosis for nine months. And finally it is the foetus, not the mother, who decides when labour should be initiated.
>
> One hour after the sperm has penetrated the ovum, the nuclei of the two cells have fused and the genetic instructions from one parent have met the complementary instructions from the other parent to establish the whole design, the inheritance of a new person. The one cell divides into two, the two into four and so on while over a span of 7 or 8 days this ball of cells traverses the Fallopian tube to reach the uterus. On reaching the uterus, this young individual implants in the spongy lining and with a display of physiological power suppresses his mother's menstrual period. This is his home for the next 270 days and to make it habitable the embryo develops a placenta and a protective capsule of fluid for himself. By 25 days the developing heart starts beating, the first strokes of a pump that will make 3,000 million beats in a lifetime. By 30 days and just 2 weeks past mother's first missed period, the baby, ¼ inch long, has a brain of unmistakable human proportions, eyes, ears, mouth, kidneys, liver and umbilical cord and a heart pumping blood he has made himself. By 45 days, about the time of mother's second missed period, the baby's skeleton is complete, in cartilage not bone, the buds of the milk teeth appear and he makes his first movements of his limbs and body—although it will be another 12 weeks before mother notices movements. By 63 days he will grasp an object placed in his palm and can make a fist.
>
> Most of our studies of foetal behavior have been made later in pregnancy, partly because we lack techniques for investigation earlier and partly because it is only the exigencies of late pregnancy which provide us with opportunities to invade the privacy of the foetus. We know that he moves with a delightful easy grace in his buoyant world, that foetal comfort determines foetal position. He is responsive to pain and touch and cold and sound and light. He drinks his amniotic fluid, more if it is artifically sweetened and less if it is given an unpleasant taste. He gets hiccups and sucks his thumb. He wakes and sleeps. He gets bored with repetitive signals but can be taught to be alerted by a first signal for a second different one. Despite all that has been written by poets and song writers, we believe babies cry at birth because they have been hurt. In all the discussions that have taken place on pain relief in labour only the pain of mothers has been considered—no one has bothered to think of the baby.
>
> This then is the foetus we know and indeed each once were. This is the foetus we look after in modern obstetrics, the same baby we are caring for before and after birth, who before birth can be ill and need diagnosis and treatment just like any other patient. This is also the foetus whose existence and identity must be so callously ignored or energetically denied by advocates of abortion.

For those who seek further information on the points raised by Dr. Liley, I would refer them to the detailed description of the unborn child contained in the brief filed as amicus curiae by more than 200 members of the American College of Obstetrics and Gynecology. Mr. President, I ask unanimous consent that the relevant portions of that brief be printed at the conclusion of my remarks as appendix E.

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

(See appendix E.)

Mr. BUCKLEY. Mr. President, finally, for the benefit of those who wish to learn

what is actually involved in abortion procedures, I ask unanimous consent that there be provided at the conclusion of my remarks, as appendix F, a recent paper by Dr. Joseph Stanton, M.D., entitled "Abortion—Death Before Birth." Dr. Stanton is associate clinical professor of medicine at Tufts Medical School.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. (See appendix F.)

Mr. BUCKLEY. So much, Mr. President, for the scientific facts of prenatal life and for the techniques now used to destroy it. They illuminate the true nature of the distinctions we are asked to make in the name of a "new ethic." I urge my colleagues to study these facts with special care in the light of the truly radical implications for our society of the Supreme Court decisions. I ask them to keep in mind that the American people were not consulted before seven justices of the Supreme Court took it upon themselves to overturn a commitment to the sanctity of human life that has been central to our civilization for more than 2,000 years. I urge them to understand that if—as I profoundly believe—a majority of the American people continue to believe in the old ethic, they have no effective recourse except through the amendatory process. I believe, at the very least, we have a duty to give consideration of a human life amendment our highest priority.

Mr. President, one final note, if I may. Opponents of abortion are frequently characterized as being indifferent or callous toward the plight of women with what are called problem pregnancies—such as the pregnant, unwed teenager, or the woman who conceives an unplanned child. I believe such a characterization to be wholly unwarranted. To oppose abortion—save the mother's life is at stake—is by no means to be indifferent to the problems of pregnant women. It is our belief that abortion is in fact a spurious remedy to the problem pregnancy. The substantial medical risks attending abortion, the well-documented psychological trauma which accompanies the destruction of a child in utero, the continuing possibility of repeated problem pregnancies throughout the rest of a fertile woman's life—all these factors suggest that ethical considerations aside, abortion is a superficial and highly dangerous nonsolution to what is admittedly a most serious problem.

I profoundly believe that opponents of abortion have a positive obligation to assist pregnant women who are troubled. The private sector has already produced a number of organizations whose central purpose it is to provide counseling and medical assistance to pregnant women, as well as for the placement of any child who after birth is still unwanted. The most prominent organization of this type is called Birthright, with chapters in many cities and towns across the land. I fully endorse these efforts to provide truly humanitarian assistance to those in need, and I intend to assist their growth in whatever ways I can.

Mr. President, I have spoken at some length because I consider this issue to be of paramount importance. As we stand here on this day, quite literally thousands of unborn children will be sacrificed before the sun sets in the name of the new ethic. Such a situation cannot continue indefinitely without doing irreparable damage to the most cherished principles of humanity and to the moral sensibilities of our people. The issue at stake is not only what we do to unborn children, but what we do to ourselves by permitting them to be killed. With every day that passes, we run the risk of stumbling, willy-nilly, down the path that leads inexorably to the devaluation of all stages of human life, born or unborn. But a few short years ago, a moderate liberalization of abortion was being urged upon us. The most grievous hypothetical circumstances were cast before us to justify giving in a little bit here, a little bit there; and step by step, with the inevitability of gradualness, we were led to the point where, now, we no longer have any valid legal constraints on abortion.

What kind of society is it that will abide this sort of senseless destruction? What kind of people are we that can tolerate this mass extermination? What kind of Constitution is it that can elevate this sort of conduct to the level of a sacrosanct right, presumptively endowed with the blessings of the Founding Fathers, who looked to the laws of nature and of nature's God as the foundation of this Nation?

Abortion, which was once universally condemned in the Western World as a heinous moral and legal offense, is now presented to us as not only a necessary, sometime evil, but as a morally and socially beneficial act. The Christian counsel of perfection which teaches that the greatest love consists in laying down one's life for one's friend, has now become, it seems, an injunction to take another's life for the security and comfort of one's own. Men who one day argue against the killing of innocent human life in war will be found the next arguing in praise of killing innocent human life in the womb. Doctors foresworn to apply the healing arts to save life now dedicate themselves and their skills to the destruction of life.

To enter the world of abortion on request, Mr. President, is to enter a world that is upside down. It is a world in which black becomes white, and right wrong, a world in which the powerful are authorized to destroy the weak and defenseless, a world in which the child's natural protector, his own mother, becomes the very agent of his destruction.

Mr. President, I urge my colleagues to join me in protecting the lives of all human beings, born and unborn, for their sake, for our own sake, for the sake of our children, and for the sake of all those who may someday become the victims of the new ethic.

APPENDIX A

[In the Supreme Court of the United States, October Term, 1972—No. 72-434]

MOTION TO POSTPONE JURISDICTION UNTIL A HEARING ON THE MERITS

On Appeal From the Court of Appeals of the State of New York

(Robert M. Byrn, as Guardian ad Litem for Infant Roe, an unborn child of less than 24 weeks gestation, whose life is about to be terminated by induced abortion at a municipal hospital of New York City Health & Hospitals Corporation, etc., *Appellant,* versus New York City Health & Hospitals Corporation, Jan Roe and John Roe, parents of said unborn Infant Roe, whose true names are presently unknown, the Hon. Louis J. Lefkowitz, Atty. General of the State of New York, *Appellees,* and Ruth Charney, *et al., Interveners-Appellees*)

Appellant respectfully moves that the Court postpone determination of the question of jurisdiction and of the motions pending before the Court to affirm or dismiss appellant's appeal until a hearing of the case on the merits.

Appellant is the court-appointed guardian *ad litem* for a continuing class of unborn children scheduled for abortion in the municipal hospitals of appellee, New York City Health & Hospitals Corporation. On behalf of his wards, appellant challenged the constitutionality of New York's Elective Abortion Law (New York Penal Law, Sec. 125.05, subdiv. 3); the New York Court of Appeals upheld the validity of the Law, and granted final judgment on the merits to appellees. Appellant's appeal to this Court was docketed on September 14, 1972.[1]

On January 22, 1973, this Court struck down antiabortion statutes in Texas and Georgia in *Roe* v. *Wade,* No. 70–18 (hereinafter "Wade") and *Doe* v. *Bolton,* No. 70–40 (hereinafter "Bolton"). Although unborn children were not parties in either *Wade* or *Bolton,* the opinions of the Court raise doubts affecting the determination of jurisdiction in the instant appeal. The standing or right of appellant's wards to a hearing is inextricably intertwined with the merits of their case (Juris. State., pp. 38a–39a, 65a). That being so, there must not be a prejudgment that the guardian may not be heard because his wards are non-persons. Since jurisdiction in the case at bar depends on the ultimate resolution of that issue, for the reasons hereinafter set forth, determination of jurisdiction should not be made until after a full hearing on the merits.

GROUNDS FOR THE MOTION

I. *Wade* and *Bolton* are neither controlling nor persuasive as to the claims of right of appellant's wards:

A. Unborn children were not parties, individually or as a class, in *Wade* and *Bolton* and those cases are not *res judicata* as to their rights and status. (See, *infra,* IA).

B. *Wade* and *Bolton* contain fundamental errors with respect to crucial issues upon which appellant had previously briefed the Court. Appellant's arguments were not answered in *Wade* and *Bolton.* (See, *infra,* IB).

II. *Fundamental fairness* requires that before an entire class of living human beings be deprived of the protection of law, their claims of right be heard. (See, *infra,* II).

III. *Wade* and *Bolton* contain dangerous implications which threaten the continued viability of the Due Process and Equal Protection clauses of the Fourteenth Amendment wherein the claims of right of appellant's wards are rooted. (See, *infra,* III).

The holding in Wade and Bolton does not affect the right of absent parties, including appellant's wards, to a hearing on the merits before this Court on their federal constitutional rights.

The opinions of the Court in *Wade* and *Bolton* are not decisive of the instant appeal because unborn children were not parties in either case and no guardian was before the Court to represent their interests. *Griswold* v. *Connecticut* is not to the contrary. In that case, this Court recognized the standing of the Planned Parenthood League of Connecticut and a physician to raise the constitutional rights of married people with whom they had a professional relationship. *Griswold* v. *Connecticut,* 381 U.S. 479 (1965).

Footnotes at end of article.

However, *Griswold* involved a defense to a criminal prosecution and this Court noted that if declaratory relief were sought "the requirements of standing should be strict, lest the standards of 'case or controversy' in Article III of the Constitution become blurred." 381 U.S. 479, 481. It seems clear that a decision in *Griswold* adverse to the constitutional rights of those married people (who were not parties) would *not* be *res judicata* in any pending or subsequent suit by married people to assert and vindicate their rights. *Hansberry* v. *Lee*, 311 U.S. 32, 40 (1940).

In *Wade*, the constitutional rights of unborn children were raised by the Texas Attorney General to support Texas' compelling interest in its anti-abortion statute.[2] The Attorney General argued that the question as to when human life begins was unanswerable and best left to the legislature.[3] But the issue before this Court is not when human life begins. It is recognition of the constitutional fact that at the time an abortional decision is executed, death is inflicted, not on potential human life, but on an individual human life with all its potential, that has already begun.

In all, thirteen judges in New York passed on the merits of appellant's case. Although divided in their decisions on the legal issues, on the factual issue of the individual humanity of the unborn child, they found, on an unchallenged—indeed conceded—factual record of expert evidence, that each of appellant's wards is a "live human being" (Queens County Supreme Court, Juris. State., p. 68a), a "child [with] a separate life" (Appellate Division, Second Department, Juris. State., p. 41a, 38 A.D. 2d 316, 324, 329 N.Y.S. 2d 722, 729 [1972]), a "human" who is "unquestionably alive" and "has an autonomy of development and character" (N.Y. Court of Appeals, Juris. State., p. 10a, 31 N.Y. 2d 194, 199, 335 N.Y.S. 2d 390, 392, 286 N.E. 2d 887, 888 [1972]).

It cannot be said that the Texas Attorney General stood in substantially the same position as the class of unborn children whose rights he purported to assert. Clearly he is not a member of the class and he cannot adequately represent the class. *Hansberry* v. *Lee*, 311 U.S. 32, 41, 43. As a public official, his interest is ever subject to the vagaries of legislative action and potentially in conflict with the interests of the unborn child. Appellant-guardian asserts that the interests and nature of the unborn child constitutionally mandate state protection—a position an attorney general, jealous of state's rights, could hardly sponsor. The potentially conflicting interests of State Attorney Generals is clearly illustrated by the recent history of abortion in New York. In 1969, the Attorney General of the State of New York asserted the interests of the unborn child in supporting a law which permitted abortions only when necessary to preserve the life of the mother. *Hall* v. *Lefkowitz*, U.S.D.C., So. Dist. N.Y., 305 Fed. Supp. 1030 (1969). As appellee herein, he now supports New York's elective abortion law which subordinates the lives of appellant's wards to the unfettered discretion of pregnant women and their doctors. A party possessing such potentially conflicting interests cannot represent the fundamental personal interests of an absent party or fairly insure their protection. *Hansberry* v. *Lee*, 311 U.S. 32, 44, 45. Wright and Miller, *Federal Practice and Procedure*, Vol. 7A, No. 1789 at pp. 178–9. Mr. Justice White writing for the Court in *Blonder-Tongue Labs.* v. *University Foundation*, squarely stated the governing principle in these words:

"Some litigants—those who never appeared in a prior action—may not be collaterally estopped without litigating the issue. They have never had a chance to present their evidence and arguments on the claim. Due process prohibits estopping them despite one or more existing adjudications of the identical issue which stand squarely against their position." 402 U.S. 313, 329 (1971).

I(B). THE FUNDAMENTAL ERRORS

The Court in *Wade* erred at the threshold when it declined to resolve the crucial question of whether abortion as a matter of fact kills a live human being, even though this is a fact upon which constitutional issues rest (page 15, *infra*). This fundamental error was evidently caused by the Court's misapprehension of the common law of abortion (page 8, *infra*) and the motivation behind early American anti-abortion statutes (page 10, *infra*) which led the Court to ignore the intent of the Framers of the Fourteenth Amendment: to bring within the aegis of the Due Process and Equal Protection Clauses every member of the human race regardless of age, stage or condition of wantedness (page 14, *infra*). The Court left itself without any reliable historical basis for its constitutional interpretation with the result that the Court both omitted to allude to its own prior interpretation of "person" under Section One of the Fourteenth Amendment (page 17, *infra*), and mistook the general status in law of unborn children (page 17, *infra*). Instead, the Court adverted to a number of criteria which it erroneously interpreted as proof that the unborn child is not a person under Section One of the Fourteenth Amendment (pages 19–23, *infra*).

The threshold error is the crucial error. As appellant demonstrates in this motion, the claims of constitutional right of appellant's wards turn on the issue of whether they are all live human beings. When the personal constitutional rights of a party depend on a fact in controversy, the duty rests upon this Court to resolve the fact in controversy for itself. *Napue* v. *Illinois*, 360 U.S. 264, 272 (1959). The Court cannot abdicate that duty without sapping its authority as fact-finder, judge and ultimate arbiter of federal rights.

Referring to another question of life-or-death import, Mr. Justice Marshall observed, "While this fact cannot affect our ultimate decision, it necessitates that the decision be free from any possibility of error" *Furman* v. *Georgia*, 408 U.S. 238, 316 (1972). *Wade* and *Bolton* are not free from error.

1. The historical errors

(a.) *Apparent acceptance of the pro-abortionist thesis that abortion was not a crime at common law (Wade, p. 21),[4] and may even have been a "right" (Wade, p. 25), when Appellant had previously briefed the Court on the better view of history which is to the contrary.* Apparently relying on a single law review article, the Court in *Wade* concluded that it is "doubtful that abortion was ever firmly established as a common law crime even with respect to the destruction of a quick fetus." (*Wade*, pp. 20–21)

The Court is in error. Appellant has briefed the Court extensively on the common law history of abortion (Appellant's Brief, pp. A–8 to A–24). Appellant's Brief shows (i) that at least from Bracton's time onward, the common law sought ways to protect the unborn child from abortion from the moment his existence as a separate, live, biological human being could be scientifically demonstrated; (ii) that problems of proving that the unborn child had been alive when the abortional act was committed and that the abortion had been the cause of the child's death were, in the early law, considered insuperable barriers to prosecution; (iii) that thereafter quickening evolved in the law, not as a substantive judgment on when human life begins, but as an evidentiary device to prove that the abortional act had been an assault on a live human being; (iv) that outside the criminal law, the common law, unburdened of problems of proof, regarded the unborn child as in all respects a human being;[5] (v) that abortion after quickening, though a crime, was not homicide at common law (unless the child were born alive and then died) only because of the difficulty of proving that the abortional act had been the cause of the child's death; (vi) that the liability of the abortionist to a murder conviction, if the aborted child were born alive and then died, establishes that the unborn child was in law a person prior to birth because the common law defined crime as "generally constituted only from concurrence of an evil-meaning mind with an evil-doing hand" (*Morissette* v. *U.S.*, 342 U.S. 246, 251–52 [1952]), and the rule of concurrence means necessarily that the intrauterine victim of the abortional act was at the time of the act a human person, else the result could not be called murder; (vii) that problems of proof aside, abortion at any stage of pregnancy was considered *malum in se*, a secular crime against unborn human life, as evidenced by the application of the common law felony-murder rule to the death of the aborted woman (even prior to quickening)[6]—the theory being "that at common law the act of producing an abortion was always an assault for the double reason that a woman was not deemed able to assent to an unlawful act against herself, and for the further reason that *she was incapable of consenting to the murder of an unborn infant* * * *." *State* v. *Farnum*, 82 Ore. 211, 161 Pac. 417, 419 (1916) (emphasis added) (Motion for a Stay, pp. 7a–8a); (viii) that the application of the felony-murder rule to abortion belies the Court's statement in *Wade* that "abortion was viewed with less disfavor than under most American statutes currently in effect," (*Wade*, p. 25);[7] (ix) that in the face of the abortion-murder rule and the general medical disapproval of abortion, it cannot be assumed that "throughout the major portion of the 19th century prevailing legal abortion practices were far freer than they are today * * *." (*Wade*, p. 43), and finally, (x) that the common law is totally consistent with the claims of right of appellant's wards herein.

(b.) *Apparent acceptance of the pro-abortionist thesis that 19th century anti-abortion legislation was intended solely to protect the pregnant woman (Wade, p. 36, citing only one case), when Appellant had previously briefed the Court on the overwhelming majority of State court decisions to the contrary.* The 19th century American anti-abortion legislation is a continuum of the efforts of the common law to protect the unborn child from abortion from the moment his existence as a separate, live, biological human being could be scientifically demonstrated.

The Court in *Wade* asserts that the American Medical Association's outcries against abortion, spanning the years 1859–1871, "may have played a significant role in the enactment of stringent criminal abortion legislation during that period." (*Wade*, p. 26).[8] Yet while so admitting, the Court concludes that "the few state courts called upon to interpret their laws in the late 19th and early 20th centuries focused on the State's interest in protecting the woman's health rather than in preserving the embryo and fetus." (*Wade*, p. 36, citing only *State* v. *Murphy*, 27 N.J.L. 112, 114 [1858]). It is inconceivable that appellant's wards should be bound by such a finding when appellant has heretofore briefed the Court on:

(1) the amendment of the New Jersey abortion statute in 1972 designed "to protect the life of the child also, and inflict the same punishment, in case of its death, as if the mother should die." *State* v. *Gedicke*, 43 N.J.L. 86, 90 (1881). (Motion for a Stay, pp. 4a–6a).

(2) decisions from ten other states—all of which were rendered prior to the abortion "reform" movement of the 1960's (six prior to 1920, three between 1930 and 1940, and one in 1950)—which explicitly state that protection of the life of the unborn child was at least one of the purposes of the re-

Footnotes at end of article.

spective States' 19th century anti-abortion statutes. (Appendix A)*.

(3) decisions and statutes from nine other States (only one of the key decisions being later than 1907) which clearly imply the same intent. (Appendix A).[9]

(4) the better interpretation of early New York anti-abortion statutes as having as at least one of their purposes the protection of unborn children (in refutation of one of the law review articles upon which the Court relied) (Appellant's Brief, pp. (A29–A37).

Further, appellant submits that it is inconsistent for the Court in *Wade*, on the one hand, to admit that the A.M.A. statements may have influenced the passage of restrictive abortion legislation, and on the other hand, to find, in effect, that the Framers of the Fourteenth Amendment acted in defiance of both the 1859 A.M.A. statement and State legislation and deliberately created an unarticulated right of privacy which included the right to kill unborn children whom the Framers intended to exclude from Fourteenth Amendment protection. If that had been the intent of the Framers, one could hardly imagine three quarters of the State Legislatures ratifying the amendment while they were at the same time contemplating (or had already enacted) restrictive abortion legislation designed to protect unborn human children—especially if such legislation was the product of the A.M.A. statements cited by the Court. Then too, what evidence is there that the Framers did not share "[t]he anti-abortion mood prevalent in this country in the late 19th century * * *" (*Wade*, p. 26)?

Statutory law, common law and the prevalent mood converged in an Iowa case decided in 1868, the year in which the Fourteenth Amendment was ratified. *State* v. *Moore*, 25 Iowa 128 (1868) (Motion for a Stay, pp. 10a–11a), affirmed a conviction of murder for causing the death of a woman by an illegal abortion. The trial court had charged the jury:

"To attempt to produce a miscarriage, except when in proper professional judgment it is necessary to preserve the life of the woman, is an unlawful act. *It is known to be a dangerous act, generally producing one and sometimes two deaths—I mean the death of the unborn infant and the death of the mother.* Now, the person who does this is guilty of doing an unlawful act. If the death of the woman does not ensue from it, he is liable to fine and imprisonment in the county jail (act March 15, 1858, Revision, sec. 4221); and if the death of the woman does ensue from it, though there be no specific intention to take her life, he becomes guilty of the crime of murder in the second degree. The guilt has its origin, in such cases, in the unlawful act which the party designs to commit, and if the loss of life attend it as incident or consequence, the crime and guilt of murder will attach to the party committing such an unlawful act." 25 Iowa at 131–32 (emphasis added).

In upholding the charge, the Iowa court said: "We have quoted the court's language in order to say that it has our approval as being a correct statement of the law of the land." 25 Iowa at 132.

and further: *"The common law is distinguished, and is to be commended, for its all-embracing and salutary solicitude for the sacredness of human life and the personal safety of every human being. This protecting, paternal care, enveloping every individual like the air he breathes, not only extends to persons actually born, but, for some purposes, to infants in ventre sa mere:* 1 Bla. Com. 129.

The right to life and to personal safety is not only sacred in the estimation of the common law, but it is inalienable. It is no defense to the defendant that the abortion was procured with the consent of the deceased.

The common law stands as a general guardian holding its aegis to protect the life of all. Any theory which robs the law of this salutary power is not likely to meet with favor." 25 Iowa at 135–36 (emphasis added).

Although the abortion in *State* v. *Moore* occurred after quickening, "no mention is made of the fact in the opinion," *State* v. *Harris*, 90 Kan. 807, 136 Pac. 264, 266 (1913), and the court was obviously speaking of the "sacred" and "inalienable" right to live of *all* unborn children.

(c) *Omission to allude to the recorded statements of intent of the Fourteenth Amendment Framers.* Unfortunately, the Court's errors in *Wade* are cumulative. Having been led astray on the common law and the motivation for 19th century anti-abortion legislation, the Court apparently (and, as it turns out, erroneously) felt that it could safely expound the status of the unborn child under the Fourteenth Amendment without reference to the intent of the Framers.

Fortunately we need not guess at the Framers' intent. It was to protect every live human being regardless of age, stage, or condition of wantedness. Congressman John A. Bingham who sponsored the Amendment in the House of Representatives noted that it is "universal" and applies to "any human being" (Appellant's Brief, p. 38). Congressman Bingham's counterpart in the Senate, Senator Jacob Howard, emphasized that the guarantee of equality in the Amendment protects "the humblest, the poorest, the most despised of the race." (*Id.*)

Appellant submits that it was error for the Court to expound the status of unborn children under the Fourteenth Amendment without reference to the expressed intent of the Framers, as further illuminated by the better view of the common law, the real motivation for the 19th century statutes, and the prevalent mood of the time—that the life of every unborn child is "sacred" and "inalienable." *State* v. *Moore, supra;* A.M.A. Statements, *supra.*

2. The errors on the questions of human life and human-legal person

(a) *Failure to resolve the threshold question of fact of whether an abortion kills a live human being.* The Framers intended that every life human being, every member of the human race, even the most unwanted, fall within the aegis of the Due Process and Equal Protection Clauses. History does not support the proposition that the Framers intended to exclude unborn children. The Court observed in *Wade* that "We need not resolve the difficult question of when life begins." (*Wade*, p. 44). But the Court erred at the threshold when it failed to determine whether an individual human life has already begun before an abortion takes place. That was precisely the constitutional fact to be resolved by the Court before it could even address itself to the rights of unborn children. "There is a long line of judicial construction which establishes as a principle that the duty rests on the court to decide for itself facts or constructions upon which federal constitutional issues rest." *Napue* v. *Illinois*, 360 U.S. 264, 272 (1949). (Appellant's Brief, pp. 7–8). What is at issue in the instant appeal is not a "theory of life" (cf. *Wade*, p. 47), but the "fact of life." The lack of "consensus" among those trained in the respective disciplines of medicine, philosophy, and theology" (*Wade*, p. 44) is not a lack of consensus on the fact of the existence of human life before birth—that is established beyond cavil by the unchallenged biological-medical-genetic-fetological evidence in the case at bar—but on the value of a human life already in existence.[10] That value judgment was made over one hundred years ago, on a constitutional level, and as a matter of binding law, by the Framers of the Fourteenth Amendment. A "consensus" is not relevant. "One's right to life * * * depend[s] on the outcome of no elections." *West Virginia State Board of Education* v. *Barnette*, 319 U.S. 624, 638 (1943). (Appellant's Brief, p. 44)

The Court in *Wade* erroneously omitted to resolve the threshold issue of fact—that abortion kills a live human being—which is, by virtue of the statements of intent of the Framers, a fact upon which constitutional issues rest.

(b.) *Failure to advert to the Court's own explication of "person" as that term is used in Section One of the Fourteenth Amendment.* Heretofore, the Court's explication of "person" in Section One of the Fourteenth Amendment has been consistent with the intent of the Framers. In *Levy* v. *Louisiana*, 391 U.S. 68, 70 (1968), the Court identified such persons as those who "are humans, live and have their being." By rational, modern, biological-genetic-medical-fetological standards, Appellants wards are humans, live and have their being. (See page 5, *supra,* and see Appellants Brief, pp. 8–19). It is this evidence, not personal or legislative predilection, that controls. "To say that the test of equal protection should be the 'legal' rather than the biological relationship is to avoid the issue. For the Equal Protection Clause necessarily limits the authority of a State to draw such 'legal' lines as it chooses." *Glona* v. *American Guarantee Co.*, 391 U.S. 73, 75–76 (1968). (Appellant's Brief, pp. 33–36)

(c.) *That statement that, "In areas other than criminal abortion the law has been reluctant to endorse any theory that life, as we recognize it, begins before birth or to accord legal rights to the unborn except in narrowly defined situations when the rights are contingent upon live birth."* (*Wade*, p. 46). The Court erred. Appellant has heretofore briefed the Court on cases in which an unwilling pregnant woman was required to submit to a blood transfusion, despite her religious objections, because "the unborn child is *entitled* to the law's protection." (Appellant's Brief, pp. 21–30, citing, *inter alia, Raleigh Fitkin-Paul Morgan Memorial Hospital* v. *Anderson*, 42 N.J. 421, 201 A.2d 537, 538, *cert. den.*, 377 U.S. 985 [1964], emphasis added). Obviously, the unborn children in these cases were recognized as human persons before birth—only persons are "entitled" to the law's protection—and just as obviously, their rights were not contingent upon birth.

The common law regarded the unborn child as a live human being in all situations except that in the criminal law problems of proof gave rise to the quickening dichotomy. *Hall* v. *Hancock, supra.* The "traditional rule of tort law" that "denied recovery for prenatal injuries even though the child was born alive," (*Wade*, p. 46) is no tradition at all. It was first promulgated in 1884 (*Dietrich* v. *Inhabitants of Northampton*, 138 Mass. 14); it was severely criticized in a scholarly New York Law Revision Commission Study for its misunderstanding of law and science (*Communication of the Law Revision Commission to the Legislature Relating to Prenatal Injuries* 5–6, 24–25 [1935], reprinted in Law Revision Commission: Report, Recommendations and Studies, 449, 453–54, 472–73 [1935]; it was totally discredited in 1946 on the ground that, "From the viewpoint of the civil law and the law of property, a child *en ventre sa mere is* not only regarded as [a] human being, but as such from the moment of conception—which it is in fact," (*Bonbrest* v. *Kotz*, 65 F. Supp. 138, 140 [D.D.C.]); and it is now in all but total disrepute. (Appellant's Brief, p. 36)

The whole thrust in the law, outside the abortion "reform" movement, is to recognize the unborn child for exactly what he is—a live human being.

3. The errors in the interpretation of criteria purportedly negativing the personhood of unborn children

(a.) *The statement that "appellee conceded on reargument that no case could be cited*

Footnotes at end of article.

that holds that a fetus is a person within the meaning of the Fourteenth Amendment." (*Wade*, p. 41, footnote omitted). Appellant herein would make two observations:

First, the inability of appellee in *Wade* to cite a case in answer to a question does not mean that the case does not exist, nor can it govern the rights of appellant's wards herein. Appellant has cited to the Court the statement in *Steinberg* v. *Brown*, 321 F.Supp. 741, 746–47 (N.D. Ohio 1970) that, "Once human life has commenced, the constitutional protection found in the Fifth and Fourteenth Amendments impose upon the state the duty of safeguarding it." (Appellant's Brief, p. 5) (Of course an attempt *might* be made to denigrate the *Steinberg* statement as *dictum* and not holding, but this hardly seems relevant in the context of the Court's question in *Wade*.) Appellant has also called to the Court's attention statements in *State* v. *Moore*, 25 Iowa 128 (1868) (Motion for a Stay, pp. 10a–11a); *People* v. *Sessions*, 58 Mich. 594, 26 N.W. 291 (1885) (Appellant's Brief, p. A–17; Motion for a Stay, pp. 13a–14a), and *Gleitman* v. *Gosgrove*, 49 N.J. 22, 227 A.2d 689 (1967) (Appellant's Brief, pp. 65–66) which, in paraphrase of the Declaration of Independence, characterize the lives of unborn children of all gestational ages as "sacred" and "inalienable." The Constitution incorporates the basic guarantees of the Declaration (Appellant's Brief, p. 68). Unless we are to assume that the Framers of the Fourteenth Amendment intended to strip live human beings of their sacred and inalienable right to live, *Moore*, *Sessions* and *Gleitman* must be interpreted as holding that appellant's wards are persons under Section One of the Fourteenth Amendment. Appellant has also cited to the Court the cases requiring a pregnant woman to undergo a blood transfusion because the unborn child is "entitled" to the law's protection. Only human persons are "entitled" to the law's protection, and the blood transfusion cases must be taken as decisions of Fourteenth Amendment significance.

Second, the absence of any such decision should not be influential. As Mr. Justice Brennan stated in another life-or-death context, "The constitutionality of death itself under the Cruel and Unusual Punishments clause is before this Court for the first time; we cannot avoid the question by recalling past cases that never directly considered it." *Furman* v. *Georgia*, 408 U.S. 238, 285 (1972).

(b.) *The statement that, "We are not aware that in the taking of any census under this clause, a fetus has ever been counted."* (*Wade*, p. 42, note 53). Appellant submits that corporations are not counted in a census either, but they too are Fourteenth Amendment persons (discussed under a separate point heading in Appellant's Brief, p. 49).

(c.) *The statement that, "When Texas urges that a fetus is entitled to Fourteenth Amendment protection as a person, it faces a dilemma. Neither in Texas nor in any other States are all abortions prohibited."* (*Wade*, p. 42, note 54). Appellant has discussed the relevant doctrine of legal necessity (which applies to postnatal as well as prenatal human beings) under a separate point heading at pages 52–54 of Appellant's Brief.

(d.) *The statement that, "Further, the penalty for criminal abortion specified by Art. 1195 is significantly less than the maximum penalty for murder prescribed by Art. 1257 of the Texas Penal Code. If the fetus is a person, may the penalties be different?"* (*Wade*, pp. 42–43, note 54). Indeed, the penalties may be and are different because States are free to recognize "degrees of evil" and treat offenders accordingly. *Skinner* v. *Oklahoma*, 316 U.S. 535, 540 (1942). Killing an unborn child may, in legislative judgment, involve less personal malice than killing a child after birth even though the result is the same (discussed under a separate point heading in Appellant's Brief, pp. 50–51).

(e.) *The statement that, "It has already been pointed out, n. 49, supra, that in Texas the woman is not a principal or an accomplice with respect to an abortion upon her."* (*Wade*, p. 42, note 54). The reasons appear to be historical and pragmatic, and totally unrelated to the personhood of the unborn child. *Historically*, abortion was viewed as an assault upon the woman because she "was not deemed able to assent to an unlawful act against herself," *State* v. *Farnum*, 82 Ore. 211, 161 Pac. 417, 419 (1916). As a result the woman was considered a victim rather than a perpetrator of the abortion.[11] *Pragmatically*, conviction of the abortionist would frequently depend upon the testimony of the aborted woman, especially if a subjective element like quickening were at issue. The woman could hardly be expected to testify if her testimony automatically incriminated her. *People v. Nixon*, —— Mich. App. ——, 201 N.W. 2d 635, 645–46 (Mich. 1972, concurring and dissenting opinion of Burns, J.). The omission to incriminate the woman is no more than a statutory grant of immunity.

(f.) *The statement that, "Montana* v. *Rogers, 278 F.2d 68, 72 (CA 7 1960), aff'd sub nom. Montana v. Kennedy, 366 U.S. 308 (1961)" "is in accord" with the proposition "that the word 'person' as used in the Fourteenth Amendment, does not include the unborn."* (*Wade*, p. 43, footnote omitted.) *Montana* was decided under the Citizenship Clause, not the Due Process and Equal Protection Clauses, and is therefore irrelevant (discussed under a separate point heading in Appellant's Brief, pp. 49–50, and see *Byrn* v. *N.Y.C. Health & Hospitals Corp.*, 38 A.D. 2d 316, 329, 329 N.Y.S.2d 722, 734 [1972]).

(g.) *The statement that "Keeler v. Superior Court, ——Cal.——, 470 P.2d 617 (1970) and State* v. *Dickinson, 23 Ohio App. 2d 259, 275 N.E.2d 599 (1970)" are "in accord with" the proposition "that the word 'person,' as used in the Fourteenth Amendment, does not include the unborn."* (*Wade*, p. 43, footnote omitted). Neither *Dickinson* nor *Keeler* was an abortion case. Under a separate point heading in Appellant's Brief, pages 54–55, three reasons are given why the cases are both irrelevant to the instant appeal and correct on their facts. Appellant will not repeat the reasons here.

None of the seven negative criteria cited by the Court (pages 19 through 22, *supra*) supports a finding that the unborn child is not a person under Section One of the Fourteenth Amendment.

* * * * *

In previous papers submitted to the Court on the instant appeal, appellant has provided the answer to virtually every erroneous proposition advanced by the Court in *Wade*. Appellant submits that fundamental fairness requires that the claims of right of appellant's wards not be summarily dismissed on the basis of precedent containing these fundamental errors; rather appellant ought to be accorded a full hearing on the merits.

II. FUNDAMENTAL FAIRNESS REQUIRES A HEARING.

The constitutional right of life of unborn children was not, and could not, be "inferentially determined in *Vuitch*," (*Wade*, p. 43) and should not be determined by *obiter* in *Wade* and *Bolton*. If the Court should dismiss the instant appeal on the authority of *Wade* and *Bolton*, unborn children, including appellant's wards, will be left rightless without ever having been heard. Such a holding would lower a judicial iron curtain in every court in the nation against the future standing of unborn children to claim protection for their lives. A judicial holding that condemns an entire class of live human beings to oblivion without a hearing is lacking in the fundamental fairness that is the very foundation of due process.

The crucial constitutional fact before the Court is not when life begins but recognition that an individual human life has begun before the abortion takes place. At least for purposes of postponing jurisdiction until after a hearing on the merits, that fact is as worthy of judicial notice as the notice taken by the Court of "the normal 266-day human gestation period" (*Wade*, p. 10) for purposes of giving standing to *Roe*.

Byrn is the only case that directly presents the voice of unborn children, themselves, to the Court. It is certainly not an ordinary case. It is a case of first impression presenting a constitutional issue of great magnitude—the extent to which human life itself is protected under the Constitution. The Court has indicated its awareness "of the well known facts of fetal development" (*Wade*, p. 41), and knows that ova, sperm and zygotes are not being aborted under New York's Elective Abortion Law. No troublesome judicial notice need be taken in *Byrn*.[12] The medical and scientific testimony of experts is in the record and directly before the Court. It is uncontradicted and was accepted by all of the judges in the Courts below. Only in *Byrn* are the unborn children, whose lives depend on the outcome, directly before the Court. The vital criterion as to the standing of those children is not birth but that they live. There is no superior element in the crude fact of expulsion from a uterus that would render it a satisfactory 20th Century determinant of legal human existence. Life, not birth, is the essential element worthy of recognition.

A matter so grave as excluding live human beings from basic constitutional protections should not become part of the fabric of our jurisprudence without full opportunity for the affected human beings, themselves, to be heard.

Fundamental fairness requires that this Court afford that opportunity to appellant's wards.

III. THE DANGEROUS IMPLICATIONS

A. Compulsory abortion

In *Wade*, the court grounded its holding in "the right of personal privacy," but noted that "this right is not unqualified and must be considered against important state interests in regulation." (*Wade*, p. 39) in support of this qualification and as an example of an appropriate state limitation on the right of privacy, the Court cited *Buck* v. *Bell*, 274 U.S. 200 (1927) which upheld the validity of a state statute providing for compulsory sterilization of mental defectives whose affliction was hereditary (*Wade*, p. 39). *By implication in* Wade *the Court espoused the constitutional validity of State-imposed compulsory abortion of unborn children diagnosed intrautero as mentally defective.* Neither the child's constitutional rights (of which the Court could find none) nor the mother's right of privacy (which the Court found limited by the State's "interest" in preventing the birth of mental defectives) could, according to *Wade*, be interposed to challenge such a statute. The spectre of compulsory abortion assumes additional substance when one reads (within a page of a citation to *Buck* v. *Bell*) that certain enumerated situations "make an early abortion the only civilized step to take." (Douglas, J., concurring in *Wade* and *Bolton*, p. 8). Presumably, under *Wade*, the State would have an interest, sufficiently compelling, to mandate "the only civilized step to take," *i.e.*, abortion.

B. Execution of a sentence of death upon a pregnant woman

In *Furman* v. *Georgia*, 408 U.S. 238 (1972) it was speculated that capital punishment might not be unconstitutional so long as it was mandatorily imposed (408 U.S. at 413, dissenting opinion of Blackmun, J.). Assuming this to be true, *Wade* would permit a State to execute a pregnant woman (under an appropriate mandatory capital punishment statute) at any time during pregnancy up to the moment before the birth of a

Footnotes at end of article.

child. The sense of reverence for the life of an unborn child, which in the past has underpinned state policies of delaying execution of a condemned pregnant woman until the birth of her child (see Appellant's Brief, pp. 30–32, 62–64, A24–A28), is nowhere evident in *Wade*.

C. Involuntary euthanasia

The Court in *Wade* refused "to resolve the difficult question of when life begins" because "medicine, philosophy and theology are unable to arrive at any consensus," (*Wade*, p. 44)[13] even though the Court had before it in briefs of appellee and *amici* "at length and in detail the well-known facts of fetal development." (*Wade*, p. 41). These well-known facts include the fact that an eight week old unborn child (for instance) is in genetics, in biology, in medical science, and in appearance nothing less than an individuated, irreversible, live human being. (See Appellant's Brief, pp. 8–10) The controversy to which the Court refers, involves not whether abortion kills a live human being, but whether that live human being is worth keeping alive or, to put it another way, whether he may be killed with impunity. The factual judgment is clear and inevitable; what is at issue is a subjective, individual judgment of whether the life of a human being distinguished from other human beings only by dependency, is "meaningful" (cf. *Wade*, p. 84).[14] The same kind of controversy could, of course, arise at the end of life. Because of illness, age or incapacity a live human being, indistinguishable from other live human beings except by dependency, might be claimed by some in the disciplines of medicine, philosophy and theology to be no longer alive in a "meaningful" way.[15] On the precedent of *Wade* and the Court's unwillingness to recognize the fact of life unless there is a "consensus," a State would seem to be free to remove a live human being (*e.g.* a senile elderly individual) from the law's protection, and the "process of death" (compare the "process of conception," *Wade*, p. 45) could then be hastened by those who found that the care of this live human being had forced upon them "a distressful life and future." (Compare *Wade*, p. 38).

The prospect of involuntary euthanasia is no mere hobgoblin. It results from the Court's abandonment in *Wade* of the constitutional fact doctrine set forth in *Napue* v. *Illinois* (page 16 *supra*). The Court's refusal to resolve the crucial question of the fact of life, because of a lack of "consensus," establishes a precedent that is as far reaching as involuntary euthanasia.

D. Selectivity in Recognizing only some human beings as fourteenth amendment persons

To the extent that *Wade* is to be read to mean that not all live human beings are "persons" within the Fourteenth Amendment Equal Protection and Due Process clauses, it is a dangerous departure from the intent of the Framers and the Court's own prior interpretation of the word "person" as used therein (Appellant's Brief pp. 33–38). Once these clauses cease to have universal application to all who are humans, live and have their being, the Fourteenth Amendment ceases to be viable. Every unwanted person may justly feel imperiled.

CONCLUSION

Traditional reverence for human life cannot long survive in a society that surrenders to doctors, or anyone else, a choice to determine who shall live and who shall die. Forty-five years ago this Court upheld compulsory sterilization of the feeble-minded in these words:

"The principle that sustains compulsory vaccination is broad enough to cover cutting the Fallopian tubes." *Buck* v. *Bell*, 274 U.S. 200, 207.

The analogy is clear. *The principle that sustains termination of unwanted pregnancies is broad enough to cover the termination of unwanted lives.*

In Germany, earlier in this century, doctors advanced medico-sociological "final solutions" to the problems of the unwanted. In this way mercy killing of the senile and the incurably insane became an accepted part of "good" medicine. Great numbers of sane intellectuals and middle class professional people accepted a new ethic that demanded "life have quality", and then proceeded to carry that ethic to its logical conclusion until the "Judgment at Nuernberg." Only at its peril does society strike, as ours has started to do, at the fundamental conscience of its doctors. It is not the doctor's province to make a value judgment of a human life. His task is to help where he can, relieve pain and continue to treat illness which is beyond cure. This Court should not give impetus to a new ethic foreign to our traditions and to the reverence for all life embedded in the Declaration of Independence. *Wade* and *Bolton* should be courageously "re-examined without fear and revised without reluctance rather than to have the character of our law impaired, and the beauty and harmony of the system destroyed by the perpetuity of error." 1 Kent's Commentaries 13th Ed. 477.

Wherefore, it is respectfully requested that the Court postpone determination of the question of jurisdiction and of the motions now pending before it to affirm or dismiss the appeal herein until a hearing of the case on the merits.

APPENDIX A

I. Courts which have declared unambiguously that one of the purposes of their early anti-abortion statutes was the protection of unborn children:

Alabama—Trent v. *State*, 15 Ala. App. 485, 73 So. 834 *cert. den.*, 198 Ala. 695, 73 So. 1002 (1916)

Colorado—Dougherty v. *People*, 1 Colo. 514 (1872)

Idaho—Nash v. *Meyer*, 54 Idaho 283, 31 P. 2d 273 (1934)

Kansas—State v. *Miller*, 90 Kan. 230, 133 Pac. 878 (1913)

New Jersey—State v. *Gedicke*, 43 N.J.L. 86 (1881)

Ohio—State v. *Tippie*, 89 Ohio St. 35, 105 N.E. 75 (1913)

Oklahoma—Bowlan v. *Lunsford*, 176 Okla. 115, 54 P.2d 666 (1936)

Oregon—State v. *Ausplund*, 86 Ore. 121, 167 Pac. 1019 (1917), *rehearing den.*, 87 Ore. 649, 171 Pac. 395 (1917) *appeal dismissed* on consent, 251 U.S. 563 (1919)

Vermont—State v. *Howard*, 32 Vt. 380 (1859)

Virginia—Anderson v. *Commonwealth*, 190 Va. 665, 58 S.E. 2d 72 (1950)

Washington—State v. *Cox*, 197 Wash. 67, 84 P.2d 357 (1938)

II. Courts which have clearly implied that that one of the purposes of their early anti-abortion statutes was the protection of unborn children:

Iowa—State v. *Moore*, 25 Iowa 128 (1868) (1 Harris 631) (1850) (common law)

Maine—Smith v. *State*, 33 Maine 48 (1851)

Maryland—Worthington v. *State*, 92 Md. 222, 48 Atl. 355 (1901)

Michigan—People v. *Sessions*, 58 Mich. 594, 26 N.W. 291 (1886)

Indiana—Montgomery v. *State*, 80 Ind. 338 (1881)

Nebraska—Edwards v. *State*, 79 Neb. 251, 112 NW 611 (1907)

New Hampshire—Bennet v. *Hymers*, 101 N.H. 483, 147 A.2d 108 (1958)

Pennsylvania—Mills v. *Commonwealth*, 13 Pa. St. 630 (1 Harris 631) (1850) (common law)

Utah—State v. *Crook*, 16 Utah 212, 51 Pac. 1091 (1898)

FOOTNOTES

[1] The proceedings below and the prior proceedings before the Court are set forth in appellant's Jurisdictional Statement (hereinafter referred to as Juris. State.) filed September 14, 1972, appellant's Motion to Expedite Consideration of Jurisdiction, filed September 14, 1972 and denied October 10, 1972, appellant's Brief in Opposition to Motions to Dismiss, filed October 21, 1972 (hereinafter referred to as Appellant's Brief), and appellant's Application for a Temporary Restraining Order (hereinafter referred to as Motion for a Stay), filed January 5, 1973 and denied by Mr. Justice Marshall January 11, 1973 and by the Court, January 22, 1973 (A–721).

[2] During reargument of *Bolton*, October 11, 1972, the Assistant Attorney General of Georgia stated, "I do not directly represent the unborn children here * * * their representation by a guardian ad litem was denied by the court below." *Doe* v. *Bolton*, Tr. of Rearg. 21–22.

[3] *Roe* v. *Wade*, Tr. of Rearg. pp. 38–39.

[4] Unless otherwise indicated, page references are to the slip opinions in *Wade* and *Bolton*.

[5] "We are also of opinion that the distinction between a woman being pregnant, and being quick with child, is applicable mainly, if not exclusively, to criminal cases * * *." *Hall* v. *Hancock*, 15 Pick. 255, 257 (Mass. 1834).

[6] See the cases collected in *State* v. *Harris*, 90 Kan. 807, 136 Pac. 264 (1913).

[7] The Court also erred when it concluded that prior to the incrimination of prequickening abortions in the 19th century, "a woman enjoyed a broader right to terminate a pregnancy than she does today." (*Wade*, p. 25). A lack of criminal prosecution cannot be translated into an historical right. At common law, larceny by false promise was not a crime, *Chaplin* v. *U.S.*, 157 F. 2d 697, (D.C. Cir. 1946), but few would claim that a thief "enjoyed a broader right" to commit a fraudulent larceny than he does today.

[8] The outcries, of course, were against "the destruction of human life." (*Wade*, p. 26, quoting the 1859 report of the A.M.A. Committee on Criminal Abortion), whether before or after quickening. "We had to deal with human life. In a matter of less importance we could entertain no compromise. An honest judge on the bench would call things by their proper names. We could do no less." (*Wade*, p. 27, quoting the 1871 report of the A.M.A. Committee on Criminal Abortion). No subsequent medical society or bar association statement, referred to by the Court (see *Wade*, pp. 27–32), denies that abortion, as a matter of fact, kills a live human being.

[9] The cases are also set forth in Appellant's Motion for a Stay, pp. 1a–9a and 10a–18a.

[10] Appellant would also point out that the existence of each of his wards has been confirmed by a pregnancy test. (Appellant's Brief, p. 10). We do not deal here with "obscurity," but with the "known rather than the unknown." (Cf. concurring opinion of Douglas, J. in *Wade* and *Bolton*, p. 10). See *State* v. *Sudol*, 43 N.J. Super. 481, 129 A.2d 29, 33, *cert. den.*, 25 N.J. 132, 135 A.2d 248 (1957), *cert. den.*, 355 U.S. 964 (1957), holding that modern science has advanced to a point where a court is justified in taking judicial notice of the accuracy of a confirmed pregnancy test. (See Motion for a Stay, p. 6a)

Appellant, of course, would not concede that *any* human life is *de minimis*.

[11] There is, however some authority that "the mother may be guilty of the murder of a child in *ventre sa mere*, if she takes poison with an intent to poison it, and the child is born alive, and afterwards dies of the poison." *Beale* v. *Beale*, 1 P.Wms. 244, 246, 24 English Reports 373 (ch. 1713).

[12] Chief Justice Burger, concurring in *Wade* and *Bolton* noted "I am somewhat troubled that the Court has taken notice of various

scientific and medical data in reaching its conclusion." Slip Opinion p. 1.

[13] But see *West Virginia State Board of Education* v. *Barnette*, 319 U.S. 624, 638 (1943): "One's right to life * * * depend[s] on the outcome of no elections."

[14] See, *e.g.*, *Editorial*, California Medicine, Vol. 113, No. 3, p. 68 (Sept. 1970) (Appendix B).

[15] See, *e.g.*, Fletcher, *Indicators of Humanhood*, The Hastings Center Report, vol. 2, No. 5, p. 1 (November 1972).

APPENDIX B

(This editorial is preprinted from "California Medicine," Official Journal of the California Medical Association, Volume 113, Number 3, Pages 67–68, September, 1970)

A NEW ETHIC FOR MEDICINE AND SOCIETY

The traditional Western ethic has always placed great emphasis on the intrinsic worth and equal value of every human life regardless of its stage or condition. This ethic has had the blessing of the Judeo-Christian heritage and has been the basis for most of our laws and much of our social policy. The reverence for each and every human life has also been a keystone of Western medicine and is the ethic which has caused physicians to try to preserve, protect, repair, prolong and enhance every human life which comes under their surveillance. This traditional ethic is still clearly dominant, but there is much to suggest that it is being eroded at its core and may eventually even be abandoned. This of course will produce profound changes in Western medicine and in Western society.

There are certain new facts and social realities which are becoming recognized, are widely discussed in Western society and seem certain to undermine and transform this traditional ethic. They have come into being and into focus as the social by-products of unprecedented technologic progress and achievement. Of particular importance are, first, the demographic data of human population expansion which tends to proceed uncontrolled and at a geometric rate of progression; second, an ever growing ecological disparity between the numbers of people and the resources available to support these numbers in the manner to which they are or would like to become accustomed; and third, and perhaps most important a quite new social emphasis on something which is beginning to be called the quality of life, a something which becomes possible for the first time in human history because of scientific and technologic development. These are now being seen by a growing segment of the public as realities which are within the power of humans to control and there is quite evidently an increasing determination to do this.

What is not yet so clearly perceived is that in order to bring this about hard choices will have to be made with respect to what is to be preserved and strengthened and what is not, and that this will of necessity violate and ultimately destroy the traditional Western ethic with all that this portends. It will become necessary and acceptable to place relative rather than absolute values on such things as human lives, the use of scarce resources and the various elements which are to make up the quality of life or of living which is to be sought. This is quite distinctly at variance with the Judeo-Christian ethic and carries serious philosophical, social, economic and political implications for Western society and perhaps for world society.

The process of eroding the old ethic and substituting the new has already begun. It may be seen most clearly in changing attitudes toward human abortion. In defiance of the long held Western ethic of intrinsic and equal value for every human life regardless of its stage, condition or status, abortion is becoming accepted by society as moral, right and even necessary. It is worth noting that this shift in public attitude has affected the churches, the laws and public policy rather than the reverse. Since the old ethic has not yet been fully displaced it has been necessary to separate the idea of abortion from the idea of killing, which continues to be socially abhorrent. The result has been a curious avoidance of the scientific fact, which everyone really knows, that human life begins at conception and is continuous whether intra- or extra-uterine until death. The very considerable semantic gymnastics which are required to rationalize abortion as anything but taking a human life would be ludicrous if they were not often put forth under socially impeccable auspices. It is suggested that this schizophrenic sort of subterfuge is necessary because while a new ethic is being accepted the old one has not yet been rejected.

It seems safe to predict that the new demographic, ecological and social realities and aspirations are so powerful that the new ethic of relative rather than of absolute and equal values will ultimately prevail as man exercises ever more certain and effective control over his numbers, and uses his always comparatively scarce resources to provide the nutrition, housing, economic support, education and health care in such ways as to achieve his desired quality of life and living. The criteria upon which these relative values are to be based will depend considerably upon whatever concept of the quality of life or living is developed. This may be expected to reflect the extent that quality of life is considered to be a function of personal fulfillment; of individual responsibility for the common welfare, the preservation of the environment, the betterment of the species; and of whether or not, or to what extent, these responsibilities are to be exercised on a compulsory or voluntary basis.

The part which medicine will play as all this develops is not yet entirely clear. That it will be deeply involved is certain. Medicine's role with respect to changing attitudes toward abortion may well be a prototype of what is to occur. Another precedent may be found in the part physicians have played in evaluating who is and who is not to be given costly long-term renal dialysis. Certainly this has required placing relative values on human lives and the impact of the physician to this decision process has been considerable. One may anticipate further development of these roles as the problems of birth control and birth selection are extended inevitably to death selection and death control whether by the individual or by society, and further public and professional determinations of when and when not to use scarce resources.

Since the problems which the new demographic, ecologic and social realities pose are fundamentally biological and ecological in nature and pertain to the survival and well-being of human beings, the participation of physicians and of the medical profession will be essential in planning and decision-making at many levels. No other discipline has the knowledge of human nature, human behavior, health and disease, and of what is involved in physical and mental well-being which will be needed. It is not too early for our profession to examine this new ethic, recognize it for what it is and will mean for human society, and prepare to apply it in a rational development for the fulfillment and betterment of mankind in what is almost certain to be a biologically oriented world society.

APPENDIX C

CONTEMPORARY VIEWS ON PROTECTING UNBORN LIFE AND ANTIABORTION

United Nations Declaration on the Rights of the Child, (promulgated by the General Assembly in 1959.) It reads, in relevant part:

"The child . . . shall be entitled to grow and develop in health; to this end, special care and protection shall be provided both to him and to his mother, including adequate *pre-natal and post-natal care.*" And elsewhere in the same document it states:

"the child by reason of his physical and mental immaturity, needs special safeguards and care, *including appropriate legal protection, before as well as after birth.*"

"Declaration of Geneva", (medical oath adopted by the General Assembly of the World Medical Association in 1948.) It states, in relevant part:

"I will maintain the utmost respect for human life, from the time of conception; even under threat, I will not use my medical knowledge contrary to the laws of humanity."

Karl Barth, (considered by many to be the pre-eminent Protestant theologian of this century): "The unborn child," he wrote, "is from the very first a child. It is still developing and has no independent life. But it is a man and not a thing . . . He who kills germinating life kills a man."

Dietrich Bonhoeffer, (the famed Protestant philosopher and theologian who ended his days in a Nazi concentration camp): "To raise the question whether we are here concerned with a human being or not is merely to confuse the issue. The simple fact is that God certainly intended to create a human being and that this innocent human being has been deliberately deprived of his life. And that is nothing but murder."

Dr. George Hunton Williams, (Hollis Professor of Divinity at Harvard University): "The Catholic Church is here defending the very frontier of what constitutes the mystery of our being. At the other end of this front line is the struggle against euthanasia (in the strict and deliberate sense). Unless these frontiers are vigilantly defended, the future is grim with all the prospects of man's cunning and contrived manipulation of himself and others. Next to the issue of peace in the world, I feel the opposition to abortion and euthanasia constitutes the second major moral issue of our society (racial integration and the preservation of the family being third and fourth in the American perspective of priorities). In the cause of defending the rights of the unborn, all Christians should be rallied.

"The Catholic position on abortion should not be assailed as 'sectarian' or deplored by some Protestants as 'too harsh' in the present ecumenical climate. Historically the position is in fact Judeo-Christian."

Dr. Billy Graham, (widely known and respected contemporary Protestant evangelist): "Murder is murder, whether you shoot the victim with a revolver, or disconnect his life support mechanisms.

"Abortion, like many other questionable things, is a symptom of something more serious than the act itself. It has long been allowed by society, when the life of the mother is endangered, but today, all too often, it is occasioned by the breaking of God's laws on sex. Unwanted pregnancy is the result, not the cause of the difficulty. If you really want to stop 'runaway' abortion, then you must first start with the human heart, not the body. The Bible says, 'Keep thy heart with all diligence, for out of it are the issues of life.' (Proverbs 4:23).

"Physicians say that the complications from a 'vacuum abortion' are relatively few. But when you tamper with the body in what some have called the 'voiceless injustice," it is also possible to damage the soul.

"Few women plan to have an abortion. It suddenly appears as the answer to a dilemma. But, ask the woman who has had one—it carries a heavy price.

"Even if abortion were legalized, no law could take away the feelings of guilt which inevitably accompany it. You don't violate the sacredness of life with impunity. Any position which doesn't respect the rights of the unborn is a position which opposes those rights. As Deuteronomy 30:19 says, 'See, I

have set before you life and death . . . choose life.' "

The Conference of Rabbis of the Chief Rabbinate of the Holy Land: "Abortion, except when necessary to save the mother's life, is in the category of the killing of innocent human life."

The Rabbinical Alliance of America, (supported by the entire Orthodox Rabbinate as well as by Jewish lay groups such as the Agudah Women of America and the National Council of Young Israel) urged the immediate repeal of New York's liberalized abortion law, which it described as "the most vicious and barbaric law" in the history of the state. "Abortion is not as its advocates say a private, personal matter in which the law should not interfere. Where human life is at stake, the law has always interfered and must continue to interfere . . ."

APPENDIX D

[From the Evening Star and Daily News, Apr. 17, 1973]

WOMEN LEAD OPPOSITION TO ABORTION

(By John Lear)

Although the recent Supreme Court decision upholding the legality of abortion was based largely on the argument that women have a constitutional right to make a personal decision concerning the children they will bear, American women themselves are not as determined to exercise that right as men are to guarantee it.

This is perhaps the most surprising finding of a public opinion survey just reported by political scientists at the University of Michigan's Institute for Social Research.

The survey disclosed that only a short time before the Supreme Court in January voted 7–2 in support of the view that the Constitution protects the right to abortion, a majority of the eligible voters of the country were opposed to abortion.

The data came from computer analysis of answers given by a sample of 2,738 citizens questioned between Sept. 15 and Nov. 6, 1972 by ISR surveyors. The sample was statistically representative of the whole electorate, and the weight of preference against abortion was roughly 3–2.

When the responses to the ISR questionnaire were separated according to sex, women in all three of the age brackets covered were found to be slightly more opposed to abortion than were men. Here are the figures:

Over age 60—men 67, women 72.

30 to 60 years of age—men 58, women 60.

Under 30 years of age—men 43, women 49.

Among the respondents in the under-30 age group, where a majority of both sexes favored abortion, the number of women opposed to abortion was 6 percent higher than the number of men.

In June, during the California primary, Dr. Warren Miller of ISR's Center for Political Studies, decided to include the abortion question in the 1972 edition of a pre-election survey ISR has been conducting regularly for a quarter century. By then, abortion not only had attained the status of a nationally debated social problem but seemed likely to become an active issue in the presidential campaign. The ISR survey received the following percentages of favorable responses to these four statements:

Abortion should never be forbidden—25 percent.

Abortion should be allowed in any case in which the prospective mother would have difficulty in bringing up her child—17 percent.

Abortion should be permitted only when the life of the mother would be endangered by the birth—47 percent.

Abortion should never be allowed—11 percent.

Although those absolutely in favor of abortion were more than twice as numerous as those absolutely opposed, the holders of the two extreme positions, together totaled only a shade more than one-third of the population sample.

Since those who expressed a more moderate view accounted for almost two-thirds of the sample, analysts agreed that the most accurate separation of the data would combine the responses to the first two statements and juxtapose them against the combined responses to the last two. The result was 42 percent favorable to abortion, 58 percent opposed.

Because opposition to abortion is a tenet of modern Roman Catholic teaching, a substantial component of the opposition sentiment could be expected to be Catholic. The ISR data confirmed that expectation.

Of Catholics in the sample, 67 percent were opposed to abortion. But Catholics make up something less than a quarter of the population of the country and obviously could not alone account for an electoral majority in opposition. The balance had to be made up by non-Catholics. And when all Protestants were counted together, 59 percent of them were found to be lined up with the Catholics. Only Jews were steadfastly in favor of abortion and overwhelmingly so (82 percent).

Other differences became noticeable when the so-called "establishment" Protestants (Congressionalists, Episcopalians, Lutherans, Presbyterians, and several smaller groups) were split off from the more fundamentalist Protestant denominations. The Protestant "establishment" then was seen to have a 1 percent majority in favor of abortion while 63 percent of the far more numerous fundamentalists were opposed.

An even more interesting difference surfaced when the attitudes of Catholics, "establishment" Protestants, and Protestant fundamentalists were measured in terms of frequency of worship. Of "establishment" Protestants who went to church every week or almost every week, 57 percent opposed abortion; of those who appeared in church only a few times a year or not at all, 59 percent favored abortion.

Catholics who went to church every week or almost every week were 83 percent opposed to abortion; those who got to church but once or twice a year or never were 51 percent in favor of abortion. It was the Protestant fundamentalists who most resisted abortion regardless of the regularity of their attendance at church.

Among those who worshipped every week or almost every week, 75 percent were opposed to abortion; when church attendance dropped to only a few times a year or ceased altogether, 56 percent of the Protestant fundamentalists still opposed abortion.

What other elements influential in defining traditional morality in America can be identified in the ISR abortion data?

One is the immediate environment into which people are born and in which they grow up. Within the ISR sample, 72 percent of those reared in a rural setting opposed abortion, 55 percent of those who grew up in towns or small cities opposed abortion, and 54 percent of those who lived in big cities favored abortion.

Education is another factor in moral definition. The more schooling people have the less willing they are to see abortion as an evil. College people are three times as favorable to abortion as are those whose education stopped in grade school. However, those at the college level favor abortion by only a 7 percent margin.

A third facet of traditional morality is social class. Sixty-five percent of those who consider themselves members of the working class are opposed to abortion. Those who characterize themselves as middle class are so evenly split on abortion that a majority cannot be said to exist on either side of the question.

Race is a factor, too. Blacks are more anti-abortion than whites are, although only slightly so.

In view of what the ISR study has already revealed, it is not surprising to learn that the older people are, the more they oppose abortion. Here the attitudes are expressed by age bracket:

	Percent in opposition
Over 60 years	72
30 to 60 years	60
Under 30 years	47

[Supreme Court of the United States, October Term, 1971]

No. 70–18

JANE ROE, ET AL., APPELLANTS, VS. HENRY WADE, APPELLEE, ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS

No. 70–40

MARY DOE, ET AL., APPELLANTS, VS. ARTHUR K. BOLTON, ET AL., APPELLEES, ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA

Motion for leave to file brief amicus curiae.

PURPOSE OF THE MOTION

All parties in No. 70–18 (the Texas case) have given their written consent to Dr. Bart Heffernan, one of the amici herein, to file an *amicus curiae* brief.[1] The appellants in No. 70–40 (the Georgia case) have never responded to a request for consent. The appellees do not object to these *amici* filing in this cause.[2]

INTEREST OF THE AMICI

1. Identification of the *amici.* Dr. Bart Heffernan has an appeal presently pending before this Court in the case of *Heffernan, et al.* v. *Doe, et al.,* docketed as No. 70-106, October 1971 term, which case involves the constitutionality of the Illinois criminal abortion statute, and is similar to both *Jane Roe, et al.* v. *Wade,* No. 79-18, and *Mary Doe, et al.* v. *Bolton,* No. 70-40. The Jurisdictional Statement in the *Heffernan* case was filed on March 29, 1971, but no action was taken thereon during the last term of Court.

Any ruling on the merits in the Georgia and Texas cases could profoundly and perhaps adversely affect the outcome of the Illinois case, in which case Dr. Heffernan was appointed *guardian ad litem* for the class of unborn children. He asks leave of this Court to file this *amicus curiae* brief on behalf of his wards.

The other *amici* are physicians, professors and certain Fellows of the American College of Obstetrics and Gynecology who seek to place before this Court the scientific evidence of the humanity of the unborn so that the Court may know and understand that the unborn are developing human persons who need the protection of law just as do adults.

These *amici* also desire to bring to the Court's attention the medical complications of induced abortion, both in terms of maternal morbidity and mortality (as well as the mortality to the child), and to show that these are questions of considerable debate in medicine.

2. The Legal Position of these *Amici* in these cases. The unborn child is a developing human being who is entitled to the law's protection just as is an adult.

3. Justification for Participation as *Amici.* As previously stated, the issues in these cases, as well as the pending case of *Heffernan* v. *Doe,* No. 70-106, October 1971 term, are of the most profound significance in dealing with the most basic and fundamental of human rights: The Right to Life.

In reviewing the Briefs filed in both cases it appears that no attempt was made to advise the Court of the scientific facts of life from conception to birth, or of the medical complications of induced abortion, and it is urged that presentation of this information

---

[1] Written consents have been filed with the clerk of this court.

[2] Response of appellees has been filed with the clerk of this court.

is a reasonable justification for participation by these *amici*.

CONCLUSION

For the reasons stated and for additional reasons as contained in and expanded upon in the Brief itself, these *amici* respectfully request this Court to grant this Motion and grant leave for filing this Brief served herewith.

Respectfully submitted,

DENNIS J. HORAN,
JEROME A. FRAZEL, JR.,
THOMAS M. CRISHAM,
DOLORES B. HORAN,
JOHN D. GORBY,

LIST OF AMICI

Leon L. Adcock, M.D. FACOG, Asst. Prof. Dept. OB Gyn, Univ. Minnesota Medical School.

Raymond J. Albrecht, M.D. FACOG, Clin. Asst. Prof. OB Gyn, Univ. Minnesota Medical School.

Leo Alexander, M.D., Asst. Clin. Prof. Psychiatry, Tufts University Medical School—Boston.

Paul H. Andreini, M.D., Consultant in Internal Medicine & Rheumotology—Mayo Clinic.

Richard Applebaum, M.D. FAAP, Miami, Florida.

Henry G. Armitage, Jr., M.D. FACS, Senior Surgeon, Lawrence General and Bon Secours Hospitals, Lawrence, Massachusetts.

James L. Barnard, M.D., Corpus Christi, Texas.

Alex, Barno, M.D. FACOG, Chief Field Investigator, Maternal Mortality Comm. of State Health Dept., Chm. Comm. OB Gyn & Mat. Welfare, Minn. State Med Assc., Clin. Assoc. Prof. OB Gyn, Univ. Minn. Med. Sch.

A. Sidney Barritt, Jr., M.D. FACOG, Gynecology Dept. of Brooklyn Hosp., Brooklyn, New York.

Peter J. Bartzen, M.D. FACOG, Duluth, Minnesota.

Frederick C. Battaglia, M.D. FAAP, Dir. Div. of Perinatal Med., Prof. OB Gyn and Prof. Pediatrics, Univ. Colorado Med. Center, Denver.

Woodard Beacham, M.D. FACOG, Cofounder & First Pres. of Amer. College of OB Gyn Clinical Prof. OB Gyn Tulane Univ. Medical School.

Jacob E. Bearman, Ph.D., Professor Department of Public Health—Biostatistics, Univ. Minnesota Medical School. Member U.S. National Committee on Vital and Health Statistics, U.S. Dept. H.E.W.

Christopher Bellone, M.D. FACS, Founder, New Orleans OB Gyn Society.

Karl L. Bergener, Roswell, New Mexico 88201.

William F. Bernhard, M.D. FACS, Prof. Surgery, Harvard Med. Sch. Senior Assoc. Cardiovascular Surgery, Children's Hosp., Med. Ctr. Boston.

Irving Berstein, M.D. FACOG, Clinical Professor of Psychiatry and OB Gyn Univ. Minnesota Medical School.

Lester J. Bossert, M.D., FACOG, Clin. Prof. OB Gyn, Univ. Cincinnati College of Med.

John G. Boutselis, M.D., FACOG, Prof. OB Gyn, Ohio State U. Med. Sch.

Watson A. Bowes, Jr., M.D., Prof. OB Gyn, Univ. of Colorado Med. Center, Denver.

Benjy Brooks, M.D. FAAP, Clin. Asst. Prof. Ped. Surgery, Baylor College of Medicine, Assoc. Prof. Ped. Surgery, Univ. Texas Grad. School Biological Science.

Richard Bryant, M.D. FACOG, Founding Fellow Amer. College OB Gyn Clin. Prof. OB Gyn, Univ. of Cincinnati.

Ray H. Buzbee, M.D., FACOG FACS, Chief of Staff OB Gyn, Hendricks Hospital, Abilene, Texas.

Jesse Caldwell, M.D. FACS, Gastonia, North Carolina.

Dennis Cavanaugh, M.D. FACOG, Prof. OB Gyn, Univ. of Tasmania Med. School, Tasmania, Australia.

John J. Cochoran, M.D. FACOG, Albuquerque, New Mexico.

Evis J. Coda, M.D., Dir. Kennedy Child Study Center, Santa Monica, Calif.

William E. Cohenour, M.D., Albuquerque, New Mexico.

Jason H. Collins, M.D. FACOG, Prof. and Acting Chairman Dept. OB Gyn, Tulane School of Medicine, New Orleans.

Vincent Collins, M.D., Prof. Anesthesiology, Northwestern U. School of Medicine.

William E. Colliton, Jr., M.D. FACOG FACS, Clinical Instructor, Georgetown University School of Medicine.

R. Vernon Colpitts, M.D. FACOG, Clin. Instructor OB Gyn, Baylor College of Med., Clin. Assoc. in OB Gyn, Univ. of Texas—Houston.

John P. Connelly, M.D. FAAP, Assoc. Prof. Pediatrics, Harvard Medical School.

John G. Cope, M.D., Albuquerque, New Mexico.

Robert A. Cosgrove, M.D. FACOG FACS, Clinical Prof. OB Gyn, New Jersey College of Medicine.

Joseph T. Crapanzano, M.D. FACOG, Associate Professor of OB Gyn, Dir. of Med. Education, La. State U. Div., Louisiana State Univ. School of Medicine, New Orleans, Louisiana.

Donald H. Cummings, M.D., Dept. of Psychiatry, Lovelace-Bataan Medical Center, New Mexico.

Ever Louise Curtis, M.D., New Orleans, Louisiana, Harry R. Dailey, M.D. FACOG, Pittsburgh, Pennsylvania.

Jack Davies, M.D., Professor & Chairman Dept. of Anatomy, Vanderbilt Univ. School of Medicine, Nashville, Tennessee.

Van A. Davison, M.D. FACOG FACS, Member Bd. of Governors, Tulane Med. School, New Orleans, Assoc. Prof. OB Gyn, Southwestern Med. School.

Daniel Degallier, M.D. FACOG, Winona, Minnesota.

James J. Delaney, M.D. FACOG, Asst. Prof. OB Gyn, Univ. Colorado Med. Center, Denver.

John P. Delaney, M.D., Ph.D. Physiology & Surgery, Assoc. Prof. Surgery, Univ. of Minnesota School of Med., Minneapolis.

Eugene F. Diamond, M.D. FAAP, Prof. Pediatrics, Stritch School of Medicine, Maywood, Ill.

William J. Dignam, M.D. FACOG, Prof. OB Gyn, UCLA Medical Center, Los Angeles, California.

James R. Dillon, M.D. FACOG, Evanston, Illinois.

Malcolm B. Dockerty, M.D., Prof. of Pathology, Mayo Graduate School of Medicine, Univ. of Minnesota, Sr. Consultant Section of Surgical Pathology, Mayo Clinic.

Robert Dolehide, M.D., Chicago, Illinois.

Jerome A. Dolan, M.D., FACOG FACS, Assoc. Clin. Prof. OB Gyn, New Jersey Medical College.

Edward P. Donatelle, M.D., Clin. Asst. Prof. in Family Practice, Univ. of Minnesota Med. School, Minneapolis.

Michael M. Donovan, M.D. FACS, Cons. in Surgery, Univ. Texas, Chief Surgeon Houston Unit of Shriners Hosp.

John H. Doran, M.D. FACOG, Detroit, Michigan.

Ronald V. Dorn, Jr., M.D., Assoc. Staff & Preceptor Dept. of Internal Medicine, New Mexico, Univ. School of Medicine.

Bernard J. Dreiling, M.D., Asst. Prof. of Med., Univ. of Miss. Med. Center.

J. Englebert Dunphy, M.D., Chairman, Dept. of Surgery and Prof. of Surgery, Univ. of California Medical Center, San Francisco, California.

Isadore Dyer, M.D., FACOG, Clinical Prof. OB Gyn., Tulane Sch. of Med.

Laura E. Edwards, M.D., FACOG, Assoc. Prof. Dept. OB Gyn., Univ. of Minnesota Med. School.

Homer Smith Ellsworth, M.D., FACOG, Assistant Clinical Professor OB Gyn., Univ. of Utah.

George J. Ellis, Sr., M.D., FACOG, Past Clinical Prof., Georgetown Univ. School of Medicine.

Joseph P. Evans, M.D., Ph. D., Prof. Neurological Survey Emeritus Univ. of Chicago Medical School, Chicago, Illinois.

John L. Falls, M.D., FACOG, Chm. Public Policy Comm. Minn. State Med. Assoc., Red Wing, Minn.

John A. Ferris, M.D., Harlingten, Texas.

Howard W. Fisher, M.D., Clin. Asst. Prof. Depts. Psychiatry and OB Ggn., Univ. of Minnesota Med. School.

John Flynn, M.D., FACOG, Med. School, State Univ. of N.Y., Buffalo.

Thomas Flynn, M.D., FAAP, Clinical Instructor of Pediatrics, Yale Medical School.

William E. Flynn, M.D., Assoc. Prof. of Psychiatry, Georgetown Univ. School of Med.

Norman J. Foit, M.D., FACOG, Kenmore, New York.

Thomas Foley, M.D., FACOG, Manchester, New Hampshire.

Stephen A. Foote, Jr., M.D., FACP, Past Pres. (1969) Texas Academy Internal Med., Assoc. Clin. Prof. of Med., Baylor College of Med., Former Asst. Prof. Med., Univ. of Texas, Bio-Medical Div., Houston.

Archibald F. Forster, M.D., FACOG, Asst. Clinical Prof. OB Gyn, UCLA Medical Center, Los Angeles, California.

Francis A. Fote, M.D., FACOG, Lackawanna, New York.

Donald J. Frank, Associate Professor of Pediatrics, University of Cincinnati, College of Medicine.

Rupert H. Friday, M.D., FACOG, Clin. Asst. Inst. OB Gyn., Univ. of Pittsburgh.

Harold L. Gainey, M.D., FACOG, Emeritus Clin. Prof. OB Gyn., Univ. of Missouri, Kansas City.

Eugene Gedgaudas, M.D., Prof. and Chairman, Dept. of Radiology, Univ. of Minnesota Med. Sch.

Hans E. Geisler, M.D., FACOG, Assist. Prof. OB Gyn., Indiana—Purdue Univ. School of Med., Indianapolis.

John M. Gibbons, Jr., M.D., FACOG, Assoc. Prof. OB Gyn., Univ. of Conn. Medical School.

John Glenn, M.D. FACOG, Dir. Dept. OB Gyn, Provident Hospital, Cincinnati, Ohio.

M. Benjamin Glover, M.D., Dept. of Neurosurgery, Lovelace-Bataan Medical Center, New Mexico.

Frederick C. Goetz, M.D., Prof. of Medicine, Univ. of Minn. Med. Sch.

Severin T. Golojuch, M.D., FACOG, Pres. Middlesex County Med. Soc., New Brunswick, New Jersey.

William E. Goodwin, M.D., Assoc. Clinical Prof. of Medicine, Univ. of Southern California Medical School, Los Angeles, California.

Hymie Gordon, M.D., Chief of Genetics Consulting Clinic, Mayo Clinic.

John L. Grady, M.D., Chm. Dept. OB Gyn Glades Gen. Hosp., Belle Glade, Florida.

William Graf, M.D. FACOG, Asst. Prof. OB Gyn, Univ. of Cincinnati.

Robert E. Gross, M.D. FACS, Prof. Pediatric Surgery, Harvard Med. Sch.

Labib M. Habashy, M.D., M.S., OB Gyn, Dickenson, Texas.

Joseph I. Hamel, M.D. FACOG, Clinical Instructor OB Gyn, Univ. of Minnesota Med. School, Minneapolis.

T. R. Hannon, M.D., Assoc. Prof. OB Gyn, Baylor Med. School, Houston, Texas.

D. G. Harrel, M.D. FACS FACOG, Clin. Prof. OB Gyn, Univ. of Texas Southwestern Med. Sch., Dallas, Texas.

Marjorie Hartig, M.D. FACOG, Dir. Family Planning Clinic, Member, Amer. Assoc. Planned Parenthood Physicians, St. Paul, Minnesota.

Robert C. Hartmann, M.D. FACP, Prof. Med. Vanderbilt Univ.

Grant E. Hartnagel, M.D. FACOG FACS, Minneapolis, Minnesota.

Barbara Hastings, M.D., Research Fellow

Dept. of Neurology, Univ. Minnesota Hospitals.

Robert L. Hatton, M.D. FACOG, Pahokee, Florida.

Allan L. Haynes, M.D., Clovis, New Mexico.

Bart Heffernan M.D., Asst. Clinical Prof. Med., Stritch School of Medicine, Maywood, Ill.

Andre Hellegers, M.D. FACOG, Prof. OB Gyn, Georgetown Univ. School of Medicine.

H. C. Henderson, Jr., M.D. FACS FACOG, Assoc. Clin. Prof. OB Gyn, University of Texas Southwestern Med. Sch., Dallas, Texas.

Leo T. Heywood, M.D. FACO, Founding Fellow—Amer. College OB Gyn, Prof. OB Gyn, Creighton Med. Sch.

John F. Hillabrand, M.D. FACOG, Pres. Nat. Comm. Human Life & Repro., Toledo, Ohio.

Thomas Hilgers, M.D., Resident OB Gyn Mayo Clinic.

Milton Hoffman, M.D., FACOG, Clinical Associate Prof., Tulane School of Medicine.

William J. Hossley, M.D., Deming, New Mex.

Richard V. Jaynes, M.D., FACOG, Garden City, Michigan.

Mildred F. Jefferson, M.D., Clin. Instr. Surgery, Boston University School of Medicine.

Emmit M. Jennings, M.D., Roswell, New Mex.

Marilyn Johnson, M.D., FACOG, Clin. Instructor OB Gyn, Baylor College of Med., Houston, Clin. Instructor OB Gyn, Texas Post-Grad., School of Med., Houston.

Hugh F. Kabat, Ph.D., Prof. and Chairman Dept. of Clin. Pharmacy, College of Pharmacy, Univ. of Minnesota.

James E. Kelly, M.D., FACOG, Van Nuys, California.

Robert F. Kelly, M.D., FACOG, Los Angeles, California.

Robert T. Kelly, M.D., Clin. Asst. Prof. Dept. of Family Practice and Community Health, Univ. of Minnesota Med. School.

Joseph Kiefer, M.D., Prof. of Urology, Univ. of Ill. School of Medicine.

Edward Kilroy, M.D., Clin. Inst. Thoracic Surgery, Case Western Reserve School Med., Cleveland, Ohio.

Daniel Kozera, M.D. FACOG, Buffalo, New York.

Charles Kramer, M.D. FACOG, Pres. Ill. OB Gyn Soc.

Gerard F. Lanchantin, Ph. D., Prof. Biochemistry, Univ. of Southern Cal., Sch. Med., Los Angeles.

William Leen, M.D. FACOG, Dir. OB Gyn, St. Vincent's Medical Center, Staten Island, New York.

George Leicht, M.D. FACOG, Director of Departmental OB Gyn, Fairview General Hospital, Cleveland, Ohio.

Albert W. Liley, M.D., Research Prof. in Perinatal Physiology, Post. Grad. School of Obstetrics & Gynaecology, National Women's Hosp., Auckland, New Zealand.

George Loehfelm, M.D., Methodist Hospital, Brooklyn, New York.

Francis Long, M.D., Wyoming.

Robert J. Lowden, M.D. FACOG, Assoc. Clin. Prof. U. of Washington Med. School, Seattle.

Robert J. Luby, M.D., Prof. and Assoc. Dir. Dept. OB Gyn., Asst. Dean of Medical School, Creighton Univ.

Joseph Lucci, Jr., M.D. FACOG Clin. Assoc. Prof. OB Gyn., Univ. of Texas School of Bio-Medical Science, Houston and Univ. of Texas Med. Branch, Galveston.

John H. McArdle, M.D., FACOG, Tonawanda, New York.

Charles McCarthy, M.D., FACOG, Clin. Inst. OB. Gyn., Univ. Minnesota Med. School and St. Paul Ramsey Hospital.

John J. McCarthy, M.D., FACOG, Pittsburgh, Pennsylvania.

Lawrence F. McCarty, M.D., Laramie, Wyoming.

Thomas E. McCarthy, M.D., Vice-Pres., Magee Women's Hosp., Pittsburgh, Pennsylvania.

James McCutchon, M.D., Corpus Christi, Texas.

Robert McDonald M.D., Chm. Med. Div. March of Dimes, Chm. Sch. & Child. Comm., Alleghany Cty. Med. Soc., Pittsburgh, Pennsylvania.

Richard N. McGarvey, M.D., FACOG, Pres. Pittsburgh OB Gyn. Soc., John L. McKelvey, M.D., Prof. & Chairman Emeritus Dept. OB Gyn. Univ. of Minnesota Med. School.

James V. McNulty, M.D., FACOG, Assoc. Clinical Prof. OB Gyn., U.S.C. School of Medicine.

Edgar L. Makowski, M.D. FACOG, Prof. OB Gyn, U. Colorado Med. Center, Denver.

John R. Marchese, M.D. FACOG, Boone, North Carolina.

Richard A. Marshall, M.D., Prof. Med., Okla. Univ. Sch. Med.

B. L. Martin, M.D. FACOG, Kingsville, Texas.

Charles C. Mary, Jr., M.D., Clinical Assoc. Prof. La. State and Tulane Universities Schools of Medicine.

Maurice Moss, M.D. FACOG, Clin. Inst. OB Gyn, Case Western Reserve Univ. School Med., Cleveland, Ohio.

Fred Mecklenburg, M.D. FACOG, Clinical Instructor, OB Gyn, Univ. of Minnesota Med. Sch., Dir. Family Planning Programs, U. Minn., Member Amer. Assoc. Planned Parenthood Physicians, Chr. Dept. OB Gyn, St. Louis Park Med. Ctr., Consultant in Family Planning Programs, OEO.

Peter Meister, M.D. FACOG, Dunkirk, New York.

Maurice J. Meynier, Jr., M.D. FACOG, Clin. Assoc. Prof. OB Gyn, Baylor College of Medicine, Houston, and Univ. of Texas Post-Grad. School, Houston, Past Pres. Texas Assn. OB Gyn.

Abe Mickal, M.D. FACOG FACS, Professor and Head Dept. OB Gyn. La. State University School of Medicine.

John F. Miller, M.D., FAAP, Clin. Assoc. Prof., Dept. of Ped., The Medical College of Ohio, Toledo.

S. D. Mills, M.D., Assoc. Prof. of Clinical Pediatrics, Mayo Graduate School of Medicine, Univ. of Minnesota, Sr. Consultant Pediatrics, Mayo Clinic.

William C. Moloney, M.D., FACP, Prof. of Medicine, Harvard Medical School.

James P. Molloy, Jr., M.D., Chief of Staff, Psychiatric Serv., Bellaire General Hosp., Bellaire, Texas. Clin. Instructor, Baylor College of Medicine, Houston.

James A. Moriarity, M.D., Asst. Prof. of Neurology, Univ. of Minnesota Med. School, Minneapolis.

Francis S. Morrison, M.D., FACP, Assoc. Prof. of Medicine, Chief, Div. of Hematology, Univ. of Miss. Medical Center, Jackson, Miss.

James G. Mulé, M.D., FACOG, Prof. OB Gyn Louisiana State, Univ. School of Medicine.

Paul F. Muller, M.D., Asst. Prof. OB Gyn, Indiana-Purdue Univ. School of Med., Indianapolis.

A. J. Murrieta, Jr., M.D. FACOG, Los Angeles, California.

G. C. Nabors, M.D., FACOG, Asst. Clin. Prof. OB Gyn, Univ. of Texas Southwestern Med. Sch., Dallas, Texas.

John Neufeld, M.D. FACOG, Dept. OB Gyn, Lovelace-Bataan Medical Center, Albuquerque, New Mex.

David Nichols, M.D. FACOG, Med. School, State Univ. of N. Y., Buffalo.

Samuel A. Nigro, M.D., Senior Instr Child Psychiatry, Case Western Reserve Univ Sch. Med. & U. Hospitals.

Fred Nobrega, M.D. FACP MPH, Dept. of Medical Statistics, Epidemiology and Population Genetics, Mayo Clinic.

Robert K. Nixon, M.D., Asst. Prof. of Med., Univ. Mich. Med. Sch.

Franklin T. O'Connell, Jr., M.D. FACOG, Evanston, Illinois.

William T. O'Connell, M.D. FACOG, Brighton, Mass.

Joseph O'Connor, M.D. FACOG, Clin. Instr. OB Gyn., Stritch School of Medicine, Maywood, Ill.

Henry J. Osekowski, M.D., Clin. Asst. Prof Psychiatry, Univ. Minnesota Med. School, Minneapolis

J. Cuthbert Owens, M.D. FACS, Prof. of Surgery, Univ. of Colorado Med. Center, Denver.

Richard R. Parlour, M.D., Assoc. Clin. Prof. of Psychiatry, Loma Linda Univ. Sch. Med., Montclair, Calif.

Lucien Pascucci, M.D., Pres. Okla. State Med. Soc.

Edward Perry, M.D. FACOG, Manchester, New Hampshire.

Bernard Pisani, M.D. FACOG, New York.

Matt K. Plasha, M.D., Past Pres. Minnesota Academy of Gen. Prac.

Frank M. Posey, Sr., M.D. FACOG FACS, Clin. Prof. OB Gyn, Univ. of Texas Med. School, San Antonio.

Konald A. Prem, M.D. FACOG, Prof. OB Gyn, University of Minnesota Medical School, Associate Editor Modern Medicine.

James T. Priestley, M.D., Emeritus Prof. of Surgery, Mayo Graduate School of Medicine, Univ. of Minnesota, Chairman of Board of Governors, 1957–1963 Mayo Clinic.

Venustiano Pulido, M.D., Instr. Pediatrics, U.S.C. Medical School, Sherman Oaks, California.

Herbert Ratner, M.D., Public Health Dir., Oak Park, Ill., Assoc. Clin. Prof. Family & Community Med., Stritch Sch. of Med., Maywood, Ill.

William Standish Reed, M.D. FACS, Tampa, Florida.

R. J. Reitemeier, M.D., Prof. of Internal Medicine, Mayo Graduate School of Medicine, Univ. of Minnesota, Chairman Dept. Internal Medicine, Mayo Clinic.

Joseph J. Ricotta, M.D., FACOG, Med. School, State Univ. of N.Y., Buffalo.

Jules Rivkind, M.D. FACOG, Chm. OB Gyn, Mercy Hosp. Pittsburgh.

Jonas Robitscher, J.D., M.D., Asst. Prof. Clin. Psychiatry, Univ. of Pennsylvania Sch. Med.

Barbara A. P. Rookett, M.D., Student Health Services, Emanuel College, Boston, Massachusetts.

Richard R. Romanowski, M.D. FACOG, Med. School, State Univ. of N. Y., Buffalo.

William W. Rueve, M.D. FACOG, Assoc. Prof. Dept. OB Gyn, Creighton Univ. Med. School, Omaha.

Ben Allen Rutledge, M.D., Assistant Prof. Orthopedic Surgery, Emery Univ. Medical School.

Joseph P. Salerno, M.D. FACOG, Assoc. Prof. OB Gyn, Baylor College of Med., Houston.

Carl Sarnacki, M.D., FACOG, Warren, Michigan.

Lester R. Sauvage, Jr. M.D. FACS, Dir. Cardio-Vascular Research Center, Seattle, Chief Children's Surgery, Children's Orthopedic Hosp., Seattle, Assoc. Clin. Prof. Univ. Washington for Cardio-Vascular & Ped. Surgery.

Richard T. F. Schmidt, M.D. FACOG, Assoc. Clin. Prof. OB Gyn, Univ. of Cincinnati College of Med.

Leonard M. Schuman, M.D., Prof. and Chairman, Div. of Epidemiology, School of Public Health, Univ. of Minnesota.

Adolph Sellman, M.D., FACOG, Assoc. Prof. OB Gyn, Louisiana State Univ., Medical School.

Mildred Shelley, M.D., Psychiatrist, Cleveland Heights, Ohio.

Philip Sheridan, M.D., FACS, Clinical Assoc., Surgery, Univ. Ill. Medical School.

Bernard Sicuranza, M.D., FACOG, Asst. Dir. Gynecology, St. Mary's Hospital, Brooklyn, New York.

Eugene J. Slowinski, M.D., FACOG, Prof. OB Gyn, New Jersey College of Medicine, Newark, New Jersey.

James Smiggen, M.D., FACOG, Southfield, Michigan.

Robert Spencer, M.D., Assoc. Prof. of Proc-

tology, Mayo Graduate School of Medicine, Univ. of Minn.

Richard H. Stanton, M.D., FACS, Clin. Prof. Surgery, Tufts Medical School.

Joseph R. Stanton, M.D., FACP, Assoc. Clin. Prof. of Medicine, Tufts Medical School.

Bruce W. Steinhauer, M.D., Asst. Prof. Medicine, University of Michigan.

R. A. Stevenson, M.D., Victoria, Texas.

Allen T. Stewart, M.D. FACOG, Lubbock, Texas.

John F. Sullivan, M.D., Neurologist-in-Chief, New England Medical Center, Prof. of Neurology, Tufts University School of Medicine, Boston, Massachusetts.

Bernard J. Sullivan, M.D., Laramie, Wyoming.

Charles L. Sullivan M.D., FACS FACOG, Boston, Massachusetts.

Matthew Talty, M.D., FACOG, Clin. Assoc. Prof. OB Gyn, Baylor College of Medicine, Houston.

James Tate Thigpen, M.D., Univ. of Miss. Med. Center, Jackson, Miss.

Leslie Tisdall, M.D., FACOG, Dir. of Gynecology, St. Mary's Hospital, Brooklyn, New York.

Robert G. Tompkins, M.D., FACP, Tulsa, Okla.

Bane Travis, M.D. FACOG, Cheyenne, Wyo.

Jack L. Turner, M.D., FACOG, FACS, Asst. Clin. Prof. OB Gyn. Univ. of Texas, Southwestern Med. School, Dallas.

Gloria Marie Volini, M.D., Wilmette, Ill.

Alphonse R. Vonderahe, M.D., Prof. Neuro-Anatomy, Univ. of Cincinnati, College of Med.

Henry P. Wager, M.D. FACOG FACS, Clin. Assoc. Prof. OB Gyn, New Jersey Med. School, Med. Dir.—Margaret Hague Maternity Hosp., Jersey City, N.J.

John W. Walker, M.D. FACOG FACS, Decatur, Georgia.

John Ward, M.D. Chief Pathologist, Mercy Hosp., Pittsburgh, Pennsylvania.

Joseph Watts, M.D. FACOG, Southfield, Michigan.

Joseph P. Williams, M.D., Neurosurgical Resident, Emery Univ.

John C. Wilke, M.D. ABFP, Author, Handbook on Abortion, Cincinnati, Ohio.

Leonard G. Wilson, Ph.D., Prof. of History of Med. Univ. of Minn.

Robert B. Wilson, M.D. FACOG, Prof. Clinical OB Gyn., Mayo Graduate School, Univ. of Minnesota, Head Section OB Gyn, 1960–69 at Mayo.

Charles J. Woeppel, M.D. FACOG, Med. School, State Univ. of N.Y., Buffalo.

Charles E. Wood, M.D. FACOG, Casper, Wyo.

Doris Wright, M.D. Assist. Prof. Community & Family Health Med. Matthew Walker Health Center, Nashville, Tennessee.

Karl Ziesmann, M.D. FACOG, Clin. Instr. OB Gyn, Univ. of Cincinnati, Natl. Pres. American Assoc. of Maternal and Child Health.

Edward A. Zimmermann, M.D. Prof. OB Gyn, Univ. of New Mex. School of Medicine.

APPENDIX E

[Supreme Court of the United States, October Term 1971]

No. 70–18

JANE ROE, ET AL., APPELLANTS, VS. HENRY WADE, APPELLEE, ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA

No. 70–40

MARY DOE, ET AL., APPELLANTS, VS. ARTHUR K. BOLTON, ET AL., APPELLEES, ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS

Brief amicus curiae of certain physicians, professors and fellows of the American College of Obstetrics and Gynecology in support of appellees

(NOTE.—Figures referred to are not printed in the RECORD.)

I. THE HUMANITY OF THE UNBORN OFFSPRING OF HUMAN PARENTS HAS BEEN THE CRITICAL ISSUE IN LOWER FEDERAL COURT ABORTION CASES

The immediate and intended consequence of an induced abortion is the destruction of life of the unborn. It is in the light of this reality that this Court must consider and decide the profound and far-reaching issues in these abortion cases.

The *amici* are concerned physicians, many of whom are fellows of the American College of Obstetrics and Gynecology (FACOG), who *urge* this Court to consider the current medical and scientific evidence of the humanity of the unborn which is contained in this Brief.

The *amici* also urge this Court to give careful consideration to the section of this Brief concerning the medical complications of legally induced abortions. Any consideration of the "safety" of legally induced abortions must consider the full range of medical complications including early and late physical and psychological complications, as well as maternal and *child* mortality.

The Courts below reached their conclusions without considering whether the victim, i.e. the unborn, of the abortion has constitutionally protected rights. In *Roe v. Wade*,[1] the U.S. District Court for the Northern District of Texas, without once mentioning, discussing or considering whether the unborn is a "person" under the Fifth and Fourteenth Amendments, or otherwise has legally protected interests involved, concluded that the Texas Abortion Laws must be declared unconstitutional because they deprive single women and married couples of their right, secured by the Ninth Amendment, to choose whether to have children."

In *Doe* v. *Bolton*,[2] the U.S. District Court for the Northern District of Georgia touched, but only in passing, upon the primary issue in this litigation, i.e. the legal "personality" of the unborn for constitutional purposes. At one point in the opinion, the Court wrote that it did not ". . . (posit) the existence of a new being with its own identity and federal constitutional rights, . . ."[3] Elsewhere in the opinion the Court, in denying a reconsideration of the Court's previous order revoking another's appointment as *guardian ad litem* for the unborn person, wrote that ". . . the Court does not postulate the existence of a new being with federal constitutional rights at any time during gestation".

The *Bolton* Court was thus able to conclude that, while procedures for obtaining an abortion may be controlled, the "reasons for which an abortion may be obtained" may not be regulated "because such action unduly restricts a decision sheltered by the constitutional right to privacy".[4]

The *Bolton* Court did point out that once conception has occurred and the embryo has formed, ". . . the decision to abort its development cannot be considered a purely private one affecting only husband and wife, man and woman".[5]

Other three-judge federal courts presented with the same clash of "rights" between mother and the unborn have not ignored the developments of many areas of the law which have found legal rights in the unborn. For example, in *Steinberg* v. *Brown*[6] the majority gave careful consideration to both the rights of the woman and the unborn, and concluded that ". . . the state has a legitimate interest to legislate for the purpose of affording an embryonic or fetal organism an opportunity to survive."[7] This Court concluded that the state did have that right ". . . and on balance it is superior to the claimed right of a pregnant woman or anyone else to destroy the fetus except when necessary to preserve her own life."[8]

In *Rosen* v. *Louisiana State Board of Medical Examiners*[9] the Court recognized that it was not dealing merely with the question whether a woman has a generalized right to choose whether to bear children ". . . but instead with the more complicated question whether a pregnant woman has the right to cause the abortion of the embryo or fetus she carries in her womb."[10] Without deciding whether the unborn per se is a person protected by the constitution since that was not the issue that Court faced, the *Rosen* Court concluded that the state of Louisiana had intended to and could legitimately protect fetal life against destruction.[11]

In *Corkey* v. *Edwards*[12] the Court concluded also that the issue involved ultimately a consideration of more than just the issue of whether a woman has a right not to bear children:

"The basic distinction between a decision whether to bear children which is made before conception and one which is made after conception is that the first contemplates the creation of a new human organism, but the latter contemplates the destruction of such an organism already created."[13]

Finding protection of fetal life an adequate state interest in invading the woman's claimed right of privacy, the *Corkey* Court concluded:

"To determine the state interest we shall not attempt to choose between extreme positions. Whether possessing a soul from the moment of conception or mere protoplasm, the fertilized egg is, we think, 'unique as a physical entity', Lucas, Federal Constitutional Limitations of the Enforcement and Administration of State Abortion Statutes, 46 N. C. L. Rev. 730, 744 (1968), with the potential to become a person. Whatever that entity is, the state has chosen to protect its very existence. The state's power to protect children is a well established constitutional maxim. See, *Shelton* v. *Tucker*, 364 U.S. 479, 485, 81 S. Ct. 247, 5 L. Ed. 2d 231 (1960); *Prince* v. *Massachusetts*, 321 U.S. 158, at 166–168, 64 S. Ct. 438, 88 L. Ed. 645. That this power should be used to protect a fertilized egg or embryo or fetus during the period of gestation embodies no logical infirmity, but would seemingly fall within the 'plenary power of government'. *Poe* v. *Ullman*, 367 U.S. 497, at 539, 81 S. Ct. 1752, 6 L. Ed. 2d 989 (Harlan, J., dissenting). That there is a state interest has until recently been taken for granted. History sides with the state."[14]

Even this brief review of five federal decisions involving the constitutionality of state abortion laws makes it clear that whether or not the Court considers the developing humanity of the unborn is critical in its resolution of the issues.[15]

The *amici* therefore ask this Court to consider the material in this Brief concerning the modern medical discoveries of the development of the unborn.

An expansion of the right to privacy to include the right of a woman to have an abortion without considering the interests of the unborn person decides this question against the unborn. The necessary consequence of that expansion would be a direct and unavoidable conflict between the unborn person's right to life and the woman's extended right of privacy. Assuming such a conflict, it is the position of the *amici* that the more fundamental and established of the conflicting rights must prevail where they clash. The right to life is most certainly the most fundamental and established of the rights involved in the cases facing the Court today.

FOOTNOTES

[1] *Roe* v. *Wade*, 314 F. Supp. 1217 (1970) at 1221 (N. D. Tex. 1970).

[2] *Doe* v. *Bolton*, 319 F. Supp. 1048 (N. D. Ga. 1970).

[3] *Ibid.* p. 1055.

[4] *Ibid.* p. 1076.

[5] *Ibid.* p. 1055.

[6] 321 F. Supp. 741 (N. D. Ohio 1970) (J. Green dissenting).

[7] *Ibid.* p. 746.

[8] *Ibid.* p. 746.

[9] 318 F. Supp. 1217 (E. D. Louisiana 1970) (J. Cassibry dissenting).

[10] *Ibid.* p. 1223.

[11] *Ibid.* p. 1225.

[12] *Corkey* v. *Edwards,* 322 F. Supp. 1248 (N. D. North Carolina 1971).

[13] *Ibid.* p. 1252.

[14] *Ibid.* p. 1253.

[15] Even the *Bolton* Court preserved the Georgia statute after alluding in its decision to the creation of a new life after conception, thus making any decision involving abortion one affecting the state since it involved developing human life.

II. THE UNBORN OFFSPRING OF HUMAN PARENTS IS AN AUTONOMOUS HUMAN BEING [1]

Even before implantation in the wall of the uterus the unborn child is responsible for the maintenance of the pregnant state in the maternal metabolism (1). The child whose tissue is antigenically different from the mother sets up protective mechanisms to prevent maternal immunologic responses from causing fetal distress (2). The newly formed child has a remarkable degree of metabolic autonomy (3). For example, the fetal endocrine system functions autonomously (4).

The recent recognition of this autonomy has led to the development of new medical specialties concerning the unborn child from the earliest stages of the pregnancy (56).

Modern obstetrics has discarded as unscientific the concept that the child in the womb is but tissue of the mother. As Dr. H. M. I. Liley, the New Zealand pediatrician, and research assistant to her famous husband, Dr. Albert Liley who perfected the intrauterine transfusion, has said:

"Another medical fallacy that modern obstetrics discards is the idea that the pregnant woman can be treated as a patient alone. No problem in fetal health or disease can any longer be considered in isolation. At the very least two people are involved, the mother and her child." (5 at p. 207.)

The courts have also abandoned that concept (7):

We ought to be safe in this respect in saying that legal separability should begin where there is biological separability. We know something more of the actual process of conception and foetal development now than when some of the common law cases were decided; and what we knew makes it possible to demonstrate clearly that separability begins at conception.

The mother's biological contribution from conception on is nourishment and protection; but the foetus has become a separate organism and remains so throughout its life. That it may not live if its protection and nourishment are cut off earlier than the viable stage of its development is not to destroy its separability; it is rather to describe the conditions under which life will not continue."

Yet the attack on the statutes below assumes this discredited scientific concept and argues that abortions should be considered no differently than any medical measure taken to protect maternal health (see Texas appellant's brief, pp. 94–98), thus completely ignoring the developing human being in the mother's womb.

It is our task in the next subsections to show how clearly and conclusively modern science—embryology, fetology, genetics, perinatology, all of biology—establishes the humanity of the unborn child. We submit that the data not only shows the constitutionality of the legislature's effort to save the unborn from indiscriminate extermination, *but in fact suggests a duty to do so.* We submit also that no physician who understands this will argue that the law is vague, uncertain or overbroad for he will understand that the law calls upon him to exercise his art for the benefit of his *two* patients; mother *and* child.

A. The Unborn Person Is Also a Patient

From conception the child is a complex, dynamic, rapidly growing organism. By a natural and continuous process the single fertilized ovum will, over approximately nine months, develop into the trillions of cells of the newborn. The natural end of the sperm and ovum is death unless fertilization occurs. At fertilization a new and unique being is created which, although receiving one-half of its chromosomes from each parent, is really unlike either (8) (6) (9) (10 at p. 18).

About seven to nine days after conception, when there are already several hundred cells of the new individual formed, contact with the uterus is made and implantation begins. Blood cells begin at 17 days and a heart as early as 18 days. This embryonic heart which begins as a simple tube starts irregular pulsations at 24 days, which, in about one week, smooth into a rhythmic contraction and expansion (8) (9) (10) (6).

Straus, et al. have shown that the ECG on a 23 mm embryo (7.5 weeks) presents the existence of a functionally complete cardiac system and the possible existence of a Myoneural or humoral regulatory mechanism. All the classic elements of the adult ECG were seen (11). Marcel and Exchaquet observed occasional contractions of the heart in a 6 mm (2 week) embryo. They also obtained tracing exhibiting the classical elements of the ECG tracings of an adult in a 15 mm embryo (5 weeks) (12).

One commentator has indicated that about 4 days postconception under a special microscope the prospective sex can already be determined (10 at p. 23).

Commencing at 18 days the developmental emphasis is on the nervous system even though other vital organs, such as the heart, are commencing development at the same time. Such early development is necessary since the nervous system integrates the action of all other systems. By the end of the 20th day the foundation of the child's brain, spinal cord and entire nervous system will have been established. By the 6th week after conception this system will have developed so well that it is controlling movements of the baby's muscles, even though the woman may not be aware that she is pregnant. By the 33rd day the cerebral cortex, that part of the central nervous system that governs motor activity as well as intellect may be seen (8) (13) (10).

The baby's eyes begin to form at 19 days. By the end of the first month the foundation of the brain, spinal cord, nerves and sense organs is completely formed. By 28 days the embryo has the building blocks for 40 pairs of muscles situated from the base of its skull to the lower end of its spinal column. By the end of the first month the child has completed the period of relatively greatest size increase and the greatest physical change of a lifetime. He or she is ten thousand times larger than the fertilized egg and will increase its weight six billion times by birth, having in only the first month gone from the one cell state to millions of cells (8) (9) (10) (6) (13). [See Fig. 1.]

Shettles and Rugh describe this first month of development as follows:

"This, then, is the great planning period, when out of apparently nothing comes evidence of a well integrated individual, who will form along certain well-tried patterns, but who will, in the end, be distinguishable from every other human being by virtue of ultra microscopic chromosomal differences." (10 at p. 35.)

By the beginning of the second month the unborn child; small as it is, looks distinctly human. (See Fig. 1.) Yet, by this time the child's mother is not even aware that she is pregnant (6).

As Shettles and Rugh state:

"And as for the question, 'when does the embryo become human?' the answer is that it *always* had human potential, and *no other,* from the instant the sperm and the egg came together because of its chromosomes." (Emphasis in original.) (10 at p. 40.)

At the end of the first month the child is about ¼ of an inch in length. At 30 days the primary brain is present and the eyes, ears and nasal organs have started to form. Although the heart is still incomplete, it is beating regularly and pumping blood cells through a closed vascular system (8). The child and mother do not exchange blood, the child having from a very early point in its development its own and complete vascular system (8) (9) (10) (12) (13).

Earliest reflexes begin as early as the 42nd day. The male penis begins to form. The child is almost ½ inch long and cartilage has begun to develop (8) (9). [See Fig. 2.]

Even at 5½ weeks the fetal heartbeat is essentially similar to that of an adult in general configuration (12) (13). The energy output is about 20% that of the adult, but the fetal heart is functionally complete and normal by 7 weeks (12) (13). Shettles and Rugh describe the child at this point of its development as a 1-inch miniature doll with a large head, but gracefully formed arms and legs and an unmistakably human face (10 at p. 54). [See Fig. 2]

By the end of the seventh week we see a well proportioned small scale baby. In its seventh week, it bears the familiar external features and all the internal organs of the adult, even though it is less than an inch long and weighs only 1/30th of an ounce. The body has become nicely rounded, padded with muscles and covered by a thin skin. The arms are only as long as printed exclamation marks, and have hands with fingers and thumbs. The slower growing legs have recognizable knees, ankles and toes (8) (9) (10) (6). [See Figs. 3 and 4]

The new body not only exists, it also functions. The brain in configuration is already like the adult brain and sends out impulses that coordinate the function of the other organs. The brain waves have been noted at 43 days [14]. The heart beats sturdily. The stomach produces digestive juices. The liver manufactures blood cells and the kidneys begin to function by extracting uric acid from the child's blood (13) (49). The muscles of the arms and body can already be set in motion (15).

After the eighth week no further primordia will form; *everything* is already present that will be found in the full term baby (10 at p. 71). As one author describes this period:

"A human face with eyelids half closed as they are in someone who is about to fall asleep. Hands that soon will begin to grip, feet trying their first gentle kicks." (10 at p. 71)

From this point until adulthood, when full growth is achieved somewhere between 25 and 27 years, the changes in the body will be mainly in dimension and in gradual refinement of the working parts (8) (46).

The development of the child, while very rapid, is also very specific. The genetic pattern set down in the first day of life instructs the development of a specific anatomy. The ears are formed by seven weeks and are specific, and may resemble a family pattern (16). The lines in the hands start to be engraved by eight weeks and remain a distinctive feature of the individual (45) (49). [See Fig 3]

The primitive skeletal system has completely developed by the end of six weeks (8) (9). This marks the end of the child's embryonic (from Greek, to swell or teem within) period. From this point, the child will be called a fetus (Latin, young one or offspring) (9). [See Fig. 2]

In the third month, the child becomes very active. By the end of the month he can kick his legs, turn his feet, curl and fan his toes, make a fist, move his thumb, bend his wrist, turn his head, squint, frown, open his mouth, press his lips tightly together (15). He can swallow and drink the amniotic fluid that surrounds him. Thumb sucking is first noted at this age. The first respiratory motions move fluid in and out of his lungs

Footnotes at end of article.

with inhaling and exhaling respiratory movements (13) (15). [See Fig. 5]

The movement of the child has been recorded at this early stage by placing delicate shock recording devices on the mother's abdomen and direct observations have been made by the famous embryologist, Davenport Hooker, M.D. Over the last thirty years, Dr. Hooker has recorded the movement of the child on film, some as early as six weeks of age. His films show that prenatal behavior develops in an orderly progression (15) (17) (18).

The prerequisites for motion are muscles and nerves. In the sixth to seventh week, nerves and muscles work together for the first time (8). If the area of the lips, the first to become sensitive to touch, is gently stroked, the child responds by bending the upper body to one side and making a quick backward motion with his arms. This is called a total pattern response because it involves most of the body, rather than a local part. Localized and more appropriate reactions such as swallowing follow in the third month. By the beginning of the ninth week, the baby moves spontaneously without being touched. Sometimes his whole body swings back and forth for a few moments. By eight and a half weeks the eyelids and the palms of the hands become sensitive to touch. If the eyelid is stroked, the child squints. On stroking the palm, the fingers close into a small fist (17) (15) (13) (64).

In the ninth and tenth weeks, the child's activity leaps ahead. Now if the forehead is touched, he may turn his head away and pucker up his brow and frown. He now has full use of his arms and can bend the elbow and wrist independently. In the same week, the entire body becomes sensitive to touch (7) (15). [See Fig. 6]

The twelfth week brings a whole new range of responses. The baby can now move his thumb in opposition to his fingers. He now swallows regularly. He can pull up his upper lip; the initial step in the development of the sucking reflex (5). By the end of the twelfth week, the quality of muscular response is altered. It is no longer marionette-like or mechanical—the movements are now graceful and fluid, as they are in the newborn. The child is active and the reflexes are becoming more vigorous. *All this is before the mother feels any movement* (5) (64). [See Figs. 5 and 7]

The phenomenon of "quickening" reflects maternal sensitivity and not fetal competence.[3] Dr. Hooker states that fetal activity occurs at a very early age normally in utero and some women may feel it as early as thirteen weeks. Others feel very little as late as twenty weeks and some are always anxious because they do not perceive movement (17).

Dr. Liley states:

"Historically 'quickening' was supposed to delineate the time when the fetus became an independent human being possessed of a soul. Now, however, we know that while he may have been too small to make his motions felt, the unborn baby is active and independent long before his mother feels him. Quickening is a maternal sensitivity and depends on the mother's own fat, the position of the placenta and the size and strength of the unborn child." (5 at pp. 37, 38)

Every child shows a distinct individuality in his behavior by the end of the third month. This is because the actual structure of the muscles varies from baby to baby. The alignment of the muscles of the face, for example, follow an inherited pattern. The facial expressions of the baby in his third month are already similar to the facial expression of his parents (13) (14) (49). [See Figs. 5 and 7]

Dr. Arnold Gesell states that: "By the end of the first trimester (12th week) the fetus is a sentient moving being. We need not pause to speculate as to the nature of his psychic attributes but we may assert that the organization of his psychosomatic self is now well under way." (49 at p. 65)

Further refinements are noted in the third month. The fingernails appear. The child's face becomes much prettier. His eyes, previously far apart, now move closer together. The eyelids close over the eyes. Sexual differentiation is apparent in both internal and external sex organs, and primitive eggs and sperm are formed. The vocal cords are completed. In the absence of air they cannot produce sound; the child cannot cry aloud until birth, although he is capable of crying before (8) (13) (9) (5).

Dr. Liley relates the experience of a doctor who injected an air bubble into unborn baby's (eight months) amniotic sac in an attempt to locate the placenta on x-ray. It so happened that the air bubble covered the unborn baby's face. The moment the unborn child had air to inhale, his vocal cords became operative and his crying became audible to all present, including the physician and technical help. The mother telephoned the doctor later to report that whenever she lay down to sleep, the air bubble got over the unborn baby's face and he was crying so loudly he was keeping both her and her husband awake (5 at p. 50) (15 at p. 75).

The taste buds and salivary glands develop in this month, as do the digestive glands in the stomach. When the baby swallows amniotic fluid, its contents are utilized by the child. The child starts to urinate (8) (13) (19).

From the twelfth to the sixteenth week, the child grows very rapidly (50). His weight increases six times, and he grows to eight to ten inches in height. For this incredible growth spurt the child needs oxygen and food. This he receives from his mother through the placental attachment—much like he receives food from her after he is born. His dependence does not end with expulsion into the external environment (8) (9) (13) (6) (10). We now know that the placenta belongs to the baby, not the mother, as was long thought (5). [See Fig. 8]

In the fifth month, the baby gains two inches in height and ten ounces in weight. By the end of the month he will be about one foot tall and will weigh one pound. Fine baby hair begins to grow on his eyebrows and on his head and a fringe of eyelashes appear. Most of the skeleton hardens. The baby's muscles become much stronger, and as the child becomes larger his mother finally perceives his many activities (8). The child's mother comes to recognize the movement and can feel the baby's head, arms and legs. She may even perceive a rhythmic jolting movement—fifteen to thirty per minute. This is due to the child hiccoughing (13) (5) (6). The doctor can already hear the heartbeat with his stethoscope (8) (13) (6). [See Figs. 9 and 10]

The baby sleeps and wakes just as it will after birth (63) (5). When he sleeps he invariably settles into his favorite position called his "lie". Each baby has a characteristic lie (5). When he awakens he moves about freely in the buoyant fluid turning from side to side, and frequently head over heel. Sometimes his head will be up and sometimes it will be down. He may sometimes be aroused from sleep by external vibrations. He may wake up from a loud tap on the tub when his mother is taking a bath. A loud concert or the vibrations of a washing machine may also stir him into activity (13). The child hears and recognizes his mother's voice before birth (19) (20). Movements of the mother, whether locomotive, cardiac or respiratory, are communicated to the child (19).

In the sixth month, the baby will grow about two more inches, to become fourteen inches tall. He will also begin to accumulate a little fat under his skin and will increase his weight to a pound and three-quarters. This month the permanent teeth buds come in high in the gums behind the milk teeth. Now his closed eyelids will open and close, and his eyes look up, down and sideways. Dr. Liley feels that the child may perceive light through the abdominal wall (20). *Dr. Still has noted that electroencephalographic waves have been obtained in forty-three to forty-five day old fetuses, and so conscious experience is possible after this date* (14).

The electrophysiologic rhythm develops early. Detailed EEG tracings have been taken directly from the head end of the 16mm (crown rump) human embryo at 40-odd days of gestation in Japan (172).

As one writer said:

"Thus at an early prenatal stage of life the EEG reflects a distinctly individual pattern that soon becomes truly personalized." (173)

In the sixth month, the child develops a strong muscular grip with his hands. He also starts to breathe regularly and can maintain respiratory response for twenty-four hours if born prematurely. He may even have a slim chance of surviving in an incubator. The youngest children known to survive were between twenty to twenty-five weeks old (13). The concept of *viability* is not a static one. Dr. Andre Hellegers of Georgetown University states that 10% of children born between twenty weeks and twenty-four weeks gestation will survive (44A and 44B). Modern medical intensive therapy has salvaged many children that would have been considered non-viable only a few years ago. The concept of an artificial placenta may be a reality in the near future and will push the date of viability back even further, and perhaps to the earliest stages of gestation (43) (48). After twenty-four to twenty-eight weeks the child's chances of survival are much greater.

Our review has covered the first six months of life. By this time the individuality of this human being is clear to all unbiased observers. Dr. Arnold Gesell has said:

"Our own repeated observation of a large group of fetal infants (an individual born and living at any time prior to forty weeks gestation) left us with no doubt that psychologically they were individuals. Just as no two looked alike, so no two behaved precisely alike. One was impassive when another was alert. Even among the youngest there were discernible differences in vividness, reactivity and responsiveness. These were genuine individual differences, already prophetic of the diversity which distinguishes the human family." (49 at p. 172)

B. The Doctor Treats the Unborn Just as He Does Any Patient

When one views the present state of medical science, we find that the artificial distinction between born and unborn has vanished. As Dr. Liley says:

"In assessing fetal health, the doctor now watches changes in maternal function very carefully, for he has learned that it is actually the mother who is a passive carrier, while the fetus is very largely in charge of the pregnancy." (5 at p. 202) (65)

The new specialty of fetology is being replaced by a newer specialty called perinatology which cares for its patients from conception to about one year of extrauterine existence (56). The Cumulative Index Medicus for 1969 contains over 1400 separate articles in fetology. For the physician, the life process is a continuous one, and observation of the patient must start at the earliest period of life. (See 42 U.S.C. 289(d).)

A large number of sophisticated tools have been developed that now allow the physician to observe and measure the child's reactions from as early as ten weeks. At ten weeks it is possible to obtain the electrocardiogram of the unborn child (22) (11) (12). At this stage also the heart sounds can be detected with new ultrasonic techniques (45). The heart has already been pumping large volumes of blood to the fast growing child for six weeks.

Footnotes at end of article.

With present day technology, the heart of the child is now monitored during critical periods of the pregnancy by special electronic devices, including radiotelemetry (23) (60). Computer analysis of the child's ECG has been devised and promises more accurate monitoring and evaluation of fetal distress (14). A number of abnormal electrocardiographic patterns have been found before birth. These patterns forewarn the physician of trouble after delivery (57) (58) (62). Analysis of heart sounds through phonocardiography is also being done (25) (53).

With the new optical equipment, a physician can now look at the amniotic fluid through the cervical canal and predict life-threatening problems that are reflected by a change in the fluid's color and turbidity (26) (27). In the future, the physician will undoubtedly be able to look directly at the growing child using new fiber optic devices (through a small puncture in the uterus) and thereby diagnose and prescribe specific treatment to heal or prevent illness or deformity (21) (55).

For the child with severe anemia, the physician now gives blood, using an unusual technique developed by Dr. A. Liley of New Zealand. This life saving measure is carried out by using new image intensifier x-ray equipment. A needle is placed through the abdominal wall of the mother and into the abdominal cavity of the child. For this procedure the child must be sedated (via maternal circulation) and given pain relieving medication, since it experiences pain from the puncture and would move away from the needle if not premedicated. As Dr. H. M. I. Liley states:

"When doctors first began invading the sanctuary of the womb, they did not know that the unborn baby would react to pain in the same fashion as a child would. But they soon learned that he would. By no means a 'vegetable' as he has so often been pictured, the unborn knows perfectly well when he has been hurt, and he will protest it just as violently as would a baby lying in a crib." (5 at p. 50)

The gastro-intestinal tract of the child is outlined by a contrast media that was previously placed in the amniotic fluid and then swallowed by the child (52). We know that the child starts to swallow as early as fourteen weeks (5).

Some children fail to get adequate nutrition when in utero. This problem can be predicted by measuring the amount of estradiol in the urine of the mother and the amount of PSP excreted after it is injected into the child (29). Recent work indicates that these nutritional problems may be solved by feeding the child more directly by introducing nutrients into the amniotic fluid which the child normally swallows (250 to 700 cc a day). In a sense, we well may be able to offer the child that is starving because of a placental defect a nipple to use before birth (30).

The amniotic fluid surrounding the unborn child offers the physician a convenient and assessable fluid that he can now test in order to diagnose a long list of diseases, just as he tests the urine and blood of his adult patients. The doctor observes the color and volume of amniotic fluid and tests it for cellura element enzymes and other chemicals. He can tell the sex of his patient and gets a more precise idea of the exact age of the child from this fluid. He can diagnose conditions such as the adrenogenital syndrome, hemolytic anemia, adrenal insufficiency, congenital hyperanemia and glycogen storage disease. Some of these, and hopefully in the future all of these, can be treated before birth (31) (32) (33) (34) (35) (36) (37).

At the time of labor, the child's body can be obtained from scalp veins and the exact chemical balance determined before birth. These determinations have saved many children who would not have been considered in need of therapy had these tests not been done (38) (39). The fetal EEG has also been monitored during delivery (61).

A great deal of work has been done to elucidate the endocrinology of the unborn child. Growth hormone is elaborated by the child at seventy-one days, and ACTH has been isolated at eleven weeks gestation (40). The thyroid gland has been shown to function at ten and a half weeks (51), and the adrenal glands also at about this age (40). The sex hormones—estrogen and androgen—are also found as early as nine weeks (40).

Surgical procedures performed on the unborn child are few. However, surgical cannulation of the blood vessels in an extremity of the child has been carried out in order to administer blood. Techniques are now being developed on animals that will be applicable to human problems involving the unborn child. Fetal surgery is now a reality in the animal laboratory, and will soon offer help to unborn patients (28) (41) (42).

The whole thrust of medicine is in support of the notion that the child in its mother is a distinct individual in need of the most diligent study and care, and that he is also a patient whom science and medicine treats just as it does any other person (21) (5).

This review of the current medical status of the unborn serves us several purposes. Firstly, it shows conclusively the humanity of the fetus by showing that human life is a continuum which commences in the womb. There is no magic in birth. The child is as much a child in those several days before birth as he is those several days after. The maturation process, commenced in the womb, continues through the post-natal period, infancy, adolescence, maturity and old age. Dr. Arnold Gesell points out in his famous book that no king ever had any other beginning than have had all of us in our mother's womb (49).

Secondly, we have shown that quickening is a relative concept which depends upon the sensitivity of the mother, the position of the placenta, and the size of the child. At the common law, the fetus was not considered alive before quickening,[3] and therefore we can understand why commentators like Bracton and Coke placed so much emphasis on quickening. But modern science has proven conclusively that any law based upon quickening is based upon shifting sands—a subjective standard even different among races. We now know that life precedes quickening; that quickening is nothing other than the mother's first subjective feeling of movement in the womb. Yet the fetus we know has moved before this. In spite of these advances in medicine, some courts and legislatures have continued to consider quickening as the point when life is magically infused into the unborn. (See *Babbitz* v. *McCann*, 310 F. Supp. 2830). No concept could be further from the scientific truth.

Thirdly, we have seen that viability is also a flexible standard which changes with the advance of these new medical disciplines some of which are hardly a half dozen years old. New studies in artificial placentas indicate that viability will become an even more relative concept and children will survive outside of the womb at even earlier ages than the 20–28 weeks in the past. Fetology and perinatology are only a few years old as specialties. Obstetrics is only sixty years old as a specialty.

Fourthly, we have seen that the unborn child is as much a patient as is the mother. In all the literature opting for permissive abortion, this simple truth is ignored. There are many doctors who know that the unborn is also their patient and that they must exercise their art for the benefit of both mother and child. When the physician accepts that he has two patients, he has no difficulty applying his skill for the benefit of child *and* mother. Every doctor practicing can tell this court when in his medical judgment an abortion is necessary to preserve life. There is no medical mystery on that point. A review of the relevant obstetrics texts will list the indications—psychiatric as well—for therapeutic abortion.[4] When the doctor makes the decision he must not consider the unborn as "mere tissue of the mother" or he will certainly weigh it no more in the balance than any other replaceable tissue of the mother.

FOOTNOTES

[1] In this section the citations are according to medical journal practices. The numbers in the parenthesis refer to the correspondingly numbered work in the medical bibliography.

[2] If the Court is interested in the actual medical history of nineteenth century legislative opposition to abortion, it may consult the American Medical Association, *1846–1952 Digest of Official Actions* (edited F. J. L. Blasingame 1959), p. 66, where a list of the repeated American Medical Association attacks on abortion are compiled. It will be seen that the great medical battle of the nineteenth century was to persuade legislatures to eliminate the requirement of quickening and to condemn abortion from conception, see Isaac M. Quimby *Introduction to Medical Jurisprudence*, Journal of American Medical Association, August 6, 1887, Vol. 9, p. 164 and H. C. Markham *Foeticide and Its Prevention*, ibid, Dec. 8, 1888, Vol. 11, p. 805. It will be seen that the Association unanimously condemned abortion as the destruction of "human life" American Medical Association, *Minutes of the Annual Meeting 1859*, The American Medical Gazette 1859, Vol. 10, p. 409.

[3] See 4 Blackstone, *Commentaries on the Laws of England*, 394–95 (1769) where it is said:

"In case this plea is made in stay of execution, the judge must direct a jury of twelve matrons or discreet women to inquire the fact, and if they bring in their verdict 'quick with child' (for barely, 'with child', unless it be alive in the womb, is not sufficient, . . .)"

[4] See Quay, *Justifiable Abortion*, 49 Georgetown Law Journal 173, 1960, pp. 180–241, where the medical reasons for therapeutic abortions as stated in the standard obstetric works from 1903 to 1960 are stated and analyzed. Dr. Guttmacher has stated:

"On the whole, the over-all frequency of therapeutic abortion is on the decline. This is due to two facts: first, cures have been discovered for a number of conditions which previously could be cured only by termination of pregnancy; and second, there has been a change in medical philosophy. Two decades ago, the accepted attitude of the physicians was that if a pregnant woman were ill, the thing to do would be to rid her of her pregnancy. Today it is felt that unless the pregnancy itself intensifies the illness, nothing is accomplished by the abortion." (66 at p. 13) (See also 67).

Dr. Guttmacher has also said:

"Today it is possible for almost any patient to be brought through pregnancy alive, unless she suffers from a fatal illness such as cancer or leukemia and, if so, abortion would be unlikely to prolong, much less save, life." (68 at p. 9).

Dr. Guttmacher has also said:

"There is little evidence that pregnancy in itself worsens a psychosis, either intensifying it or rendering prognosis for full recovery less likely." (69 at p. 121).

APPENDIX F

ABORTION—DEATH BEFORE BIRTH

(By Joseph R. Stanton, M.D., F.A.C.P.)

The magnificent Life Magazine Series "Life Before Birth" with the pictures of the human embryo and fetus by Lennart Nilsson began with the following statement, "The Birth of a Human Life Really Occurs at the Moment the Mother's Egg Cell Is Fertilized by One of the Father's Sperm Cells."

Abortion attempts to destroy the life that begins with conception. It usually but not always results in the death of the growing

child within the womb. After the first six months of liberalized abortion in New York City, the Health Department reported "eleven live births after abortion procedure, all infants died within the next day or so. Two living infants were "discharged from hospitals" having to be classified as live births rather than as abortions

During the first 12 weeks of life, abortion is carried out by either (A) D&C or (B) Suction Curettage. After twelve weeks, the fetus is too large to be removed by (A) or (B), so abortion is attempted by (C) Saline Injection, and if this is not effective, (D) Hysterotomy is carried out.

No method of abortion is carried out in any significant number of cases without hazard to the mother. A recent paper from England makes the following statement: "The morbidity and fatal potential of criminal abortion is widely accepted while at the same time the public is misled into believing that legal abortion is a trivial incident, even a lunch hour procedure which can be used as a mere extension of contraceptive practice. There has been almost a conspiracy of silence regarding risks."

Listed as immediate complications are:

1. The birth of a living child.
2. Cervical lacerations—4.2%.
3. Uterine performances—1.7%.
4. Fever—15%.
5. Peritonitis—7.2%.
6. Retained products of conception requiring D&C—5%.
7. Septicemia—0.37%.
8. Endometritis—2.5%.
9. Urinary tract infection.
10. Pulmonary embolism.
11. Amniotic fluid embolism.
12. Hemorrhage greater than 500cc. in 9–17% of abortions done by various methods.

Later, additional complications are depressive reactions, subsequent sterility, subsequent abnormalities of placental implantation and a predisposition to premature labor in future pregnancies. A paper from Czechoslovakia states: "We find the immediate acute inflammatory complications in about 5% of cases—permanent complications in 20–30% of all women who had pregnancy interruptions."

It is believed that this presentation shows abortion for what it is—a negative and destructive approach to life and one of its problems. Those who have portrayed abortion as safe, easy, and almost without psychic trauma have not spoken from the facts. The current efforts of the American drug industry now spending millions of dollars to perfect the prostaglandins so that abortions may be made microscopic should be no less objectionable than the destruction of life at 8 weeks or 12 weeks or 24 weeks—before or after birth. Each one of us began life as a single cell and that biological process has continued without interruption to the moment this line is read. Abortion interrupts, despoils and destroys human life.

A. D&C OR DILATION AND CURETTAGE

A brief history is taken, the blood typed and a consent form signed by the patient. The patient is premedicated and an intravenous is started. Anesthesia, either regional or intravenous pentothal is induced. The operative area is cleansed with antiseptics, a retractor is inserted and the mouth of the womb or cervix is grasped with a tenaculum or clamp. A sound or calibrated measure is inserted to measure the depth of the womb. The mouth of the womb is then dilated—"The amount of dilation will depend on the size of the products of conception." A sharp curette—like a long spoon with sharp serrated edges is introduced and the interior of the womb methodically scraped. "Often little tissue comes away at first but the products of conception are loosened and the ovum forceps is used to remove them." An oxytocic is then given to shrink down the uterus and lessen bleeding. The patient is watched until recovery from anesthesia occurs and then sent back to her room. The pathetic pulp in the photos above, what were once fragile, living objects of simple innocence and complex wonder, are consigned to furnace or sewer . . . unwanted, undefended, unknown. What greater sacrifice could the innocent unborn make but to lay down their lives for their mothers' convenience.

B. SUCTION CURETTAGE

Preoperative medication and preparation the same as for D&C. Anesthesia is induced usually with intravenous pentothal. A speculum is inserted in the vagina. The cervix (mouth of the womb, ed.) is grasped with a tenaculum. Pitressin, to cause the womb to contract—is injected. The cervix is forcibly dilated. The suction curette, a tube, is inserted into the uterus, the suction turned on, present at 70 mm Hg. negative pressure. The curette is worked in and out rotating it slowly. "Because the curette and tubing are transparent, the site of implantation can be ascertained from the amount of tissue withdrawn from different areas of the uterus. . . . The procedure is completed by concentrating in the area from which the bulk is obtained." The end point of the procedure is reached when no further tissue is obtained by suction. The embryonic parts, broken and crushed are caught in a tissue trap attached to the machine. A physician long accustomed to witnessing suffering and death has said of suction curettage, that in all his life he has known no more horrible sight or sound than that produced as the little human parts thud into and are caught by the tissue trap.

C. SALINE INJECTION

After twelve weeks, the fetus is so large that D&C and Suction Curettage are too dangerous to the mother. At twelve weeks, there is not enough amniotic fluid in the sac in which the little aquanaut lives and moves to do amniocentisis safely. Usually the physician waits until the unborn child has grown to 16 weeks size. Life Magazine states that it is now 5½ inches long and, "quite recognizable now as a human baby." After the patient has emptied her bladder, the abdomen is then prepared with antiseptics. The skin and subcutaneous tissues are injected with a local anesthetic. A long 18 inch gauge needle is inserted through the abdominal wall and the wall of the uterus into the amniotic sac of fluid surrounding the fetus. Four to five ounces of fluid are withdrawn and 5–7 ounces of toxic salt solution 20% saline (more than 23 times the concentration of salt solution that is used for intravenous therapy normally—ed.) is injected. The patient is then given oxytocics to contract the uterus and often also an antibiotic. After the toxic solution is injected, electrocardiographic studies in a New York hospital show that it takes 45 to 120 minutes for the unborn child's heart to stop. When the child dies or the uterus is sufficiently irritated, after a latent period of hours—labor begins and the dead child is born 24 to 28 hours later. A New York physician who does saline abortions has said of this procedure, "I hate to do saline injections—when you inject the saline you see an increase of fetal movements—it's horrible." That increase of fetal movements occurs as the unborn child struggles in his or her death throes.

D. HYSTEROTOMY

If Saline injection is ineffective or cannot be completed because of technical difficulty or reaction, abortion is accomplished by Hysterotomy. Hysterotomy has been called the "miniature Caesarean section". The patient is prepared and anesthetized, the abdomen and womb are opened. The fetus is lifted out. The cord is clamped. The fetus struggles for a moment and dies. This is obviously unpalatable, particularly to nurses, so much so that Kaye states "The large fetuses aborted at greater than 22 weeks gestation become abhorrent to the nursing staff. This necessitated the change in policy limiting abortion up to the 20th week." Hysterotomy or Caesarean section has a long and honored history in medicine, often saving the life of the mother and the child. When deliberately used to abort, it destroys the life of the child. Occasionally, at least, it also leads to the loss of the life of the mother.

TERMS AND DERIVATIONS

Abortion—Latin Ab-orior, orire, ortus sum—the one kept from arising.

Embryo—Latin Embryon—the offspring before its birth.

Fetus—Latin Foetus—the young one.

"Products of Conception"—the abortionists' term for the embroyo or fetus.

Termination of Pregnancy—abortionists' term for the act of abortion.

BIBLIOGRAPHY

1. "Life Before Birth", Life Magazine, April 30, 1965.
2. Fuchs, F., Modern Treatment, p. 206, February, 1971.
3. American Heritage Dictionary.
4. Whites, Latin-English Dictionary.
5. B. E. Marbury, M.D., "Anesthesia in Abortion", Clinical Obstetrics and Gynecology, vol. 14, pps. 81–84, 1971,
6. G. Shaefer, M.D., "Technique of Dilatation and Curettage for Abortion", Clinical Obstetrics and Gynecology, vol. 14, pps. 85–98, 1971.
7. B. N. Nathanson, M.D., "Suction Curettage for Early Abortion Experience with 645 cases," Modern Treatment, vol. 8, pps. 64–71, Feb. 1971.
8. J. M. MacKenzie, M.D., A. Roufa, M.D., and H. M. M. Tovell, M.D., "Midtrimester Abortion: Clinical Experience with Amniocentesis and Hypertonic Instilation on 400 Patients", Modern Treatment, vol. 8, pps. 72–88, February, 1971.
9. T. D. Kerenyi, M.D., "Outpatient Intra-amniotic Injection of Hypertonic Saline", Clinical Obstetrics and Gynecology, vol. 14, pps. 124–140, March, 1971.
10. S. Edmiston, "A Report on the Abortion Capital of the Country", New York Times Magazine, April 11, 1971.
11. R. E. Kaye, "Procedures for Abortion at the New York Lying-In Hospital", Modern Treatment, vol. 8 pps. 101–113, February, 1971.
12. V. Bonney, A Textbook of Gynecologic Surgery, 6th edition, Carroll, London.
13. H. Stallworthy, A. S. Moolgaoker, and J. J. Walsh, "Legal Abortion: A Critical Assessment of Its Risks", Lancet, December 4, 1971, pps. 1245–1249.
14. A. Kotasek, Int'l. J. of Gyn. and Obs., vol. 9, pps. 118–119, 1971.

ORDER OF BUSINESS

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

Mr. MANSFIELD. Mr. President, will the Senator yield to me for 1 minute?

Mr. HATFIELD. I yield.

COMMITTEE SERVICE

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

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

The legislative clerk read as follows:

S. RES. 121

Resolved, That the item of paragraph 2 of rule XXV of the Standing Rules of the Senate, relating to the Committee on Interior and Insular Affairs, is amended by striking out "13" and inserting in lieu thereof "14".

SEC. 2. Mr. Nelson of Wisconsin, be, and

he is hereby, assigned to service on the Committee on Interior and Insular Affairs, to fill a vacancy on that committee. Mr. Nelson may serve on that committee without regard to the provisions of the first sentence of paragraph 6(a) of such rule XXV, for the remainder of the Ninety-third Congress.

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

There being no objection, the resolution (S. Res. 121) was considered and agreed to.

Mr. MANSFIELD. I thank the Senator for yielding.

WHEN DOES LIFE BEGIN?

Mr. HATFIELD. Mr. President, I wish to commend my colleague, the Senator from New York (Mr. BUCKLEY), for his very thoughtful and thorough statement on a very important issue of the day, and to commend him for offering this amendment to the Constitution with which I am happy to associate myself.

Few issues prompt the depth and intensity of feeling as does abortion. On either side of the question, the ardent protagonists seem more frequently compelled by thoughtless passion and even vindictiveness than by sensitive reason. Such fervor and fury are understandable, for this issue touches on the most personal of beliefs, and affects in the most intimate way the lives of women.

An issue marked by such intensity and divisiveness invites public neutrality on the part of the politician. Quite candidly, it usually seems pragmatically imprudent to become strongly and unapologetically committed on either side of this controversy.

In truth, I have chosen to identify myself unambiguously with a constitutional amendment safeguarding the existence of human life in all forms because I am utterly convinced that issues of the most profound moral consequence for our society, and for all humanity, are at stake.

I have wrestled with my beliefs about abortion—morally, legally, biologically, sociologically, and theologically. In doing so, convictions that I find totally compelling have been deeply affirmed. Moreover, I am persuaded that how society regards this question directly relates to whether we can choose to nourish and enhance all life for the development of its full humanity, or whether we shall make quiet compromises about the sacredness of human life, until the fundamental worth of any life becomes subject to society's discretion, rather than guaranteed by that life's being.

It would be simpler if one concluded that convictions about abortion, however deeply felt, were "personal" beliefs that should be followed individually, but not applied to society. But the belief in life's fundamental right to be has inevitable corporate consequences. I do not, after all, believe merely in my right to be; I believe in the right of all life to be. It would be hypocritical cowardice to hold such a conviction, but not to propose, as a legislator, that society embrace this view.

In opposing our intervention in Indochina, for example, I did not merely believe it would be wrong for me, as an individual, to fight there. I believed that no American should fight there, which compelled me to propose legislation expressing that conviction.

Certainly, abortion, like the war, is an issue requiring moral judgments by each of us as individuals. But it is also an issue which society should and must continually face, making its corporate moral determinations.

The vitality of our corporate conscience is the fundamental issue.

Let me elaborate on the issues that invariably present themselves, in my view, when considering abortion.

At the heart of all else, we must decide upon our definition of human life and determine what value we shall give to that life. In doing so, it only makes sense, in my judgment, to start with the knowledge of biology.

The evolution of a human life, seen through the eyes of scientific inquiry, unfolds as a miraculous, awe-inspiring occurrence. It is a profoundly beautiful, incredulous mystery that prompts praise and wonder.

At the moment of fertilization, new life has its beginning. A totally unique and novel genetic code, expressing a multitude of inherited characteristics, is established as this life springs forth at this instant of creation.

After 5 to 7 days, this re-creative growing organism of life—the blastocyst—journeys into the uterus to seek implantation. Already it has developed the complexity to communicate hormonal information to its maternal host.

If successful in its urge for implantation, and accepted by the body of the mother, this evolving life then establishes a life-giving relationship with its mother. Either before, during, or immediately after implantation segmentation may occur, causing at least twins.

An awesome dynamism reveals itself in this new expression of life. Each present form is transcended by a far more complex mode of life, yet one creating a greater unity. This surging course of growth is guided by an inborn principle.

After the second week of pregnancy—when the woman becomes aware that she is pregnant—the embryo begins differentiating its distinct vital organs—the brain, the heart, the liver, and so on, with unfathomable precision. The basic structure of the human cerebral cortex, the center of consciousness, is outlined between the 15th and 25th day after fertilization, constituting an astounding leap in the growth of the life.

By 4 to 5 weeks a heart beat is detectable. By 5 to 6 weeks the signs of brain waves are present. By 6 weeks every major organ of the fully developed human can be identified. By the 8th week, all the basic structures of the grown human are present, including eyes, fingers, and toes. From this point on, its growth will consist of perfecting and maturing all its structures and organs, rather than adding anything new.

This whole intricate, stupendous chain of occurrences describes biologically the miracle of life's genesis.

Acknowledging the reality of this process, we must ask: Where does the existence of a human being begin? When is it that the individual—personhood—or true human life comes into being?

The facts of embryology seem compellingly clear to me. Human life—the existence of the person—begins when life begins.

When that life commences its development, it is human life—not any other form of life, or not just general life, but human life. And since it is there, it is obviously being. It is a human being. That seems to be the evidence of science.

It may be sensible to point to implantation, and the time after potential segmentation, as the more precise moment when truly individual and personal life is present. At that point, the life has individualized itself, and transcended its own existence by putting itself in relationship to another person. Also, due to this urge, we come to know life exists only at this point.

In any case, the thrust seems absolutely vivid to me. The life of a human being begins at life's beginning.

In my judgment, one cannot begin by dismissing what is biologically self-evident. The appropriate question we must ask is not, "When does life begin?" but rather, "How shall we value the life that exists, in relation to the life of the mother, and other values and considerations?"

There is a tendency to approach the essential questions about life from purely sociological, or legal framework, without reference to biological realities. Sociologically, we discover that unwanted children can often face severe and debilitating burdens. We find that mothers with an unwanted pregnancy may not properly nourish themselves, and thus, the life of their developing child. Retardation of that child may be the consequence.

Further, we see that society leaves a man who is the cause of an unwed mother with no responsibility, and barely even any guilt. Yet the mother faces the emotional and physical demands of a 9-month pregnancy, plus the psychological pain that can result, and then the guilt from a judgmental society. Also, we know that our planet, as well as a poverty-stricken family, have limits to the amount of life that can be fully nurtured and sustained. These are all tragic, terrible realities. But despite the harshness of such truths, these are not the criteria for determining when human life begins, or whether the existence of that life has value.

It is just as impossible to arrive at a full answer to these questions from a purely legal perspective. The law, and the courts, may determine when personhood is to be granted legal definition; this, of course, is the precise intent of the constitutional amendment being proposed. In the Supreme Court's Wade and Bolton decision, it is maintained that personhood is recognized, and given rights under the law, only when that life is viable outside the womb of the mother. The Court does not answer the question of when human life, and personhood, begins. Rather, it makes an arbitrary judgment about when that life is to be valued, and thus given legal recognition and protection.

Now we simply cannot blind ourselves

from the facts of embryology by allowing legal categories, constructed by a Court decision, to determine the point when human life shall be valued, and gain the status of person. There exists a clear consensus, from a biological view, that the ability of life to exist outside the womb in no way gives us a basis for deciding whether human life—a human being—is present. The most obvious refutation of such view—beyond all the embryological realities—is that the point of viability is purely a function of medical skill and scientific progress, and thus is highly variable. Let us push this view to its logical conclusion. If we reach the point scientifically in some future decades where life can be created and sustained totally outside the womb, then is that life to be valued legally, as human life and personhood from the beginning of its development, while life beginning inside a womb, naturally, is not to be so regarded?

The reality of a developing life's total dependency upon the mother does not provide reason for regarding it as other than life. Neither does this fact justify depriving the emerging person of its lifesaving environment, any more than an infant's basic life need for affection, warmth, and cuddling would somehow justify the abandonment of that life. The state of intimate and total dependency between the mother and the evolving life within her only underscores the realization that a human relationship exists.

As Bernard Haring eloquently expresses this truth in his new book, "Medical Ethics":

> Human solidarity, the intimate dependency of the human person on the other's love and protection—never are these more strongly disclosed than during the nine months the embryo or fetus lives in the mother's bloodstream. The psychological and moral maturity of the mother, as mother, greatly affects her attitude towards the child she is bearing. It makes an enormous difference whether she considers the fetus only as "tissue" or entertains motherly feelings towards this living being. The humanization of all mankind, the totality of human relationships cannot be dissociated from this most fundamental and life-giving relationship between the mother and the unborn child. All forms of arbitrary rationalization to justify abortion will lead to other types of alibiing about interpersonal relationships and further explosions of violence.

In summary, it seems unreasonable and irresponsible to apply sociological or legal criteria as if they transcended scientific and biological evidence when we define the existence of a human being, and then decide what value we shall give to that life. The tendency not to acknowledge known truth about life in order to view abortion in a more acceptable light must be honestly confronted and rejected if society is to have an ethic based on reality rather than on what we wish were true. An editorial in "California Medicine," the official journal of the California Medical Association, forcefully expressed this point:

> In defiance of the long held Western ethic of intrinsic and equal value for every human life regardless of its stage, condition or status, abortion is becoming accepted by society as moral, right and even necessary. It is worth noting that this shift in public attitude has affected the churches, the laws and public policy rather than the reverse. Since the old ethic has not yet been fully displaced it has been necessary to separate the idea of abortion from the idea of killing, which continues to be socially abhorrent. The result has been a curious avoidance of the scientific fact, which everyone really knows, that human life begins at conception and is continuous whether intra- or extra-uterine until death. The very considerable semantic gymnastics which are required to rationalize abortion as anything but taking a human life would be ludicrous if they were not often put forth under socially impeccable auspice.

The Supreme Court's decision must also be judged purely on its own legal terms. The Court sets limits to the legal definition of personhood—limits which cannot be justified by more fundamental biological reality. The Court, and our Nation, have dealt in the past with the legal definition of personhood. The truth of history is that the most tragic consequences have directly resulted when we, or another nation, have taken a too restrictive view of personhood and the value of all human life. The institution of slavery, reducing human beings to the level of economic commodities, the ovens at Auschwitz and the slaughter at all the My Lais of Indochina demonstrate what becomes possible, tolerable, and even legal from a philosophy of human life and personhood too narrowly conceived.

The Nation's definition of personhood, as set forth by its system of law, has potentially profound and crucial consequences on the rights of every citizen. To set a legal precedent for restricting the view of personhood according to certain artificial criteria is to open the way for the abuse of our most fundamental and treasured ideals.

We are obligated to formulate and to defend a system of law that guarantees the freedom and safety of persons within the public domain that we are called to serve. But we must not view the range of that "public" too nearsightedly. In our collective memory we honor most those lawmakers of the past who were able to hear and think beyond the vocal din of their day and to reflect justly on the needs and plight of those who had no public voice. It is difficult to bring to mind an advocate of justice whom history has condemned for a too "liberal" view of the range of human life and personhood.

The point is this: What the lessons of history teach us is that where societies have erred, they have erred on the side of bigotry and narrowmindedness. They have more often than not erred in the direction of failing to grant rights where those rights were subsequently recognized to be legitimate.

The question, then, is: How broadly shall we apply our system of justice? How liberally shall we interpret the principles spelled out in the U.S. Constitution, and more specifically in the 5th and 14th amendments, which state that no person shall be deprived "of life, liberty, or property, without due process of law" or "the equal protection of the law"?

This was precisely the issue which Congress sought to settle by the adoption of the 14th amendment. With the Dred Scott decision, the Supreme Court in effect had recognized another criteria, other than existence, for determining personhood. The impulse behind those who framed and urged the adoption of the 14th amendment—men like Congressman John Bingham of Ohio, Congressman Thaddeus Stevens, the Radical Republican leader from Pennsylvania, Senator Jacob M. Howard of Michigan, and others—was to make absolute and unequivocal that when the Constitution declares that "no person shall be deprived of life, liberty, or property without due process of law," every person means every human being. No other criteria or limitation can be applied by the State in defining who is a "person."

In the words of Congressman Bingham after the adoption of the joint resolution proposing the constitutional amendment:

> By that great law of ours it is not inquired whether a man is "free" . . . it is only to be inquired is he a man, and therefore free by the law of that creative energy which breathed into his nostrils the breath of life, and he became a living soul, endowed with the rights of life and liberty. . . . Before that great law the only question to be asked of the creature claiming its protection is this: Is he a man? Every man is entitled to the protection of American law, because its divine spirit of equality declares that all men are created equal.

The argument for the 14th amendment rests originally with the concepts of the Declaration of Independence:

> 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, that among these are life, liberty, and the pursuit of happiness.

These rights are not rights conferred on man by the State. It is not for the State to decide what persons shall or shall not have the right to live. These rights are ordained by the Creator. That is why they are universal. Our country was founded on the principle that human rights—the most fundamental of which is the right to life itself—are not given by governments, but endowed by God.

The PRESIDING OFFICER (Mr. STEVENSON). The Senator's time has expired.

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

Mr. HUGHES. Mr. President, I would like to yield a part of my time to the Senator from Oregon to complete his statement, as if it were my own, and I am certainly more than willing to adopt it.

Mr. HATFIELD. I would be very appreciative of that. I have about 6 minutes more, I would say.

Mr. HUGHES. Mr. President, I ask unanimous consent to yield a portion of my time to the Senator from Oregon to continue with his statement.

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

Mr. HATFIELD. I thank the Senator from Iowa.

Abraham Lincoln understood the full meaning of that document:

> I should like to know—taking this old Declaration of Independence, which declares that all men are equal, upon principle, and making exceptions to it—where will it stop? If one man says it does not mean a Negro, why not another say it does not mean some

other man? If that Declaration is not the truth, let us get the statute-book in which we find it, and tear it out! (If it is the truth.) Let us stick to it then; let us stand firmly by it, then.

It is fascinating to discover that advocates of civil rights during this time, who framed and supported the 14th amendment, are among the same men who successfully urged the adoption of the Assimilative Crime Statute in 1866, which adopted as law in Federal territories antiabortion laws passed recently before as State statutes. The adoption of such statutes had been prompted, in large part, by the growing scientific knowledge about the process of conception—the human female ovum was not discovered until 1827—and the resultant urgings by physicians and medical associations for more specific statutes outlawing abortion.

In 1873, Congress responded even more specifically to these pressures by passing a law prohibiting the sale, lending, or giving away of any drug, medicine, or any article causing unlawful abortion. The record shows those supporting the statute included Congressmen and Senators who were framers and advocates of the 14th amendment. This was all far more than coincidence. When one becomes convinced that every human being has fundamental, endowed rights, which are rooted in the right to life itself, then it becomes natural to apply that principle consistently, and universally.

What, then, do we discover to be the true legal issues involved with this question? We recognize that life is life from the beginning; it is endowed with personhood from its outset. To make any other legal definition of personhood is to jeopardize and nullify the most basic right guaranteed by our Constitution—the right to be. The purpose of the amendment proposed today is restore an essential unity to what the law recognizes as a person, and what we know from science, observation, and conviction to constitute a human being.

I recognized that everyone may not agree about the certainty of where personhood begins. But I suggest that if we are to err, then let us err on the side of being too liberal about the definition of human life. Even if one is unsure about when personhood originates, that does not automatically condone adopting a more restricted, limited view regarding what constitutes a human being. For if one is to argue that unborn life may be taken, more or less at will—outside of the case where there is a threat to the life of the mother—then there must be convincing certainty that a human being does not exist when that life is eliminated. The burden of proof lies with those who would advocate abortion to demonstrate conclusively that they are not taking human life. It is hard to imagine where the evidence exists—biologically, philosophically, or in any way—to conform certainty to that belief. Our commitment to life's ultimate, intrinsic value dictates that we never be careless with so crucial a question, whatever our initial views may be. The task must be to safeguard and preserve human life, rather than rationalize its expendability.

The reason why it has become so difficult and even perilous to discuss the issue of abortion is because of the growing realization by women, that they have inner gifts to express, and roles in society to explore, that have previously been disregarded and resisted by society—or more specifically, by men. Women have suffered deeply and even been dehumanized, by society's discrimination of them, and the socially enforced stereotypes every woman has been expected to fulfill. A review of our country's lamentable history in granting to women the very same right we have been discussing—full personhood under the law—makes us realize how tragically we have contradicted our ideals about human rights as far as women are concerned. Further, the depth of the culture's discriminatory attitudes, as also in the case of racism, makes this problem far more complex than merely one of legal injustice.

Many women today believe deeply that their worth is defined in ways that far transcend their ability to bear children. They see new possibilities vocationally, and new ways to express their gifts and capabilities to society. In the process, they reject the notion that the only normal, worthy, and respectable role they should play is that of being a mother. Rather, that is an option that can be chosen and embraced, if desired, rather than arbitrarily imposed by society's expectations.

I fully respect these feelings, for I deeply believe that every person who comes into this world has unique gifts which only he or she can give to others. There must be an atmosphere of freedom to allow their expression—freedom from arbitrary roles, rules, and expectations, which means freedom from prejudice.

But in pursuing these convictions, some believe that the woman's choice over whether or not to become a mother must be guaranteed not just by the preventive techniques of contraception, but by an unquestioned right to abortion. They further buttress this claim by pointing out that society, as well as biological reality, makes the woman's life bear the full weight, burden, and guilt of an unwanted pregnancy, rather than the father.

The harsh and reprehensible treatment, and the deep suffering, that can be inflicted upon the unwed mother, or a life unwanted by its parents, is painfully obvious in many instances. But the crimes of society do not exempt an individual from moral responsibility; they cannot be invoked to numb the conscience, and rationalize what is wrong into something easily excusable or inherently justifiable. Sociological tragedy does not alter the biological reality of a life's existence.

Further, I cannot condone any liberation movement that demands the sacrifice of innocent human life. You do not liberate life by destroying life. The goal, after all, is the human liberation of all mankind. It is a tragic and frightful delusion to believe that goal will be enhanced by granting the right to take life at will, claiming this can make one more fully human. The humanization of mankind will never come through condoning the slaughter of unborn life. Gandhi's words apply directly:

The means is the end in the making.

Many cases where abortion is considered are lives faced with compounded personal tragedy. In human terms, nothing can totally erase depth of tragedy from such lives; that is the province of religious faith. But society can and must take steps to at least alleviate this tragedy, and assume the responsibility for the nurturing of all life.

Let me simply outline society's obligations, which have yet to be assumed with true faithfulness and commitment. Every unborn life has a birthright; for life that is unwanted by unwed parents, society must insure that right. This necessitates maternal care and support so that the psychological, medical, nutritional, and financial needs of the mother are fully cared for, with compassion and acceptance. It means that adoption laws need substantial revision, so especially the mixed-blood or handicapped child will find the warmth and love of a family. Our whole approach to foster care must be humanized.

To prevent the tragedy of unwanted pregnancies, we must promote an uncompromising commitment to sex education and family planning services. Destroying the myths and teaching the truth about sex, and the origin of life, can instill the fundamental reverence for the miracle of new life, preventing tragic pregnancies and scarring of lives.

Further, we must recognize the plurality of sexual morality that exists in our society. That is not likely to change. But the result need not be unwanted life. Thus, there should be widespread knowledge and availability of contraceptive options. This should be steadfastly and forthrightly pursued so that life will not be created unless it is desired.

The PRESIDING OFFICER (Mr. STEVENSON). The Senator's additional 6 minutes have expired.

Mr. HATFIELD. Mr. President, I ask unanimous consent that the remainder of my statement be printed in the RECORD as if read.

Mr. HUGHES. Mr. President, since the time is mine, I will continue to give the statement of the Senator from Oregon as though he had given it.

Mr. HATFIELD. I would be very happy for the Senator to do that.

Mr. HUGHES. Mr. President, I would be more than happy to adopt the statement of the senior Senator from Oregon.

The Senator from Oregon and the Senator from New York have given wise and an unusual amount of research and dedication to this high purpose. I compliment the Senator from Oregon and the Senator from New York and others for undertaking what is obviously a very divisive issue in this country at this point. It is a very controversial one and one that could have been easily avoided by those in public life. It will be a very difficult one for this Nation to face.

I would like to continue with the reading of the excellent statement of the Senator from Oregon (Mr. HATFIELD). It deserves to be stated here this morning. And with the Senator's permission, I will now do so, as follows:

Those who advocate abortion often cite their genuine concern for the plight of the poor. It is felt that those who are poverty stricken should not be subject to the burden of trying to support children they may not have planned to bear. Yet I

believe the dispossessed should be listened to, and allowed to speak for themselves about their needs. The truth is that in general they have not been the ones asking for abortion laws to be liberalized. Quite to the contrary, the Reverend Jesse Jackson has termed abortion a form of genocide practiced against blacks. He condemned—

The moral emptiness and aloofness that comes when protecting human life is not (considered) sacred.

When we realize that society has been more ready to provide assistance for the poor to have abortions than for the poor to have children, maintained by an adequate standard of living, we recognize the truth spoken by those who view abortion as another form of our oppression of the poor.

The reality we face is our reverence for life. On many fronts today we are being asked and urged to save life. We want to save endangered species from extinction; we are asked to spare animals the abuse they suffer at rodeos or from experimentation; we hear pleas to find homes for the thousands of stray dogs populating our dog pounds; and we all know the urgent demand to preserve our natural life—to nurture the rare species of plants, to reverence the value of nature's beauty, and to protect and enlarge major portions of our natural habitat from man's destructive encroachment.

Why should this urge to reverence life, based as it is on a recognition of life's transcendent value, exclude a commitment to save unborn human life? I only plea that we recognize and seek to preserve and nurture the sacredness of life in all its forms.

Abortion is a form of violence. That is the undeniable reality. It is the destruction of life. It furthers the dehumanization of life. It cheapens life.

There is no single characteristic of our society that troubles my inner self more than the degradation, the cheapening, the dehumanization of life that we see all around us today.

That is what is at the heart of the terrible inhumanity of our policies in Indochina. Human life became cheap, and easily expendable—especially Asian life, which somehow seemed less valuable than American life. We justified policies by talking about body counts. And we destroyed all sensitivity to the sanctity of human life.

That is what happened at Attica. That is what happens whenever we heed the frightened and vengeful pleas for "law and order" that would have us crush the lives of others.

The same holds true for capital punishment. The State cannot be so arrogant as to take away that ultimate right of every citizen—the right to life. Those who clamor for capital punishment—even for those certain "exceptions"—do not sense how basic a right they would deny.

A cheapness for life plagues our attitudes regarding amnesty. We would ostracize young men from our midst—ban them forever from our land—because we disagree with their conscience. It means we have little respect for their lives.

We have suffered so many assaults on the sacredness of human life that our conscience is insensitive and numb.

So we face a complex troublesome issue. And what do many want to do? Resort to violence once again. Much of the impulse is to degrade life, and take life once again, thinking that it is some kind of a solution.

Violence is no solution. We have had enough. It is time it all stopped.

Let me echo the sentiments expressed by C. Eric Lincoln in the Christian Century:

I, for one, am sick of blood and bloodletting—in the streets, on the battlefields and in the safe aseptic privacy of a doctor's office. In our continuing retreat from responsibility, we are too ready to wipe out the consequences of our private and public acts with a shrug and a resort to blood. But there *are* consequences to human behavior—economic, political, social, psychological and sexual; and neither the bayonet nor the scalpel is the ideal means of setting things straight.

Let us believe in life. Let us nourish life. Let us commit ourselves to life.

Why? Teilhard de Chardin expresses it best:

How can we account for that irresistible instinct in our hearts which lead us towards unity whenever and in whatever direction our passions are stirred? A sense of the universe, a sense of all, the nostalgia which seizes us when confronted by nature, beauty, music—of a Great Presence * * *

We are often inclined to think that we have exhausted the various forms of love with a man's love for his wife, his children, his friends and to a certain extent his country. Yet precisely the most fundamental form of passion is missing from this list . . . A universal love is not only psychologically possible; it is the only complete and final way in which we are able to love.

Mr. President, that concludes the remarks of the distinguished senior Senator from Oregon.

Mr. HATFIELD. Mr. President, if the Senator would yield, I consider it a great honor that the Senator from Iowa completed my remarks through his own voice, and I consider it a great privilege and an honor to be associated with him in this amendment.

Mr. President, I ask unanimous consent that the following four articles be inserted at this point in the RECORD: "Avoiding a Question About Human Life," from the Washington Star; "A Religious Pacifist Looks at Abortion," by Gordan Zahn from Commonweal; "Abortion and the Court" from Christianity Today; and "Why I Reversed My Stand on Laissez-Faire Abortion," from Christian Century.

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

[From the Washington Star, Mar. 7, 1973]

THE COURT AND ABORTION, AVOIDING A QUESTION ABOUT HUMAN LIFE

(An interview with Dr. Andre Hellegers)

Dr. Hellegers is director of the Kennedy Institute for the Study of Human Reproduction and Bio-Ethics. He is a past president of the Society for Gynecological Research and the Society for Perinatal Research. This interview was conducted by Thomas Ascik of the Star-News staff.

Q. The Supreme Court, in its recent decision on abortion, calls a pregnant, but otherwise healthy, woman a "patient," and states that abortion is "primarily and inherently a medical decision up to the end of the first trimester." Is she a patient in the traditional medical sense?

A. Well, we've traditionally taken care of pregnant women. The question is whether you consider pregnancy a disease. Within the definition of the Court, pregnancy is a disease. The Court considered the stressful factors of pregnancy and the possibilities of future stress in making its decision. So the Court very rigidly followed the World Health Organization's definition of health which says that it is not just the absence of disease but "a sense of well-being." If being pregnant does not give a woman a sense of well-being, then she's ill.

Q. The Court uses the term "potential life" when talking about the fetus. What is a "potential life?"

A. I don't understand the language of the Court myself. You can't talk of the potential hand or the potential foot of a fetus; at least I presume not. It's there or it's not there, and its obviously there. I think that people are confusing the term "life" and the term "dignity." The whole abortion debate has been very fouled up in its linguistics.

I think the simple biological fact is that the fetus is human, only because "human" is a biological category. So, first, the fetus is categorically human. Second, the fetus is a "being" because it's there. If it wasn't a being, you wouldn't need the abortion. So we're dealing with human beings; we're dealing with human life.

The issue is whether we're dealing with valuable human life, whether we're dealing with dignity in that life, whether it has to be protected under the Constitution. All of these are not biological questions.

The unfortunate part of the whole debate is that people have misused biology to create phrases like "when does life begin?" When the question should have been "when does dignity begin?" They have used terms like "potential life," trying to say that life wasn't there, when the reason for saying that life wasn't there was because they didn't attach any value to it. The abortion issue is fundamentally a value issue and not a biological one.

Q. The Court says that it is only "a theory" that human life is present from conception. You obviously think that it can be substantiated beyond mere theory.

A. Oh, it's obvious. I don't know of one biologist who would maintain that the fetus is not alive. The alternative to alive is dead. If the fetus was dead, you would never do an abortion. Today we are employing euphemisms to pretend that human life is not present. This stems from the fact that we are not quite ready yet to say, yes, there is human life but it has no dignity. We have wanted to avoid that statement at all costs.

Q. So abortion is only a euphemistic question of life?

A. That's right, because of the fear of saying what we know—yes, there is human life but we attach no value to it. And it has led, incidentally, to a very interesting phenomenon. The Court specifically says that it does not want to take a stand on whether human life is there or not. But it says, operationally, you may proceed to abort. If you are not willing to say when life starts, there are two possibilities—either it is there or it is not. If you then proceed to abort you are factually saying that you may abort even though human life may be there.

Q. What is "the point of viability?"

A. The Court divides pregnancy into three sectors. During the first three months it

rules totally under the issue of privacy. Then it says, as pregnancy advances, the state may have a compelling interest in the fetus at viability which it puts at 24 or 28 weeks.

The issue, of course, is that the fetus is perfectly viable at any time during pregnancy provided you leave it in place, and it is only because of your action that it becomes not viable. To me the odd situation is that because you do something to the fetus and doing that makes it not viable you may proceed to do so.

Q. What is the "compelling point" of three months? The Court says that is the point at which the woman and her doctor are free to make a private decision about abortion, and the state may step in after three months.

A. The state may step in after three months except when the life and health of the woman are involved—and the Court clearly defines health as being economic state, stress and so forth. Now, any pregnant woman who says, "I am pregnant and it is stressful to me," is right there a candidate for abortion.

Q. What is the basis of regarding the first three months as a turning point in pregnancy?

A. It's based on the proposition that it is safer to have an abortion at that time than to go ahead and have the childbirth. The Court says that up to that time the mother's health is automatically provable to be better off not pregnant than pregnant. And that, incidentally, is just terrible use of statistics. What has happened is that one compares the statistics of undergoing an abortion procedure with the general statistics on maternal mortality as whole. Several problems arise.

First, childbirth as a whole takes nine months whereas the abortion by definition takes less than that. So, obviously, there is a less risk of dying in a three-month period than in a nine-month period because you have lived less long. The second problem is that if you die of anything before you have had a chance to get an abortion, you are counted among the non-abortion deaths. The third problem is that all women who want a child regardless of their health status and who decide to go through with it, and die, automatically fall under the death statistics and not under the abortion statistics. So you are really comparing apples and oranges. It is total misuse of scientific method.

Q. Medically where does the term "the first trimester" come from?

A. The first trimester comes from the fact that up to 13 weeks the abortion procedure is rather a simple one. The first trimester has nothing to do with what a fetus is at 13 weeks compared to what it is at 26 weeks. Up to 13 weeks it is rather safe to get aborted. From 13 to 26 weeks you have to change methods; you have to do saline infusions or hysterotomies. Then the statistics don't look quite as good.

The Court maintains that up to 13 weeks it is safer to be aborted than to have a child, which is already poor statistics. After 13 weeks the Court recognizes that the abortion procedure becomes more dangerous and therefore says that the state may begin to have some regulations to protect the health of the woman. After the 27th week there may be some interest in protecting the fetus as well. But it again spells out very clearly that whenever maternal health is involved, as defined under the World Health Organization's definition of stress, the state cannot stop the woman from getting an abortion. The first trimester has nothing to do with the visability issue; it has to do with the safety of the abortion procedure.

Q. You're saying that meaningful life outside the womb could start at the 27th week?

A. Well, after the 27th week we no longer use the term "abortion" in obstetrical circles. We then talk about "premature delivery". Now the survival rate between 20 and 28 weeks is only 10 percent. The question here is how long must you have lived to be considered viable. That's an issue in its own right.

What is, of course, absurd about the situation is that it is the procedure that makes the fetus unviable. Obviously the chances of survival are greater the closer to 40 weeks you are. But viably at any time during pregnancy is only with assistance. But it is just like a newborn child which is only viable with assistance.

Q. The Court maintains that the abortion question turns on whether the existing laws violate a woman's "rights" and "privacy." Is the fetus the possession of a woman the same as an appendix?

A. In the opinion of the Court it is. Not just the decision but a great deal of things that are going around suggest that intercourse is a given * * *. It shall be without consequences; philosophically, that is what we are saying. It is now assumed that intercourse is one action that everyone can engage in without accepting any consequences. We are now saying that the decision whether to bear a child is not a decision to be made prior to intercourse.

In the high schools we are trying to teach children that, good heavens, intercourse does things. It is very strange the way Justice Douglas puts it in his concurring opinion. He says, "The viscissitudes of life produce pregnancies that may be unwanted."

We are trying to teach in the high schools that pregnancies are produced by intercourse, and here a Supreme Court Justice who says that pregnancies are produced by "viscissitudes of life." If he had said that rape produces pregnancies which are unwanted and over which one has no control, you might be able to agree. That is not a decision for which one must take the consequences because it was not entered into voluntarily. The philosophy now becomes all intercourse is involuntary. Or else everyone is getting raped. It really is amazing.

Q. The Court allows the state a "concern for the health of the mother," and allows the state a concern for the "potential life" of the fetus, but only after 27 weeks. Why?

A. The Court simply and flatly states that the fetus is not a person to be protected under the Constitution. If that is right, then there is no reason at all for the Court to worry about the health of the fetus. Now, very interesting things will happen as a result of this.

As I read the decision, you should now be able to experiment on the fetus *in utero*. The Food and Drug Administration has always had very strict rules about what drugs may be used in pregnancy. There has been a lot of talk about setting up private colonies to test the effects of drugs on the unborn fetus. As a consequence of this decision it is now possible to test all drugs on pregnant women who are going to have an abortion, providing the woman agrees, of course.

Q. The Court says that it wished "a consensus" could have been reached from philosophers, theologians and doctors about the starting point of life.

A. There is a consensus on the starting point of life, without any question. There are many ways to prove when the starting point of life is. If we were going to make a test tube baby how would we do it? We would start off by putting a sperm and an egg together and if we succeeded, then we would be in business; we would have life. The fertilized egg would develop automatically unless untoward events occurred. The first definition of life, then, could be the ability to reproduce oneself and develop one's own, and this the fertilized egg has while the individual egg and sperm do not.

The Court makes some really amazing biological errors in its decision. When it deals with the history of abortion, it talks about what people thought about conception in the past without realizing that conception was only discovered in the 19th century. The ovum wasn't discovered until 1827. The Court says that the Pythagoreans held as a matter of dogma that the embryo "was animate from the moment of conception." Well we didn't even know about conception until 150 years ago. The Pythagoreans were philosophers, not biologists, but the Court seems to regard their opinions as dissenting biological opinions. Factually, of course, they arrived at the right answer anyway, even though they knew very little about biology.

But unless you can think about an ovum as an entity, you cannot talk medically about a start of life. Before, people thought the seed was planted and it either caught or it didn't, almost as if the seed itself was life. That is why we have such crazy terms as insemination, a pure agricultural term that implies that the seed is planted. One ought to talk about cosemination or something that recognizes that the woman contributes an ovum.

The American Medical Association in the 19th century took its stand against abortion when it became known what the process of conception was and what the ovum was. When they found out when life began they thought it imperative to protect it from the beginning.

Q. It seems that the 20th Century has used the same medical knowledge to draw the exact opposite conclusion.

A. That's right. Now that it is absolutely clear how the process works one begins to falsify history and blame the 19th century for having written laws which it wrote, not based on Victorianism, but based on the new knowledge about the process of conception. Unless you are aware of the fact that biologists did not discover the ovum until the 19th century you will completely misread the history of the subject.

The original idea was that the soul was attached at some time to the body but nobody knew when the process of body-building started. When that became known, doctors and the AMA began to count the start of life from conception.

It has been commonly assumed that once human—not cat or rat—life—not death—has started then the concept of soul or human dignity has started. That is where the falsity of the Supreme Court decision lies. If the Court had said that we know when life starts but the issue is when we shall protect it or when we shall attach value to it, then it would have had rational ground for its decision. In the whole debate I have resented the falsification of embryology for the purpose of avoiding the fundamental question—when shall we attach value to human life?

Do you think the Court could have reached the same decision if it had put the question on the proper grounds?

A. Ah, that would have been the difficult one. The Court would have been forced to say something which the California Journal of Medicine has already said very clearly. It says that we know when life starts, let's not kid ourselves. We ought to admit that we are handling certain social problems with the medical technology of killing life that has already started. The Court didn't have the courage of its convictions. So it wound up with the principle that you may kill the fetus even though it is already alive, but the Court didn't quite dare to come out and say it.

Q. What are some further implications of the Court's decision?

A. Hellegers: I am not sure that the Court's decision will cause any further harm other than the killing of fetuses. I am not a domino-theory man. Some people predict that euthanasia, infanticide and other practices will follow hard and soon on the abortion decision. I do think that the abortion decision and other bio-ethical problems are common symptoms of an underlying question. The question is whether you are going to have a utilitarian view of man or whether you are going to have some other view. The Court's decision is a utilitarian view. This fundamental question will come up very clearly, very shortly when the issue of how we use live fetus for experimentation comes up. In England it has already been decided; you may use the live fetus for experimentation.

There are two great issues before us now. First, does one adopt the World Health Organization's definition of health, and does it become a doctor's duty to ensure "a sense of well-being," which is, in a way, happiness. The second issue is whether we shall look at the body in a utilitarian sense or whether we shall attach some greater value to it.

[From Commonweal]

A RELIGIOUS PACIFIST LOOKS AT ABORTION—CAN ONE ABSOLUTIZE THE RIGHT TO LIFE?

(By Gordon C. Zahn)

Prudence, if nothing else, would seem to dictate that a celibate male, especially one committed to pacifism, should avoid getting embroiled in controversy with the women's liberation crowd. Ordinarily I would be all set to go along with this and not only for reasons of such prudential restraint. I am in general agreement with the movement's objectives and principles and more than ready to give it the benefit of almost every doubt—even though I do wish at times that its principal spokesmen (?) could be a little more, if not "ladylike," at least gentlemanly in their rhetoric and tone. But these are minor reservations.

There is one point of substance, however, on which I must register strong disagreement, and that is the increasing emphasis being placed on "free abortion on demand" as a principal plank in the liberationists' platform. From my perspective as a religious pacifist, I find this proposal thoroughly abhorrent, and I am disturbed by the willingness of so many who share my political and theological approach in most respects to go along with or condone a practice which so clearly contradicts the values upon which that approach is based.

In the past I have criticized "establishment" Christians, in particular official Catholic ecclesiastical and theological spokesmen, for their hypersensitivity to the evil of killing the unborn and their almost total disregard of the evil of "post-natal" abortion in the form of the wholesale destruction of human life in war. The argument works both ways and with equal force: those of us who oppose war cannot be any less concerned about the destruction of human life in the womb.

In discussing this issue from a pacifist standpoint I do not intend to enter upon two controversies which, though clearly related to the problem of abortion, are somewhat peripheral to my essential concern for life and the reverence for life. Thus, the whole question of the morality of contraception, obviously one of the alternatives to abortion as a means of population control, involves moral principles of an altogether different order. More closely related but also excluded from consideration here is the legal question, that is whether or not anti-abortion legislation now on the statute books should be repealed, modified, or retained. One can argue, as I shall here, that abortion is immoral and still recognize compelling practical and theoretical reasons for not using state authority to impose a moral judgment that falls so far short of universal acceptance within the political community. On the other hand, there are equally compelling arguments upholding legal prohibition of what has long been considered by many to be a form of murder; and this takes on added force to the extent that repeal of laws already in effect will be interpreted as official authorization of the hitherto forbidden practice. Since the intention here is to discuss the objections to abortion itself, this very important legal question will be left for others to debate and resolve.

Nor will I comment upon what I consider the tactical blunder on the part of the liberationists to "borrow trouble" by making so touchy an issue—on emotional as well as moral grounds—a central part of their program. I must, however, reject the rationale that is usually advanced to support their demands, the "property rights" line which holds that because a woman's body is "her own," she and she alone must be left free to decide what is to be done about the developing fetus.

Leaving aside the obvious fact that the presence of the fetus suggests a decision that could have been made earlier, this line of argument represents a crude reversion to the model of *laissez-faire* economics Catholics of a liberal or radical persuasion have long since repudiated. Even if one were to accept the characterization of a woman's body as "property" (is it not one of the liberationists' complaints that men and man-made laws have reduced her to that status?), the claim to absolute rights of use and disposal of that property could not be taken seriously. The owner of a badly needed residential building its not, or at least *should not be*, free to evict his tenants to suit a selfish whim or to convert his property to some frivolous or non-essential use. In such a case we would insist upon the traditional distinction which describes property as private in ownership but social in use.

To use another example, the moral evil associated with prostitution does not lie solely, perhaps not even primarily, in the illicit sex relationship but, rather, in the degradation of a person to precisely this status of a "property" available for "use" on a rental or purchase basis. It is a tragic irony that the advocates of true and full personhood for women have choosen to provide ideological justification for attitudes which have interfered with recognition of that personhood in the past.

This is not to say, of course, that a woman does not have prior rights over her own body but only that the exercise of those rights must take into account the rights of others. In monogamous marriage this would preclude a wife's "freedom" to commit adultery (a principle, it should be unnecessary to add, which applies to the husband as well). Similarly, in the case of a pregnancy in wedlock, the husband's rights concerning the unborn child must be respected too; indeed, even in a pregnancy out of wedlock, the putative father retains parental rights to the extent that he is ready to assume his share of responsibility for the child's future needs. In both cases, and this is the crux of the born child, perhaps the most important argument, of course, the rights of the unclaimant of all, must be respected and protected.

HUMAN RIGHTS

These categories of rights, I insist, are not to be put in any "property rights" or similar economic frame of reference. They represent elementary human rights arising out of an intimacy of union between responsible persons which transcends purely utilitarian or proprietary considerations. The governing consideration as far as the unborn child is concerned is simply this: when do these rights come into existence? The answer offered here, and I think it is the only answer compatible with a pacifist commitment, is that they exist at the moment of conception marking the beginning of the individual's life processes.

This has nothing to do with the old theological arguments over whether or not the soul can be said to be present at conception; it rests completely upon the determination of whether or not there is now something "living" in the sense that, given no induced or spontaneous interferences, it will develop into a human person. We know for certain that this fertilized ovum is not going to develop into a dog or cat or anything else; whatever its present or intervening states, it will at the end emerge as a human child. One need only consider the usual reaction to a spontaneous or accidental termination of a *wanted* pregnancy. The sorrow of the prospective parents, a sorrow shared by friends and relatives alike, testifies not only to the fact that something has "died" but, also, that this "something" was human.

So, too, with the medical arguments over when the fetus becomes "viable" and, therefore, eligible for birth. It is the life that is present, not the organism, which should concern us most. Once we agree that society's origin and purpose lie in the fulfillment of human capacities and needs, we have established the basis for a reverence for life which goes far beyond such purely technical determination. Should a life once begun be terminated (whether before or after the point of viability) because the prospective mother did not have adequate food and care or because she was forced by the demands of her social or economic condition to undergo excessive physical or psychological strain, we would have no problem about charging society with a failure to meet its responsibility. There is no reason to change this judgment when the termination is brought about by deliberate act, either to avoid some personal inconvenience or to serve what may be rationalized into the "greater good" of the family unit or, as the eugenicist might put it, society as a whole. Just as rights begin with the beginning of the life process, so does society's obligation to protect them.

Recently a new and somewhat terrifying "viability" test has been proposed in arguments supporting abortion. No longer is it to be the stage of physiological development which determines whether or not life is to be terminated but rather the degree to which "personhood" has emerged or developed. Although strict logic might suggest that personhood can be established only after the fetus has entered upon its extra-uterine existence (that is, after the child has been born) advocates of this new test are apparently willing to extend it back into the later weeks of pre-natal development as well.

Two objections to this test should be immediately obvious. In the first place (and the "generous allowance" of pre-natal personhood serves as a good illustration of this point), we are caught up with the same old problems of judgment that plagued the older viability standards: if the fetus is to be considered viable at x-weeks, what about the day before that period is completed? If personhood can be manifested in the pre-natal period when, let us say, fetuses can be compared in terms of differential activity, what about the hour before such differences can be noticed? Is more activity a sign that personhood is advanced, or might the absence of

much activity be a sign of equal, though different, emergence of personhood?

The second objection is even more troubling. Under the old notion of physiological viability, the child once born was unquestionably viable. The saying may not be true—or may not remain so in the face of changing social definitions—once the emergence or development of personhood is the measure. My experience as a conscientious objector in World War II doing alternate service in a home for mental deficients introduced me to literally hundreds of individuals whose state of retardation was such that they could be described as "animals" or even "vegetables" by members of the institutional staff. Later, working in a hospital for mental diseases, I attended paretic and senile patients who had reached the state of regression and psychological deterioration at which the same terms could be applied to them and their behavior. However ardent and sincere the disclaimers may be, applying the test of personhood to the unborn is certain to open the way to pressures to apply that same test to the already born. In this sense, then, abortion and euthanasia are ideological twins.

In the old theological formulations of the problem, the condemnation of abortion was justified in terms of the "sancity" or the "intrinsic worth" of human life. Today much of the argument supporting abortion rests upon similar abstractions applied now to the intrinsic worth of the prospective mother's life or of siblings whose living standards and life-chances might be threatened by the additional pregnancy. These are valid concerns and deserve serious and sympathetic understanding; and society does have a responsibility to find answers to these problems that do not involve the sacrifice of the human life that has begun. Pacifism and opposition to abortion converge here, for both find their ultimate justification in the Christian obligation to revere human life and its potential and to respect all of the rights associated with it.

The developmental model used by those who propose emergence of personhood as the test is basically sound, but as used by the advocates of abortion it becomes a logical enormity arguing for a development from an undefined or unstipulated beginning. A more consistent approach would see human life as a continuity from the point of clinically determined conception to the point of clinically determined death. This physiological life-span is then convertible to an existential framework as a developmental pattern of dependence relationships; at the earliest stages of a pregnancy the dependence is total; as the fetus develops, it takes on some of its own functions; at birth, its bodily functions are physiologically independent but existential dependency is still the child's dominant condition. The rest of the pattern is obvious enough. As the individual matures and achieves the fullness of personhood, both functional and behavioral independence become dominant (though never total; culture and its demands must be taken into account). Finally, advanced age and physical decline returns him to a state of dependency which may, at the end, approximate that of his earliest childhood.

Society's responsibilities to the individual stand in inverse relationship to the growth and decline of his independence and autonomy. It would follow, then, that the immortality of abortion (and euthanasia as well) lies precisely in the fact that they propose to terminate the life process when the dependency is most total, that it would do so with the approval or authorization of society, that it would seek to justify this betrayal of society's responsibility on purely pragmatic grounds. The various claims made for the social utility of abortion (reducing the threat of over-population and now pollution; sparing the already disadvantaged family the strain of providing for yet another mouth; etc.) or the even less impressive justifications in terms of personal and all too often selfish benefits to the prospective parent(s) have to be put in this context; and once they are, they lose much of their force.

The earlier reference to the sorrow caused by the loss through miscarriage of a wanted child does not obscure the fact that most abortion proposals are concerned with preventing the birth of unwanted children. No one will deny that being regarded as an unwanted intruder in the family circle will be psychologically if not always physically harmful, but there should be other solutions to this problem than "sparing" the intruder this unpleasantness by denying him life in the first place. If a child is "unwanted" before conception, science has provided sufficient means for avoiding the beginning of the life process.

Since the sexual enlightenment burst upon us a generation or so ago, we have replaced the old Victorian notions about "the mystery of sex" with a kind of mechanistic assumption that man is the helpless victim of his chemistry and unconscious impulses, an assumption which reduces sexual intercourse to a direct, natural, and almost compulsive response to stimuli and situations. The other side of this particular coin is the not so hidden danger that man himself will be redefined in strictly biological terms, a largely accidental event brought into being by the union of two adult organisms acting in response to that irresistible urge. This is reflected in many of the statements made by advocates of abortion in their references to the conceived child as a "fertilized ovum." The term is perfectly accurate in the strictly physiological sense; in the Christian perspective, however, it leaves something to be desired.

The act of intercourse, like any other human act is and must remain subject to human responsibility. This means that those who enter upon it should consider the possible consequences of the act and acknowledge responsibility for those consequences if and when they come to pass. Ideally this would mean that unwanted children would not be conceived; where the ideal is not achieved—or where the participants change their minds after the child is conceived—it will be society's obligations to assume the responsibility for the new life that has been brought into being.

[From Christianity Today, Feb. 16, 1973]

ABORTION AND THE COURT

Writing to Christians in Rome about the spiritual condition of the pagan world, Paul diagnosed it in this way: "Although they knew God, they did not honor him as God or give thanks to him, but they became futile in their thinking, and their senseless minds were darkened. Claiming to be wise, they became fools. . . . Since they did not see fit to acknowledge God, God gave them up to a base mind and to improper conduct" (Rom. 1:21, 22, 28). Not only the thinking but often the laws of men, and even the decisions of religious councils, can conflict with the laws of God. That is why Peter and John called before the Sanhedrin, declared that they must obey God rather than men (Acts 4:19).

In a sweeping decision January 22, the United States Supreme Court overthrew the abortion statutes of Texas, indeed, of the states that protect the right of an unborn infant to life before, at the earliest, the seventh month of pregnancy. The Court explicitly allows states to create some safeguards for unborn infants regarded as "viable," but in view of the present decision, it appears doubtful that unborn infants now enjoy any protection prior to the instant of birth anywhere in the United States. Until new state laws acceptable to the Court are passed—at best a long-drawn-out process—it would appear impossible to punish abortions performed at any stage.

This decision runs counter not merely to the moral teachings of Christianity through the ages but also to the moral sense of the American people, as expressed in the now vacated abortion laws of almost all states, including 1972 laws in Massachusetts, New York, and Pennsylvania, and recently clearly reaffirmed by statewide referendums in two states (Michigan and North Dakota). We would not normally expect the Court to consider the teachings of Christianity and paganism before rendering a decision on the *constitutionality* of a law, but in this case it has chosen to do so, and the results are enlightening; it has clearly decided for paganism, and against Christianity, and this in disregard even of democratic sentiment which in this case appears to follow Christian tradition and to reject permissive abortion legislation.

The Court notes that "ancient religion" did not bar abortion (*Roe et al.* v. *Wade*, No. 70–18 [1973], VI, 1); by "ancient religion," it clearly means paganism, since Judaism and Christianity *did* bar abortion). It rejects the "apparent rigidity" of the Hippocratic Oath ("I will give no deadly medicine to anyone if asked, nor suggest any such counsel; and in like manner I will not give to a woman a pessary to produce abortion") on the grounds that it did not really represent the consensus of pagan thinking, though pagan in origin, but owed its universal acceptance to popularity resulting from "the emerging teachings of Christianity" (*ibid.*, VI, 2.) To these, the High Court unambiguously prefers "ancient religion," that is, the common paganism of the pre-Christian Roman Empire. Against the official teaching of the Roman Catholic Church that the "life begins at conception" (curious language on the part of the Court, for no one denies that the fetus is human, or that it is alive: the Court apparently means *personal* life), the Court presents "new embryological data that purport to indicate that conception is a 'process' over time, rather than an event, and . . . new medical techniques such as menstrual extractions, the 'morning-after' pill, implantation of embryos, artificial insemination, and even artificial wombs" (*ibid.*, IX, B). It is hard to understand how the contention that conception is a "process" of at most a few days' duration is relevant to the possible rights of the fetus at three or six months, and even harder to comprehend the logic that holds that "new medical techniques" for destroying or preserving the embryo "pose problems" for the view that it was alive before being subjected to those techniques.

Unwanted pregnancies resulting from a freely willed and voluntary act of sexual intercourse are one thing; those resulting from rape require special consideration. Even here, I would hold, the reverence for life which forms the basis of this pacifist rejection of abortion would preclude the intentional termination of the life process begun under such tragic circumstances. The apparent harshness of this position may be mitigated somewhat by reflecting that pregnancies attributable to true rape (or incest) represent a small proportion of the unwanted. Certainly they do not constitute a large enough proportion to justify the emphasis placed upon them by proponents of abortion. This provides small consolation to the victim who has already undergone the physically and psychologically traumatic experience of the assault itself and must still suffer the consequences of an act for which

she bears no active responsibility. Nevertheless, the life that has begun is a human life and must be accorded the same rights and protection associated with the life resulting from normal and legitimate conceptions. Here again society must do what it can to provide all possible assistance to the victim including compensation (if one can speak of "compensation" in this context!) for the sacrifice she has been called upon to make. In most cases we must assume the mother will not want to keep the child after birth, at which point society's responsibility for its future development will become complete. If a mother does decide to keep her child, society will still have the obligation to make some continuing provision for adequate care and support.

The position I have outlined here has been described as unrealistic and even irresponsible in that it absolutizes the right of every "fertilized ovum" to develop, as one critic put it, "in a planet which can no longer support that kind of reproduction and where it threatens the possibility of realizing the lives which exist." The adjectives unrealistic and irresponsible do not trouble me; they are fairly standard descriptions of the pacifist approach, and this is a pacifist case against abortion. What does trouble me is the rest of the criticism. The ability or inability of the planet to support present and projected population totals is still a contested issue, and even if the prospects were as desperate as the statement suggests, the question would still remain as to whether the termination of unborn life is a desirable or acceptable solution. And as for the "realization" of the life which exists, it is essential to face the prior question of who is to determine what that involves and by what standards. How long we must ask before the quotas now being set in terms of "area population growth" and similar quantitative formulae are refined by eugenic selectionists into qualitative quotas instead? This is not an idle fear, and one would think that a movement dedicated to the elimination of long-standing inequalities based on the qualitative distinction of sex should be particularly sensitive to the possibility.

Beyond this there is that matter of "absolutizing" the right to life, and to this I am ready to plead guilty. At a time when moral absolutes of any kind are suspect and the fashions in theological and ethical discourse seem to have moved from situationalism to relativism and now to something approximating indifferentism, it strikes me as not only proper but imperative that we proclaim the value of every human life as well as the obligation to respect that life wherever it exists—if not for what it is at any given moment (a newly fertilized ovum; a convicted criminal; the habitual sinner) at least for what it may yet, with God's grace, become.

It is not just a matter of consistency, in a very real sense it is the choice between integrity and hypocrisy. No one who publicly mourns the senseless burning of a napalmed child should be indifferent to the intentional killing of a living fetus in the womb. By the same token, the Catholic, be he bishop or layman, who somehow finds it possible to maintain an olympian silence in the face of government policies which contemplate the destruction of human life on a massive scale, has no right to issue indignant protests when the same basic disregard for human life is given expression in government policies permitting or encouraging abortion.

Pleading "the established medical fact" that "until the end of the first trimester, mortality in abortion [of course the reference is to *maternal* mortality—fetal mortality is 100 per cent] is less than that in normal childbirth [nine maternal deaths per 100,000 abortions vs. twenty-five per 100,000 live births, a differential of 0.016 per cent, of course not counting the 100,000 fetal mortalities]" (*ibid.*, X), the Court decreed that a state may not regulate abortion at all during the first three months, and during the second, only to protect the health of the mother. After "viability," defined as "about six months," when the fetus "presumably has the capability of meaningful life outside the mother's womb," then, if the State is interested in protecting fetal life . . . it may go *so far* [emphasis added: since abortion is 100 per cent fatal to the fetus, it is hard to see the value of "protection" that goes less far] as to proscribe abortion during that period, except when it is necessary to preserve the life or health of the mother" (*ibid.*). Since health is explicitly defined to include "mental health," a very flexible concept, this concession to the protection of the fetus from seven to nine months will, in practice, mean little.

The Court based its abortion decision on the right of privacy, and that without empirical or logical justification. "This right of privacy . . . is broad enough to encompass a woman's decision whether or not to terminate her pregnancy," Justice Blackmun wrote in delivering the opinion of the Court. But the right of privacy is not absolute, and, much more important, no abortion decision can ever be by any stretch of the imagination a purely private matter. The fetus, if not a full-fledged human being, is at least a being owing his existence as much to father as to mother, and is therefore an individual distinct from both. Curiously, fathers are scarcely mentioned in the fifty-one-page majority opinion! The decision would appear to contradict itself when it insists that the "private" abortion decision must be made in conjunction with a physician and/or in line with some kind of medical judgment.

In his concurring opinion, Chief Justice Burger fatuously comments, "I do not read the Court's holding today as having the sweeping consequences attributed to it by the dissenting justices [White and Rehnquist]." The New York state tally stood in 1971 at a ratio of 927 abortions for 1,000 live births; now that abortion has become allowable nationwide, the ratio will presumably change, but the experience of nations with easy abortion suggests that it may very well remain as high as one abortion for every two live births, or even higher. What would the Chief Justice consider sweeping? Mandatory abortion for all those falling into a certain class? Infanticide? Mass extermination of undesirables? Make no mistake: the logic of the high court could be used with like—in some cases with greater—force to justify infanticide for unwanted or undesirable infants; the expression, "capability of meaningful life" could cover a multitude of evils and will, unless this development is stopped now.

In his dissent, Justice White sums up the situation and the Court's action:

"The common claim before us is that for any one of such reasons [he cites convenience, family planning, economics, dislike of children, the embarassment of illegitimacy, and others], or for no reason at all, and without asserting or claiming any threat to life or health, any woman is entitled to an abortion at her request if she is able to find a medical doctor willing to undertake the procedure. The Court for the most part sustains this position; during the period prior to the time the fetus becomes viable, the Constitution of the United States values the convenience, whim or caprice of the putative mother more than the life or potential life of the fetus. . . ."

In arriving at this position, the majority of the Supreme Court has explicitly rejected Christian moral teaching and approved the attitude of what it calls "ancient religion" and the standards of pagan Greek and Roman law, which, as the Court notes in self-justification, afforded little protection to the unborn" (*Ibid.*, VI, 1). It is not necessary to read between the lines for the spiritual significance of this decision, for the Court has made it crystal clear.

In view of this, Justice Rehnquist's dissenting observation that the Court is engaging in "judicial legislation" may seem almost insignificant. Nevertheless, we must ask what remains of the democratic process and the principle of local initiative when not only long-standing older laws but the most recent state laws and even the will of the people expressed in state-wide referendums are swept from the board in a single Court ruling, when the people and their representatives are prohibited forever—or at least until the Constitution is amended—from implementing a higher regard for the life of the unborn than that exhibited by seven supreme judges.

Having previously seen fit to ban the formal, admittedly superficial, and possibly hypocritical acknowledgment of God that used to take place in public-school prayers and Bible readings, the Court has now repudiated the Old Testament standards on capital punishment as cruel and without utility, and has rejected the almost universal consensus of Christian moral teachers through the centuries on abortion. Its latest decision reveals a callous utilitarianism about children in the womb that harmonizes little with the extreme delicacy of its conscience regarding the imposition of capital punishment.

Christians can be grateful that the court has not yet made the "right" to abortion an obligation. It is still possible for us to consult the will of God in this matter rather than the laws of the state. The present decision makes it abundantly clear that we are obliged to seek his will and not be guided only by public law. We should recognize the accumulating evidence that public policy is beginning to display what Paul called "a base mind and improper conduct," and for similar reasons. Will the time come when this nation "under God" is distinguishable from those that are aggressively atheistic only by our currently greater material affluence? Christians should accustom themselves to the thought that the American state no longer supports, in any meaningful sense, the laws of God, and prepare themselves spiritually for the prospect that it may one day formally repudiate them and turn against those who seek to live by them.

[From the Christian Century, April 25, 1973]

WHY I REVERSED MY STAND ON LAISSEZ-FAIRE ABORTION

(By C. Eric Lincoln)

Unrestricted abortion is but one more example of the retreat from responsibility which seems characteristic of the times.

In September 1967, I was invited to Washington to join in an international discussion on "the terrible choice," abortion. The seminars were sponsored by the Joseph P. Kennedy Foundation, and the featured speakers were some very learned clergymen and scholars from all over the world. Mine was by no means a major voice in the proceedings, but somewhere in the footnotes of the record there may be some notation of what I said at the time.

I took the position that in America, at least the notion of a woman's complete personal autonomy over her body is, or should be, so elementary as to preclude debate, and that to require a woman to be an incubator for a child she does not want is barbaric and tyrannical and in violation of the most basic expectations of a civilized society. But I also insisted that "any liberalization of the abortion laws [should] serve a constructive interest of those who are particularly disadvantaged by the consequences of isolation and poverty," and that "their economic and social vulnerability should not be . . . ex-

ploited by other interests masquerading as abortion reform." I have never been an advocate of abortion on demand, but as things have turned out, the fact that I am somewhere on record as standing for what could be interpreted as a laissez-faire approach to the issue humbles my self-esteem and roils my conscience as well. My mind has changed. I have had some second thoughts on the matter.

The issues have been debated pro and con in the press for years now, but I am not aware that any of the sub-issues I am about to raise has received the attention that seems due it. To be sure, having taken the "logical" position in the early years of the debate, I made no attempt to keep up with it, awaiting only the confirmation of the courts—which did occur in due time, to my increasing apprehension and dismay. For, as I said, my mind has changed. So, although belatedly and after the fact, I feel compelled to raise the following issues.

(1) Marriage is a civil contract. The partners to that contract are required by law to assume certain derivative responsibilities to each other, to the state (society) and to any children born to their marriage. A married person's control over his or her body is modified by the contract of marriage, which, among other things, presupposes sexual ("bodily") love and exclusive access.

Now, a marriage that is not "consummated" by bodily union is customarily considered null and void. If consummation results in pregnancy, that pregnancy is the consequence of *two people's acting in concert;* and if that pregnancy reaches its natural consummation, a child is born. A child is the natural product of *two* people who have had sexual intercourse, and by law and by custom both share responsibility for the child. No woman gets pregnant all by herself. The child, born or unborn, belongs equally to its progenitors. How then can the decision to terminate—to abort—be limited to one partner to the marriage contract and a physician?

(2) An unmarried woman may accept or refuse sexual intercourse. If she consents, a contractual relationship is implied, for if a child is born of that union, the male partner may be assigned the responsibilities of support of the child and/or its mother. In a just and reasonable society, rights and responsibilities occur in tandem. Has not a man who is legally liable for the consequences of his participation in sexual intercourse by mutual consent, an equal right in the determination of whether the natural consequences of that act shall be terminated by abortion? A child has a mother *and* a father. A fetus is a child *in utero.* We need not debate the question of at what point it becomes "human"; we know by experience that it becomes human at *some* point, and that after nine months, more or less, a child will be born of every pregnancy if it is not interrupted. Can a decision so vital to at least two people be justly made by one?

Stress is put on the fact that the woman must carry the child in her body, to her possible inconvenience in one way or another. But "incubation" is in some sense only the counterpart of "procreation." Both require the instrumentation of the body and its processes and resources. One of these processes requires more time. But society evens out the responsibilities by placing the subsequent burden of primary liability upon the male.

The state (society) is a party to every marriage contract and to every *implied* contract of marriage. It must be, because the state is in *loco parentis* to every child whose father and/or mother cannot or will not accept responsibility for it. If the state (in the absence of father or mother) must assume liability should pregnancy run its natural course, does not the state also have something to say about the interruption of pregnancy?

The state is the guardian of public welfare and public policy. In that capacity, it exercises some degree of control over our use (or abuse) of our bodies in many other areas. For example, it requires the conversion of some (male) bodies to military tasks; it confines some bodies in jails or other institutions, thereby drastically reducing the options for personal decisions regarding those bodies. It forbids suicide and restricts the use of certain beverages or drugs, and even of some medical practices (e.g., acupuncture), which might have a deleterious effect upon the body. The state requires, on occasion, the use of seat belts, helmets, protective shoes, water treatment, various inoculations, among myriads of other practices which modify the individual's right to make autonomous decisions about his body. Even the right not to clothe it is a regulated right. Probably the state would prohibit branding of the body as practiced in the days of slavery, and would hold scarification as a beauty technique to be against public policy. Does the state have an interest in abortion that it may have overlooked in the heat of the controversy?

Despite the fact that the issue has been settled, at least for the time being, by the Supreme Court, the questions I have raised are in no sense intended to be academic, but they did figure prominently in my own descent from what now seems an impossible idealism. My original position was largely motivated by an interpretation of sectarian dogma which seemed at the time anachronistic and repressive. My vision was of an occasional individual caught up in circumstances so overwhelming and so devastating in potential as to warrant so drastic a procedure as the interruption of life. I considered abortion a draconian measure of last resort for a limited class of people who, after having considered the vast implications of what they were about to do, would proceed with fear and trembling and a prayer for forgiveness. I was not prepared for the bloodletting which has, in fact, ensued.

I, for one, am sick of blood and bloodletting—in the streets, on the battlefields and in the safe aseptic privacy of a doctor's office. In our continuing retreat from responsibility, we are too ready to wipe out the consequences of our private and public acts with a shrug and a resort to blood. But there *are* consequences to human behavior—economic, political, social, psychological and sexual; and neither the bayonet nor the scalpel is the ideal means of setting things straight. They are instruments after the fact. In a sophisticated society with a vaunted technology based on the common understanding of cause and effect, we seem to be operating more and more from the premise that so long as the effect is no more than a small unpleasantness which can be conveniently removed before it becomes burdensome, the cause is reduced to inconsequence. The police, the army, the medical profession are there to extricate us from the consequences of our folly and our lack of restraint. We do not need to care much about what we do, or to whom.

There are few to challenge the permissive sophistry behind which we slither our way into this "new" wasteland of unaccountability. Our newest cultural "inventions" and "discoveries" are in fact ancient experiments long since discarded by ascendant civilizations. To my present way of thinking, unrestricted abortion—"left up to the woman and her doctor"—is but one more example of the retreat from responsibility which seems characteristic of the times. A decision about abortion is not properly the doctor's responsibility unless a medical problem is involved, and most abortions currently demanded are not even remotely "medical." Since the physician was not a party to the procreative act, his role in determining the consequences of that act is questionable. We have made of medicine a convenient facade. We have made of the doctor a mere functionary and accessory—a scapegoat for the clergy, the judiciary, the pregnant woman and her partner in the act, and for all the rest of us who turn away from personal and social accountability. This is social progress? Somehow I remain unconvinced.

Mr. HUGHES. Mr. President, I compliment the distinguished Senator from Oregon and the distinguished Senator from New York. It is a very difficult enterprise in which they have engaged. I am cosponsoring this amendment for the reasons given this morning and because of my own deep feeling that abortion is the taking of human life.

I disagree with the Wade and Bolton decisions of the Supreme Court which deal with the matter of abortion more liberally than is necessary for the health of the mother. It is claimed that this is an invasion of the mother's constitutional right to privacy. I cannot accept the view that the mother has a right to privacy which would supersede the unborn child's right to life.

I am aware of the difficulties in forming an amendment to the Constitution to deal with a matter of this kind. There are great difficulties.

I compliment the Senator from New York and the Senator from Oregon for the tremendous effort they have put in this matter. I know the difficulty involved in choosing the right wording to frame such an amendment. We must avoid language that would affect the constitutional rights of people on matters that are entirely unrelated to the objective we seek here.

I am hopeful that we have done that. However, certainly this amendment is going to be referred to the appropriate committee, and the Subcommittee on Constitutional Amendments will, I am sure, analyze it carefully and consider what we are discussing here today in the light of what they should do.

The PRESIDING OFFICER. The Senator's time has expired. Under the previous order, the Senator from Maryland (Mr. MATHIAS) is recognized for not to exceed 15 minutes.

(The remarks Senator MATHIAS made at this point on the introduction of S. 1923, pertaining to the need for Federal agencies to keep congressional committees fully and currently informed, are printed in the RECORD under Statements on Introduced Bills and Joint Resolutions.)

QUORUM CALL

Mr. MATHIAS. Mr. President, I make the point that a quorum is not present.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

ORDER OF BUSINESS

The PRESIDING OFFICER. Under the previous order, the distinguished Senator from Illinois (Mr. PERCY) is now recognized for not to exceed 15 minutes.

(The remarks Senator PERCY made at this point on the introduction of S. 1914, relating to Radio Free Europe and Radio Liberty, are printed in the RECORD under Statements on Introduced Bills and Joint Resolutions.)

INTERPARLIAMENTARY UNION MEETING IN MEXICO

Mr. PERCY. Mr. President, in my few remaining minutes, I would like to address myself to another subject.

While we try to build bridges to our enemies, I feel that we should be careful not to burn them or neglect them with respect to our friends. I had the privilege of participating in the Interparliamentary Union meeting in Mexico over the Memorial Day recess. It was the first bilateral meeting I have attended in Mexico. I will reserve detailed comments for later, when other Senators are ready to report on that meeting.

At this time I should merely like to state that I have reaffirmed my interest and intention in maintaining close relationships with our immediate neighbors, Canada and Mexico. There is always the tendency to say that fields farthest away are the greenest. I would say, as a result of the meeting just held in Mexico—the 13th, now, in a series of such meetings—that I am impressed with how many things we have in common with our friends in Mexico, and how many problems await solution.

I should like to pay tribute to the great hospitality and warmth of our Mexican hosts, whose thoughtfulness and kindness exceeded all bounds of duty to warm friends.

Mr. President, I wish to conclude by stating that the leadership provided to the U.S. delegation by the distinguished majority leader (Mr. MANSFIELD) was greatly appreciated. We all have the highest admiration for him and we all hold him in the highest regard and affection. But to see this feeling that we have had on both sides of the aisle for our majority leader expressed so warmly and with such enthusiasm by our Mexican parliamentary counterparts left us all with a feeling of pride in his leadership.

Senator MANSFIELD's understanding of Mexico, his deep interest in their problems, his apparent admiration for their marvelous characteristics, and his desire to work out—and not cover over—any problems they have with us or we have with them made our session intensely interesting and left all of us with the feeling that we had learned a great deal as a result of this experience. We returned, renewed in our faith that whatever problems we have with Mexico can be solved, that they will be solved, and that there will be greater good will on each side in the future.

I am glad to have been able to participate and to have been a part of the U.S. delegation. I believe an outstanding job was done by every member of the delegation from both the House of Representatives and the Senate, including our distinguished colleague, the Senator from Michigan (Mr. GRIFFIN).

TRANSACTION OF ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of routine morning business for not to exceed the hour of 12:30 p.m., and with statements therein limited to 3 minutes each.

Is there further morning business?

Mr. MANSFIELD. 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. 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.

EXPRESSION OF SYMPATHY ON DEATH OF THE MOTHER OF SENATOR MUSKIE

Mr. MANSFIELD. Mr. President, I have just been informed that the mother of the distinguished senior Senator from Maine (Mr. MUSKIE) passed away last night. She was 82 years old. We all know what great pride she had in her son and in her family. We regret that Senator MUSKIE is not with us today, but we fully understand the reason he is in Rumford, Maine, at the present time, where the Muskie family lives.

May I at this time on behalf of the Senate extend to ED and Jane MUSKIE our deepest sympathies and our condolences, and to assure them that while we never got to know ED's mother, we do know she produced an outstanding man in the person of her son who has made many contributions to the betterment of his State, the Nation, and the country.

At this time, I wish to make my personal feelings known, as well as the feelings of the Senate, and to say in conclusion may her soul rest in peace.

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

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

REPORT ON NUMBERS OF OFFICERS SERVING IN COMMISSIONED GRADES IN THE ARMED FORCES

A letter from the Assistant Secretary of Defense, transmitting, pursuant to law, a report on numbers of officers serving in commissioned grades in the various branches of the Armed Forces, as of May 10, 1973 (with an accompanying report). Referred to the Committee on Armed Services.

REPORT ON EXPORT CONTROL

A letter from the Secretary of Commerce, transmitting, pursuant to law, a report on export control, dated May 29, 1973 (with an accompanying report). Referred to the Committee on Banking, Housing and Urban Affairs.

PUBLICATION AND MAP FROM FEDERAL POWER COMMISSION

A letter from the Chairman, Federal Power Comission, transmitting, for the information of the Senate a publication entitled "Steam-Electric Plant Air and Water Quality Control Data, Form No. 67, December 31, 1969," together with a map of major natural gas pipelines, December 31, 1972 (with accompanying documents). Referred to the Committee on Commerce.

PUBLICATION FROM FEDERAL POWER COMMISSION

A letter from the Chairman, Federal Power Commission, transmitting, for the information of the Senate, a publication entitled "Statistics of Publicly Owned Electric Utilities in the United States, 1971" (with an acompanying document). Referred to the Committee on Commerce.

INSTRUMENTS ADOPTED BY THE INTERNATIONAL LABOR OGRANIZATION

A letter from the Acting Assistant Secretary for Congressional Relations, Department of State, transmitting, pursuant to law, certain instruments, adopted by the International Labor Organization (with accompanying papers). Referred to the Committee on Foreign Relations.

LIST OF REPORTS OF GENERAL ACCOUNTING OFFICE

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a list of reports of the General Accounting Office, for the month of April 1973 (with an accompanying list). Referred to the Committee on Government Operations.

ANALYSIS OF ASSAULTS ON FEDERAL OFFICERS

A letter from the Acting Director, Federal Bureau of Investigation, transmitting, pursuant to law, an Analysis of Assaults on Federal Officers, 1972 (with an accompanying document). Referred to the Committee on the Judiciary.

REPORT ENTITLED "THE SOUTHWEST INDIAN REPORT"

A letter from the Vice Chairman, U.S. Commission on Civil Rights, transmitting, pursuant to law, a report entitled "The Southwest Indian Report" (with an accompanying report). Referred to the Committee on the Judiciary.

REPORT OF THE LIBRARIAN OF CONGRESS

A letter from the Librarian of Congress, transmitting, pursuant to law, his report for the fiscal year ended June 30, 1972 (with an accompanying report). Referred to the Committee on Rules and Administration.

PETITIONS

Petitions were laid before the Senate and referred as indicated:

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

A concurrent resolution of the Legislature of the State of Florida. Ordered to lie on the table:

"SENATE CONCURRENT RESOLUTION No. 258

"A concurrent resolution commending President Richard M. Nixon for concluding an agreement to end the war and bring peace with honor in Vietnam and Southeast Asia, and inviting the President to address the Florida legislature

"Whereas, all the world is joyous that an agreement was signed on January 27, 1973, which is bringing an end to destruction of American and Asian lives and property, and

"Whereas, it is hoped the peace agreement will ultimately bring peace through out Vietnam and Southeast Asia, and

"Whereas, the peace agreement is the instrument responsible for freeing American Prisoners of War and returning these brave men to their families, and

"Whereas, the entire nation owes a debt of gratitude to President Nixon for his role in preserving the respect for the United States in the world and establishing the United States as a leader in the cause of world peace by "staying the course in Vietnam" and bringing about "peace with honor" instead of choosing the dangerous course of "peace at any price", and

"Whereas, an overriding majority of all Americans and especially Floridians have supported President Nixon in his successful quest for a just and honorable peace and the release of all Prisoners of War, now therefore,

"Be it resolved by the Senate of the State of Florida, the House of Representatives concurring:

"That the legislature of the State of Florida, on behalf of the citizens of Florida, commends the President of the United States, the Honorable Richard M. Nixon, for his steadfast and successful role in bringing peace with honor in ending this nation's involvement in the Vietnam War, and for bringing about the release of American Prisoners of War.

"Be it further resolved that the legislature of the State of Florida issues a standing invitation to President Nixon to address a joint session of the legislature during his term of office.

"Be it further resolved that this resolution, under the Great Seal of the State of Florida, be presented to President Nixon as a token of appreciation from the people of Florida and that copies of this resolution be presented to the officers of the United States Congress and to the members of the Florida congressional delegation.

"Filed in Office Secretary of State May 15, 1973."

A concurrent resolution of the Legislature of the State of New Jersey. Referred to the Committee on the Judiciary:

"SENATE CONCURRENT RESOLUTION No. 2022

"A concurrent resolution, memorializing the Congress of the United States to amend the Constitution of the United States to effectuate protection of unborn humans

"Be it resolved *by the Senate of the State of New Jersey (the General Assembly concurring)*:

"1. That the Congress of the United States be and is hereby memorialized to propose an amendment to the Constitution of the United States to effectuate protection of unborn humans.

"2. That duly authenticated copies of this resolution, signed by the President of the Senate and the Speaker of the General Assembly and attested to by the Secretary of the Senate and Clerk of the General Assembly, be transmitted to the Secretary of the Senate of the United States and the Clerk of the House of Representatives, the United States Senators from New Jersey and each member of the House of Representatives elected from New Jersey."

A joint resolution of the Legislature of the State of Oregon. Referred to the Committee on the Judiciary:

"HOUSE JOINT RESOLUTION 13

"Whereas the Thirty-ninth Congress proposed an amendment to the Constitution of the United States, as follows:

" 'ARTICLE —

" 'Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

" 'Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

" 'Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

" 'Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

" 'Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.'; and

"Whereas such amendment was ratified as the Fourteenth Amendment to the Constitution of the United States by the legislatures of three-fourths of the several states within seven years after its submission; and

"Whereas the Fifth Legislative Assembly of Oregon 'rescinded' its ratification of such amendment on October 16, 1868, by Senate Joint Resolution 4 (1868); now, therefore,

"Be It Resolved by the Fifty-seventh Legislative Assembly of the State of Oregon:

"(1) The Fourteenth Amendment to the Constitution of the United States, as set forth herein, hereby is ratified.

"(2) The Governor shall send certified copies of this resolution to the Administrator of General Services of the United States, to the presiding officer of the United States Senate and to the Speaker of the House of Representatives of the United States."

A joint resolution of the Legislature of the State of Utah. Referred to the Committee on Interior and Insular Affairs:

"HOUSE JOINT RESOLUTION"

"A joint resolution of the 40th Legislature of the State of Utah, memorializing the President of the United States, the Secretary of the Interior, and the Congress of the United States to promote and facilitate the development of southern Utah

"Be it resolved by the Legislature of the State of Utah:

"Whereas, the development of the Kaiparowits Coal Project and the Lake Powell Recreation Area are important elements in the economic growth of Utah and Southern Utah in particular; and

"Whereas, the counties of Southern Utah directly affected by these developments have been declared by the federal government to be economically depressed areas (with a 14% unemployment factor); and

"Whereas, the federal government has already studied the feasibility of full development in this area and found it economically sound; and

"Whereas, private enterprise has signed contracts and is ready to develop the area as soon as the federal government and the Secretary of the Interior in particular permit; and

"Whereas, in the past numerous promises have been given regarding federal permission and assistance in the development of these two areas of Southern Utah; and

"Whereas, at the present time, many Kane County residents have to travel an unnecessarily long route of over 400 miles to the county seat because of non-existent or inadequate roads; and

"Whereas, the American people are traveling more and overcrowding the existing accessible national parks and recreational areas; and

"Whereas, tourism is a major factor in Utah's economy, demanding proper facilities and accessibility for our scenic attractions; and

"Whereas, ninety percent of Lake Powell is in Utah with less than ten percent of accessibility from Utah.

"Now, therefore, be it resolved, by the Legislature of the State of Utah that we call upon the President of the United States, the Secretary of the Interior, and the Congress of the United States to honor past commitments made, to take a positive view toward the future, and to further and to assist in the development of this potentially rich, economically depressed area.

"Be it further resolved, that the Legislature of the State of Utah call upon the Congressional Delegation from the State of Utah to work avidly for the implementation of this resolution.

"Be it further resolved, that the Secretary of State of Utah, be, and is hereby, directed to send copies of this resolution to the President of the United States, the Secretary of the Interior, to the Senate and House of Representatives of the United States and to the Senators and Representatives representing the State of Utah in Congress."

A resolution of the Fifth Palau Legislature. Referred to the Committee on Appropriations:

"RESOLUTION No. 73(1)-28

"A resolution respectfully urging the President and the Congress of the United States not to cut the funds for the construction of the Koror-Babelthaup Bridge

"Whereas, the April 12, 1973 Dateline of Guam quoted Senator J. Bennett Johnston, Jr., Chairman of the U.S. Senate Interior Subcommittee on Territories, as saying that his subcommittee would cut the funds which have been previously appropriated by the United States Government for the bridge between Koror and Babelthaup Islands in the Palau District; and

"Whereas, the Palau Legislature places the highest priority on the construction of the said bridge over any other capital improvement project being built or to be built in Palau by the United States Government as the bridge would bring tremendous economic and social benefits to the people of Palau and would also greatly assist the United States Government in meeting its obligations under the Trusteeship Agreement; now, therefore;

"Be it resolved by the Fifth Palau Legislature, Fourth Regular Session, April, 1973 that the President and the Congress of the United States are hereby respectfully urged

not to cut the funds for the construction of the Koror-Babelthaup Bridge; and

"Be it further resolved that the Select Committee on Development of the Palau Legislature is hereby authorized and directed to look to other sources for funds to construct the Koror-Babelthaup Bridge if and when the United States Government decides to cut the monies for the bridge; and

"Be it further resolved that certified copies of this Resolution be transmitted to the President of the United States, the President and Speaker of the United States Congress, the Chairman of the U.S. Senate and House Committees on Interior and Insular Affairs, Senator J. Bennett Johnston, Jr., the members of the Hawaii Congressional Delegation, the Secretary of the U.S. Department of the Interior, the President of the United Nations Trusteeship Council, the President and Speaker of the Congress of Micronesia, the Chairman of the Joint Committees on Program and Budget Planning, the Chairman of the Select Committee on Development, the High Commissioner, and the District Administrator.

"Adopted: April 27, 1973"

A resolution adopted by the County of Maui, Wailuku, Hawaii, praying for the enactment of House bill 6522. Referred to the Committee on Finance.

A resolution adopted by the County of Maui, Wailuku, Hawaii, praying for the enactment of House bill 5877. Referred to the Committee on Finance.

A resolution adopted by the Council of San Diego State University, San Diego, Calif,. praying for political asylum for certain persons. Referred to the Committee on Foreign Relations.

Two resolutions adopted by the Long Island Federation of Women's Clubs, Inc., Oceanside, N.Y., praying for restoration of Veterans Day to November 11, and compulsory retirement age for Members of Congress. Referred to the Committee on the Judiciary.

A resolution adopted by the Long Island Federation of Women's Clubs, Inc., Oceanside, N.Y., praying for designation of Ellis Island as a national shrine. Referred to the Committee on Interior and Insular Affairs.

A resolution adopted by the Georgia Chapter, Society of Former Special Agents of the Federal Bureau of Investigation, Inc., Atlanta, Ga., praying for the selection of a permanent Director of the Federal Bureau of Investigation. Referred to the Committee on the Judiciary.

A resolution adopted by the County of Maui, Wailuku, Hawaii, praying for the enactment of legislation to amend the Federal Aid Highway Act of 1973. Referred to the Committee on Public Works.

NEW HAMPSHIRE FISCAL PROBLEMS

Mr. McINTYRE. Mr. President, the State of New Hampshire faces today a problem shared by most other States. In attempting to design a fiscally sound budget, the State finds itself unable to anticipate Federal allotments for ongoing programs or to determine which funds have been terminated, impounded, or reprogramed.

New Hampshire is feeling the adverse effects of this clash between the executive and legislative branches of the Federal Government. This is a battle over spending and taxing priorities, over which branch of Government has the constitutional power to establish these priorities, and how that power will be exercised.

The U.S. Senate supported legislation to restrict the President's ability to arbitrarily cut funds if the $268 billion ceiling is exceeded; however two attempts to override Presidential vetos were unsuccessful. It is evident from these activities that the time element will pose a substantial problem. Time is also a major element in the conversion of over 70 categorical aid programs to special revenue-sharing programs.

I ask unanimous consent that Senate Concurrent Resolution No. 6, reflecting the desire of the general court of New Hampshire to continue to budget their Federal funds in a conventional manner until such time as Federal budgetary problems are resolved, be printed in the RECORD, and be referred to the appropriate committee.

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

The concurrent resolution was referred to the Committee on Finance, and ordered to be printed in the RECORD, as follows:

RESOLUTION

Senate Concurrent Resolution No. 6 relative to the effect of the Federal budget cutbacks on the fiscal affairs of the State of New Hampshire

Whereas, The leadership of both the House of Representatives and the Senate have been concerned with the potential disruption of the State's fiscal affairs which could result from a conflict between the Congress and the President as to the budgetary priorities for the nation; and

Whereas, The potential damage of this conflict has been sufficient to motivate the leadership of both the House of Representatives and the Senate to authorize the attendance of delegates of both House and Senate at the National Legislative Leadership Conference in Washington, D.C. on March 30 and 31, 1973, including an interview with the President and his Cabinet Officers at the White House; and

Whereas, At said Conference, the President and his Cabinet asserted that the Federal Revenue Sharing plans being submitted to the Congress would more than cover the amounts now being expended through the federal categorical grant programs; and

Whereas, The State of New Hampshire has, like most other states, the problem of passing a budget for fiscal year 1974 starting July 1, 1973, which budget must anticipate federal revenues in support of existing, on-going programs and has, however, been told conflicting reports concerning which programs may be in effect on July 1, 1973 and which may be placed in jeopardy from either termination, impoundment or reprogramming;

Now Therefore Be It Resolved by the Senate, the House of Representatives concurring:

That The State of New Hampshire respectfully requests that federal officials recognize the very real mechanical problem being faced by the States during the transitional period which will surely occur between July 1, 1973 and the time when the new Revenue Sharing programs may be enacted by Congress to replace the present programs; that they agree to "hold harmless" those states which continue to budget their federal funds in conventional manner during said period; and be it further

Resolved, That the President of the United States, the members of the Federal Cabinet and the New Hampshire Congressional delegation be advised that the responsible officials of the State of New Hampshire request that the present federal programs be continued until such time as they are replaced; and be it further

Resolved, That in replacing said programs, the States be given at least ninety days' notice before the effective date of any such new programs in order that the States can have sufficient time to readjust their budgets to reflect such federal budgetary changes.

Now Be It Further Resolved, That certified copies of this concurrent resolution be conveyed to the President of the United States of America, the members of the Federal Cabinet and the New Hampshire Congressional delegation and such other officials as the President of the Senate and the Speaker of the House shall designate.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. EASTLAND, from the Committee on the Judiciary, without amendment:

S. 67. A bill for the relief of Reynaldo Canlas Baecher (Rept. No. 93–181);

S. 227. A bill for the relief of Michael Kwok-choi Kan (Rept. No. 93–182); and

S. 339. A bill for the relief of Mrs. Stefanie Miglierini (Rept. No. 93–183).

By Mr. EASTLAND, from the Committee on the Judiciary, with an amendment:

S. 155. A bill for the relief of Rosita E. Hodas (Rept. No. 93–184);

S. 315. A bill for the relief of Elsa Bibiana Paz Soldan (Rept. No. 93–185); and

S. 529. A bill for the relief of Mrs. Hang Kin Wah (Rept. No. 93–186).

By Mr. WILLIAMS from the Committee on Banking, Housing and Urban Affairs, with an amendment:

S. 470. A bill to amend the Securities Exchange Act of 1934 to regulate the transactions of members of national securities exchanges, to amend the Investment Company Act of 1940 and the Investment Advisers Act of 1940 to define certain duties of persons subject to such Acts, and for other purposes (Rept. No. 93–187).

By Mr. McCLELLAN:

S. 1930. An original bill to amend the Omnibus Crime Control and Safe Streets Act of 1968; ordered placed on the calendar, by unanimous consent.

REPORT ENTITLED "JUVENILE DELINQUENCY" (S. REPT. NO. 93–180)

Mr. BAYH, from the Committee on the Judiciary, submitted a report entitled "Juvenile Delinquency," pursuant to Senate Resolution 256, 92d Congress, second session, which was ordered to be printed.

EXECUTIVE REPORTS OF COMMITTEES

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

By Mr. SPARKMAN, from the Committee on Banking, Housing and Urban Affairs:

John R. Evans, of Utah, to be a member of the Securities and Exchange Commission;

Thomas R. Bomar, of Maryland, to be a member of the Federal Home Loan Bank Board;

Gloria E. A. Toote, of New York, to be an Assistant Secretary of Housing and Urban Development;

Robert C. Holland, of Nebraska, to be a member of the Board of Governors of the Federal Reserve System;

Grady Perry, Jr., of Alabama, to be a member of the Federal Home Loan Bank Board; and

James E. Smith, of Virginia, to be Comptroller of the Currency.

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.

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

Harold O. Bullis, of North Dakota, to be U.S. attorney for the district of North Dakota; and

Brian P. Gettings, of Virginia, to be U.S. attorney for the eastern district of Virginia.

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.

REREFERRAL OF S. 1810

Mr. ROBERT C. BYRD. Mr. President, on behalf of the Senator from Idaho (Mr. CHURCH) I ask unanimous consent that S. 1810 be rereferred from the Post Office and Civil Service Committee to the Senate Labor and Public Welfare Committee because this bill amends the Age Discrimination in Employment Act. Second, S. 1810 would extend the application of the age discrimination law to include additional private employers—those employing 20 or more employees—in interstate commerce, as well as governmental employers.

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

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first time and, by unanimous consent, the second time, and referred as indicated:

By Mr. PERCY (for himself and Mr. HUMPHREY):

S. 1914. A bill 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. Referred to the Committee on Foreign Relations.

By Mr. HARTKE (for himself and Mr. HANSEN):

S. 1915. A bill to amend title 38, United States Code, to provide an earlier effective date for payment of pension to veterans. Referred to the Committee on Veterans' Affairs.

By Mr. SYMINGTON (for Mr. STENNIS and Mr. THURMOND) (by request):

S. 1916. A bill to amend titles 10 and 37, United States Code, to make permanent certain provisions of the Dependents Assistance Act of 1950, as amended, and for other purposes. Referred to the Committee on Armed Services.

By Mr. DOMENICI:

S. 1917. A bill for the relief of Giusetpi Migliaccio. Referred to the Committee on the Judiciary.

By Mr. BURDICK:

S. 1918. A bill to allow the States to designate agents to conduct audits on behalf of any designating State or group of States. Referred to the Committee on Government Operations.

By Mr. BARTLETT (for himself and Mr. BELLMON):

S. 1919. A bill to amend the Federal Meat Inspection Act to provide that State inspected facilities after meeting the inspection requirements shall be eligible for distribution in establishments on the same basis as plants inspected under title I. Referred to the Committee on Agriculture and Forestry.

By Mr. METCALF:

S. 1920. A bill to amend the Budget and Accounting Act, 1921, to require the advice and consent of the Senate for future appointments to the officers of Director and Deputy Director of the Office of Management and Budget. Referred to the Committee on Government Operations.

By Mr. METCALF:

S. 1921. A bill to amend the age and service requirements for immediate retirement under subchapter III of chapter 83 of title 5, United States Code, and for other purposes. Referred to the Committee on Post Office and Civil Service.

By Mr. JAVITS:

S. 1922. A bill for the relief of Robert J. Martin. Referred to the Committee on the Judiciary.

By Mr. MATHIAS (for himself, Mr. ERVIN, and Mr. MANSFIELD):

S. 1923. A bill to amend the Legislative Reorganization Act of 1970 to provide that Federal agencies keep congressional committees fully and currently informed. Referred to the Committee on Government Operations.

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

S. 1924. A bill to authorize the Administrator of General Services to dispose of certain excess property. Referred to the Committee on Government Operations.

By Mr. PEARSON (for himself, Mr. BEALL, Mr. HARTKE, and Mr. COTTON)

S. 1925. A bill to amend section 1(16) of the Interstate Commerce Act authorizing the Interstate Commerce Commission to continue rail transportation services. Referred to the Committee on Commerce.

By Mr. McCLURE:

S. 1926. A bill to be cited as the "Livestock Grazing Indemnification Act." Referred to the Committee on Interior and Insular Affairs.

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

S. 1927. A bill to provide for the coinage and issuance of coins to commemorate the bicentennial of the American Revolution. Referred to the Committee on Banking, Housing, and Urban Affairs.

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

S. 1928. A bill to provide for the coinage and issuance of coins to commemorate the bicentennial of the American Revolution. Referred to the Committee on Banking, Housing, and Urban Affairs.

By Mr. KENNEDY:

S. 1929. A bill to establish the Nantucket Sound Islands Trust in the Commonwealth of Massachusetts, to declare certain national policies essential to the preservation and conservation of the lands and waters in the trust area, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

By Mr. McCLELLAN (for himself and Mr. HRUSKA):

S. 1930. An original bill to amend the Omnibus Crime Control and Safe Streets Act of 1968. Ordered placed on the calendar by unanimous consent.

By Mr. BROCK:

S. 1931. A bill to amend the Agricultural Adjustment Act of 1938 with respect to peanuts. Referred to the Committee on Agriculture and Forestry.

By Mr. INOUYE:

S. 1932. A bill to amend section 1331(c) of title 10, United States Code, to authorize the granting of retired pay to persons otherwise qualified for such pay who were members of the Reserve forces prior to August 16, 1945, if such persons served on active duty during the Vietnam conflict. Referred to the Committee on Armed Services.

By Mr. BUCKLEY (for himself, Mr. HATFIELD, Mr. HUGHES, Mr. BENNETT, Mr. BARTLETT, Mr. YOUNG, and Mr. CURTIS):

S.J. Res. 119. Joint resolution proposing an amendment to the Constitution of the United States for the protection of unborn children and other persons. Referred to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. PERCY (for himself and Mr. HUMPHREY):

S. 1914. A bill 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. Referred to the Committee on Foreign Relations.

Mr. PERCY. Mr. President, today Mr. HUMPHREY and I are introducing a bill to authorize the continuation of Federal assistance to Radio Free Europe and Radio Liberty and establishment of a Board for International Broadcasting to administer that assistance.

Just over a year ago, a resolution introduced by Mr. HUMPHREY and myself and cosponsored by 65 other Senators expressed "appreciation of the valuable work being performed by the personnel" of RFE and RL and the "intention to provide adequate support to these radios while methods for future support are carefully examined within the framework of U.S. foreign policy objectives." In the wake of that action, the Congress voted the necessary financial aid and the President appointed a distinguished panel to study the problem of future government support.

The Report of the Presidential Study Commission on International Radio Broadcasting, which the President endorsed on May 7, makes recommendations on which the administration bill we are introducing is based. Dr. Milton S. Eisenhower, president emeritus of John Hopkins University, served as Chairman of the Commission. The other members were Mr. Edward Ware Barrett, director of the Communications Institute of the Academy for Educational Development; Dr. John A. Gronouski, dean of the Lyndon B. Johnson School of Public Affairs, University of Texas; Dr. Edmund A. Gullion, dean of the Fletcher School of Law and Diplomacy, Tufts University; and Dr. John P. Roche, professor of politics at Brandeis University.

These men have rendered a comprehensive study of Radio Free Europe and Radio Liberty. In the process, the Commissioners' report also illuminates the fundamental nature of relations between the Soviet Union and the West in the present era we characterize by the term "detente." It merits reading by every member of the Congress and by a wide public.

The Commission anchored its study to the fundamental principle that all peoples have a "right to know," for only if they are informed and are able freely to exchange ideas can they deal with the problems they face in common. Beyond

this, the Commission concluded that a freer exchange of information is a precondition for genuine, long-term accommodation between East and West. Accordingly, the United States can ill-afford to reduce its efforts to supply information needed and desired by the people of the U.S.S.R. and East Europe so long as internal controls imposed by their governments make them so largely dependent on us.

The report analyzes the remarkable growth in the volume and importance of international radio broadcasting in the last two decades. For several years, the U.S.S.R. has maintained the largest foreign radio service in the world. The United States places no barriers in the way of the international movement of information, by whatever medium. Yet the Soviet and other Communist governments devote several hundred hours weekly to shortwave broadcasts to North America alone. Western nations, in contrast, must rely on radio broadcasting to Eastern Europe and the U.S.S.R. as virtually the only effective means of reaching the peoples there.

The report makes clear that Radio Free Europe, broadcasting to the people of Bulgaria, Czechoslovakia, Hungary, Poland and Romania in their native languages, and Radio Liberty, transmitting in 18 languages to the peoples of the U.S.S.R., continue today to provide a unique informational service. They operate as a surrogate "home service," providing reliable, comprehensive information—particularly about developments that most directly affect the lives of their listeners, namely, within their own nation and region.

The bill introduced today is based on the conclusion reached by the Commission that a Board for International Broadcasting should be created to administer future grants of public funds to Radio Free Europe and Radio Liberty. Under its provisions, five voting directors would be appointed by the President, with the advice and consent of the Senate, from Americans distinguished in the fields of foreign policy and mass communications. The Board would assure that grants of public funds made to the two private, nonprofit radio corporations are used for broadcasting of the highest professional integrity. The Board would also be responsible for ascertaining that the content of RFE and RL broadcasts did not run counter to broad U.S. foreign policy objectives. The Commission strongly and unanimously felt that providing Federal assistance to the radios through the Board which this bill would establish is far preferable to assigning that responsibility to the Department of State or to USIA.

While this bill relates to the U.S. Government's relationship to the radios, it should be noted that the Commission gives strong backing to reinvigorated solicitation of nongovernmental contributions to the stations, both in Europe and the United States. The report also recommends that European government support now be sought to finance RFE and RL research, which is used by many governments. The Commission does not favor solicitation of foreign government contributions for station broadcast operations for it believes that such aid would lead to multinational management and, thus, problems in operational policies.

Mr. President, Radio Free Europe and Radio Liberty have contributed in a major way to a better informed public in East Europe and the Soviet Union. I believe that the weight of the popular consensus there pressing for peaceful relations with the West and for a better, freer way of life has significantly affected the posture of their governments. But their work is not over. The Soviet and other East European governments still prevent anything approaching a free flow of information and ideas in domestic media; they continue to try to jam out such information coming from abroad, evidently preferring to set national policies in a public opinion vacuum.

Thus Radio Free Europe and Radio Liberty serve a purpose in harmony with the broad objectives of the United States and the West in general and they merit a continuation of the governmental assistance they have received for two decades. Expeditious enactment into law of the "Board for International Broadcasting Act of 1973" will permit Radio Free Europe and Radio Liberty to continue to inform the people of the Soviet Union and East Europe, thereby advancing the cause of international peace and understanding.

I know that this subject is not without controversy in the Senate, and the distinguished chairman of the Committee on Foreign Relations feels very strongly about this matter. It was with distress that in my first week of service on that great committee I had to take serious issue with our chairman on this issue. I was pleased to be joined by virtually two-thirds of the Senate in an expression of support for Radio Free Europe and Radio Liberty.

But I agreed with Senator FULBRIGHT that we should carefully appraise and study the objectives and performance of the radios, to be certain that the audits made by GAO and the Library of Congress would be studied closely, and that we should look into the possibility of having certain aspects of the program and its cost shared by the governments of Western Europe.

The study by Dr. Eisenhower was undertaken for that purpose. Dr. Milton Eisenhower, president emeritus of Johns Hopkins University, a man who has devoted himself to public service throughout his career in many aspects of foreign and domestic affairs, was the brilliant choice of President Nixon to serve as chairman of this Commission.

The members of the Commission, I believe, have performed a great service; and I commend to every Member of Congress as well as others interested in this subject the report they have published. It is my intention to insert various parts of the report and periodically in the RECORD, for study and review by my colleagues.

It is my hope that as a result not only of the work of this Commission but also of previous work that has been done on a number of occasions to evaluate the effective role of Radio Liberty and Radio Free Europe, Congress will once again affirm its support for the radios.

The question has been asked whether this activity is a continuation of the cold war, whether statements made or programs carried by Radio Liberty and Radio Free Europe are provocative. I can say that the programs today are straightforward and informational. They are of deep interest and have a wide following in Eastern European countries and in the Soviet Union itself. It is the only source of information of this type provided to the peoples of Eastern Europe. The Right To Know, which is the title of the study of the Presidential Commission on International Radio Broadcasting, is a right that we feel should be shared with the people of the world.

Obviously, it would be the hope of all of us that other countries would decide that a more open society for their citizens would be desirable and that they should have access to all the news at home and abroad. But until such time as internal policies make this possible, I think it is our obligation to provide a source of reliable information and news.

If figures that I have seen are accurate, the Communist nations invest a far greater proportion of their gross national product to broadcasting abroad than do the United States and other western countries.

Mr. HUMPHREY. Mr. President, Radio Free Europe and Radio Liberty make an essential contribution to our national interest by maintaining a flow of uncensored information into a area of central importance to our foreign policy.

Radio Free Europe and Radio Liberty provide one important means of assuring that the "muffling" of information by governments does not happen. These radios differ from official national radios in that they speak sensitively and with authority about the day-to-day concerns of their listeners—both domestic developments and international affairs in which they have a particular stake. Both stations have steadily won over the confidence and respect of their audiences by two decades of honest and skilled effort at telling the truth. They have audiences of many millions. Their importance and effectiveness has been confirmed by professional journalists and—more important—their listeners at all levels.

It was the novelist Solzhenitsyn who said of Radio Liberty:

> If we ever hear anything about events in this country (and by "this country" he meant his own, the USSR), it's by listening to them.

The New York Times veteran East European correspondent, Henry Kamm, wrote about RFE:

> East Europeans . . . continue to tune in with as much faith as an American might bring to a newspaper that had a decent record for factual reporting and an editorial policy with which he agrees more often than not . . . Radio Free Europe's listeners consider it not a propaganda station, but the antipropaganda station that adjusts the one-sided view of the world laid down for all do-

mestic media by . . . each country's Communist Party.

The London Times commented:

One reason why these stations are valued is that they are not primarily concerned with purveying official propaganda about the Western way of life, but with meeting the hunger of their listeners about their own domestic affairs. . . . They are serving quite hard and legitimate interests of Western foreign policy by preventing the peoples of Europe drifting apart into two wholly different worlds, and by contributing to the competition of ideas which the Communists themselves regard as an essential element of peaceful coexistence.

A recent letter from a Czechoslovak listener warned RFE:

It is difficult to tell you what a tremendously important source of information RFE is at this time, because it deals with Czechoslovak affairs . . . If it is in your power, do something so that we may hear you without jamming, we beg you. I am not speaking for myself alone; I am sure I do not exaggerate when I say that the great majority of the nation feels the same way. People are deprived of information and succumb to despair: believe me, it is terrible. . . . Friends, let our truth prevail!"

Finally, let me also remind you of the appeal addressed to us here in the U.S. Senate in March of last year by 98 recent emigrants from the Soviet Union to Israel. It said in part:

It is very difficult to explain to you, people of a free country, how vital and important it is for everybody behind the iron curtain to get true and objective information about world affairs . . .

Most of us, the undersigned, just arrived from Russia. We still remember very well those evening hours during which we tried to get and listen to the voice of the free world. Sometimes it was very difficult to catch the voice—the Soviets are doing everything to silence the transmission. . . . [Without Radio Liberty] the cold war will increase, because nobody inside Russia will be able to say a word about the real affairs of their government and in a certain measure to influence the little public opinion in their country.

There is a recurrent theme in these and other comments about the two stations. They are prized by their audiences not only because of their proved reliability, but because they report and analyze developments with the Soviet Union and East Europe as well as world developments which are of particular concern to the Eastern countries.

It is not without significance that last year, during the 6-month debate over continuing the radios until a solution for their future could be found, that Soviet and East European media printed or broadcast no less than 587 attacks on them. In the same period, from mid-February through the end of August, the American press offered 598 editorials favorable to the stations, against 33 unfavorable.

The distinguished members of the Presidential Study Commission on International Radio Broadcasting say, in the summary of their report:

The Commission is convinced that Radio Free Europe and Radio Liberty, by providing a flow of free and uncensored information to peoples deprived of it, actually contribute to a climate of detenté rather than detract from it. . . .

Progress toward the relaxation of international tensions will be the product of many influences. The free flow of ideas and information will be critical among these. Without this free communication of information and ideas, governments will strive to insulate themselves from the pressures for changes in policies and actions which an informed public opinion imposes on even the rigidly controlled societies in Eastern Europe. Radio Free Europe and Radio Liberty play a uniquely important role in this process.

. . . If the International Community is to make true and lasting progress toward the East-West detente about which we all dream, it will come about through pressure exerted on their own governments by an informed citizenry.

Mr. President, I believe the Senate should support Radio Free Europe and Radio Liberty.

By Mr. HARTKE (for himself and Mr. HANSEN):

S. 1915. A bill to amend title 38, United States Code, to provide an earlier effective date for payment of pension to veterans. Referred to the Committee on Veterans' Affairs.

Mr. HARTKE. Mr. President, today I introduced legislation to provide an earlier effective date for payment of pensions to veterans. This bill would liberalize the provisions governing the effective date of initial awards of non-service-connected disability pensions by authorizing payment of the benefit retroactively to the date on which the veteran became permanently and totally disabled, if his application for payment is received within 1 year of that date.

Currently, a disability pension may not be paid for any period earlier than the date of receipt of application. By contrast, disability compensation is paid retroactively to the day following the veteran's discharge if his application is received within 1 year; death compensation, dependency and indemnity compensation or death pension are payable retroactively to the first day of the month in which the veteran died if the eligible survivor's application is received within 1 year.

Need is one of the criteria for entitlement to disability pension. But if the veteran delays in applying for the benefit because of problems relating from his disability, the award presently cannot be effective prior to the date his application is received. This compounds the hardship since the very condition upon which entitlement may depend may also prevent prompt application for the benefit.

This legislation would alleviate this situation by affording the disabled veteran a year from onset of disability to apply for pension, and if eligible, receive retroactive payment to the date he became permanently disabled.

This 1-year period is very reasonable. Its enactment would achieve general uniformity respecting the effective date of an initial award of monetary disability or death benefits.

Mr. President, I ask unanimous consent that the text of the bill as introduced be inserted in the RECORD.

There being no objection, the text of the bill was ordered printed as follows:

S. 1915

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (b) of section 3010 of title 38, United States Code, is amended by inserting "(1)" immediately after "(b)" and by adding at the end of said subsection the following new paragraph:

"(2) The effective date of an award of disability pension to a veteran shall be the date on which the veteran became permanently and totally disabled, if an application therefor is received within one year from such date."

SEC. 2. The first section of this Act shall apply to applications filed after its date of enactment, but in no event shall an award made thereunder be effective prior to such date of enactment.

By Mr. SYMINGTON (for Mr. STENNIS and Mr. THURMOND) (by request):

S. 1916. A bill to amend titles 10 and 37, United States Code, to make permanent certain provisions of the Dependents Assistance Act of 1950, as amended, and for other purposes. Referred to the Committee on Armed Services.

Mr. SYMINGTON. Mr. President, by request, for Mr. STENNIS and Mr. THURMOND, I introduce, for appropriate reference, a bill to amend titles 10 and 37, United States Code, to make permanent certain provisions of the Dependents Assistance Act of 1950, as amended, and for other purposes.

I ask unanimous consent that a letter of transmittal from the Department of Defense requesting consideration of the legislation, and explaining its purpose, be printed in the RECORD immediately following the listing of the bill.

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

S. 1916

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

TITLE I—AMENDMENTS TO MAKE PERMANENT CERTAIN PROVISIONS OF THE DEPENDENTS ASSISTANCE ACT OF 1950, AS AMENDED

SEC. 101. Sections 10, 11, and 12 of the Dependents Assistance Act of 1950 (50 App. U.S.C. 2210, 2221, and 2212) are repealed.

SEC. 102. Chapter 59 of title 10, United States Code, is amended by adding after section 1172 the following new section and inserting a corresponding item in the analysis:

"§ 1173. Enlisted members: discharge for hardship

"Under regulations prescribed by the Secretary concerned, a regular enlisted member of an Armed Force who has dependents may be discharged for hardship."

SEC. 103. Section 401(3) of title 37, United States Code, is amended to read as follows:

"(3) his parent (including a stepparent or parent by adoption, and any person, including a former stepparent, who has stood in loco parentis to the member at any time for a continuous period of at least five years before the member became 21 years of age) who is in fact dependent on the member for

over one-half of his support; however, the dependency of such a parent is determined on the basis of an affidavit submitted by the parent, and any other evidence required under regulations prescribed by the Secretary concerned, and he is not considered a dependent of the member claiming the dependence unless—

"(A) the member has provided over one-half of his support for the period prescribed by the Secretary concerned; or

"(B) due to changed circumstances arising after the member enters on active duty, he becomes in fact dependent on the member for over one-half of his support."

SEC. 104. Section 403 of title 37 is amended—

(1) by striking out that part of the table in subsection (a) which prescribes monthly basic allowances for quarters for enlisted members in pay grades E–1, E–2, E–3, E–4 (four years' or less service), and E–4 (over four years' service) and inserting in place thereof the following:

"E–4	$81.60	$121.50
E–3	72.30	105.00
E–2	63.90	105.00
E–1	60.00	105.00";

(2) by striking out the last sentence in subsection (a);

(3) by striking out "subsection (g)" in the second sentence of subsection (b), and inserting in place thereof "subsection (j)";

(4) by inserting the following new subsections after subsection (f):

"(g) An aviation cadet of the Navy, Air Force, Marine Corps, or Coast Guard is entitled to the same basic allowance for quarters as a member of the uniformed services in pay grade E–4.

"(h) The Secretary concerned, or his designee, may make any determination necessary to administer this section with regard to enlisted members, including determinations of dependency and relationship, and may, when warranted by the circumstances, reconsider and change or modify any such determination. This authority may be redelegated by the Secretary concerned or his designee. Any determination made under this section with regard to enlisted members is final and is not subject to review by any accounting officer of the United States or a court, unless there is fraud or gross negligence.

"(i) Under regulations prescribed by the Secretary of Defense, the Secretary concerned may authorize payment of the monthly basic allowance for quarters to the authorized dependents of an enlisted member who loses his entitlement to basic pay as a direct result of his being incarcerated by a foreign government. Payments may be made under this subsection only for the period during which an enlisted member is being held in pretrial confinement by that foreign government."; and

(5) by redesignating subsection (g) as subsection (j).

TITLE II—MISCELLANEOUS PROVISIONS

SEC. 201. Section 302 of title 37, United States Code, is amended by striking out "July 1, 1973" wherever it appears therein and inserting in place thereof "July 1, 1975".

SEC. 202. Section 302a of title 37, United States Code, is amended by striking out "July 1, 1973" wherever it appears therein and inserting in place thereof "July 1, 1975".

SEC. 203. Section 303 of title 37, United States Code, is amended by striking out "July 1, 1973" wherever it appears therein and inserting in place thereof "July 1, 1975".

SEC. 204. Section 308a of title 37, United States Code, is amended by striking out "June 30, 1973" and inserting in place thereof "June 30, 1975".

SEC. 205. Section 207 of the Career Compensation Act of 1949, as amended (70 Stat. 338), is repealed.

SEC. 206. This Act shall become effective on July 1, 1973.

GENERAL COUNSEL
OF THE DEPARTMENT OF DEFENSE,
Washington, D.C., March 21, 1973.

Hon. SPIRO T. AGNEW,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: There is forwarded herewith a draft of legislation "To amend titles 10 and 37, United States Code, to make permanent certain provisions of the Dependents Assistance Act of 1950, as amended, and for other purposes."

This proposal is a part of the Department of Defense legislative program for the 93d Congress, and the Office of Management and Budget advises that the enactment of this proposal would be in accord with the program of the President. It is recommended that the proposed legislation be enacted by the Congress.

PURPOSE OF THE LEGISLATION

The purpose of the proposed legislation is to make permanent certain of those authorities and entitlements now contained in the Dependents Assistance Act of 1950, as amended, (50 App. U.S.C. 2201 et seq.), and to extend certain other temporary entitlements in title 37, United States Code, which would otherwise expire on June 30, 1973. The implications of permitting these authorities to expire along with the draft act would counter the improvements provided by the Congress in Public Law 92–129 (Amendments to the Military Selective Service Act of 1967) by lowering the pay rates of junior enlisted members. Essentially, this would be a step backward in our move toward an all-volunteer force.

The authorities in the Dependents Assistance Act of 1950 as amended, primarily impact on members in pay grades E–4 (with four years' or less service), E–3, E–2, and E–1, and should they be allowed to expire, approximately 352,000 members with dependents would suffer a reduction in their quarters allowance ranging from $60–$76 per month. The reason for this is because the Dependents Assistance Act of 1950 suspends those provisions of 37 U.S.C. 403(a) which stipulate that a member in pay grade E–4 (with four years' or less service), E–3, E–2, or E–1 is considered at all times to be without dependents. The permanent quarters rate in title 37, United States Code, for members with dependents in these pay grades is $45.00 monthly as compared to the $105.00–$121.50 now provided by the Dependents Assistance Act of 1950 as amended.

In addition, this legislation would extend until June 30, 1975, the special pay authorized for physicians, dentists, optometrists, and veterinarians under 37 U.S.C. 302, 302a, and 303, and also extend until June 30, 1975, the enlistment bonus authorized under 37 U.S.C. 308a for persons enlisting in a combat element of an armed force.

ANALYSIS

The following are the principal features which are incorporated in the legislation. They constitute a restatement of existing authority and are considered vital to the Department of Defense in its move to an all-volunteer force.

Dependents Assistance Act of 1950, as amended, authorities

The Dependents Assistance Act of 1950 (hereafter referred to as the "DAA") allowances had their beginning during World War II when it was found that the Nation's resource of single, draft-eligible males was insufficient to satisfy the country's need for military manpower. Because it was necessary to draft married men, many with young children, Congress enacted the Servicemen's Dependents Allowance Act of 1942 (56 Stat. 381) which provided special allowances for their families.

After World War II, at the recommendation of the Hook Commission, these allowances were discontinued. The Commission believed that the Nation's military manpower requirements could be met from the pool of available single men, and further, it was the Commission's opinion that due to the many relocations experienced during the first few years of a military career, it would be best for all concerned if young servicemen remained single.

In 1950, with the onset of the Korean War, it became necessary to induct married men into the armed forces, and Reservists with family responsibilities were mobilized and called to active-duty. Congress responded to this situation with the enactment of the DAA. This Act provided a quarters allowance supplement to the income of young enlisted members to enable them to cope with family responsibilities. Because of the continuing need for this income supplement, the DAA has been renewed concurrently with the Selective Service Act, since 1950.

The need for equitable treatment of junior enlisted members has been established and will not diminish as the Department of Defense approaches its objective of an all-volunteer force. Therefore, it is considered necessary to make the following features of the DAA permanent legislation.

The paramount need is to eliminate the language of current 37 U.S.C. 403(a) that stipulates a member in pay grade E–4 (with four years' or less service), E–3, E–2, or E–1 is considered at all times to be without dependents. The discrimination inherent in this section has been recognized by the Congress since 1950 in the continuance of the DAA. Future equitable treatment of junior enlisted members and their families should be ensued in permanent legislation to be in consonance with our move to an all-volunteer force. At the present time, more than 30 percent of the members in pay grade E–4 (with four years' or less service), and below, have dependents. This is representative of the national population were 33.5 percent of the 10 million males in the 18–24 year age group are married. Certainly, this is too large a segment of the available manpower pool to exclude as a recruiting resource through inequitable compensation treatment. To be competitive with civilian industry and attractive to this group, provision must be made to ensure that junior enlisted members can adequately support and care for their families.

Another feature of the proposal deletes the language of current 37 U.S.C. 401(3) which stipulates that parents must actually reside in the service member's household to be considered dependents. This restrictive definition is an outdated provision of law which fails to recognize that members of the uniformed services are required to serve wherever assigned; oftentimes on remote tours where dependents are specifically precluded from accompanying them. The DAA suspended this restriction to ease the economic burden of our servicemen and to enable them to approach their duties with the realization that their families were financially secure. This purpose remains valid and permanent modification of existing law is now desirable.

The proposal also makes permanent the current language of section 8 of the DAA (50 App. U.S.C. 208), which prescribes that aviation cadets are entitled to the basic allowance for quarters at the rates for members in pay grade E–4. This change is for administrative convenience and consistent

with respect to other entitlements for these members which already are incorporated permanently in title 37, United States Code.

The DAA contains certain sections which are permanent in that they do not have an expiration date. For administrative expediency it is proposed that portions of two sections (50 App. U.S.C. 2210 and 2211) which provide secretarial authority to regulate entitlements for enlisted members, be included in the appropriate section of title 37, United States Code. The authority to waive recoupment of erroneous payments, which is in sections 10 and 11 (50 App. U.S.C. 2210 and 2211), has now been made permanent law in title 10 P.L. 92–453, which Act includes waiver authority with respect to allowances paid to dependents. Therefore, the waiver authority in sections 10 and 11 of the DAA need not be included in this bill since such authority has already been incorporated in title 10 by P.L. 92–453.

Section 5 of the DAA (50 App. U.S.C. 2205) authorizes the Secretary concerned to pay the basic allowance for quarters to an enlisted member's dependents even when the member is not entitled to receive basic pay. That authority is made permanent in title 10, United States Code, by this bill, but it will apply now only to an enlisted member who is incarcerated by a foreign government, and only while such an enlisted member is being held in *pretrial* confinement by that government. The authority will no longer apply to enlisted members who are absent without leave, deserters, or not entitled to basic pay for any reason other than the one outlined above.

The DAA authorizes the Secretary concerned to establish policies under which certain enlisted members with dependents may be discharged for hardship. It is proposed that this authority (section 14; 50 App. U.S.C. 2214) be permanently incorporated in title 10, United States Code.

In submitting this legislation, the Department of Defense proposes to allow certain authorities now contained in the DAA to expire. A discussion of each of these follows:

The most significant is the objectionable feature of existing law (section 4(b); 50 App. U.S.C. 2204(b)) which requires members in pay grade E–4 (with four years' or less service), E–3, E–2, and E–1 to allot a portion of their pay in order to qualify for DAA benefits. Such a provision was necessary during the past decades of heavy conscription when some individuals of questionable integrity were drafted into the armed forces. However, a mandatory allotment implies irresponsibility on the part of the member and is neither conducive to attracting the kind of individual desired in a zero draft environment nor consistent with the degree of responsibility entrusted to members in the operation of modern weapons systems. Elimination of the mandatory allotment is also in consonance with recent Congressional action recognizing the maturity and sense of responsibility of 18 year olds by authorizing them the right to vote. It would be inconsistent for the Department of Defense to treat this group as less than fully responsible citizens.

The general authority of the Secretary concerned under section 6 of the DAA (50 App. U.S.C. 2206) to establish allotments without the consent of the members is unnecessary. Adequate provision for the well-being and protection of dependents in the event of the service member's absence or physical incapacity is already contained in 37 U.S.C. 553(h). Further, 37 U.S.C. 602 provides protection when the member is mentally incompetent.

Finally, another objectionable and discriminating feature of the DAA is that provision (section 4(b); 50 App. U.S.C. 2204) which specifically precludes payment of quarters allowances to Reservists in pay-

grades E–4 (with four years' or less service), E–3, E–2, and E–1 who are on active duty for training. Since all other married Reservists receive a quarters allowance while on active duty for training, internal equity is adequate justification for elimination of this provision. However, reserve forces manning shortfalls are an equally significant consideration. Because married personnel are an important resource for reserve recuiting, every effort must be made to ensure that reserve participation is not financially unattractive to the more than 3.2 million married civilians in the 18–24 year age group.

Miscellaneous authorities

The legislation also extends until June 30, 1975, the following miscellaneous authorities which expire June 30, 1973.

Special Pay for Physicians and Dentists

The authority for special pay for physicians and dentists (37 U.S.C. 302) (ranging from $100 per month for those with less than two years' service to $350 per month for those with over ten years' service) will expire with respect to those ordered to active duty after June 30, 1973. This authority presently exists to reduce the disparity between compensation in the uniformed services and earnings opportunities of physicians and dentists in the private sector.

Special Pay for Optometrists

The authority for special pay for optometrists (37 U.S.C. 302a) of $100 per month will expire with respect to those ordered to active duty after June 30, 1973. This authority was enacted by the Congress to make the financial inducements of military service more attractive to optometrists.

Special Pay for Veterinarians

The authority for special pay for veterinarians (37 U.S.C. 303) of $100 per month will expire with respect to those ordered to active duty after June 30, 1973. This authority presently exists to make a military career more attractive for veterinarians.

Combat Arms Enlistment Bonus

The Department of Defense has authority, until June 30, 1973, to pay an enlistment bonus of up to $3,000 for at least a three-year enlistment to individuals who enlist in the combat elements of the armed forces (37 U.S.C. 308a). Continuation of this authority is essential to ensure that the required combat element accessions are obtained in the all-volunteer environment. However, as demonstrated with the current enlistment bonus, the Department of Defense intends to use the proposed enlistment bonus authority only if it is necessary to do so.

Cost and budget data

The enactment of this legislation will result in no increase in budgetary requirements for the Department of Defense.

Sincerely,

J. Fred Buzhardt.

SECTION-BY-SECTION ANALYSIS OF A BILL "TO AMEND TITLES 10 AND 37, UNITED STATES CODE, TO MAKE PERMANENT CERTAIN PROVISIONS OF THE DEPENDENTS ASSISTANCE ACT OF 1950, AS AMENDED, AND FOR OTHER PURPOSES"

TITLE I

Section 101. This section repeals sections 10, 11, and 12 of the Dependents Assistance Act of 1950, as amended (50 App. U.S.C. 2210, 2211, and 2212). Those three sections of the Act are the only ones which will not otherwise expire on July 1, 1973, under the provisions of section 16 of that Act (50 App. U.S.C. 2216). By repealing sections 10, 11, and 12, the entire Act will terminate as of July 1, 1973.

Section 102. The purpose of this section is to insert a new permanent section 1173 in chapter 59 of title 10, United States Code, to authorize the Secretary concerned to prescribe regulations for the discharge, in his discretion, of enlisted members with dependents, on the basis of hardship. This makes permanent, in title 10, the basic provisions of section 14 of the Dependents Assistance Act of 1950, as amended (50 App. U.S.C. 2214).

Section 103. The purpose of this section is to make permanent the suspension of the original requirement that a parent reside in the members' household for purposes of entitlement of quarters allowances. That requirement originated in section 102(g) of the Career Compensation Act of 1949 (63 Stat. 802), but was suspended by section 1 of the Dependents Assistance Act of 1950, as amended (50 App. U.S.C. 2201), for the duration of that Act. This section amends section 401(3) of title 37, United States Code, by permanently deleting that requirement, and also by including the other amendments made to the definition of "parent" by the Dependents Assistance Act of 1950, as amended, with some technical changes made for purposes of clarity.

Section 104.

Clause (1). This clause permanently amends that part of the table in section 403(a) of title 37, United States Code, which prescribed monthly basic allowance for quarters for enlisted members in pay grades E–1, E–2, E–3, and E–4 (four years' or less service). Section 3 of the Dependents Assistance Act of 1950, as amended (50 App. U.S.C. 2203), and subsequent amendments to it, temporarily suspended, for the duration of that Act, that portion of the table and inserted temporary changes in the rates being paid to those grades. That part of the table is still temporarily suspended until July 1, 1973, with changes in the rates having been made periodically by a series of amendments. The purpose of this clause is to make permanent in the table the current rates for quarters allowances for pay grades E–1 through E–4. This clause also deletes the former distinction between a member in pay grade E–4 who has over four years' service, and such a member who has four or less years' service, since all members in pay grade E–4 are now being paid the same rate for quarters allowance.

Clause (2). This clause strikes out the last sentence in section 403(a) of title 37, United States Code. That sentence, which states that a member in pay grade E–4 (four years' or less service), E–3, E–2, or E–1 is considered at all times to be without dependents, was temporarily suspended by section 2 of the Dependents Assistance Act of 1950, as amended (50 App. U.S.C. 2202), for the duration of that Act.

Clause (3). The purpose of this provision is to change the reference to "subsection (g)" that appears in subsection (b) of section 403 of title 37, United States Code, since subsection (g) is being redesignated as "subsection (j)" by this bill.

Clause (4). The purpose of this provision is to insert three new subsections in section 403 of title 37, United States Code.

Subsection (g) makes permanent the basic provisions of section 8 of the Dependents Assistance Act of 1950, as amended (50 App. U.S.C. 2208), which prescribes that, for the purpose of that Act, aviation cadets are entitled to basic allowance for quarters under the conditions and at the rates for members in pay grade E–4.

Subsection (h) makes permanent the authority to make determinations of dependency given to the Secretary concerned by sections 10 and 11 of the Dependents Assistance Act of 1950, as amended (50 App. U.S.C. 2210 and 2211).

Subsection (i) retains in part the authority in section 5 of the Dependents Assistance Act of 1950, as amended (50 App. U.S.C. 2205) to pay the basic allowance for quarters to an enlisted member's dependents even when he

is not entitled to receive basic pay. This subsection retains that authority, but only with respect to an enlisted member who is incarcerated by a foreign government, and only while such an enlisted member is being held in *pretrial* confinement by that government. The authority will no longer apply to enlisted members who are absent without leave, deserters, or not entitled to basic pay for any reason other than the one described above.

Clause (5). This clause redesignates subsection (g) as subsection (j).

TITLE II

Section 201. This section extends until June 30, 1975, section 302 of title 37, United States Code, which would otherwise expire with respect to authorizing special pay for physicians and dentists ordered to active duty after June 30, 1973.

Section 202. This section extends until June 30, 1975, section 302a of title 37, United States Code, which would otherwise expire with respect to authorizing special pay for optometrists ordered to active duty after June 30, 1973.

Section 203. This section extends until June 30, 1975, section 303 of title 37, United States Code, which would otherwise expire with respect to authorizing special pay for veterinarians ordered to active duty after June 30, 1973.

Section 204. The purpose of this section is to extend until June 30, 1975, section 308a of title 37, United States Code, providing for the payment of an enlistment bonus to a person who enlists in a combat element of an armed force for at least three years.

Section 205. The purpose of this section is to repeal section 207 of the Career Compensation Act of 1949, which contains certain provisions regarding the reenlistment bonus that are now obsolete.

Section 206. This section establishes the effective date of this Act as July 1, 1973, so as to provide continuity with the present laws which expire on that date.

By Mr. METCALF:

S. 1920. A bill to amend the Budget and Accounting Act, 1921, to require the advice and consent of the Senate for future appointments to the offices of Director and Deputy Director of the Office of Management and Budget. Referred to the Committee on Government Operations.

Mr. METCALF. Mr. President, today I am introducing a bill that makes it explicit that the Director and Deputy Director of the Office of Management and Budget be confirmed by the Senate. Previously, I introduced S. 37 which was considered in connection with S. 518, introduced by Senator ERVIN and others. S. 37 was introduced on January 4 for consideration as soon as Congress convened and without knowing who the President would appoint to the offices of Director and Deputy Director. When the Government Operations Committee reported S. 518, it contained the provision that the recent Presidential appointees to these offices would be subject to confirmation. S. 518 passed the Senate and was considered in the House where an amendment was made discontinuing the respective offices and then recreating them in order that the present incumbents of these offices would be subject to confirmation. This is the bill that President Nixon vetoed.

The Senate voted to override the veto but the House failed to muster the necessary two-thirds vote, and therefore the Presidential veto was sustained. However, in the veto message, and indeed in the House debate, much was made of the proposition that this act would require the present regularly appointed and serving incumbents in the Office of Management and Budget to submit to retroactive confirmation as a result of the provisions of the law.

President Nixon said:

This legislation would require the forced removal by an unconstitutional procedure of two officers now serving in the executive branch.

I do not concede either proposition. It would not necessarily have meant that the two incumbents now serving would have been unable to meet the scrutiny of confirmation. Nor do I think the provision of requiring their confirmation was unconstitutional. The President also based his veto upon the proposition that the offices of Director and Deputy Director of the Office of Management and Budget are special offices to provide the President with advice and staff support in the management of his budgetary and management responsibilities.

President Nixon declared that these offices cannot be equated with other offices requiring Senate confirmation. Again I must respectfully disagree. In fact, it was the growth of responsibility and power in the Office of Management and Budget that impelled me to introduce S. 37 on January 4 before either of the present incumbents was appointed.

Today I am introducing a revised version of S. 37. It is completely prospective in nature. It would affect only future appointees and thus remove one of the reasons for the Presidential veto. More than a majority of each House of Congress has voted to require confirmation of these powerful and important officers. Without having the question of the status of the present incumbents interjected, I believe Congress should again have the opportunity to prospectively decide about confirmation of these powerful officers. Perhaps with removal of the question of the status of the present incumbents, the President will reconsider; or, in the event of a veto, some of those who believed this legislation was directed at the present incumbents will agree that future confirmation would be desirable.

By Mr. MATHIAS (for himself, Mr. ERVIN, and Mr. MANSFIELD):

S. 1923. A bill to amend the Legislative Reorganization Act of 1970 to provide that Federal agencies keep congressional committees fully and currently informed. Referred to the Committee on Government Operations.

AMENDMENT OF THE LEGISLATIVE REORGANIZATION ACT OF 1970 TO REQUIRE ALL FEDERAL AGENCIES TO KEEP CONGRESSIONAL COMMITTEES FULLY AND CURRENTLY INFORMED

Mr. MATHIAS. Mr. President, from the earliest days of the Republic it has been a premise of our Democratic government that the shared wisdom of those elected to carry out the public will should be based on the fruits of deep and considered full inquiry. It is both sensible and necessary that those given the responsibility by the Constitution to make decisions about our national policy should have the best and fullest information available to guide them. Unfortunately, the Congress of the United States, for a variety of reasons, has not been as well informed as recent situations have demanded. Decisions of great consequence have been acceded to by the Congress without the necessary facts, and such inquiries as have been made by the Congress from time to time, have been stymied all too often by a refusal on the part of the executive branch to furnish necessary information. It is vital to have the relevant facts and alternatives before decisions are made; all too often information has been supplied to the Congress after decisions have been made in the executive branch. All too often a chain of irreversible events has been set in motion which has prevented alternative policies from being acted upon or even considered. The result of this practice has been the entanglement in destructive policies, some of which, such as our Vietnam involvement have cost the United States the lives of tens of thousands of its youth, the loss of revenues and resources and the diminishing of U.S. influence and reputation in the world.

I do not question the motives of those who advocated the pursuit of past policies which have turned out to be failures. But what I do question is the process by which we have become committed to such disastrous policies. A large part of the blame for these failures lies with the Congress itself. The Congress has not taken the steps it can take to assure that it has the full information necessary to make sound judgments about the purposes, goals and programs of this Government. It is a plain fact that the Congress of the United States is not as well informed as it should be. Members of the Senate and House, whether they serve on committees which examine questions of defense or foreign policy or of agriculture or those that concern the judiciary—members of all of the committees of the Congress no matter what their jurisdiction, have not been able to carry out fully, or even adequately, their responsibilities, because of a lack of necessary information.

Many in the Senate and the House have spoken about the need for reform—the need for the Congress to improve its capabilities and performance so that the legislature of the United States can better serve the people who have elected them. It is a reason for hope that steps are being taken by both Houses once again to enable the Congress to assume responsibility for the appropriations process. The Congress has recognized that the practical and sensible steps taken by the executive branch enabling it to function with effect in a complex modern superstate, such as the creation of Office of Management and Budget and its predecessor agencies have relevance to the Congress. The Congress is only now beginning to give itself a similar capability, but at this point we can only hope for significant change.

Article I of the Constitution specifies that Congress shall make the laws. If this responsibility of the Congress is to have purpose and effect, it will require changes, and changes now, in the proce-

dures of the Senate and the House. A vital first step is to assure that full and timely information will be available to the Congress and to adapt our committees in order to make use of this information.

To this end, Senator ERVIN and I introduce today a bill which would amend the Legislative Reorganization Act of 1970 and require all Federal agencies to keep congressional committees and any subcommittee thereof fully and currently informed.

I send the bill to the desk and ask for its appropriate referral.

The PRESIDING OFFICER. The bill will be received and appropriately referred.

Mr. MATHIAS. The bill reads as follows:

S. 1923

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) title III of the Legislative Reorganization Act of 1970 is amended by adding at the end thereof the following new part:

"PART 4—KEEPING THE CONGRESS INFORMED

"INFORMING CONGRESSIONAL COMMITTEES

"SEC. 341. (a) Every Federal agency shall keep each standing committee of the Senate and the House of Representatives fully and currently informed with respect to all matters relating to that agency which are within the jurisdiction of such committee. Every Federal agency shall furnish any information requested by any such standing committee with respect to the activities or responsibilities of that agency within the jurisdiction of that committee.

"(b) Each such standing committee shall take appropriate measures to insure the confidentiality of any information made available to it under this section.

"DEFINITION

"SEC. 342. For purposes of this part, 'Federal agency' has the same meaning given that term under section 207 of this Act."

(b) Title III of the table of contents of the Legislative Reorganization Act of 1970 is amended by adding at the end thereof the following:

"PART 4—KEEPING THE CONGRESS INFORMED

"341. Informing congressional committees.
"342. Definition."

The bill provides, very simply, that there is an imperative duty on the part of the executive branch to provide information, not just some unspoken understanding but an affirmative duty, that "every Federal agency shall keep each standing committee of the Senate and the House of Representatives fully and currently informed with respect to all matters relating to that agency which are within the jurisdiction of such committee."

The purpose of this bill is to provide as a matter of legal right to all standing committees and subcommittees thereof of the Senate and House of Representatives, fully and currently, any information or analyses of information paid for by public funds from any Federal department or agency pertaining to all matters within the jurisdiction of each standing committee. In addition, every Federal agency would be required to supply any information requested by any standing committee with respect to all matters within the jurisdiction of each standing committee. This proposed legislation would, in the form of a statute, enforce what is already a fundamental legislative right.

The obligation that this bill would place upon the executive branch: the requirement to keep the Congress fully and currently informed and to respond to any request within the jurisdiction of a congressional committee is already firmly established by a working precedent of over 27 years duration. The Joint Committee on Atomic Energy, under the provisions of section 202 of the Atomic Energy Act of 1946 as amended (42 U.S.C. 2252) places these obligations upon the executive branch:

The Commission shall keep the Joint Committee fully and currently informed with respect to all of the Commission's activities. The Department of Defense shall keep the Joint Committee fully and currently informed with respect to all matters within the Department of Defense relating to the development, utilization, or application of atomic energy. Any Government agency shall furnish any information requested by the Joint Committee with respect to the activities or responsibilities of that agency in the field of atomic energy . . ."

The experience of the Joint Committee on Atomic Energy has been exemplary. The executive branch has provided fully and currently the information as required by law and has responded to all requests made by the Joint Committee. The question of security has never been an issue, even though the Joint Committee is privy to the most sensitive matters relating to our national security.

In addition, there is at least one other statutory precedent—5 U.S.C. 2954 provides that—

An Executive agency, on request of the Committee on Government Operations of the House of Representatives, or of any seven members thereof, shall submit any information requested of it relating to any matter within the jurisdiction of the committee.

The proposed bill simply extends the precedents in law contained in section 202 of the Atomic Energy Act and 5 U.S.C. 2954 to all standing committees.

I think it is fair to say that the Senator from North Carolina (Mr. ERVIN) and I recognize that it would be desirable to have provisions for enforcement to assure compliance with the purposes of the bill. Although we have considered various proposals which provide for enforcement, we have decided to defer a final decision on the most appropriate enforcement procedure until the bill is taken on by the committee which would consider the proposed bill.

The underlying premise of this bill is that the Congress should have access to all information produced by the Government, so that it can carry out its constitutional responsibilities to make law and policy, and do so making use of the best and most complete information and analyses of information available. We believe that for constitutional and practical reasons it is in the national interest to place the legal obligation contained in this proposed bill upon the executive branch to keep the Congress fully and currently informed upon all matters pertaining to the jurisdiction of the standing committees of the Congress.

This bill, in my view, provides one significant and effective way to assure that the major decisions made by the Government of the United States will be made with full due process as provided by the Constitution, and assure that fundamental decisions will be made on the basis of the reasoned judgment of all of the peoples, responsible elected officials, and representatives.

Over the past decade, we have had clear and sufficient warnings of increasing threats to open democratic government. We have begun to heed these warnings that government by cabal, unless checked, will stifle our freedom. It is my hope that the bill Senator ERVIN and I have introduced will contribute to strengthening our system of free democratic government of laws.

Mr. President, I ask unanimous consent that this bill be referred to the Committee on Government Operations.

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

Mr. MATHIAS. Mr. President, I reserve the remainder of my time.

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

S. 1924. A bill to authorize the Administrator of General Services to dispose of certain excess property. Referred to the Committee on Government Operations.

Mr. CRANSTON. Mr. President, I introduce for appropriate reference a bill to authorize the Administrator of the General Services Administration to convey portions of the Camp Antelope property in Mono County, Calif., to the Paiute Indians of Coleville, Calif. I am delighted that my distinguished colleague from California, Senator JOHN TUNNEY, is joining me as cosponsor of this bill.

The Paiute Indians of Coleville, Calif., are in dire need of adequate housing. They are now living in shacks—without sanitation facilities, without inside running water or insulation, and with only wood-burning stoves to heat them in winter. The Indians take their drinking water from a polluted drainage ditch which runs from the nearby Walker River. During the summer their water supply is nearly cut off as the flow of the ditch is reduced to a trickle. Coleville Paiute Roseann Kizer describes her situation:

In our little one-room house there are seven of us living and we have another little one coming soon. All the (Indian) people who now live here in Coleville have all lived the same way, drinking ditch water, using wood-burning stoves.

Within view of the Indian shacks are 36 modern homes with all the necessary comforts which have been vacant for nearly 6 years. These homes, formerly occupied by officers at Camp Antelope, have been declared excess to the needs of the Marine Corps and were turned over to the General Services Administration for disposal in January of this year. To my knowledge the Federal Government has no need for the buildings; although the Forest Service has submitted an application to GSA, I understand that it soon may be withdrawn. The heads of 24 families of Coleville Paiute Indians, eager to improve their living conditions, have expressed the desire to acquire the excess military officer housing. Because most of

them are unemployed on pensions or receiving welfare, they otherwise would be unable to acquire better housing.

However, no agency of the Federal Government appears to have the authority to submit an application to GSA on behalf of the Paiute Indians. The Coleville Indians are not a federally recognized tribe with a Federal reservation with land held in trust. However, this legislation is not concerned with the question of recognition of these Indians by the BIA. The bill merely helps the Indians obtain decent housing.

The Bureau of Indian Affairs advises me that—

Legislation would be necessary to authorize the federal government to donate these houses and land in fee title to the designated Indian families.

The legislation I am introducing today would provide that authority. The bill would give the Administrator of GSA the authority to dispose of the 36 excess houses at Camp Antelope together with whatever amount of national forest land he deems necessary to adult Paiute Indians of Coleville. In addition, the Administrator is given the authority to convey the laundromat and maintenance shop on the property to any corporation, association, or group formed by these individuals within 1 year following the date of enactment of the bill. All the buildings are located on 80 acres withdrawn from the public domain which are part of 720 acres permitted to the Department of the Navy from the Department of Agriculture. The land has not been declared excess.

The General Services Administration, recognizing the tremendous need of the Paiute Indians of Coleville, has been delaying action on the disposal of the 38 Camp Antelope buildings until all possibilities of making the houses available to the Indians have been exhausted. I commend the General Services Administration for its compassion and caution in this matter.

In disposing of excess Federal property, I feel it is incumbent upon the Federal Government to give first priority to the welfare of its citizens and human needs. There is no doubt about the need of the Paiute Indians. I am hopeful that Congress will respond with early action on this bill to alleviate the wretched conditions under which the Paiute Indians of Coleville are living.

Mr. President, I ask 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. 1924

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, upon application filed by any eligible individual within the twelve calendar month period following the date of the enactment of this Act, the Administrator of General Services is authorized to convey, by quitclaim deed, to such applicant, all right, title, and interest of the United States in and to one of the thirty-six family housing units located within the area comprising seven hundred and twenty acres made available to the Department of the Navy under a permit from the Department of Agriculture and comprising a portion of Camp Antelope, Mono County, California. Such conveyance shall include the land on which such dwelling is situated, together with such additional land contiguous thereto as the Administrator determines necessary to enable the applicant to utilize such dwelling for non-commercial residential purposes. Such applications shall be submitted in such manner and shall contain such information as the Administrator shall prescribe. Conveyances pursuant to this Act shall be made without consideration.

SEC. 2. The Administrator of General Services is authorized, at any time during the twelve calendar month period following the date of the enactment of this Act, to convey, by quitclaim deed, to any eligible entity, all right, title, and interest of the United States in and to the facilities comprising the so-called maintenance shop and laundromat which are located generally within the area described in the first section of this Act. Such conveyance shall include the land on which such facilities are situated, together with such additional lands contiguous thereto as the Administrator shall determine necessary to the utilization of such facilities.

SEC. 3. As used in this Act, the term—

(1) "eligible individual" means any individual who, without regard to place of residence, is generally recognized as a Paiute Indian of Coleville, California, and who is twenty-one years of age or older; and

(2) "eligible entity" means any corporation, association, group, or other entity established by the Paiute Indians of Coleville, California.

By Mr. PEARSON (for himself, Mr. BEALL, Mr. HARTKE, and Mr. COTTON):

S. 1925. A bill to amend section 1(16) of the Interstate Commerce Act authorizing the Interstate Commerce Commission to continue rail transportation services. Referred to the Committee on Commerce.

INTRODUCTION OF LEGISLATION TO CONTINUE ESSENTIAL RAIL SERVICES

Mr. PEARSON. Mr. President, I introduce for myself, and Senators BEALL, HARTKE, and COTTON, a bill requested by the Interstate Commerce Commission to authorize the Commission to direct one railroad to operate over the lines of another when the latter carrier is unable to transport essential tendered traffic.

The Northeastern United States—a region of 17 States—currently is served by 6 class I railroads which are in bankruptcy. These six railroads operate over 50 percent of the trackage in the affected region. Together they generate more than 17 percent of all the freight revenues of all class I railroads in the Nation. Nearly half of all the people of this country are provided essential rail services by one or more of these bankrupt carriers.

The Surface Transportation Subcommittee, chaired by our distinguished colleague from Indiana (Mr. HARTKE) is currently considering intensively the proposals of the U.S. Department of Transportation and the Interstate Commerce Commission to bring order out of the chaos in rail transportation in the Northeast. I am confident that our subcommittee, and the full Commerce Committee will meet their responsibility in fashioning a reasonable legislative proposal in response to the Northeast rail problem.

In the meantime, however, it is imperative that Congress approve legislation to authorize the Commission to invoke emergency procedures in the event of the cessation of rail service on one or more carriers' lines. The Commission should be given authority to direct an operating carrier to provide essential rail services over the lines of a defunct carrier. Today under existing law the Commission can exercise certain emergency powers to alleviate the crisis which would result if even one carrier were to terminate services. But those powers stop short of what is needed.

Mr. President, the bill which I today introduce will extend to the Commission the authority which it has been seeking for 3 years or more. It will guarantee that no essential service will be interrupted in the event of liquidation of a railroad and termination of its operations.

Hearings were held by the Surface Transportation Subcommittee on an identical measure in the 92d Congress. The proposal which I am introducing today enjoyed the support of the administration in the last Congress.

Mr. President, in view of the potential injury which would be suffered by the public in the event of interrupted essential rail services due to liquidation of an operating carrier, and in view of the support this measure enjoys within the administration, I am hopeful that it can be reported promptly by our committee and considered favorably by the Senate in the immediate future.

Mr. President, I request that the text of my bill be inserted in the RECORD immediately following these remarks.

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

S. 1925

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1(16) of the Interstate Commerce Act (49 U.S.C. 1(16)) is amended to read as follows: "Whenever the Commission is of opinion that any carrier by railroad subject to this part is for any reason unable to transport the traffic offered it so as properly to serve the public, it may, upon the same procedure as provided in paragraph (15), make such just and reasonable directions with respect to the handling, routing, and movement of the traffic of such carrier and its distribution over such carrier's or other lines of roads, as in the opinion of the Commission will best promote the service in the interest of the public and the commerce of the people, and upon such terms as between the carriers as they may agree upon, or, in the event of their disagreement, as the Commission may after subsequent hearing find to be just and reasonable."

By Mr. KENNEDY:

S. 1929. A bill to establish the Nantucket Sound Islands Trust in the Commonwealth of Massachusetts, to declare certain national policies essential to the preservation and conservation of the lands and waters in the trust area, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

THE NANTUCKET SOUND ISLANDS

Mr. KENNEDY. Mr. President, nearly 18 months ago, in September of 1971, I introduced legislation designed to begin the process of preserving and conserving the Nantucket Sound Islands. These islands, principally those of Martha's Vineyard and Nantucket, lie off the southern coast of Cape Cod.

They are unique islands. They combine an unusual history, a fragile ecology, a natural beauty, and other values unmatched anywhere on the east coast of the United States. These islands have, until recently, escaped the intense second-home and suburbanized development pressures which are so characteristic of much of the rest of the coastlines of the United States. In the past 4 years, however, the Nantucket Sound Islands have become the target of the same kind of pressures which have irretrievably destroyed such large parts of our natural heritage. This type of development scatters houses haphazardly across the rolling moors; sits them down on fragile dunes and in coastal marshes without regard for delicate, natural balances; drives up local taxes to pay for the increased demand for municipal services; and with irreversible finality changes what was once a wild and beautiful landscape into one indistinguishable from big city suburbs.

It is my own belief that legislation can be designed which will both preserve and conserve the natural beauty of these islands, and at the same time maintain the sound economic base so important for the island residents. These are not, I should stress, incompatible goals. But because the islands are not entirely wild but are already partially developed, with bustling towns on each of the major islands, the legislation must be imaginative and innovative in comparison to legislation designed strictly to preserve the wide open expanses which exist in so much of the rest of the country. It will not be good enough, however, to preserve the island if the local economies falter; similarly, it will do no good to focus entirely on the local economies and pay no heed to the imminent destruction of all that makes the islands so unique.

These islands today, then, stand on the brink. There really is but one chance for them. If the challenge is met, then the islands, with all their rare values, will be preserved. If the challenge is not met, however, then the Nantucket Sound Islands will in a very few years be indistinguishable from the heavily developed and suburbanized parts of Cape Cod or of Long Island or of the New Jersey Shore. This is not an overstatement. It is a fact accurately represented and attested to by numerous studies, comment by public officials, and confirmed by personal observation.

As one illustration, Massachusetts Gov. Francis W. Sargent visited Martha's Vineyard in January of this year, to talk with island officials about conservation issues. During that visit he said:

> There is not one inch of available land on the island that is not being eyed by developers today.

Governor Sargent's statement is yet one more warning that tomorrow may be too late for the islands.

I am today introducing the Nantucket Sound Island Trust bill. This bill is the natural product and outgrowth of the bill I first introduced more than 18 months ago. The bill is designed to meet the threat to these islands head on. It is compatible with any possible future State legislation, and is designed in such a way that any such legislation would complement this bill, and that this bill would complement the State legislation. Congressman GERRY E. STUDDS is introducing today companion legislation in the House of Representatives.

NATURE OF THREAT

The threat to the islands is a very real one. It is evidenced by large scale suburban tract developments promoted by off island developers. These developments have already brought, and will continue to bring in ever-increasing degree, overloaded sewage systems, potentially hazardous saturation of the soil and possible contamination of the ground water supply where sewage systems do not exist, congestion of the narrow winding roads so typical of the islands, overcrowding of public facilities—and without doubt, higher taxes.

Row house condominium developments in the moors and plains are now a fact of life on these islands. In 1971, there were 197 housing starts on Martha's Vineyard. In the first half of 1972, there were 144 starts. This is an increase of nearly 50 percent over that of the first half of 1971. As is predictable in situations such as this, the development pressures have the effect of driving the price of land higher and higher, so that it is increasingly out of the reach of island families.

The people of the islands recognize this threat. On Martha's Vineyard, for example, in a referendum of island voters, nearly 90 percent indicated their belief that the island was in jeopardy from overdevelopment. The same sentiment exists on Nantucket, on the basis of informal samplings at a number of large public meetings.

The towns of Nantucket and West Tisbury have made the most determined efforts to prevent haphazard development which might endanger water supplies of these towns. Nantucket, for example, has established a moratorium on building permits for that part of the town which is adjacent to the source of most of its fresh water. This moratorium, though, can be only of limited duration pending completion of a ground water quality study. Furthermore, it is very limited in the area to which it applies. The town of West Tisbury on Martha's Vineyard made an effort to put into effect a similar moratorium, but had to withdraw it under the threat of lawsuits from large scale developers. These efforts must stand beside the incident in Vineyard Haven last summer, in which the town dump became overloaded with raw sewage being trucked to it from restaurant cesspools; the result of the dumping was raw sewage flowing down the State road in that town.

The report of the town of Gay Head on Martha's Vineyard for 1971 crystallized the sentiment of many islanders in these words:

> Gay Head has reached a crossroad in her history. The town could become another Cape resort, or carry on with its traditions and history. The public has discovered the town to an increasing degree, so that revolutionary adjustments have become necessary.

The threat, then, to these islands is very real, it is present, and it has been recognized by many of the islanders.

BACKGROUND OF BILL

It was in response to these threats, and in response to appeals from a broad spectrum of island people, that in September of 1971 I introduced S. 2605, to authorize the Secretary of the Interior to study the feasibility of including the Nantucket Sound Islands within the Cape Cod National Seashore. This bill, which drew extensive treatment in island newspapers, stimulated the beginnings of what has been a continuing series of discussions about Federal, State, and local legislation to preserve the islands. The response that I received to this bill, and my own studies and examinations, convinced me later in 1971 that there was no real need for yet another study of these islands. They have been the object of numerous Federal, State, and local studies over the years, and each one of these studies has recognized the unique characteristics of the islands, and the strong national and State interests in preserving them. I was also convinced, upon examination, that the model of the Cape Cod National Seashore was not the one most appropriate for the Nantucket Sound Islands. The National Seashore was highly effective on Cape Cod, as it dealt primarily with the largely undeveloped lands of the outer beach. But because it is my intention to treat the threat to the islands in toto, instead of simply the undeveloped fragile edges and areas, I was drawn to the work of the Department of the Interior in its report entitled Islands of America.

This study is a comprehensive and recent inventory of the recreational, scenic, and historical value of the Nation's islands. It was published in 1970 by the Department of the Interior, and recommended establishment of a national system of island trusts.

In November of 1971, I had printed in the CONGRESSIONAL RECORD copies of a number of articles about Martha's Vineyard and Nantucket, all of which plead for their preservation; also at the same time a memorandum expanding upon the Department of the Interior's recommendations. This material, too, was printed in island newspapers and reecived wide discussion over a period of some months.

There were a number of public meetings on the subject of the seashore study bill and the material printed in the CONGRESSIONAL RECORD. As a result, I received a large volume of letters and memorandums from island people suggesting ways to shape and strengthen any legislation. The result of this was the Nantucket Sound Islands trust bill, S. 3485, which I

introduced on April 11, 1972. That bill, the predecessor of the one I am introducing today, established a comprehensive program for preserving and conserving the islands within the structure of an island trust, to be largely controlled by a trust commission largely made up of island people.

After I introduced the bill, there was an immediate and sharp division of opinion about the merits of the bill. The proponents of that bill saw it as an opportunity to preserve all that is unique about the islands, and forthrightly and willingly accepted my invitation to come forward with constructive suggestions for improving it. I made it plain that the bill I introduced last April was a working document, and that I expected to make substantial changes in it after discussions and meetings with island residents.

Many of the opponents of the bill saw it as more of a threat to the islands than the pressures of suburbanization and overcrowding. Many of the opponents were local officials, who saw the bill as a threat to local control and the town meeting form of government so much a part of the history of Massachusetts. Many other opponents, principally those in the construction trades and in the real estate development business, saw the bill as a threat to their livelihoods. Over a period of months, however, much of this early opposition has changed to support, and much of it has changed to less strong opposition. There is, however, still opposition to Federal legislation to preserve and conserve these islands, and I would not anticipate there ever being unanimous support for it. I am confident, on the other hand, of a majority of island people accepting a carefully designed program based on Federal and State legislation which assures that all of our children, when they are our ages, will be able to enjoy the beauty of these islands.

After the bill was introduced, I attended a number of meetings with island officials and island residents. There were many, many other meetings held with interested citizens on my behalf. The written results of these meetings and discussions were circulated on the islands, and printed in the local newspapers, as proposed revisions to the island trust bill. After a careful review of these suggestions, on July 27, 1972, I introduced an amendment to S. 3485, which was printed as Senate amendment 1372. This amendment, comprehensive in scope, was the direct outgrowth of active citizen participation of both year-round and seasonal residents in strengthening the bill and tailoring it more closely to the needs of the islands. This aspect of the effort to preserve the islands—the hard work and long hours of literally hundreds of island people—has been the most gratifying aspect of the 18 months' effort.

In October of last year. Congressman EDWARD P. BOLAND introduced the revised bill in the House of Representatives. In January of this year, Congressman BOLAND and Congressman GERRY STUDDS reintroduced the bill in the House of Representatives. Also, in January, I visited both Martha's Vineyard and Nantucket, and held a series of meetings on both islands; these meetings were both open public meetings and meetings with island officials and groups.

As the direct result of this visit to the islands, of the meetings held then, and of the continuing work of interested citizens and officials who continue to make constructive suggestions, I circulated a proposed revision of the bill on March 21, 1973, to all island officials and interested citizens. This bill, too, was printed in the island newspapers of general circulation.

The bill finds its direct precedent in the 1970 Department of Interior report, Islands of America. It was in this report that the island trust concept first received careful explanation and wide public notice. The bill is also based upon the land use control and environmental protection legislation in the States of New York, Maine, and Vermont. In addition, existing Federal laws dealing with preservation and conservation of natural areas was a major source of many of the bill's provisions.

Despite the ample precedent for many of the bill's provisions, it is still an innovation in Federal conservation and preservation efforts. It is an innovation because it makes a serious and concerted attempt to confront directly one of the most difficult problems facing the Nation today: the necessity of containing the spread of suburban tract developments, and the commercial strip development which follows, to areas of unique value to the Nation as a whole. The islands are not empty of people; there are towns and schools and stores and homes from one end to the other. There are, though, still large areas preserved wild, in many cases because of the efforts and sacrifices of individual land owners. There are, too, many areas with large expanses of sparsely developed land. The village centers are easily identified, and until recently have been concentrated in fairly tight geographic centers. It is only in the past few years that the suburban sprawl so much in evidence around our metropolitan areas has begun to reach the Nantucket Sound Islands.

The principal innovation in the bill is in the establishment of Island Trust Commissions to manage the lands and waters in the trust area. The Commissions, created by Federal statute, are to a large extent made up of island people. Because of the national interest in the islands, and because of the Federal funds involved, there is a Federal representative on the Commissions. Similarly, there is a State representative on the Commissions because of the State interests and potential State funds involved in a comprehensive attempt to preserve the islands. But the large majority of Commission members are local people.

These Commissions will establish policies and then carry them out. They will do so within guidelines established by the bill, but by and large the policies and the programs will be developed, written, and enforced by the Commissions—that is, by the local people themselves.

To divert the threat of haphazard overdevelopment, the bill establishes three principle land use classifications, into which all lands not currently protected by conservation status are placed. These classifications are class A: Forever Wild, class B: Scenic Preservation, class C: Town Planned Lands.

The bill, then, seeks to create a new kind of partnership between the Federal, the State, and the local governments involved. It recognizes at the outset that most of the decisionmaking as it relates to the future of the islands, belongs in the hands of the local people themselves. But it also recognizes realistically that both the powers and the funds available at the State and Federal level are absolutely essential if the islands are to be preserved for future generations.

I am convinced that only with the partnership of the type represented by the island trust bill can preservation and conservation efforts be successful over the long term. One of the key lessons of the discussions over the past 18 months about these preservation and conservation efforts has been a steadily growing awareness that the town governments and county governments do not have the tools at their disposal to control, in any meaningful way, the development pressures. Another lesson has been that even new State legislation will not suffice to create the tools to do the job because of the limitations of the police powers under the State constitution and State laws.

At the same time, it has become plain that Federal legislation, to be successful, must wherever possible be fitted together with whatever State and local laws are available to the people of the islands, or may become available in the future. It is this sharing of powers and sharing of responsibilities which marks one principal innovative feature of this bill, and which I believe augurs well for its operational success.

PROVISIONS OF BILL

The central concept behind the island trust is that there be a body created to hold certain lands "in trust" for future generations. It is not necessary that this body own the lands outright; nor is it by any means necessary that the body own all the lands. It is sufficient that the body have the authority to purchase or otherwise obtain easements and other restrictions on those lands threatened by the type of development which would destroy the unique island values.

This body, the Island Trust Commission, becomes the principal operational authority established by the bill. It also becomes, automatically, the one-half owner of any lands or interests purchased by the Department of the Interior; and it can receive full title to lands or interests it acquires in any other manner. The Commission sets policies, writes regulations, and enforces them—with the expertise available from a paid professional staff and with the advice and suggestions from the Department of the Interior and the Commonwealth of Massachusetts.

There are three Commissions established—one for Nantucket, one for Martha's Vineyard, and one for the Elizabeth Islands. On each one, there is a majority of local island people—an important factor both in terms of local knowledge being brought to bear on the problems, and also in terms of enhancing the ability of a locally based institution to exer-

cise some high degree of control over the future of the islands.

The three classifications of land follow logically from a study of existing land use patterns, and a comparison of those patterns with the natural and other features of the islands which contribute so markedly to the unique qualities.

Forever wild lands are those which should be left wild. They may be dunes, marshes, hilltops, promontories, watersheds, and so on—but they should not, henceforth, sustain any new construction. There are, in addition, lands which should be in the forever wild classification but which are already built upon. The bill provides that improvements in this latter category may remain in the hands of the family, broadly defined, now owning them. If the improvements are to be sold outside the family, then a Commission has the right to first refusal at the then determined fair market value. This is an orderly, fair procedure for protecting a family's stewardship of a particular area, while presenting the Commissions with the long-range opportunity of restoring the forever wild status some areas which are now built upon but which perhaps should not be.

Scenic preservation lands are those which are currently most threatened by the rush to suburbanized tract development. Generally speaking, they are the lands which lie between the built-up village centers and the dunes, marshes and hilltops. Thousands of acres of these "middle lands" have been subdivided into 1-, 2-, and 3-acre lots in the past 5 years, and without the Island Trust bill they will ultimately, each one, have a house. The Vineyard Conservation Society newsletter estimates that there could be as many as 49,000 new houses built on Martha's Vineyard under existing or proposed zoning ordinances.

The bill establishes four broad guidelines for development of scenic preservation lands beyond their present intensity of use. Within these broad guidelines, the Commissions are to draw up specific regulations, which may be different for the different character and quality of the lands within the scenic preservation classification. This is a key provision of the bill, and it is this flexibility which holds out such a high degree of promise.

The third category is town planned lands, in which local zoning and other ordinances control. In general, town planned lands are the village centers and the areas immediately contiguous to them. In town planned lands, the Commissions are required to review and comment upon any new land use control ordinances, or amendments; and may review and comment upon proposed variances. A considerable amount of criticism has been directed at this provision, because it does not give the Commissions any measure of control over potential developments in the village centers and their fringes. But it seems to me that the review and comment procedure can serve very well to help achieve consistency and to provide information, and that this is the principal need in town planned lands.

The boundaries between classifications are set by official maps. These maps, after enactment, must be publicly available in the town offices, the Commissions' offices, and the offices of the National Park Service. I am releasing proposed official maps today; I anticipate that further information gathered previous to and during the hearings on the bill will permit refinements and adjustments in the preparation of the official maps themselves.

It has been a continuing and often-repeated fear of many island people that the purpose of this bill is to make the Nantucket Sound Islands into recreation areas; or that in years to come the Federal or State governments will induce the Commissions to turn the islands into recreation areas. In the first instance, if the central purpose of the bill had been recreation, it would not be framed as an island trust, but would be framed as an incremental addition to our system of national recreation areas. In the second instance, the Commissions are the central management authority for the islands trust; neither the Secretary of the Interior nor the Governor can change the policies and guidelines unless the Commissions so desire and affirmatively vote for the changes. In effect, the Commissions have veto power. Finally, I have deleted most references to recreation, to make clear the paramount preservation and conservation purposes.

The bill states that full and fair market value must be paid for any purchase of the whole or a lesser interest in any land. Since 1970, all agencies of the Federal Government have been subject to the provisions of the Relocation Assistance and Real Property Acquisition Policies Act. This law without qualification requires prompt appraisals and payments, and mandates fair market valuations.

The bill when introduced last year contained a provision authorizing the selectmen in each town to institute a procedure to slow down the runaway rate of growth, based upon a showing of "need" for the construction of improvements. This provision was and is designed as an interim measure, to assist the towns during the period between first introduction of the bill on April 11, 1972, and its eventual enactment. The town of Nantucket instituted such a procedure, which has been of material assistance to it, and the provision is consequently retained. Individuals who obtained permits under this provision, or made efforts to in those towns which did not adopt the procedure, are protected from nonconsent acquisition.

Any lands or interests held in trust by the Commissions, and owned jointly by them and the Secretary, are to be subject to real property taxation as if they were privately owned. This is important if the tax base of the towns is not to shrink because of the bill, even though I do not anticipate that very large areas will be actually purchased. It has been suggested that this provision is an almost pure form of revenue sharing, and it seems to me that this suggestion has merit.

There are important provisions in the bill concerning private nonprofit organizations and associations. The main purpose of these provisions is to encourage preservation and conservation by voluntary private action, where at all possible. Generally speaking, the authority to acquire without consent is suspended as to those lands now owned by conservation organizations, or to those lands which are committed to conservation organizations up to 2 years after enactment. In addition, there is a broader suspension of the bill's provisions for lands subject to a conservation easement created under Massachusetts statute either when the bill is enacted, or up to 2 years later. This is strong inducement for the continuing strong presence of these organizations.

The bill would establish a mechanism by which access to the islands, by water and air, can be controlled. If access were to be unlimited, then the very purposes of the bill—preservation and conservation—would be thwarted. For that reason, the Commissions and other officials are directed to examine and develop the means and procedures by which access could be limited. A corollary of this access control mandate is a statement of national policy in the bill which would prevent a bridge or causeway or tunnel from ever being built to the islands.

There live on Martha's Vineyard the last survivors of the Gay Head Indian Tribe. The bill makes special provision for the lands which belong to this tribe, and directs the Secretary of the Interior to carry out whatever studies and undertake whatever steps are necessary to give this tribe Federal recognition. The precise legal status of these lands is at the present time unclear, and until a thorough and detailed study is made it is not realistic to determine precisely the manner of preserving them, although it is realistic to set a policy—that they should remain Indian lands.

We cannot turn back the clock and restore to the Indians of this country all that they once had; but where we have an opportunity, as we do on Martha's Vineyard and with this legislation, we should make an effort, and a determined effort, to restore to the Indians what is rightfully theirs.

For many years the Department of the Interior has sought to win acceptance of the concept of compensable regulations. Under this concept, wherever an action of the Federal Government in the nature of the land-use control regulation can be construed as a taking, of either the fee or of a less-than-fee interest, there must be provided full and fair compensation at fair market value. The bill adopts the compensable regulation concept. This is an important step in Federal conservation and preservation efforts, one which I believe to be long overdue. It contrasts strongly with local zoning, carried out under the police powers of State constitutions, which is a noncompensable regulation and for which there is no compensation paid for the restriction on land use.

Because land costs on the islands have been driven so high by the speculation accompanying the land boom, the bill establishes a mechanism by which the Commissions and the towns can, in effect, write down the cost of land for

residents who seek homesites. This, too, is a fair and needed provision. It will make it possible for many islanders, under regulations and provisions locally prepared, to own land and homes where they might otherwise not be able to afford rapidly rising land costs which are still fueled by speculative fever.

The bill would clarify the right-of-passage easement which exists below the high-water line on beaches in Massachusetts. It does so by stating that there shall be a right-of-passage easement created at the high-water mark. To go further and establish all of the beaches on the islands as open and free for public use, as has been strongly urged by a number of groups and residents of the islands, would, unfortunately, probably lead to the destruction of much of the most fragile and beautiful areas. The threat of dune buggies and other vehicles on the dunes is a present one, and if it is not controlled will shortly lead to the destruction of the dunes. Similarly, uncontrolled pedestrian public access to all of the fragile dune lands and marsh areas would shortly and similarly destroy them.

Consequently, the bill provides that there shall be created on Martha's Vineyard two new additional public beaches on the south and southwestern shores of that island. Creation of these new beaches will provide ample access to the ocean for island residents and island visitors, because the bill also establishes the procedures for providing access to these new beaches. On Nantucket, the problem of public beaches does not exist because there are already an ample number; consequently, no new beaches are required to be created on Nantucket.

No Man's Land, an island now under the jurisdiction of the Department of the Interior, but used by the Department of the Navy under an agreement with the Department of the Interior as a bombing range, would be made a national wildlife refuge, and the Secretary of the Navy would be directed to clean up all of the unexploded bombs and other such materials within a short time after passage of the bill.

There are many other provisions of the bill, the most important of which are the 3-year authorization of appropriations of $25 million; pollution and erosion control measures; encouragement of new employment opportunities in occupations outside the construction trades; specific inducement for voluntary private preservation and conservation efforts; and reasonable procedures for changing the boundaries between classifications.

In sum, the bill is a comprehensive legislative effort designed specifically to blunt the threat now confronting the islands, consistent with the highest possible degree of control of local people and maintenance of the local economies.

As succinct a statement as currently might be made about island sentiment is the following paragraph, signed by the chairman, from the Edgartown selectmen's report for 1972, released in April of 1973:

> In April of 1972 Senator Kennedy made public his Islands Trust bill. The debate has been raging ever since. This controversial legislation has brought out some very strong feelings amongst the people of Martha's Vineyard. One positive result is the interest that has been generated throughout the Island in land usage and the need for some protection of the environment. The questions raised by the bill at this writing are far from resolved. However, one or two indications seem very clear. I believe that the majority of the people want some reasonable protection for the land and environment of Martha's Vineyard. Also, they want the necessary authority to attain this protection given to the local town government with Federal and State participation kept at a minimum.

Very few of us would quarrel with that statement, and it is my belief that the islands trust bill is very near to achieving the combination of authority and local control.

LOCAL EFFORTS

Much has already been accomplished on the islands, both to set aside large areas for conservation, and to adopt local land use controls. But it is now a race against the clock, and local conservation groups simply cannot raise adequate funds privately to preserve all which should be preserved. Furthermore, even if all the towns adopted the full range of measures available to them under State law—zoning, subdivision controls, building codes, and historic district measures—they would not have enough powers to control the burgeoning growth effectively. This bill, though, by combining Federal, State and local powers in the Commissions, can and will provide the tools to do the job of controlling unchecked growth—a job the overwhelming majority of islanders wants done.

On Nantucket, Nantucket Conservation Foundation, the Nantucket Ornithological Foundation, the Nantucket Conservation Commission, the Nantucket Historical Trust, and the Nantucket Historical Association, have accomplished much to preserve that island's natural, cultural and historic heritage. Their work has been nationally recognized, and that recognition is well deserved. Since I introduced the bill in April of 1972, two groups have worked long and hard to provide their fellow islanders and State and Federal legislators and officials with constructive suggestions: The Nantucket Home Rule Committee and the Committee to Preserve Nantucket. Their work has been of inestimable value, and it is my hope that their work will continue over the next few months.

On Martha's Vineyard, the Vineyard Open Land Foundation, the Vineyard Conservation Society, the Martha's Vineyard Garden Club, the Sheriff's Meadow Foundation, the Trustees of Reservations, and other groups have also made important contributions. Many of that island's most critical areas have already been preserved by the work of these organizations. Since I introduced the bill, the Vineyarders to Amend the Bill and the Concerned Citizens have provided real leadership for their fellow Islanders in strengthening and tailoring the bill's provisions to the specific needs of Martha's Vineyard. The Conservation Society and the Garden Club have done similarly, and the Open Land Foundation recognized the importance of the bill for the island's future in a resolution by its board adopted last spring.

The Elizabeth Islands have been well protected over the years through the Naushon, Pasque, Nashawena and Cuttyhunk Trusts. The bill provides a series of measures of encouragement for this type of enlightened stewardship.

In recent months a coalition of different groups of Martha's Vineyard, proponents and opponents alike, has been meeting under the chairmanship of a nationally-recognized land use expert. The principal thrust of this group's work has been to explore approaches to establish controls on the growth rate, and it is my hope that in time for hearings on this bill the group will have been able to resolve the inherently difficult issues in this work and be able to present it to the committees of the Congress.

Since late last year, through the impetus of the Dukes County Selectmen's Association and the Dukes County Planning and Economic Development Commission, State officials have been drafting a bill to present to the Massachusetts legislature to control developments in areas of critical planning concern through an island-wide or regional agency. I welcome this effort, and I have added provisions to this bill to ensure that it is carefully fitted to whatever State legislation might ultimately result. I do not believe that State legislation can provide all the necessary powers to preserve and conserve the islands in the fashion they deserve; nor do I believe that State funds in sufficient amounts can be made available. This has been confirmed by spokesmen for Governor Sargent, and this is the principal reason for the complementary approach adopted by the bill.

In sum, local efforts have already accomplished much. They can accomplish even more. But if all the work which has gone before is not to have gone for naught, then we will have to press vigorously for enactment of this bill.

LAND USE LEGISLATION

The Nantucket Sound Islands are not an isolated situation. There is a stronger and stronger demand all across Massachusetts, and all across the country, for more and stricter land use control laws. The problem will grow more acute as the second home becomes more and more a part of the American standard of living; and it will continue to be acute, but for different reasons, in the presently open lands within easy travel time of all our large metropolitan areas.

The most recent major study and report on land use controls—conducted by the Citizens' Advisory Committee to the Council on Environmental Quality—has concluded:

> To protect critical environmental and cultural areas, tough restrictions will have to be placed on the use of private land.

The report cites growing acceptance of the concept that development rights attaching to private property must henceforth be regarded as being vested in the community and in its well-being, instead of in the fact of ownership.

In the past, the Congress and the Executive have responded to the needs

for preservation and conservation with specific legislation designed for a specific area—such as the Cape Cod National Seashore or the Point Reyes National Seashore, and with the whole range of national parks, national wildlife, refuges, wild rivers, and national recreational areas. There will always be a continuing need for this special purpose legislation, and it is my belief that the island trust concept will provide a model for legislation to preserve threatened areas elsewhere in the country.

But for the first time, there is now a serious effort underway for a national land use program. As a precursor, last year the Congress adopted the Coastal Zone Management Act, an important step focusing on the Nation's shorelines. Unfortunately, though, it has not been funded. Also last year, the Senate passed a National Land Use Policy Act, but the House did not. This, too, is an important step toward rational policies toward our Nation's land.

It has been said that the Nation is in the midst of a quiet revolution of land use controls. A few short years ago, such an idea would not have received serious consideration. Today, however, it is generally recognized as inescapable because land use has become recognized as the critical and overriding environmental issue. A few specific examples of the high-level concern.

President Nixon, in his message to Congress on February 14, 1973—

> Land in America is no longer a resource we can take for granted. We no longer live with an open frontier. Just as we must conserve and protect our air and our water, so we must conserve and protect the land, and plan for its wise and balanced uses.

Russell E. Train, Chairman of President Nixon's Council on Environmental Quality, in a 1972 book:

> The Council on Environmental Quality seeks reform of the regulatory structure over land use decisions that have greater than local impact. . . Some have purported to see in this approach a dire threat to cherished values of municipal home rule and local autonomy. . . However, like the 19th century pioneer ethic towards the land, unthinking obeisance to notions such as home rule can be an obsolete reflex in a more complicated time.

Secretary of the Interior Rogers C. B. Morton, in a February 15, 1973 letter to the President of the Senate:

> ". . . most of our present land use problems stem from a piecemeal, fragmented, and uncoordinated approach to land use decision-making. Unless we can reverse this pattern, we will not be able to meet the challenge which lies ahead of us in planning for the future of this country.

These are important policy statements, deserving our thoughtful consideration.

While recognition of the need for wise and reformed land use patterns is a recent phenomenon, the facts demonstrating the need are not. For example, in the period 1922–54, over one-quarter of the salt marshes in the Nation—more than 900 square miles—were destroyed by filling, diking, draining or by construction of walls along the seaward marsh edge. In the following 10 years, another 10 percent of the remaining salt marsh, between Maine and Delaware, was destroyed.

There are other examples, too. Upwards of 3 million Americans now own second homes. This new rush to the frontier generates a sales volume of $4 to $6 billion a year. Former Vermont Gov. Philip Hoff said recently:

> Southern Vermont is now swiftly becoming an upper middle class suburb.

In the Poconos in Pennsylvania, some 35,000 to 45,000 lots for vacation homes have recently been sold.

Some States have moved energetically to control their land use. Maine, Vermont, New York, Oregon, Florida, Hawaii—these States have laws which are important models for other States, laws on which key parts and concepts of the islands trust bill have been modeled.

It should be clear, consequently, that the threat to the Nantucket Sound Islands is not an isolated phenomenon. It is part of the pattern of similar pressures which threaten the Berkshires in western Massachusetts, the northern New England mountains, the Shenandoahs, the Upper Midwest, and both the coastline and mountains of California.

The key to preserving the truly unique among these threatened resources is a partnership which provides Federal and State funds and powers, in the framework of guidelines, to be administered by local island people. Such a partnership is in fact an expansion of local powers, but an expansion realistically consistent with guidelines reflecting the national interest in preserving the islands. I do not believe that an effective preservation program can be designed without this three-level partnership.

Time, for the islands, is of the essence. The urgency is plain for all to see, in the angular grids slashed through the moors and woods for subdivision roads; in the steepening curve of housing starts; in the Steamship Authority's boats filled to capacity on spring and fall weekends; and in the steady, ongoing destruction of dunes, beaches, and wetlands.

Where we can act, we should; and because we can act to save the Nantucket Sound Islands, we must.

Mr. President, I want to bring to the attention of the Senate two editorials from island newspapers. The first appeared a year ago in the Vineyard Gazette, that island's largest newspaper. The second appeared last week in the Nantucket Inquirer & Mirror, that island's only newspaper. They are a good indication of the urgency of the need for the islands trust bill, and of the sentiments of a great number of island people. I ask unanimous consent that they be printed in the RECORD at this point. I also ask unanimous consent that the text of the bill I am introducing today be printed in the RECORD following the two editorials.

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

THE KENNEDY BILL MUST BE ENACTED

The only secure future for Martha's Vineyard lies in the enactment as soon as possible of the Islands Trust Bill with the amendments now incorporated or projected. This view would not be advanced here or urged so forcibly without reservation if it were not based upon study, consultation, and an earnest examination of problems and alternatives.

Some things need to be resolved, such as provision for the building industry which, at the rate of a new house every day, is now headed for disaster in the familiar cycle of boom and bust. The bill ought to be shaped to make it the salvation of the builders, not their ruin. Other changes are easily possible if Islanders will speak up.

Meantime no word has been said against the purpose of the bill. We can recognize in it the common purpose of us all. Every Vineyarder knows in his heart that the Island is in deep trouble that will not go away. We have kept our heritage almost intact for more than 300 years but a new era has closed in about us and we must act. More than the preservation of scenery is at stake. Our tax structure, our basic economy, our customary pursuits, our quality of life, are all in hazard.

The differences among us are not of good against evil, or summer people against all year people, or the wise against the foolish. They are basically of conservatives who would protect and hold as much of the Island heritage in its present form as possible; and of liberals who have a dedicated love of the Island and would take bold steps to save it.

These differences must be resolved with the mutual respect of Vineyarders as reasonable men and women, and by a steadfast realism in facing up to things as they are. The county, an obsolete unit everywhere but on the Islands, cannot serve us now. To become instrumentalities of the state legislature would be intolerable.

The Kennedy Bill offers a sound course, innovative but well grounded. Within its framework a bright future can be shaped, and only good will is needed for success in the undertaking. Not least important by far, in discussing and planning and deciding, let's not lose the fun of living on Martha's Vineyard either for ourselves or for generations to come.

REAL ESTATE DEVELOPMENT—ANOTHER DEFENSE DISCREDITED

(By Tom Giffin)

In the concern which has arisen in the past several years to preserve a large part of Nantucket's wild lands as they are, there has been a sharp difference of opinion over how to do it. Beyond the capacities of the Nantucket Conservation Foundation and other private groups, which has been able to purchase less than 20 percent of Nantucket's open land for preservation, one school of thought has favored government action primarily through the proposed Nantucket Sound Islands Trust, or Kennedy bill. Another school of conservation-minded people has felt that land control by any off-island level of government should be avoided if at all possible, and has believed that Nantucket can sufficiently restrict real estate development through its own public health authority over sewage disposal and water supply.

This latter school has been, for all practical purposes, demolished with the completion of the water study in the land east of the Wannacomet Water Company and the subsequent lifting of the moratorium on building in that area. In this potentially most sensitive of all land on Nantucket it was found that the ground could safely absorb septic tank effluent from a very large number of dwelling units, and that building could therefore not be prohibited on this account. What goes for this land will very likely apply to a large proportion of land elsewhere on the island, and the amount of building thereby permitted will easily be enough to completely change the character of Nantucket in a most unpleasant way. Much more than just the covering of wild land with houses is at stake.

The further congestion of the town with additional auto traffic for which we have no room, the need for more heavy transport facilities both on the waterfront and at the airport, the need for more out-of-town shopping services—these and other changes in the wake of much more building will make Nantucket a very different place than we have known in even the recent past. What we have valued will shrink and disappear, and it will be replaced by one more piece of modern American Exurbia, a little harder to get to than its likenesses on the mainland, but of no particular interest or appeal.

The situation facing us should now be clear to all. If land is to be restricted from building it must be bought, either by ourselves or by someone off-island, government or otherwise. If it is not bought for conservation, then sooner or later the greater part of it will be bought for building. We can have Building Codes and Zoning Codes, and Historic District regulations until we are blue in the face—but it won't stop the building. If Nantucket is to be preserved substantially the way it is, as a delightful place to live in and visit and a valuable part of America's natural wealth, then someone is going to have to take effective action very soon.

S. 1929

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

FINDINGS AND STATEMENTS OF POLICY

SECTION 1. The Congress finds that—

(a) The Nantucket Sound Islands in the Commonwealth of Massachusetts, known generally as the Islands of Nantucket, Tuckernuck, Muskeget, Martha's Vineyard, Noman's Land, and the group of Islands known collectively as the Elizabeth Islands, possess unique natural, scenic, ecological, scientific, cultural, historic, and other values;

(b) There is a national interest in preserving and conserving these values for the present and future well-being of the Nation and for present and future generations;

(c) These values are being irretrievably damaged and lost through ill-planned development;

(d) Present state and local institutional arrangements for planning and regulating land and water uses to preserve and conserve these values are inadequate;

(e) The key to more effective preservation and conservation of the values of the Nantucket Sound Islands is a program encouraging coordinate action by Federal, State, and local governments in partnership with private individuals, groups, organizations, and associations for the purpose of administering sound policies and guidelines regulating ill-planned development;

(f) Such a program can protect the natural character and scenic beauty of the Nantucket Sound Islands consistent with maintenance of sound local economies and private property values; and

(g) Because expanded access to the Islands would seriously impair them and be in contravention to the purposes of this Act, it shall be national policy that no bridge, causeway, tunnel or other direct vehicular access be constructed from the mainland to the Islands.

NANTUCKET SOUND ISLANDS TRUST

SEC. 2. In order to provide for the preservation and conservation of the unique natural scenic, ecological, scientific, cultural, historic, and other values of the Nantucket Sound Islands, there is established in the Commonwealth of Massachusetts the Nantucket Sound Islands Trust (hereinafter referred to as the "Trust") consisting of the area described in section 4 herein. This Trust area shall be administered as hereinafter described through programs and policies designed to achieve wise use of the land and water resources of the area, giving full consideration to protection of the values of the area as well as to needs for sound local economies.

NANTUCKET SOUND ISLANDS TRUST COMMISSIONS

SEC. 3. (a) There are hereby established the Nantucket Trust Commission, the Martha's Vineyard Trust Commission, and the Elizabeth Islands Trust Commission, to be known collectively as the Nantucket Sound Islands Trust Commissions (hereinafter referred to as the "Commissions"). It shall be the purpose of the Commissions to have principal management authority for the Nantucket Sound Islands Trust.

(b) The Nantucket Trust Commission shall have the responsibilities as established herein over the lands and waters in Nantucket County, and shall be composed of seven members serving three-year staggered terms which shall commence on the first Monday in April. Members shall be selected as follows:

(1) a member appointed by the Secretary of the Interior (hereinafter referred to as the "Secretary");

(2) a member appointed by the Governor of the Commonwealth of Massachusetts (hereinafter referred to as the "Governor");

(3) two members appointed by the Board of Selectmen of the Town of Nantucket within two weeks after the annual town meeting, one of whom shall be a seasonal resident property owner;

(4) two members who shall be qualified voters of the town and shall be elected at the annual election which is a part of the annual town meeting; and

(5) a member appointed by the Nantucket Planning Board within two weeks after the annual town meeting, who shall be a qualified voter of said town. Not more than one member of the Commission may serve simultaneously in any elective Town or County office.

(c) The Martha's Vineyard Trust Commission shall have the responsibilities as established herein over the lands and waters in Dukes County, excepting the Elizabeth Islands, and shall be composed of thirteen members serving three-year staggered terms which shall commence on the first Monday in June. Members shall be selected as follows:

(1) a member appointed by the Secretary;

(2) a member appointed by the Governor;

(3) a member elected by each town on Martha's Vineyard at the annual election which is a part of the annual town meeting, each of whom shall be a qualified voter of the town;

(4) a member appointed by the Dukes County Selectmen's Association;

(5) a member appointed by private conservation organizations on Martha's Vineyard;

(6) two members appointed by seasonal resident taxpayer associations on Martha's Vineyard; and

(7) a member elected by the senior class of the regional high school, who shall, notwithstanding other provisions of this subsection, serve a one year term.

Only the member selected under paragraph (4) of this subsection may hold elective Town or County office during his term of office as Commission member.

(d) The Elizabeth Islands Trust Commission shall have the responsibilities as established herein over the lands and waters of the Elizabeth Islands, and shall be composed of seven members serving three-year staggered terms which shall commence on the first Monday in April. Members shall be selected as follows:

(1) a member appointed by the Secretary;

(2) a member appointed by the Governor;

(3) a member elected at the annual election which is a part of the annual town meeting;

(4) two members appointed by the Board of Selectmen to represent the Island of Cuttyhunk, one of whom shall be a permanent resident of Cuttyhunk and one of whom shall be a seasonal resident of Cuttyhunk; and

(5) two members appointed by the Board of Selectmen to represent the other islands in the Elizabeth Islands, one of whom shall be a permanent resident of one of such other islands and one of whom shall be a seasonal resident of one of such other islands.

(e) Each Commission shall have a Chairman. The Chairmen of the Commissions shall each be elected by the membership thereof for a term of not to exceed two years. Any vacancy in the Commissions shall be filled in the same manner in which the original selection was made, except that interim appointments may be made by the remaining members of the Commission.

(f) All members of the Commission shall be paid at the rate of $50 per diem when actually serving. The Secretary is authorized to pay the expenses reasonably incurred by the Commissions in carrying out their responsibilities under this Act on the presentation of vouchers signed by the Chairmen.

(g) The Commissions shall publish and make available to the Secretary and to the public an annual report reviewing matters relating to the Trust, including acquisition of lands, progress toward accomplishment of the purposes of this Act, and administration, and shall make such recommendations thereto as they deem appropriate to the Secretary, the Governor, and the towns.

(h) The Martha's Vineyard and Nantucket Commissions shall, and the Elizabeth Islands Commission may, each have an Executive Director, and such other permanent or part-time professional, clerical, or other personnel as they find are required, and may engage such other professional services as they may reasonably require and the Secretary shall approve. Each Commission shall have an office and a mailing address at a central location in the area of its jurisdiction, and such office shall be where its ordinary business is conducted and its maps and records kept.

(i) The Commissions shall each have the authority to appoint Commission Advisory Committees in their own discretion. Each Commission shall designate three of its members to serve on a coordinating committee with members of the other Commissions to treat matters of common concern.

(j) At its first meeting each Commission shall adopt by-laws and rules of procedure, which may include dates of meetings, public distribution of information relating to Commission activities, disclosure of ownership interest in trust lands by Commission members, and any other matters normal to the operation of such bodies and consistent with the purposes of this Act. The Commissions shall comply with the provisions of the Massachusetts Open Meetings Law, and they shall be deemed to be "boards" within the meaning of said law.

(k) In exercising their management and administrative responsibilities under this Act the Commissions shall not adopt regulations which are less restrictive than regulations in force and effect in the Commonwealth of Massachusetts or the respective towns within the Trust area.

(l) Members of Commissions may serve also as members of any resources or land management council heretofore or hereafter established under the laws of the Commonwealth of Massachusetts.

TRUST AREA

SEC. 4. (a) The area of the Trust shall encompass the following lands and waters in the Commonwealth of Massachusetts:

(1) Nantucket Island, and the Island to westward called variously Smith's Island or Esther Island;

(2) Tuckernuck Island;

(3) Muskeget Island;

(4) Martha's Vineyard Island, and various islands appurtenant to it;

(5) Noman's Land Island;

(6) The Elizabeth Islands, including but not limited to the Islands of Cuttyhunk, Nonamasset, Naushon, Pasque, Nashawena, Uncatena, Penikese, and the Weepeckets; and

(7) Any other lands and waters in Nantucket County and Dukes County in the Commonwealth of Massachusetts.

(b) The area included in the Trust may be changed only by an amendment to this Act adopted by the Congress and signed by the President, and only upon petition therefor by the Commissions wtih the concurrence of—

(1) The town or towns affected expressed by vote of a town meeting or meetings;

(2) The Governor; and

(3) The Secretary.

(c) Noman's Land. The lands and waters of Noman's Land are hereby established as a national wildlife refuge, and the Secretary is directed to prepare and execute the necessary documentation for such establishment forthwith. To make Noman's Land suitable for such establishment, the Secretary and the Secretary of Defense shall, within twelve months after the date of enactment of this Act, survey Noman's Land for unexploded military ordnance and render such ordnance, wherever it may be found, harmless.

CLASSIFICATION OF TRUST LANDS

SEC. 5. (a) Lands and waters within the Trust area shall all be assigned to the classifications established in subsection (b) of this section. Upon the date of enactment of this Act, such lands and waters shall be assigned to classifications according to the terms of section 6 of section 17 herein.

(b) Classifications of Trust lands:

(1) Class A: Lands Forever Wild. Lands and waters so classified shall remain forever free of improvements, as defined hereinafter, of any kind except as provided herein. If improvements exist on any lands so classified on the date of enactment of this Act, then the Commissions and the Secretary shall permit a right of use and occupancy to the legal or beneficial owner or owners thereof, or their successors or assigns, for so long as such successors or assigns are members of the same family or families as the legal or beneficial owner or owners. If, however, the legal or beneficial owner or owners seek to sell or otherwise convey the improvement with or without the land thereunder to others than legal or beneficial owners or members of the same family or families as the legal or beneficial owner or owners, then the Commissions and the Secretary shall have an exclusive option to purchase at full and fair market value, which shall be promptly determined, and such option shall exist for sixty days after such determination. If such option is exercised, then the improvement may be moved or removed; if such option is not exercised, then the sale or other conveyance may proceed in the ordinary course. For the purposes of this paragraph, family shall mean siblings of a legal or beneficial owner or owners, lineal descendants natural or adopted, or relatives by marriage. Access to and use of lands so classified under the terms of this Act shall be determined by the Commissions and the Secretary, except that uses shall be in a manner not less restrictive than permitted by general purpose local ordinances, by-laws and regulations from time to time in effect. Owners of improvements may make necessary repairs, and may make replacements or extensions which shall not alter the basic character of the lands, with the approval of the Commissions and applicable Town or County agencies.

(2) Class B: Scenic Preservation Lands. Lands and waters so classified shall not be developed beyond their present intensity of use, except as provided in this paragraph. Owners of such lands, or of improvements thereon, or of both, may transfer, sell, assign, or demise such land or improvements, or both. Reasonable replacement and extension of improvements shall be permitted, under regulations issued by the Commissions. Development on lands so classified beyond their present intensity of use shall be permitted only under regulations consistent with the following guidelines:

(i) The overall intensity of use for lands so classified in any town shall not be greater than sixty-five improvements per square mile, including improvements existing on April 11, 1972;

(ii) The area upon which intensity is calculated shall not include bodies of water or wetlands classified as such under Massachusetts salt water or fresh water wetlands acts (Chapters 784 and 782 of the Acts of 1972);

(iii) The overall intensity guideline shall not be translated into uniform lot sizes and applied to the land so classified, but shall be applied with flexibility to encourage sound land use planning respecting the varying natural values of the different geographical areas of land; and

(iv) Any development must take into account the capability of the land for such development, which shall include consideration of existing land use, intensity of uses in the immediate vicinity, areawide water quality, soil conditions, roadway utilization, and visual and topographic conditions.

Regulations consistent with these guidelines shall be drawn up and published by each town and the appropriate Commission, and shall become effective only after a public hearing or hearings thereon and after approval by the Governor and the Secretary. After such regulations have become effective, the provisions of section 16 herein as they apply to the lands covered by the regulations shall no longer apply; and construction of improvements shall thereafter be permitted so long as the appropriate Commission has issued a permit therefor indicating satisfaction of the conditions of this paragraph.

(3) Class C: Town Planned Lands. Lands and waters so classified shall remain under the jurisdiction of the town in which located for purposes of planning and zoning ordinances and other land use regulations: *Provided*, That such planning and zoning ordinances and other land use regulations shall be reviewed and commented upon by the Commissions and the Secretary as to consistency with the purposes of this Act prior to the adoption of such ordinances or regulations or amendments thereto; and *provided further*, That the Commissions may review and comment upon variances proposed to be granted pursuant to any local zoning ordinance.

ASSIGNMENT OF TRUST LANDS

SEC. 6. (a) Assignment of lands and waters within the Trust area to the classifications established by section 5 herein shall be as depicted on Nantucket County and Dukes County Nantucket Sound Island Trust maps on file and available for public inspection in—

(1) The offices of the National Park Service, Department of the Interior;

(2) The offices of the towns within the Trust area; and

(3) The offices of the Commissions.

(b) Changes in such assignments to classifications may be made by altering the location of boundary lines between classifications in the following manners—

(1) Minor corrective adjustments due to technical or clerical errors may be made within one hundred and eighty days after the first official meeting of a Commission by vote of such Commission and with the concurrence of the Board of Selectmen of the town affected;

(2) Thereafter, the location of boundary lines between classifications may be changed only by a Commission acting pursuant to an affirmative vote thereon by a town meeting or meetings of the town or towns affected, with the concurrence of the Governor and the Secretary.

(c) Any changes in the location of boundary lines between classifications shall be recorded by the Commissions and the Secretary on the official maps within seven days after such changes become effective.

ACQUISITION OF LANDS

SEC. 7. (a) GENERAL PROVISIONS—

(1) Within the area of the Trust, the Secretary is authorized to acquire by donation or transfer from any Federal agency, and, with the advice of the Commission, by purchase with donated or appropriated funds or transfer funds, or by exchange, lands and waters and interests therein at fair market value for the purpose of this Act.

(2) With respect to that property which the Secretary is authorized to acquire without the consent of the owner under the terms of this Act, the Secretary shall initiate no proceedings therefor until after he has made every reasonable effort to acquire such property or interest therein by negotiation and purchase at the fair market value prior to April 11, 1972. The certificate of the determination by the Secretary or his designated representative (which may be the Commissions) that there has been compliance with the provisions of this paragraph and of paragraph (3) of this subsection shall be prima facie evidence of such compliance.

(3) In exercising authority to acquire property under the terms of this Act, the Secretary shall give immediate and special consideration to any offer made by an owner or owners of unimproved Class A: Forever Wild Lands or Class B: Scenic Preservation Lands within the Trust area to sell such lands to the Secretary. An owner or owners may notify the Secretary that the continued ownership of those lands would result in hardship to such owner or owners, and the Secretary shall immediately consider such evidence and the recommendations of the Commissions, if any, and shall within six months following the submission of such notice, and subject to the then current availability of funds, purchase the lands offered at the fair market value prior to April 11, 1972.

(4) In exercising authority to acquire property under the terms of this Act, the Secretary shall conform to the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601).

(5) The Secretary shall furnish to any interested person requesting the same a certificate indicating, with respect to any property which the Secretary has been prohibited from acquiring without the consent of the owner in accordance with the provisions of this Act, that such authority is prohibited and the reasons therefor.

(6) Nothing in this Act shall be construed to prohibit the use of eminent domain as a means of acquiring a clear and marketable title, free of any and all encumbrances.

(7) In exercising his authority to acquire property by exchange, the Secretary may accept title to any non-Federal property located within such area and, with the advice of the Commissions, convey to the grantor of such property any federally owned prop-

erty under the jurisdiction of the Secretary within such area. The properties so exchanged shall be approximately equal in fair market value: *Provided*, That the Secretary may accept cash from or pay cash to the grantor in such an exchange in order to equalize the values of the properties exchanged.

(8) Any property or interests therein, owned by the Commonwealth of Massachusetts or any political subdivisions thereof, may be acquired only by donation. Notwithstanding any other provision of law, any property owned by the United States on April 11, 1972, located within the Trust area may, with the concurrence of the agency having custody thereof, be transferred without consideration to the administrative jurisdiction of the Secretary for use by him in carrying out this Act.

(b) TRANSFER TO COMMISSIONS—

(1) Upon acquisition by him of any land or interests therein, the Secretary shall concurrently or as soon as is practicable thereafter transfer without consideration an undivided one-half interest in such land or interest therein to the Commission within whose jurisdiction the land or interest therein lies.

(2) Thereafter, such land or interest therein shall be held by the appropriate Commission and the Secretary in a public trust.

(3) The lands or interests therein so held in trust shall be administered as described in this Act, and the Secretary and the Commissions may exchange any such lands or interests so held in trust pursuant to the provisions of this section.

(c) TAXATION—

(1) Nothing in this Act shall be construed to exempt any real property or interest therein held by the Commissions and the Secretary under this Act from taxation by the Commonwealth of Massachusetts or any political subdivision thereof to the same extent, according to its value, as other real property is taxed.

(2) Nothing contained in this Act shall be construed as prohibiting any governmental jurisdiction in the Commonwealth of Massachusetts from assessing taxes upon any interest in real estate retained under the provisions of this Act to the nonexempt owner or owners of such interest, nor from establishing and collecting fees in lieu of taxes upon any nongovernmental use of lands acquired pursuant to this Act.

LIMITATIONS

SEC. 8. (a) Not later than one hundred and eighty days after the enactment of this Act, the Commissions and the Secretary shall notify an owner or owners of Class B: Scenic Preservation Lands, other than property designated for fee acquisition, of the minimum regulations on use and development of such property under which such property may be retained in a manner compatible with the purpose for which the Trust was established. If the owner or owners of any such lands agree to the use and development of the property in accordance with such regulations, the Secretary may not acquire, without the consent of such owner or owners, such property or interests therein for so long as the property affected is used in accordance with such regulations, unless the Commissions and the Secretary determine that such property, or any part thereof is needed for other purposes as described in this Act. Such lands shall be included in the area upon which intensity is calculated for purposes of section 5(b)(2) herein.

(b) The Secretary may not acquire improved property on Class B: Scenic Preservation Lands without the consent of the owner or owners unless he shall have determined that acquisition of such property is necessary to carry out the requirements of this Act and unless the appropriate Commission shall have concurred therewith by a recorded affirmative vote.

(c) As used herein, the terms "improved property" or "improvement" shall mean a detached, noncommercial residential one-family dwelling the construction of which was begun before April 11, 1972, or such a dwelling for which a certificate of need was voted pursuant to section 16(a) herein, together with—

(1) So much of the land on which the dwelling is situated, the said land being in the same ownership as the dwelling, as the Commissions and the Secretary shall determine to be reasonably necessary for the enjoyment of the dwelling and land for noncommercial residential or agricultural purposes, and

(2) Any structures accessory to the dwelling which are situated on such land. The amount of the land subject to determination Class A: Forever Wild Lands and Class B: Scenic Preservation Lands shall in every case be at least three acres in area, or all of such lesser acreage as may be held in the same ownership as the dwelling. In making such determinations the Commissions and the Secretary shall take into account the manner of noncommercial residential use in which the dwelling and land have customarily been enjoyed: *Provided*, That the Commissions and the Secretary may exclude from the land subject to determination any beach lands, together with so much of the land adjoining such beach lands, as they may deem necessary for public access thereto. If they make such exclusion, an appropriate buffer zone shall be provided between any dwelling and the public access or beach. (d) As used herein, the term "development" shall mean the construction of an improvement.

(e) Should a commercial use in existence prior to April 11, 1972, be included as part of such a dwelling, it shall be considered a nonconforming use.

(f) The Commissions, together with the Secretary and the towns, shall establish regulations consistent with the purposes of this Act governing the status of boathouses, camps, piers, and other nonresidential structures.

(g) The Secretary, after consultation with the Commissions and the Governor and within six months after the date of enactment of this Act, shall issue proposed Compensable Land Use Regulations applicable to the Trust, and after due notice shall cause to be held public hearings on such regulations. Thereafter, he shall issue Compensable Land Use Regulations applicable to the Trust which shall—

(i) establish the manner in which the fair market value of lands or waters affected by the classifications established in sections 5(b)(1) and 5(b)(2) and by the right of passage in Section 10(c) shall be calculated where such classifications have caused a decrease in such value, and where the provisions of sections 7(a)(3), 8(a) or 13(a) do not apply; and

(ii) set forth the manner by which owner or owners may pursue a right of action in the United States District Court.

EROSION CONTROL

SEC. 9. (a) The Commissions, together with the Secretary, the Governor, and the Secretary of the Army, shall cooperate in a study and shall formulate plans for beach and shoreline erosion control and restoration projects on the Nantucket Sound Islands, especially in those areas most immediately threatened. Any protective works, including water resource developments and navigation improvements, for such control undertaken by the Chief of Engineers, Department of the Army, shall be carried out only in accordance with a plan that is mutually acceptable to the Commissions, the Governor, and the Secretary, and is consistent with both the purposes of this Act and the purposes of existing statutes dealing with water and related resource development.

(b) The Commissions together with the Governor and the Secretary, shall undertake a program of dune and headland erosion control, beginning with those dunes and headlands most immediately threatened and in need thereof. Such dune and headland erosion may be that caused by natural wind and water action, by motor vehicle passage, or by other factors, and such programs may have the purposes of restoring past and present damage and of preventing further damage.

BEACHES

SEC. 10. (a) All beach lands within the Trust area, with the exception of beach lands classified as Class C: Town Planned Lands, shall be classified as Class A: Forever Wild Lands, notwithstanding that such beach lands may be classified as Class B: Scenic Preservation Lands by other provisions of this Act.

(b) As used in this Act, the term "beach lands" shall mean the wet and dry sand area lying between the mean low water line and the base of headlands or the visible line of upland vegetation, whichever shall be closer to the mean low water line, and shall include dunes, rock beaches, wetlands, marshes, and estuarine areas adjoining tidal waters.

(c) There is herewith established a nonvehicular right of passage—

(1) In Class A: Forever Wild beach lands, at the high water line of sufficient width for a person to pass and repass; and

(2) In Class C: Town Planned beach lands, at the high water line of sufficient width for a person to pass and repass, but only in those specified areas which each Commission shall, within six months after its first meeting, establish as right of passage beach lands. The rights of owners of residential improvements on beach lands as of April 11, 1972, shall be respected: and the Commissioners shall not permit the right of passage created in paragraphs (1) and (2) of this subsection where such right would interfere with the use and enjoyment of such improvements by the owners thereof.

(d) Upon agreement therefor by the Commissions, the Governor, and the Secretary, the Secretary may acquire in any manner authorized by this Act, lands and waters in the Trust area for the purposes of—

(1) establishing public beaches open to public use and enjoyment; and

(2) establishing access to such beaches. Such public beaches may or may not be enlargements of existing public beaches, but in any case shall to as great an extent as possible be located so as to be consistent with the conservation and preservation purposes of this Act. Access to such public beaches shall respect the rights of private property owners in the immediate vicinity, and shall be designed to protect the natural features of the land. The Commissions shall establish limitations on the number of vehicles to be parked at public beach areas. Within twelve months after its first meeting, the Martha's Vineyard Commission shall designate two new public beaches on the southern or south-western shoreline of Martha's Vineyard; neither of such new areas shall, however, be enlargements of existing beaches open to public use.

(e) Six months after the first meeting of each Commission, motor vehicles, open fires, and camping shall be prohibited from beach lands within the area of its jurisdiction: *Provided*, That each Commission may designate beach land areas open to such uses, and shall adopt regulations specifying the conditions of use within six months after its first meeting.

ADMINISTRATIVE PROVISIONS

SEC. 11. (a) The Trust shall be administered and protected by the Commissions with the primary aim of preserving the natural resources located within it and preserving the area in as nearly its natural state and condition as possible. No development by the Commissions shall be undertaken in the Trust area which would be incompatible with the overall lifestyle of residents of the area, with generally accepted ecological principles, with the preservation of the physiographic conditions now prevailing, or with the preservation of historic sites or structures.

(b) The Trust shall be administered and protected by the Secretary, as to his responsibilities, in accordance with the provisions of this Act and the Act of August 25, 1916 (39 Stat. 535; 16 U.S.C. 1 et seq.), as amended and supplemented, except that the Secretary may utilize any other statutory authority available to him for the conservation, preservation, and management of natural resources to the extent he finds such authority will further the purposes of this Act.

(c) The Commissions shall coordinate their administrative activities both with each other, and with those of other Federal, State, and local government authorities and agencies operating in the Trust area.

(d) In the event that the laws of the Commonwealth of Massachusetts either before or after enactment of this Act provide for the management by a regional agency of areas of critical planning concern, pursuant either to a special purpose act dealing only with all or a part of Trust lands and waters or to a general purpose state law, the Commissions may, with the concurrence of the Governor and the Secretary, suspend the application of all or part of the provisions of this Act, except Section 2 which shall not be suspended, for those lands and waters managed by such agency so long as the Commissions, the Governor and the Secretary are satisfied that such management will be consistent with the purposes of this Act.

TRANSPORTATION AND GENERAL USES

SEC. 12. (a) The Commissions, together with the Governor, and the Secretary, shall make an immediate survey of public and private water and air access to lands in the Trust area, including that by the Woods Hole, Martha's Vineyard, and Nantucket Steamship Authority and by other public and private water and air carriers, shall make such recommendations to the appropriate body or bodies for legislative or administrative action as they deem consistent with the preservation and conservation purposes of this Act. Such recommendations shall include specific measures to limit the number of motor vehicles and passengers such carriers might otherwise transport to the Nantuck Sound Islands. Thereafter, regular and frequent surveys of such access shall be made, and such recommendations shall be made, as are deemed appropriate to maintain the unique values of lands and waters in the Trust area.

(b) No development or plan for the convenience of visitors to Trust lands or waters shall be undertaken which would be incompatible with the preservation and conservation of the unique values thereof: *Provided*, That the Commissions, the Governor, and the Secretary may provide for the public enjoyment and understanding of the values of the Nantucket Sound Islands by establishing such public transportation systems, trails, bicycle paths, observation points, and exhibits, and by providing such services as they may deem desirable for such public enjoyment and understanding, consistent with the preservation and conservation of such values.

(c) In any such provision for public enjoyment or understanding, the Commissions, the Governor, and the Secretary shall not unreasonably diminish for its owners or occupants the value or enjoyment of any improved property within the Trust lands.

PRIVATE NONPROFIT ORGANIZATIONS

SEC. 13. (a) In order to encourage and provide an opportunity for the establishment of natural and scenic preserves by voluntary private action of owners of lands and waters in the Trust area, and notwithstanding any provision in this Act or in any other provision of law, the Secretary's authority to acquire lands or interests therein without the consent of the owner shall be suspended when:

(i) lands or waters or interests therein which are designated as being presently or from time to time needed to carry out the purposes of this Act are irrevocably in the ownership of private nonprofit conservation, preservation, historic, or other organizations or associations, and the restrictions against development of such lands meet the standards referred to herein; or

(ii) lands or waters or interests therein which are designated as being presently or from time to time needed to carry out the purposes of this Act are, to the satisfaction of the Commissions, the Governor, and the Secretary and within twenty-four months after enactment of this Act, irrevocably committed to be sold, donated, demised, or otherwise transferred to such organizations or associations.

(b) Section 19 of this Act shall be suspended with respect to those lands and waters and interests to which subsection (a) of this section applies; and section 10 of this Act shall be similarly suspended whenever in the judgment of the Commissions its applicability will contravene the purposes of this Act or any provision of law of the Commonwealth of Massachusetts.

(c) The provisions of this section shall be applied only to those organizations and associations which are determined to be bona fide and general purpose.

(d) All of the provisions of this Act, except Section 2, shall be suspended with respect to any lands, waters, or interests therein so long as such lands, waters, or interests therein are within twenty-four months of the enactment of this Act irrevocably subject to a conservation restriction created, approved and recorded under sections 31 through 33 of chapter 184 of the General Laws of Massachusetts which forbids or in the judgment of the Commissions and the Secretary, as evidenced by their written approval of such restriction, substantially limits all or a majority of the land uses referred to in clauses (a) through (g) of the first paragraph of said section 31.

(e) The Secretary is authorized to provide technical assistance to the Commissions and the towns, and to private organizations and associations, for the purpose of establishing sound land use planning and zoning bylaws to carry out the purposes of this Act. Such assistance may include payments to the Commissions and the towns for technical aid.

POLLUTION

SEC. 14. The Commissions, together with the Governor and the Secretary, shall cooperate with the appropriate Federal, State and local agencies to provide safeguards against pollution of the waters in and around Trust lands. Such safeguards shall include an immediate survey of the quality of ground water conditions in all or any part of the area of the Trust, and the necessary funds therefor may be drawn from the appropriations authorized by section 20 herein.

NEW EMPLOYMENT OPPORTUNITIES

SEC. 15. (a) The Secretary, together with the Governor and the Secretaries of Commerce and Labor, is directed to examine the Trust lands and waters forthwith for opportunities to experiment with, and to encourage development of, aquaculture of all kinds, including but not limited to, fish and shellfish and other associated activities; and to examine other new employment opportunities of any kind appropriate to the purposes of this Act. Funds appropriated to the Department of Interior, Commerce and Labor under the authority of this or other laws of the United States may be used for this purpose without restriction.

(b) The Commissions, the Governor and the Secretary shall to as great an extent as possible in the development of any regulations pursuant to the provisions of this Act encourage the maintenance and commencement of agricultural uses of Trust lands.

(c) The Secretary, in consultation and cooperation with the Secretary of Labor, shall investigate, and where appropriate establish, training and retraining programs suitable for residents of Trust lands.

FREEZE DATE

SEC. 16. (a) Beginning on April 11, 1972, no construction of any improvement, whether for residential, commercial, industrial, or any other purpose, shall be permitted to commence on any lands classified herein as "Forever Wild". Construction of improvements shall be permitted on any lands classified as "Town Planned Lands" only upon the granting of specific approval therefor by the board of selectmen of the particular town, after a showing of the need therefor. Construction of improvements shall be permitted on any lands classified as "Scenic Preservation Lands" only upon the granting of specific approval therefor by the board of selectmen of the particular town, after a showing of the need therefor. Approvals granted by a vote of board of selectmen pursuant to a finding of need therefor and pursuant to a statement of justification therefor, shall subsequently be deemed valid by the Commissions and the Secretary.

(b) In the case of any hardship caused by the provisions of subsection (a) of this section, the Commissions and the Secretary shall, on the basis of rules and regulations developed and approved by the Commissions and the Secretary, make a valuation thereof and shall award fair recompense to any individual for whom hardship is demonstrated.

INDIAN COMMON LANDS

SEC. 17. (a) The Martha's Vineyard Commission is directed to establish forthwith an orderly program for determining the precise extent of Indian Common Lands on Martha's Vineyard. The program shall include a survey or surveys, and such other research or field work as may be necessary to establish the ownership and boundaries of the Indian Common Lands known generally as the Cranberry Bogs, the Clay Cliffs, and Herring Creek. Funds to carry out the program may be drawn from those authorized to be appropriated by section 20 or section 13(c) herein.

(b) Upon completion of this program, the Secretary is directed to acquire the Indian Common Lands by any manner authorized by this Act: *Provided*, That such power of acquisition is suspended for any such lands in the ownership of a member or members of the Wampanoag Indian Tribe of Gay Head.

(c) The Martha's Vineyard Commission and the Secretary shall thereafter hold in trust such land acquired as established by section 7 herein. At such time as the Wampanoag Indian Tribe of Gay Head is recognized officially by the United States of America, and subject to mutual agreement as to utilization of any land held in trust, the Martha's Vineyard Commission and the Secretary shall transfer such land to the Wampanoag Indian Tribe of Gay Head without consideration to be held in tribal trust status.

(d) Upon petition therefor by the Wampanoag Tribal Council, the Secretary shall undertake such studies and begin such proceed-

ings as may be necessary to cause the Wampanoag Indian Tribe of Gay Head to be officially recognized by the United States of America.

RESIDENT HOME SITES

SEC. 18. (a) Upon petition therefor by any town, acting pursuant to a vote of a town meeting, the appropriate Commission shall, with the advice of the Governor and the Secretary and the Secretary of Housing and Urban Development, prepare a Resident Home Site Plan.

(b) A Resident Home Site plan shall—

(1) State the reasons for the establishment of the plan;

(2) Delineate the land area or land areas in the town intended to be utilized for carrying out the plan;

(3) Define the criteria by which town residents may avail themselves of the plan;

(4) Project the total number of sites envisioned by the plan; and

(5) Establish the fair purchase value of such sites for qualified residents.

(c) Upon approval of a Resident Home Site plan by the appropriate town, and by the Governor and the Secretary, the Secretary is authorized to acquire for fair market value the land area or land areas specified in the plan by any manner authorized by this Act. The Secretary of the appropriate Commission shall thereafter make resident home sites available for sale to qualified residents at the fair purchase value established in the plan. The difference between the fair market value and the fair purchase value shall be borne by the Secretary out of funds appropriated pursuant to section 20 herein.

(d) Any resident home site sold under the authority of this section shall be subject to a right of first refusal in the Secretary and the appropriate Commission.

HUNTING AND FISHING

SEC. 19. (a) Hunting, fishing, and trapping on lands and waters within the Trust shall be permitted in accordance with the applicable laws of towns in the Trust area, the Commonwealth of Massachusetts, and the United States, except that the Commissions, the Governor, and the Secretary may designate zones where, and establish periods when, no hunting, no fishing and no trapping shall be permitted for reasons of public health, public safety, fish or wildlife management, administration, or public use and enjoyment. Except in emergencies, any regulations prescribing any such restrictions shall be issued only after consultation with the appropriate agency of said Commonwealth and any political subdivision thereof which has jurisdiction over such activities.

(b) The Commissions and the Secretary shall leave all aspects of the propagation and taking of shellfish to the towns within the Trust area.

APPROPRIATIONS

SEC. 20. There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act; not to exceed, however, $20,000,000 for the acquisition of land and interests therein, and not to exceed $5,000,000 for development, both in April 1972 prices, for the first three years of the operation of the Trust, plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indices applicable to the types of construction involved herein.

By Mr. McCLELLAN (for himself and Mr. HRUSKA):

S. 1930. An original bill to amend the Omnibus Crime Control and Safe Streets Act of 1968. Ordered placed on the calendar by unanimous consent.

Mr. McCLELLAN. Mr. President, I am today introducing, for myself and the distinguished Senator from Nebraska (Mr. HRUSKA), legislation to extend for 1 year the Law Enforcement Assistance Administration created by the Congress as title I of the Omnibus Crime Control and Safe Streets Act of 1968.

The authority for the Law Enforcement Assistance Administration—LEAA—will end on June 30 of this year. There are a number of proposals pending in both Houses of the Congress which would extend, alter, or significantly change the authority for this administration. One such measure would have the funding authorities of the present act merged into law enforcement revenue sharing payments to the States. Another proposes to channel increased Federal funds directly into local cities and communities, replacing the existing State block grant approach in most of the present programs. Other proposals, with perhaps less far-reaching changes, are before the Subcommittee on Criminal Laws and Procedures, which I am privileged to chair.

In view of the obvious controversial or at least differing character of the proposals before the subcommittee, and the short time remaining under existing authority, I feel that this bill may be the most expeditious way to guarantee that the LEAA program does not die and that the Senate has adequate opportunity to consider proposals for change.

We had hoped that the House—which started its hearings sometime ago—would have a bill over here by now, giving the Senate time to examine it along with other measures pending in the Senate. This would have possibly enabled us to have processed, reported, and enacted a bill before the end of next month. That possibility is now fading with the passage of time. In view of our present heavy schedule here in the Senate it now appears we will have to adopt some other course of action.

Mr. President, there has been a very significant amount of interest expressed recently in the Law Enforcement Education program administered by LEAA. The mail I have received indicates serious concern for the future of that program, concern particularly on the part of the men and women in law enforcement and on the part of the educational institutions taking part in the program. This program is presently serving some 95,000 students in more than 900 educational institutions across the Nation. Clearly, those who are presently taking part in the program and those who hope to do so in the future need to be assured of its continuation.

Under this proposed extension, the law enforcement education program could be continued in its present form and could continue to provide financial assistance to law enforcement personnel who are seeking to increase their skills and ability through higher education.

Under the 1968 act, moreover, each State is required to develop and submit to LEAA a comprehensive statewide criminal justice plan. This plan must be approved by LEAA before bloc grant funds are made available to implement the State and local law enforcement programs. The criminal justice planning process and the development of State and local programs is a year-round activity, which requires leadtime in term of the assurance of a specific level of Federal funding. The States are already well into the planning cycle for the 1974 fiscal year funding. This proposed extension will permit them to continue the planning activities and assures them that Federal participation will not be disrupted or suddenly expire with the close of fiscal year 1973.

It has been said that the cooperation between the various elements of the criminal justice system in the several States and the preparation of the annual State plans are among the most important contributions of the Safe Streets Act to law enforcement. It is critical that this planning process be maintained and encouraged through positive action to continue the Federal program of law enforcement assistance.

Mr. President, I do not view this extension as settling in favor of the status quo or even putting off the work that faces the subcommittee. Hearings have been scheduled for June 5 and 6 on the measures now before the subcommittee. I expect that the House bill will arrive shortly. The subcommittee fully intends to explore each of these measures and to process a comprehensive bill as soon as practicable. I note, too, that it will be possible to tailor carefully the effective date of innovative features of any legislation which emerges from our considerations. Needed reforms can, therefore, be put into effect without unnecessary delay or disrupting unduly the present programs.

Mr. President, I ask unanimous consent that this proposed legislation not be referred to committee, but that it go directly on the calendar. It is not my intention, however, to call this legislation up immediately. But as time goes on, if it appears that it will not be possible to complete action on the measures before us, I want to be in a position to act swiftly to guarantee that this program will continue.

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

Mr. HRUSKA. Mr. President, I am pleased to join with the distinguished senior Senator from Arkansas (Mr. McCLELLAN) in the introduction of a bill to extend the Omnibus Crime Control and Safe Streets Act for 1 year following its expiration on June 30, 1973.

As the ranking minority member of both the Subcommittee on Criminal Laws and Procedures and the Appropriations Subcommittee responsible for the budget legislation affecting the Department of Justice and the Law Enforcement Assistance Administration, I am deeply concerned by the rapidly advancing expiration date of this important program. A glance at the calendar indicates that there are fewer than 20 weekdays remaining for final legislative action.

On March 14 of this year, I introduced at the request of the administration the Law Enforcement Revenue Sharing Act of 1973. A companion measure was introduced in the House by Representative HUTCHINSON.

The Subcommittee on Criminal Laws and Procedures has set aside time on June 5 and 6 to hold hearings on the anticipated House-passed bill. It is hoped that we will be able to complete final action on the measure by June 30. However, the prospects of final action by the Congress prior to that date are extremely dim.

One reasonable interim alternative might be a simple extension of the Safe Streets Act to June 30, 1974. This will permit the State and local units of government, which have benefited so significantly under the existing law enforcement assistance program, to continue their comprehensive criminal justice planning and maintain the operation of crime-reduction programs with some assurance of a continuing Federal commitment to this effort.

Mr. President, I am certain that none of my colleagues wants to see this program end or would propose to abolish LEAA. Even those who have most forcefully advocated changes in the present Act have repeatedly asserted a conviction that LEAA should have a continued life. This attitude was made abundantly clear last September when I proposed an extension to the Safe Streets Act in anticipation of the very kind of difficulty and delay we are now experiencing.

I am certain that no one would argue that the existing law is perfect—that no modifications to the Safe Streets Act ought be considered. In fact, I am pleased to learn that the House subcommittee which is considering the law enforcement assistance legislation has tentatively agreed to language which would reduce the state and local contributions to the program. It is my understanding that the presently agreed-to proposal would provide for a 90 percent Federal share to be matched by a 10 percent State and local match instead of the present 75 percent and 25 percent matching. It would also provide for a 50 percent "buy-in" wherein the States will provide in the aggregate not less than one-half of the non-Federal funding. This provision would reduce even further the burden on local units of government and be one step toward a revenue sharing concept.

Additionally, there are other alterations in the existing Safe Streets Act which may be desirable, and they will be considered fully.

From the standpoint of the appropriations process we must provide both LEAA and the Congress with sufficient time prior to June 30 to begin consideration of a restructuring of certain portions of the administration's budget request. The administration budget proposal for LEAA was designed to implement law enforcement special revenue sharing and to operate with a reduced administrative staff. It might be necessary to consider a variation of that administration budget for LEAA to make necessary adjustments in personnel.

It seems to me that with the imminent expiration of the present Act and the possibility that the Senate will be unable to undertake adequate consideration of a House bill to deal with this matter, an immediate extension of the Safe Streets Act should be held at the desk and duly acted upon as subsequent events require.

By Mr. BUCKLEY (for himself, Mr. HATFIELD, Mr. HUGHES, Mr. BENNETT, Mr. BARTLETT, Mr. YOUNG, and Mr. CURTIS):

S.J. Res. 119. Joint resolution proposing an amendment to the Constitution of the United States for the protection of unborn children and other persons. Referred to the Committee on the Judiciary.

(The debate relating to introduction of the joint resolution appears at an earlier point in the RECORD.)

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

S. 470

At the request of Mr. WILLIAMS, the Senator from Massachusetts (Mr. BROOKE) was added as a cosponsor of S. 470, to amend the Securities Exchange Act of 1934 to regulate the transactions of members of national securities exchanges, to amend the Investment Company Act of 1940 and the Investment Advisers Act of 1940 to define certain duties of persons subject to such acts, and for other purposes.

S. 651 AND S. 652

Mr. McCLURE. Mr. President, I have worked against gun controls ever since I have been in Congress. I was the first Member of the House of Representatives to introduce a bill to repeal the entire Gun Control Act and I was the first Member of the Senate to do so this year. S. 652 would simply repeal the Gun Control Act of 1968, a law passed at a moment of national hysteria and a law that has proved to have no adverse effect on anyone other than the law-abiding citizen.

Recently the distinguished Senators from Arizona, Senator FANNIN and Senator GOLDWATER, have asked to cosponsor my bill. I welcome this support and respectfully request that their names be added as cosponsors to S. 652.

Additionally Senator GOLDWATER and Senator FANNIN have asked to cosponsor S. 651. I introduced this bill in an effort to take a more practical approach to crime in which a gun is used. S. 651 would require an automatic additional penalty of from 5 to 10 years for anyone convicted of using a firearm in the commission of a Federal crime. I am grateful to Senator FANNIN and Senator GOLDWATER for their support of this bill. I respectfully request that their names be added as cosponsors to S. 651.

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

S. 1125

At the request of Mr. HUGHES, the Senator from Oregon (Mr. HATFIELD) was added as a cosponsor of S. 1125, to amend the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act and other related acts to concentrate the resources of the Nation against the problem of alcohol abuse and alcoholism.

S. 1318

Mr. BEALL. Mr. President, on March 22, 1973, Senator DOMINICK and I introduced S. 1318, the Elementary School Reading Emphasis Act of 1973.

I first want to ask unanimous consent that at the next printing of the bill the following Senators be added as cosponsors of the measure: PETER V. DOMENICI, JOSEPH M. MONTOYA, JOHN O. PASTORE.

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

Mr. BEALL. Mr. President, I am most pleased with the favorable interest this proposal is generating throughout the country. This includes endorsements from a number of prominent educators, including the superintendents from two of the Nation's largest States, California and Michigan. I ask unanimous consent that the letters from both Superintendent Porter of Michigan and Superintendent Riles of California be printed in the RECORD.

Finally, this proposal has also received editorial comments and endorsements. I ask unanimous consent that the editorials from the Frederick News-Post and the Baltimore News American in my State, together with a two part article carried by the Copley Newspapers, be printed in the RECORD.

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

STATE OF CALIFORNIA,
DEPARTMENT OF EDUCATION,
Sacramento, May 11, 1973.

The Honorable J. GLENN BEALL, Jr.,
U.S. Senate,
Committee on Commerce,
Washington, D.C.

DEAR SENATOR BEALL: Thank you very much for giving me the opportunity to comment on the "Elementary School Reading Emphasis Act of 1973". I vigorously support the preventative approach to learning problems in general and reading problems specifically addressed in your bill.

Along with a great many educators, I have been much concerned with the increasing numbers of children who fail to reach even minimal standards of achievement in school. Too often for too many children, the costly pattern of failure is fixed as early as the third grade and continues until they become high school dropouts. As a result, we have developed in California an innovative plan for Early Childhood Education designed to restructure early elementary school programs to more fully meet the individual needs and talents of youngsters. The plan will concentrate on the basic skills of reading, language, and mathematics.

Your program of reading emphasis in the early grades addresses itself to the most basic educational problem facing too many youngsters. Such intensive reading programs with the use of reading specialists can only help to assure each child a sufficient level of reading achievement to guarantee educational success.

I have asked Don White, Deputy Superintendent for Congressional Liaison, to provide any assistance you might request on S. 1318.

Sincerely,

WILSON RILES.

MICHIGAN DEPARTMENT OF EDUCATION,
Lansing, Mich., April 17, 1973

The Honorable J. GLENN BEALL, Jr.,
U.S. Senator, Senate Office Building, Washington, D.C.

DEAR SENATOR BEALL: I have had an opportunity to review Senate Bill 1318 and the analysis of your legislation entitled "The Elementary School Reading Emphasis Act of 1973."

I am very impressed with the proposal, and certainly support the emphasis on reading.

In fact, I am so encouraged that I have requested my staff to consider modifications in our remedial reading legislation to reflect some of the accountability ingredients contained in Senate Bill 1318. You are to be congratulated on emphasizing the need for improved skills in teachers of reading and in emphasizing the need to demonstrate whether or not there are some programs that can better teach reading than others.

If I can be of any assistance in helping to move this legislation through Congress, please do not hesitate to let me know.

Sincerely,

JOHN W. PORTER.

EDUCATION NOTEBOOK I

(By Kenneth J. Rabben)

Elementary school pupils could improve their reading ability within three years through a broad-based attack on reading problems proposed by U.S. Sen. J. Glenn Beall Jr.

The Maryland Republican's bill, The Elementary School Reading Emphasis Act of 1973, S. 1318, recognizes that reading problems have many causes and it attempts to deal with their interrelationships.

Beall and co-sponsor, Sen. Peter H. Dominick, R-Colo., both on the Senate Education subcommittee, recommend spending $176 million during the next three years to halt the inability to teach children to read.

Schools in the program would be committed to having pupils read at third grade level by the end of their third year in school.

There is no financial eligibility criteria. Pupils with reading problems from poor, middle-income and rich families would take part. Federal funds would be provided for demonstration projects in elementary schools with large numbers or high concentrations of children not reading at grade level. (A child is expected to grow a year in reading ability for each year in school. Youngsters in most city and many rural schools are a year or more behind.)

At participating schools, regular reading instruction in all first and second grades would be supplemented by not less than 40 minutes of additional instruction daily by reading specialists. Pupils in grades three through six with special reading problems would have regular classroom instruction supplemented by not less than 40 minutes of additional instruction daily by reading specialists.

In addition, all pupils in one urban and one rural school district somewhere in the nation would test further the effect of specialized, expert reading instruction.

The bill defines a reading specialist as someone with a master's degree in reading instruction and three years of successful teaching experience, including reading. Reading teachers who agree to become specialists can be used instead of specialists if not enough specialists are available. A reading teacher, the bill says, will have a bachelor's degree, 12 credit hours in reading instruction and two years of successful teaching, including reading instruction. Funds are to be provided for in-service teacher training.

Special intensive summer reading programs would be conducted by reading specialists or teachers for children below grade level or with reading problems. The senator found research showing that reading skills of children from low-income families drop significantly during vacation periods.

Schools in the program would be required to analyze why pupils are not reading at grade level and to determine "conditions that would impede or prevent children from learning to read." Diagnostic tests would have to be used to identify pupils not reading at grade level. School districts would have to develop plans with specific objectives that would include children reading at the appropriate level by the end of the third year. Each year, participating districts would calculate, through use of objective reading measures, the extent to which the goals have been achieved.

For the first time, the federal government would require participating districts to publish aggregate test scores of pupils in the program, thus giving parents and other taxpayers some idea of the progress of pupils, their schools and school system. Individual scores would be available only to parents or guardians.

Parent participation is stressed.

When teacher aides are used, consideration would have to be given to hiring parents of pupils in the program on a rotating basis.

These provisions would be authorized $50 million during the next fiscal year beginning July 1. In 1975, the bill calls for $55 million and in 1976, $60 million. More money is recommended for other sections of the bill.

The Elementary School Reading Emphasis Act of 1973 faces a tough, perhaps impossible fight without strong support from people who think public schooling can change the fact that:

In urban areas about 50 per cent of the children read below grade level.

Seven million elementary and secondary pupils are in dire need of help from reading specialists.

Ninety per cent of the 700,000 pupils who drop out of school annually are "poor readers."

About 18.5 million adults do not read well enough to follow simple directions; to complete employment and other important forms or to broaden their knowledge and brighten their lives through books and periodicals.

EDUCATION NOTEBOOK II

(By Kenneth J. Rabben)

The proposed Elementary School Reading Emphasis Act is a very comprehensive piece of federal legislation dealing with a major basic education problem.

In addition to providing grade school pupils with supplemental reading instruction from experienced specialists and teachers during the school year and in the summer, S. 1318 also:

Recognizes the importance of upgrading preparation of reading specialists and teachers and the principal's special role in improving a school's reading program.

Would establish a Reading Corps to increase the number of reading specialists and improve instructional quality.

Would provide a reading instruction course and study guide for teachers and parents to be shown over public television.

Provides for a Reading Improvement Center to conduct research into the how and why of reading and to develop new instruction methods.

Creates a presidential Reading Achievement Award for pupils reading at the appropriate grade level and for schools whose pupils do likewise.

This broad attempt to improve reading instruction would cost $176 million during the next three years. It is not designed to replace regular classroom instruction in reading by regular teachers.

Much of the act's successful implementation would depend upon the U.S. commissioner of education.

John R. Ottina, the acting commissioner, who is expected to be confirmed in that job permanently, told a meeting of education writers on March 30 that he was not familiar with the proposal.

The act was introduced on March 21 by Sen. J. Glenn Beall Jr., R-Md., a member of the Senate Education subcommittee and is co-sponsored by Sen. Peter H. Dominick, R-Colo., another committee member. Sen. Beall and his staff spent a year preparing the act and it shows a deep appreciation of the workings of public education in general and reading instruction in particular.

S. 1318 was filed as an amendment to the Elementary and Secondary Education Act of 1965 being considered for continuation, but it can be adopted separately if the ESEA is replaced by education revenue sharing as proposed by the Nixon administration.

The bill may be difficult to pass at a time when the administration is trying to reduce more than 300 special or categorical programs to about five and S. 1318 may not be supported by the Department of Health, Education and Welfare.

The act wisely takes into consideration the hard lessons learned from Title I of the ESEA, aid to disadvantaged children, the ESEA's most ineffective section and recipient of most ESEA funds.

One of Sen. Beall's aides explained that the senator is sympathetic to the revenue sharing approach and reduction of categorical programs, but he also believes that there remains a federal role to identify key problems and to point the way toward their solution.

The bill "addresses what I regard as the Achilles' heel of education, the massive reading problem of schools having large numbers or high concentrations of children reading below grade level," Sen. Beall said.

"A society like ours, where technology and education are so important and where only five per cent of the jobs are unskilled, cannot allow the dangerous condition of having massive numbers of children who lack the ability to read and thus the ability to learn and to earn."

The bill and the senator's remark provide yet another sad commentary on what passes for public education not only in kindergarten through 12th grade, but in teacher preparation institutions as well.

S. 1318 places considerable emphasis on credentials, ignoring the many classroom teachers who have been doing an outstanding job of reading instruction and who might not want to chase college credits for "specialist" status and higher pay.

It also must make the public question once again the claim by schoolmen that they know how to educate the nation's children. Some parents and other taxpayers will wonder whether such a massive effort should be undertaken by the federal government.

Given the concept of a monopolistic bureaucratic, government-controlled public school system, will $176 million and supplemental instruction from reading specialists make a difference?

[From the Frederick (Md.) News, Mar. 22, 1973]

TEACH AMERICA TO READ

The acute seriousness of the reading problems facing the nation—yes, Johnny still can't read well enough—has finally been brought to the attention of the nation . . . and rather forcefully by U.S. Senator J. Glenn Beall, Jr.

The Republican Senator from Maryland Wednesday proposed the establishment of special reading programs to teach reading skills in the elementary grades in order to overcome what he correctly described as "the massive reading problem" in American schools.

How right he is when he states that "reading is the single most important skill, the single most important key to learning."

And how descriptively accurate when he labels the lack of proper training in reading skills as "the Achilles' Heel of Education," and is there anyone who does not know that the great warrior Achilles was vulnerable only in one place—his heel.

Obviously Senator Beall has hit a tender spot with the people at least in Frederick County, because within minutes after the public announcement Wednesday of his pro-

posal, scores of local residents telephoned this column urging its support of his bill, which is being co-sponsored by his Republican colleague from Colorado, U.S. Senator Peter H. Dominick.

"Equal opportunities begin early, and this proposal seeks to make the opportunity for higher education or technical education possible by not only reaffirming that children have the right to read, but also helping to assure that they will, in fact, be able to read," Senator Beall contends.

A member of the Senate Education Subcommittee, Senator Beall, proposed a seven-point plan to have reading skills taught as a special emphasis subject, by teachers as well as reading specialists, in the elementary grades.

The bill, would authorize federal assistance to enable local educational agencies to implement reading programs in schools having a large concentration or large numbers of children who are reading below grade level.

Specifically, the proposed Elementary School Reading Emphasis Act of 1973 would:

Provide instruction by reading specialists for at least 40 minutes daily for all children in grades one and two.

Provide similar instruction in grades 3 through 6 for children with reading difficulties or who are below grade level.

Provide a summer intensive reading program for children showing signs of reading difficulty or of falling behind grade level.

Establish a Reading Corps to increase the number of reading specialists and improve the general quality of reading instruction.

Develop a course and study guide in reading to be shown over public television for the use of teachers and parents.

Establish a Center for Reading Improvement to conduct research on reading and develop new methods of instruction.

Create a Presidential Award for Reading Achievement to motivate elementary pupils to develop better reading skills.

The legislation carries an authorization of $176 million to support research, training programs and demonstration projects over a three-year period.

"Mastery of reading determines, in large part, not only success in school, but also success in adulthood," Senator Beall declared, adding that, "A society like ours, where technology and education are so important and where only about 5 percent of the jobs are unskilled, cannot allow the dangerous condition of having massive numbers of children who lack the ability to read, and thus the ability to learn and to earn."

The senator pointed to some alarming statistics which underline the extent of the reading problem in the United States:

Some 18.5 million adults are functional illiterates.

Nearly 7 million elementary and secondary school children are in severe need of special reading assistance.

In large urban areas, 40 to 50 percent of the children are reading below grade level.

Close to 90 percent of the 700,000 pupils who drop out of school annually are classified as poor readers.

"Many middle class children are also handicapped because of their lack of reading skills, and in my own state of Maryland, a statewide survey by the Department of Education found that parents ranked the mastering of reading skills as the most important goal in school."

This column commented at length on that state report and urged then a program of positive action as a follow through to improve reading in the schools. Beall's bill is a good start.

"The situation was put in perfect perspective recently," Senator Beall said, "when Washington Post Columnist William Raspberry said, 'Since you can only play at teaching history to children who can't read, why not stop playing and teach them to read?'

"This legislation seeks to prevent reading problems from developing, to identify them when they do, and to provide for a prompt remedy once such problems are identified," Beall explained, adding:

"The education-limiting and career-crippling handicap of the inability to read is so big and its solution is so important that it demands a concentrated attack, and I believe that this approach can and will make a substantial difference."

Senator J. Glenn Beall has struck a blow at the very heart of the problem crippling much of our nation. Hopefully every Senator and every Congressman will support this timely piece of legislation, and let every voter urge them to do so.

It is time to teach America to read and to read well.

[From the News American (Md.), Apr. 22, 1973]

READING SPECIALISTS

Maryland's Sen. J. Glenn Beall, Jr., has zeroed in on what many public school educators consider their most important problem with an imaginative proposal to launch a federally-financed program that would wipe out reading deficiencies.

Sen. Beall, a member of the Senate Subcommittee on Education, has introduced a bill to pump $176 million in federal funds over a three-year period into a variety of projects to improve reading skills of students, particularly those in big cities like Baltimore.

The Beall bill carries a two-point rationale. The first is the time-tested thesis that reading is the most crucial skill a school can develop in a youngster, the key to all learning. The second is the documented fact that an appalling 40 to 50 per cent of children in large urban areas are reading below grade level.

The situation is so bad some places that one nationally known educator proposed, in all seriousness, the suspension for one year of all subjects in ghetto schools so that the time could be devoted to bringing the children's reading up to grade level.

While not going that far, Baltimore's school superintendent, Dr. Roland Patterson, has recognized the importance of improving reading skills here. He has ordered all 8,000 teachers to take additional training in the teaching of reading. His idea is to hammer away at imparting reading skills throughout the school day and not just in one classroom period.

Perhaps the key proviso in the Beall bill concerns reading specialists, teachers trained especially in the field. Federal funds would be provided so that schools could put a reading specialist for at least one period a day into every first and second grade classroom. Youngsters would get a double dose of reading since the regular classroom teacher would continue to teach a period in the subject.

Sub-par readers would continue to receive instruction from a reading specialist in the third grade. Funds also would be provided for intensive summer reading programs, for recruiting more reading teachers, and for giving all teachers training in the teaching of reading.

Sen. Beall's bill, entitled the Reading Emphasis Act, is attracting interest in Congress and elsewhere. It is a good example, we think, of legislation proposing a solution for a demonstrated need.

S. 1722

At the request of Mr. HARTKE, the Senator from South Carolina (Mr. HOLLINGS) was added as a cosponsor of S. 1722, a bill to provide tutorial assistance for homebound handicapped students.

S. 1748

At the request of Mr. GRAVEL, the Senator from Alaska (Mr. STEVENS) was added as a cosponsor of S. 1748, to amend the Ship Mortgage Act of 1920 in order to provide that a State, the District of Columbia, the Commonwealth of Puerto Rico, and a territory of the United States shall be considered to be a citizen of the United States for the purposes of such act.

S. 1766

At the request of Mr. BAYH, the Senator from California (Mr. TUNNEY) was added as a cosponsor of S. 1766, to require periodical financial disclosure by officers and certain employees of the Federal Government, to establish criminal penalties for unfair campaign practices, to strengthen Presidential campaign financing laws, to amend the Federal Election Campaign Act of 1971, and for other purposes.

S. 1880

At the request of Mr. HARTKE, the Senator from Colorado (Mr. DOMINICK) was added as a cosponsor of S. 1880, the Hobby Protection Act.

SENATE JOINT RESOLUTION 117

At the request of Mr. INOUYE, the Senator from South Dakota (Mr. ABOUREZK), the Senator from Indiana (Mr. BAYH), the Senator from Texas (Mr. BENTSEN), the Senator from North Dakota (Mr. BURDICK), the Senator from Wyoming (Mr. HANSEN), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Iowa (Mr. HUGHES), the Senator from Utah (Mr. MOSS), the Senator from Rhode Island (Mr. PASTORE), the Senator from Illinois (Mr. STEVENSON), the Senator from North Dakota (Mr. YOUNG), and the Senator from Ohio (Mr. TAFT) were added as cosponsors of Senate Joint Resolution 117, to authorize and request the President of the United States to issue a proclamation designating September 17, 1973, as "Constitution Day."

SENATE CONCURRENT RESOLUTION 27—SUBMISSION OF A CONCURRENT RESOLUTION TO OBSERVE A PERIOD TO HONOR AMERICA

(Considered and agreed to.)

Mr. SCOTT of Pennsylvania (for himself and Mr. MANSFIELD) submitted a concurrent resolution (S. Con. Res. 27) to observe a period of 21 days to honor America, which was considered and agreed to.

(The concurrent resolution printed in full when submitted by Mr. SCOTT of Pennsylvania, appears at an earlier point in the RECORD.)

SENATE RESOLUTION 121—SUBMISSION OF A RESOLUTION WITH RESPECT TO THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

(Considered and agreed to.)

Mr. MANSFIELD submitted a resolution (S. Res. 121) with respect to the Committee on Interior and Insular Affairs, which was considered and agreed to.

(The resolution printed in full when

submitted by Mr. MANSFIELD, appears at an earlier point in the RECORD.)

SENATE RESOLUTION 122—SUBMISSION OF A RESOLUTION RELATING TO THE PRESIDENT'S ECONOMIC STABILIZATION PROGRAM

(Referred to the Committee on Banking, Housing and Urban Affairs.)

Mr. CRANSTON. Mr. President, it is understandable that Watergate has demanded much of the President's time and attention. It is imperative, however, that he not permit himself to be distracted from the No. 1 domestic problem facing our Nation: inflation.

Runaway prices are doing incredible harm to countless Americans, inflicting deep hardship upon tens of millions of families.

A month ago, Congress extended the President's power to deal with inflation. But the administration has done nothing, and through its indecision and inaction, the economy has gotten completely out of hand.

The rate of inflation has been 9.2 percent—the highest since the Korean war—in sharp contrast with the President's goal of 2.5 percent.

Food prices, compounded annually, have increased by 25.4 percent at the consumer level and by 34.9 percent at the wholesale level during the first quarter of 1973, a rate of increase that is likely to continue based on the omen of a 37.3-percent annual increase in farm prices.

The industrial commodity index, the leading indicator of consumer prices in the months ahead, has increased 14.8 percent under phase III, and real weekly spendable earnings have actually declined, for the first time in more than 2 years.

Phase III, a weakling premature birth brought into the economic world before the inflational spiral was under control, has totally deteriorated.

Phase III has degenerated into phase IV—the do-nothing phase of economic policy—in which a seemingly paralyzed administration has seemingly become psychologically incapable of decisive action on its own.

Therefore, I am submitting a sense of the Senate resolution calling on the President to take immediate action to place firm and equitably administered controls on prices, wages, and whatever other elements of the economy contribute to the present runaway inflation.

Earlier action on Capitol Hill giving the President full power to deal with inflation represented stage I of congressional action against inflation.

This resolution represents stage II of congressional action against inflation—an urgent appeal to the President to use those powers.

If the President remains reluctant or unable to act, we must then move to stage III of congressional action against inflation—enacting a law mandating firm economic controls.

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

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

S. Res. 122

Whereas the months since the beginning of Phase III voluntary economic controls have been marked by steadily rising prices and uncontrolled inflation, and by increasing anguish and economic turmoil on the part of the American people, which are overwhelming evidence of the failure of the President's economic program; and

Whereas the Congress renewed the President's authority to contain inflation because Congress intended that the President utilize this authority to bring inflation under control and to achieve the economic goals set forth in his statement introducing Phase III; and

Whereas the President has consistently failed to respond to this mandate for action, except for a selective and totally ineffective effort to curb meat price increases; and

Whereas the economic indicators that reflect the state of the domestic economy have shown steady deterioration since the inception of Phase III, particularly the rate of inflation which has been 9.2 percent—the highest since the Korean War—in sharp contrast with the President's goal of 2.5 percent; and

Whereas food prices, compounded annually, have increased by 25.4 percent at the consumer level and by 34.9 percent at the wholesale level during the first quarter of 1973, a rate of increase that is likely to continue based on the omen of a 37.3 percent annual increase in farm prices; and

Whereas the industrial commodity index, the leading indicator of consumer prices in the months ahead, has increased 14.8 percent under Phase III; and

Whereas average real weekly spendable earnings have actually declined, for the first time in over two years: Now, therefore, be it

Resolved, That it is the sense of the Senate that Phase III voluntary controls have failed, and that therefore the President should take immediate action to place firm and equitably administered controls on prices, wages and whatever other elements of the economy contribute to the present runaway inflation.

REPEAL OF TAX ON WHEAT MILLED INTO FLOUR—AMENDMENTS

AMENDMENT NO. 155

(Ordered to be printed, and to lie on the table.)

BREAD TAX REPEAL

Mr. BAYH. Mr. President, I am today submitting for myself and Senator WEICKER an amendment to the Agriculture and Consumer Protection Act of 1973 (S. 1888) to accelerate the effective date of the repeal of the 75-cents-per-bushel tax on wheat milled into flour—"the bread tax"—from January 1, 1974, to the date of enactment of the bill.

I ask unanimous consent that the text of the amendment and an explanation of it be printed in the RECORD at this point.

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

AMENDMENT NO. 155

On page 21, line 8, insert "(A)" immediately after "(10)".

On page 21, line 15, strike out "January 1, 1974", and insert in lieu thereof "beginning on the date of enactment of the Agriculture and Consumer Protection Act of 1973."

On page 21, between lines 16 and 17, insert the following:

(B) The Secretary of Agriculture is authorized to issue such rules and regulations as he deems necessary to achieve a prompt and effective implementation of the amendment made by subparagraph (A) of this paragraph, and to guarantee that the amounts which a producer would have realized under law for the 1973 crop of wheat from the sale of his farm domestic allotment of wheat in the absence of the changes relating to marketing certificate requirements made by the Agriculture and Consumer Protection Act of 1973 shall be paid to such producer as if such changes had not been made.

EXPLANATION OF BREAD TAX AMENDMENT TO S. 1888

The Bayh-Weicker Bread Tax amendment to S. 1888 would accelerate the effective date of the repeal of the bread tax from January 1, 1974 to the date of enactment of the bill. The amendment would also give the Secretary of Agriculture authority to issue regulations to assure an orderly transition at the time the tax is removed, and to guarantee that farmers receive exactly what they would have received for their 1973 crops of wheat in the absence of the repeal of the bread tax.

The bread tax is the 75 cents per bushel tax imposed on wheat which is milled into flour. It is a highly regressive tax because it applies to the primary ingredient in a basic necessity, bread. And the tax creates significant inflationary pressures on the retail price of bread, because the additional cost to the miller is reflected in the price he charges the baker, and the price the baker charges the grocer and thus the consumer. Finally, the tax has had a particularly devastating effect on small independent bakers in the last year because flour prices have risen sharply (due largely to the Russian wheat deal) while the controlled prices of large bakers have prevented a retail price increase. Many small bakers have been forced out of business or forced to operate at losses they cannot long sustain.

S. 1888 contains provisions (p. 21, 11.8–16) which repeal the bread tax effective January 1, 1974. The Bayh-Weicker amendment would move that date up to the date of enactment of the bill. This is highly desirable for several reasons. First, the principle that the bread tax is not the right way to raise money for our valuable farm programs having been accepted, it ought to be implemented as quickly as possible. The tax hits poor people harder than rich people and ought to be repealed when this bill is enacted. Second, acceleration of the repeal will help stabilize the price of bread by removing a cost which is, in the end, borne by the consumer. The Senate wisely rejected the alternative to repeal—a 10% to 15% increase in the price of bread—when it defeated on March 19 an amendment designed to permit an across the board increase. Third, acceleration of the repeal will help the baking industry remain competitive by keeping many small independent bakers in operation. Fourth, making the repeal effective on date of enactment will help the cost decrease to be more quickly reflected in flour prices by eliminating the inventory control problems which would occur if the tax is repealed on a date certain, known far in advance, as the bill now provides.

Repeal of the bread tax, as proposed in S. 1888, will reduce federal revenues by a relatively small amount in fiscal 1974, and acceleration of the repeal will result in some additional loss of revenue, depending on the date of enactment. We believe this is a worthwhile cost in view of the short and long range benefits to consumers, the public policy principles involved, and the estimates that fiscal 1974 receipts as a whole will be some $4 billion above those originally anticipated. In sum, the small budgetary impact is far outweighed by the benefits of acceleration.

The remaining parts of the amendment

are designed simply to give the Secretary of Agriculture authority to issue regulations to assure that the transition from tax to no tax is smooth so that the cost reduction will quickly be passed on, and to guarantee that wheat growers are in no way affected in the payments they receive by the repeal of the bread tax. These provisions reflect the desires of those who favor repeal of the bread tax and are not necessarily related to the date of repeal.

AMENDMENT NO. 156

(Ordered to be printed, and to lie on the table.)

HOG CHOLERA INDEMNIFICATIONS

Mr. BAYH. Mr. President, I am submitting today an amendment to the Agriculture and Consumer Protection Act of 1973 (S. 1888) to require the Agriculture Department to compensate swine producers in the same manner as poultry producers when animals on their farms have been destroyed to prevent the spread of disease.

In 1972 there was a rather severe outbreak of hog cholera in Indiana. As of December 6, 19,567 hogs had been killed to prevent the spread of the disease. The Federal Government paid a total of $631,192 in indemnities to affected Indiana hog producers, and a national emergency was declared for the area.

As a result of the epidemic and the personal difficulties of these farmers, I became very involved in the details of the cholera outbreak, meeting with farmers to discuss improved techniques of monitoring the interstate shipment of possibly diseased animals, and corresponding with the Department of Agriculture to secure adequate financial assistance for those farmers whose herds had been wiped out due to an outbreak in the area.

As you may know, in 1969, the use of vaccinations for hog cholera was ceased because, according to the Department of Agriculture's studies, it was not possible to eradicate the disease while vaccines were being used, and because the vaccine was, in itself, a frequent cause of the disease. Therefore, swine producers rely entirely on the effectiveness of the regulation of interstate shipment, and upon Federal and State assistance in order to get back on their feet after eradication of their herds. The situation of these farmers is very insecure since they can take no precautions themselves to prevent catastrophes.

During the emergency last year, I was consistently impressed by the cooperative attitude of Indiana swine producers. These farmers, who rely completely on the actions of Federal and State governments have not made many requests or demands during a year of personal and professional trauma. However, some of the farmers did bring to my attention reports that poultry farmers in California whose flocks had been infected with exotic Newcastle disease had been paid indemnities which were much higher than those paid to hog producers. Investigation proved the reports to be true, despite official denials from the Department of Agriculture.

Basically, at the time of depopulation, poultry farmers are reimbursed for the replacement value of the depopulated flocks—since the new flocks are raised to near maturity off the farm, this figure is close to the value of a mature laying hen—then, when the farmer is ready to start with a new flock of mature hens, he is reimbursed again for the profit lost during the intervening 26 weeks as a result of the depopulation of his egg-producing machines. Hog farmers are only reimbursed for the replacement value of their depopulated hogs; in the interest of equity they, like poultry farmers, should be compensated for lost profits which result from depopulation of their meat producing machines.

Prior to markup by the Senate Committee on Agriculture of this year's Agriculture Act, I wrote to all members of the subcommittee, requesting that they consider my bill, S. 1683, as an amendment to the Agriculture Act. Unfortunately, the committee decided not to attach my bill as an amendment to the farm bill because the Department successfully argued that it would be too expensive.

While I am also very concerned about the question of expense, I cannot understand why the Department incurred the initial expense of paying poultry producers for lost profits if it was not prepared to treat livestock and pork producers in the same way. Therefore, today I am asking the Senate to vote on the question of whether we intend to compensate all farmers who need financial assistance as a result of disease and depopulation in an equitable fashion. As the payments stand now, the Department has declined to give one producer desperately needed financial assistance to get him back on his feet, while paying another group of producers generous payments designed to compensate them for lost profits during the time needed to get back in full production.

The inequities are blatant, and in my view are without justification. Just as there are insufficient supplies of laying hens on the market for the poultry farmer to restock his farm immediately, there are insufficient supplies of breeding sows for the swine producer to restock his farm immediately. Usually the farmer must buy untried gilts and raise them to breeding age. Second, a swine producer cannot risk mixing breeds of stock which comes from different farms because each group may be carrying diseases to which the other has not built up an immunity. Therefore, a producer is limited, in restocking his farm, by the number of pigs, sows, or gilts available for sale from any other single farm in the area.

Of course, the Department of Agriculture has argued that the situation between swine producers and egg producers is not parallel. Therefore, a more detailed analysis of the indemnification system used in the case of Newcastle disease and a comparison between production methods for swine producers and egg producers is in order.

In the words of the Department of Agriculture:

On October 5, 1972, Secretary Butz announced a change in the indemnity schedule for exotic Newcastle disease for egg-laying flocks to properly reflect the actual value of those flocks. The schedule is in two phases. The first is to appraise the birds prior to depopulation, based on their market value at the time. The second phase involves a reevaluation of the value of the birds as egg-laying machines, based on the 26 weeks following depopulation.

Flock owners must be paid for the replacement value of their birds immediately following depopulation in order that they will have the financial resources to negotiate for replacements. When the flock is declared infected, it will be appraised at its actual replacement value. When the owner orders replacements from the hatchery, it usually takes about a week to complete the contract for the production of birds, 3 weeks to hatch the eggs, and 26 weeks to raise the birds to full production age. The supplemental indemnity computations are based on a 26 week period following the date of appraisal by deducting the average cost of production from the actual average weekly price of the type of eggs which would have been produced by the birds had they lived. The variation in the cost of feed above or below the basic $80 per ton is built into the compensation formula. Variations in feed prices of $5 per ton will change the cost or production of eggs by one cent per dozen.

The formula evaluates the potential production of the flock, the price that the owner would have received had the birds remained alive, adjusted by the variation in feed prices, deducting the fixed production costs. Any increased value above production costs will be reevaluated and paid to the owner at the end of the 26-week period following depopulation.

Thus, during the quarantine and the period of inactivity of the poultry farm when the farmer has to continue paying overhead costs such as taxes on, and maintenance of, his buildings, and wages for the employees whose assistance he will need once the farm is again in full production, the poultry farmer can count on Federal financial assistance to replace the profits which he would have made if his farm were fully operating. At present, a hog producer, who may have to operate a partially operating farm for even longer than the poultry producer, receives no financial assistance while getting back on his feet.

The Department explains the discrepancy between the two programs by arguing that there are no established markets or replacement values for laying hens, while both markets and values exist for hogs of all weights. Actually, there are market values for laying hens; the problem is that there are not sufficient market supplies to allow poultry farmers to immediately restock their farms. Compensation has been provided in recognition of the restocking delay. In my view, the swine producers face the exact same problem in that most of them are not able to immediately restock their farms without committing economic suicide.

The Department apparently believes most swine producers can restock their farms immediately since they have written me the following statement:

The existence of markets for swine of virtually any age not only assists the appraisers and the owners in arriving at fair market values, but also provides a source of swine for restocking premises following cleaning and disinfection. Assuming hog cholera outbreaks are confined to a comparatively small number of herds, it is possible, under exist-

ing Federal regulations, for the producer to repopulate the premises with swine of approximately the same weight class as those that were destroyed immediately after having completed the required supervised cleaning and disinfection of the infected or exposed premises.

In fact, the producer cannot—

Repopulate the premises with swine of approximately the same weight class as those that were destroyed, immediately after having completed the required supervised cleaning and disinfection.

The Carroll County Pork Producers Board in Indiana recently met and sent me a number of advisory comments and recommendations. Among them was the statement that a person who has bred gilts or bred sows for sale will not sell their best ones to potential buyers. It is very unusual to buy good proven sows. General agreement was reached that those who had to buy replacement female animals did so by buying 6-month-old gilts from general fattening pens at the market price plus $10,000. Since it is recommended that a gilt not be bred until she is 9 months old, she usually must be cared for and fed for 90 days before she is of breeding size, and for another 114 days before she had pigs. Thus, there is a delay of at least 6 months after the quarantine has been lifted before a farrow-to-finish farmer—one who raises baby gilts to mature sows, then breeds the sows and raises those baby feeders to maturity for slaughter—or a feeder-producer farmer can even think about raising feeder pigs for market.

An apparently obvious solution to this 6-month delay is for the producer to buy feeder pigs on the market as well as sows to replace those which have been depopulated. The pork producers pointed out that such a purchase would be possible only if the producer can buy both the gilt and the feeder pigs from the same farm; it is very unwise to mix breeds of stock from different farms because each group may be carrying diseases to which the other has not built up an immunity. In Indiana following the recent cholera outbreak, the earliest that any farrow-to-finish operator will have market animals for sale is 1 year from the date that the quarantine was lifted; despite farmers' obvious self-interest in getting back in business as quickly as possible, some producers face a delay of as much as 18 months.

For those farmers producing feeder pigs for sale, the delay would be similar to that for farrow-to-finish operators since sows would first have to be raised and bred. However, for farmers raising feeder pigs to a marketable age, the delay would consist only of the length of the quarantine, which in Indiana last year was as long as 3 months for some farms, plus the time needed to buy replacement pigs.

Under my proposed bill, the Department of Agriculture would draw up payment schedules based on the various requirements of the three types of swine operations. Following the formula used in the Newcastle indemnification program, the average cost of production would be deducted from the average price of the hogs or meat which would have been produced if depopulation had not occurred.

The following tentative table has been provided me by extension economists at Purdue University for the computing of the probable profits and costs which would have occurred during the interim period while the farmer is restocking his farm. I want to emphasize that this is a tentative table; its purpose is to demonstrate that a reasonable formula can be established to compensate hog producers for their lost profits. All variable figures are based on 1972 national average figures. I ask unanimous consent that the table be printed at this point in the RECORD.

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

PROPOSED PROFIT-COST FORMULAS

I. PRODUCER OF PURCHASED PIGS

Period for second payment might be the time interval from depopulation to the end of the embargo plus 30 days as a period to locate replacement pigs. Volume could be established on the basis of the number of pigs on hand at the time of depopulation. If we define a unit of production as a pig, a normal production rate is 1.75 pounds of product (starting with a 40# pig) per unit per day.

The approximate requirements to produce a 220# market hog, averaging $57.20 in 1972 are:

A 40# pig	*$20.32
11.5 bu. corn	*14.83
100# supplement	*7.50
Other variable costs	5.00
Fixed costs (overhead)	2.00
Labor	2.50
Total	52.15

II. PRODUCER OF FEEDER PIGS

Period for second payment might be the time interval from depopulation to end of embargo plus seven months. (Seven months made up of one month to locate breeding stock, two months to get new breeding stock to reproduction age plus four months gestation.) Volume might be established on the basis of the number of mature females on hand at the time of depopulation. If we define a unit of production as a mature female, a normal production rate is 1⅓ pigs (40# each) per unit per month.

The approximate requirements to produce a 40# pig, averaging $20.32 in 1972 are:

60# supplement	*$4.50
3 bu. corn	*3.87
Other variable costs	3.00
Fixed costs (overhead)	3.25
Labor	3.75
Total	18.37

III. FARROW TO FINISH

Period for second payment might be the time interval from depopulation to end of embargo plus nine months. (Nine months made up of one month to locate breeding stock, two months to get new breeding stock to reproductive age plus four months gestation, plus two months to produce feeder pigs.) Volume might be established on the basis of the number of mature females on hand at the time of depopulation. If we define a unit of production as a mature female, a normal production rate is 300# of slaughter animals per unit per month.

The approximate requirements to produce 100# of slaughter animals (currently worth $32.02 at Indianapolis), averaging $26.00 in 1972 are:

75# supplement	*$5.61
6 bu. corn	*7.74
Other variable costs	2.00
Fixed costs (overhead)	2.50
Labor	3.25
Total	21.00

*Values vary (along with slaughter hog and feeder pig prices) depending upon time and geographic location.

Mr. BAYH. To take the example of the producer of feeder pigs in more detail, let us assume that the producer owned 20 sows which were all depopulated and the second evaluation was made 8 months after the depopulation—1 month of quarantee, 1 month to locate breeding stock, 2 months—plus—to raise the stocks to reproduction age, and 4 months for gestation. If we assume that a mature sow will usually produce 1⅓ pigs—at 40 pounds each—per month, the potential production from 20 sows over the 8-month period would have been 213 pigs—40 pounds each.

The average market price of a 40-pound pig was $20.32 in 1972, so that the gross potential profit would have been $4,328. Approximate costs of producing one 40-pound pig have been estimated in the printed table as $18.37. The costs for producing 213 40-pound pigs would therefore have been $3,913, and the difference between the gross profit and cost, or the net potential profits over the 8-month period would have been about $415.

I ask unanimous consent that a copy of my amendment be printed at this point in the RECORD.

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

AMENDMENT NO. 156

On page 51, between lines 15 and 16, insert the following:

(29) Section 11 of the Act of May 29, 1884 (58 Stat. 734); 21 U.S.C. 114a) is amended by inserting "(a)" immediately after "Sec. 11." and by adding at the end of such section a new subsection as follows:

"(b)(1) Whenever swine are destroyed under authority of this Act, the amount of compensation to be paid to the owner of such swine shall be determined in two stages as follows:

"(A) The swine shall be appraised, at the time of their destruction, on the basis of their fair market value for meat, feeding, or breeding purposes, as appropriate.

"(B) At the end of an appropriate period following the date on which the swine were destroyed, a determination shall be made of the potential value of the swine as meat producers had such swine not been destroyed. In determining the potential value of any swine under this clause, the value shall be reduced by the amount that would have been expended for feed (adjusted for variation in price) and other production costs. The period between the destruction of swine and the appraisal of the potential value of the swine shall be determined on the basis of the average time required by (i) farrow to finish operators, (ii) feeder pig producers, and (iii) finishers of purchased pigs to raise new herds to full production capacity.

"(2) The owner of swine destroyed under amount determined under clause (A) of paragraph (1) as soon as practicable after the authority of this Act shall be paid the destruction of his swine. The owner of such swine shall be paid the amount of any in-

crease in value determined under clause (B) of paragraph (1) as soon as practicable after the amount has been computed."

AMENDMENT NO. 157

(Ordered to be printed, and to lie on the table.)

FAMILY FARM AMENDMENT

Mr. PEARSON. Mr. President, from our Revolutionary period to the present we have sought in this Nation to promote, protect, and maintain a family farm system of agriculture. By the early 1800's our forefathers had made the commitment that the vast public domain—all the agricultural land that came to constitute the territorial United States—would be turned over to private ownership in family size units. It was a conscious and deliberate decision to form an owner-operated type agriculture over large scale, estate and plantation type agriculture. The decision was based in part on the belief that the family farmer was best suited for subduing the frontier and producing the necessary food and fiber. But equally important, the decision was based on the conviction that for social and political reasons small scale, family farming was preferable to large scale estate farming. Indeed, men like Thomas Jefferson literally believed that democracy could survive only if the bulk of the citizens was made up of family farmers and independent village artisans. In any case, the agrarian ethic and the early land policies culminating in the Homestead Act of 1862 had a profound effect in shaping the economic, social, and political character of the Nation.

We have never deviated from that national commitment forged during the Revolutionary period and refined during the first half of the 19th century. It is true we never sought to dismantle the large estates and plantations but we never sought to consciously promote their growth. It is true also that we have not been altogether successful in promoting and protecting the family farm system. but our intent to do so has always formed the base of our agricultural policy deliberation. In short, our agricultural policies have been intended as family farm policies, and today despite many shortcomings and many failures we have the finest agricultural system—both in its economic and social aspects—in the world.

Mr. President, today the family farm is rather firmly entrenched and clearly the dominant production unit in agriculture. But we are entering an uncertain period. New forces are at work which appear to promise a stronger farm economy. But it is possible that these forces may also bring a new threat to the competitive position of the family farm. Corporate and vertically integrated units continue to show some increase in number and size and this trend might accelerate in the future. In addition, growing demands on the budget require, I believe, that we must make an ever more conscious effort in the future to tailor the expenditure of Federal taxes to the family farm system. We must do this in our commodity programs, our credit programs, and our research and development programs. Large scale, corporate agriculture does not need nor deserve Federal support except where the failure to do so would do harm to the family farm system.

Therefore, it seems to me that the time is appropriate for us to make explicit what has always been implicit in our agricultural policy deliberations. To this end, I introduce an amendment to S. 1888 specifying that Congress affirms its long standing commitment to protecting, preserving, and strengthening the family farm system of American agriculture.

Such a declaration at this time will serve as a clear standard for our future policy deliberations and also for a fresh, thorough review of existing agricultural and agriculture related programs.

The amendment which I submit does not establish any new program. It does, however, require the Secretary of Agriculture to provide the Congress with annual reports containing current information on trends in family farm operations and data on corporate, vertically integrated agricultural operations. In these reports, the Secretary will also provide the Congress with an analysis of how these existing programs are being administered on behalf of family farm agriculture and also how Federal programs, including tax laws, may be serving to encourage the growth of large-scale corporate and vertically integrated farming operations.

These reports will provide Congress with the information needed to improve our operational definition of family farms and to better judge trends in the organizational structure of agriculture and as a consequence how we may improve upon existing programs and better shape future Federal farm programs.

Mr. President, I believe this is a noncontroversial amendment, but at the same time an extremely important and useful one, and I ask unanimous consent that it be printed in the RECORD at this point.

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

AMENDMENT No. 157

On page 46, line 17, strike out the double quotation marks.

On page 46, between lines 17 and 18, insert the following:

"SEC. 818. (a) The Congress hereby specifically affirms the long-standing national policy to protect, preserve, and strengthen the family farm system of agriculture in the United States and believes that the maintenance of that system is essential to the social well-being of the Nation and the competitive production of adequate supplies of food and fiber. The Congress further believes that any significant expansion of large scale corporate and vertically integrated farming enterprises would be detrimental to the national welfare. It is not the policy of the Congress that agricultural and agriculture related programs be administered exclusively for family farm operations, but it is the policy and express intent of the Congress that no such program be administered in a manner that will place the family farm operation at an economic disadvantage.

(b) In order that the Congress may be better informed regarding the status of the family farm system in the United States, the Secretary of Agriculture shall submit to the Congress not later than July 1 each year a written report containing current information on trends in family farm operations and comprehensive national and state by state data on corporate and vertically integrated agricultural operations in the United States. The Secretary shall also include in each such report (1) information as to how existing agricultural and agriculture related programs are being administered so as to protect, preserve, and strengthen the family farm system of agriculture in the United States, (2) an assessment of how Federal laws, including the tax laws, may be serving to encourage the growth of large-scale corporate and vertically integrated farming operations, (3) such other information as the Secretary deems appropriate or determines would aid the Congress in protecting, preserving, and strengthening the family farm system of agriculture in the United States."

Mr. PEARSON. Mr. President, today the family farm is rather firmly entrenched and clearly the dominant production unit in agriculture. But we are entering an uncertain period. New forces are at work which appear to promise a stronger farm economy. But it is possible that these forces may also bring a new threat to the competitive position of the family farm. Corporate and vertically integrated units continue to show some increase in number and size and this trend might accelerate in the future. In addition, growing demands on the budget require, I believe, that we must make an ever more conscious effort in the future to tailor the expenditure of Federal taxes to the family farm system. We must do this in our commodity programs, our credit programs, and our research and development programs. Large scale, corporate agriculture does not need nor deserve Federal support except where the failure to do so would do harm to the family farm system.

Therefore, it seems to me that the time is appropriate for us to make explicit what has always been implicit in our agricultural policy deliberations. To this end, I introduce an amendment to S. 1888 specifying that Congress affirms its long-standing commitment to protecting, preserving, and strengthening the family farm system of American agriculture.

Such a declaration at this time will serve as a clear standard for our future policy deliberations and also for a fresh, thorough review of existing agricultural and agriculture related programs.

AMENDMENT NO 158

(Ordered to be printed, and to lie on the table.)

Mr. HART. Mr. President, a bill, the Agriculture and Consumer Protection Act of 1973 (S. 1888), which the Senate soon will be asked to vote on fits nicely in with the cliche: It grew like Topsy.

Introduced on January 23, this year, as a 5-page proposal, it has been reported as a 5-page bill. As introduced, the bill would simply have extended the provisions of the Agricultural Act of 1970.

During about 14 days of hearings in Washington and in the field, witnesses were heard on a vast array of subjects including all the major farm crops covered by farm programs in the last 40 years, the dairy and livestock industries, forestry, the food for peace program, beekeeping, food stamps, the International Grains Conference, various research pro-

posals, and proposed policies affecting imports and export policies.

The resulting bill amends or extends 12 different major acts of Congress now on the books and for the most part is commendable legislation reflecting great credit on the committee.

But, truthfully—and not aiming at being dramatic—I think some of the phenomenal growth shows signs of malignancy.

My deepest concern is over some of the provisions dealing with the dairy industry.

Careful reading of this necessarily complex bill seems to show that these provisions would:

First. Legalize practices which are currently being attacked in Department of Justice antitrust suits and private suits.

Second. Give a congressional blessing to future antitrust violations.

Third. Increase dairy product prices manyfold.

Fourth. Work great competitive harm on independent dairies which are competing with large co-ops.

Fifth. Give the co-ops enormous power and control over the individual farmer members.

In brief, the particular provisions which concern me would give a great deal of increased power to the large dairy cooperatives. Maybe this is justified—although I admit on the face of it, I cannot see the reasons.

My greatest concern is that this language was adopted without a chance for the many interested parties to dissect it, comment on it and counsel concerning it.

Up to now, the co-ops were governed by the antitrust laws—with some limited exemption for marketing granted under the Capper-Volstead Act. But S. 1888 would expand greatly this antitrust exemption and seems to give an unfair advantage to the co-ops over the independent dairies with which they compete.

While my concern over some of these provisions as they affect competition could be called the type of esoteric thing that would interest the chairman of the Antitrust and Monopoly Subcommittee and almost no one else, there is a practical concern affecting every family in America.

For these provisions will—without question—raise milk prices.

One of the ways they do that is with what amounts to a system of payment aimed at eliminating competition.

Let me explain that.

Traditionally, areas which produce less milk than they consume—deficit areas—buy at reasonable prices milk from areas which produce a surplus.

This has resulted in a stable milk price countrywide—and an efficient use of milk production.

Under the provisions of this bill, the surplus areas would no longer sell milk to the deficit areas. In fact, the deficit areas would pay the producers in the surplus areas to keep their milk at home.

The unavoidable result would be a scarcity of milk and high prices. Without this bill, such an agreement would be a flagrant violation of the antitrust laws.

The bill would also raise prices of milk and cheese by fixing the minimum prices which the handler would pay for services rendered by the co-op. This will result in an increased price for those services which will be passed on to the consumer in the form of higher prices for milk and cheese.

Moreover, the bill would make the dairy farmer subject to the giant co-op. It would allow the co-op to take possession and control of the base of the dairy farmer. "Base" is a term which designates the number of pounds of milk a farmer can sell at class I prices, which is the highest price a farmer can receive for milk. It is a very valuable property of the dairy farmer. Without it the milk of the farmer has little value. Under this bill the co-op can usurp the farmer's base. The bill is unclear whether or not the base is returned to the farmer if he leaves the co-op and, if so, how it would be returned to him. Thus, the independent farmer is at the mercy of the giant co-op for his livelihood.

The amendments I propose today would only strike those sections of the bill which raise these serious antitrust concerns. Should the amendment be agreed to, as I urge, then I would hope the committee will hold public hearings on the exact impact of these particular provisions.

Let me make it clear, this is not an amendment to strike the entire dairy section. Provisions dealing with import quotas, support prices, authority for class I base plans and indemnification or loss of milk and cows would remain in the bill. These provisions are not affected by this amendment.

Struck from the bill—with the hope of full hearings at an early date—would be the provisions only that raise serious antitrust questions and seem to guarantee increases in milk prices for consumers.

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

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

AMENDMENT NO. 158

On page 2, beginning with line 6, strike out through line 2 on page 8 and insert in lieu thereof the following:

(A) amending section 201(e) by striking out "1973" and inserting "1978", and by striking out "1976" and inserting "1981" and

(B) adding at the end thereof the following:

"(f) The Agricultural Adjustment Act as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended, is further amended by:".

On page 8, line 3, strike "(4)" and insert "(1)".

On page 8, line 15, strike "(5)" and insert "(2)".

AMENDMENTS NOS. 160 THROUGH 162

(Ordered to be printed, and to lie on the table.)

Mr. BUCKLEY submitted three amendments, intended to be proposed by him, to Senate bill 1888, supra.

AMENDMENT NO. 163

(Ordered to be printed, and to lie on the table.)

PAYMENTS LIMITATION

Mr. BAYH. Mr. President, I am introducing today an amendment to the Agriculture and Consumer Protection Act of 1973 (S. 1888) to limit payments to individual producers to a total of $20,000, rather than $55,000 per crop—for a total of $165,000—as provided in the bill.

I ask unanimous consent that the text of the amendment and an explanation of it be printed in the RECORD at this point.

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

AMENDMENT NO. 163

On page 1, line 5, strike out "101(1)" and insert "101".

On page 1, strike out lines 6 and 7, and insert in lieu thereof the following:

(A) amending subsection (1), effective beginning with the 1974 crop, to read as follows:

"(1) The total amount of payments which a person shall be entitled to receive under one or more of the annual programs established by titles IV, V, and VI of this Act for the 1974 through 1978 crops of the commodities shall not exceed $20,000."

FACT SHEET ON $20,000 PAYMENT LIMITATION

AMENDMENT TO 1973 AGRICULTURAL BILL (BY SENATOR BAYH)

Limit total annual payment to an individual producer under cotton, feed grains and wheat programs to $20,000 not including any payment determined by the Secretary to represent compensation for resource adjustment or public access for recreation. Under the present provisions of S. 1888, a producer would be entitled to receive up to $55,000 under each of these crop programs, a total of up to $165,000, in addition to compensation for resources adjustment or public access for recreation.

PRINCIPAL REASONS WHY A $20,000 PAYMENT LIMITATION WOULD IMPROVE S. 1888

1. As a result of the program changes proposed in S. 1888, a $20,000 blanket limitation is even more desirable than a $55,000 per crop limitation since the limitation would apply only to income supplement payments.

2. A $20,000 limitation on total payments to an individual producer would reduce government expenditures without reducing the benefits of the programs to small family farmers. This could result in potential savings of $150 to $200 million annually.

3. One of the major beneficiaries of government payments in terms of dollar amounts is the large farm operation. Many of these farms receive payments well above this $20,000 payment limitation. Few of them, if any, require such large income supplement payments. Few small family farms receive payments in excess of $20,000. Many of them require adequate income supplements. This amendment sets a reasonable limit on such payments and insures that government money does not go to farmers who do not require it.

4. The blanket limitation is preferable to the per-crop basis for limiting payments in that it offers more encouragement for the farmer to respond to market forces rather than to predetermined government payments.

KEY FACTS IN FAVOR OF A $20,000 PAYMENT LIMITATION

TABLE 1.—NUMBER OF PRODUCERS RECEIVING CHECKS OF $20,000 OR MORE

	1970	1971	1972	Percent change 1970–72
Cotton producers	7,753	8,810	9,066	+17
Feedgrains producers	1,395	245	1,855	+33
Wheat producers	1,223	1,088	1,388	+13
Total	10,371	10,143	12,309	+19

TABLE 2.—TOTAL PAYMENTS TO PRODUCERS RECEIVING $20,000 OR MORE IN 1972

[Dollar amounts in thousands]

	Total payments	Amount in excess of $20,000/producer	Excess payments (percent)
Cotton producers	$319,384	$138,064	43
Feedgrain producers	53,088	15,988	30
Wheat producers	39,288	11,488	29
Total	411,760	[1] 165,540	

[1] Potential reduction in Government expenditures with $20,000 limitation.

3.—PERCENTAGES OF PRODUCERS VERSUS TOTAL PRODUCTION AFFECTED BY A $20,000 LIMIT

[In percent]

	Producers	Total production
Cotton	4.0	39.5
Feedgrains	.1	3.0
Wheat	.1	4.5

EMERGENCY PETROLEUM ALLOCATION ACT OF 1973—AMENDMENTS

AMENDMENT NO. 159

(Ordered to be printed.)

Mr. MOSS (for himself, Mr. KENNEDY, Mr. SAXBE, Mr. CANNON, Mr. MAGNUSON, Mr. PASTORE, and Mr. STEVENSON) proposed an amendment to the bill (S. 1570) to authorize the President of the United States to allocate energy and fuels when he determines and declares that extraordinary shortages or dislocations in the distribution of energy and fuels exist or are imminent and that the public health, safety, or welfare is thereby jeopardized; to provide for the delegation of authority to the Secretary of the Interior; and for other purposes.

AMENDMENT NO. 164

(Ordered to be printed, and to lie on the table.)

Mr. RIBICOFF submitted amendments, intended to be proposed by him, to Senate bill 1570, supra.

AMENDMENT NO. 165

(Ordered to be printed, and to lie on the table.)

Mr. KENNEDY (for himself and Mr. JACKSON) submitted amendments, intended to be proposed by them, jointly, to Senate bill 1570, supra.

ADDITIONAL COSPONSORS OF AN AMENDMENT

AMENDMENT NO. 9 TO S. 426

At the request of Mr. MANSFIELD (for Mr. HART), the Senator from Wisconsin (Mr. NELSON) was added as a cosponsor of amendment No. 9, to the bill (S. 426) to regulate interstate commerce by requiring premarket testing of new chemical substances and to provide for screening of the results of such testing prior to commercial production, to require testing of certain existing chemical substances, to authorize the regulation of the use and distribution of chemical substances, and for other purposes.

NOTICE OF HEARINGS ON S. 1861 AND S. 1725

Mr. WILLIAMS. Mr President, on Wednesday and Thursday, June 6 and 7, the Subcommittee on Labor of the Committee on Labor and Public Welfare will hold hearings on S. 1861 and S. 1725, amendments to the Fair Labor Standards Act of 1938, as amended. The hearings will begin at 9:30 a.m. on June 6 and 10 a.m. on June 7 in room 4232 of the Dirksen Office Building.

The subcommittee will hear from representatives of the administration, the AFL–CIO, the National League of Cities, a panel of representatives from the retail and service industries, and a panel of economists.

Any persons wishing to submit any written materials to the committee for its consideration during deliberations on this legislation should make those materials available to the subcommittee staff prior to June 7, 1973.

ADDITIONAL STATEMENTS

VA ADMINISTRATOR EXPLAINS DEADLINE

Mr. HANSEN. Mr. President, the Administrator of Veterans' Affairs, Mr. Donald E. Johnson, is making a concentrated effort to advise all veterans of their education rights.

Since some schooling benefits will expire in the next fiscal year, Mr. Johnson has released a statement which is most timely; it should provide beneficial information to these individuals.

Because of its importance, I ask unanimous consent that the information provided by Administrator Johnson be printed in the RECORD.

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

STATEMENT BY VETERANS' ADMINISTRATION

Administrator of Veterans Affairs Donald E. Johnson is making an all-out effort to alert all veterans discharged from the military service prior to June 1, 1966, that they only have until May 31, 1974, to *complete* their programs of education.

These warnings are being issued through all possible news media. Special letters have been sent to all veterans not presently participating in the program, notifying them of the impending delimiting date, and each time a veteran currently participating in the program is sent a new Certificate of Eligibility he is advised of the deadline date. Plans have been made to expand all of these potential sources of communication to inform veterans of the impending expiration date.

At the time the current GI Bill was passed in 1966, the Congress provided that any veteran serving on or after January 31, 1955, and discharged on or before June 1, 1966, would be allowed a period of eight years from that latter date in which to utilize his available educational benefits.

A subsequent law (Public Law 90–77) added three new programs—on-job or apprenticeship, flight, and on-farm training. Veterans training under any of these programs were given until August 30, 1975, to complete their education in these categories.

The program has been very successful with 1.4 million, or 33 percent of the 4.1 million veterans made eligible by the 1966 law having used all or part of their educational benefits.

The overall participation rate for Vietnam era veterans has been even higher—approximately 46 percent.

Any veteran whose benefits may expire soon is urged to contact any Veterans Administration office or representatives of local veterans service organizations for full information on the many educational programs available to him, as well as the benefits payable to him while pursuing those programs.

NO ONE CLOBBERED BY THE STICK IN THE CLOSET

Mr. PROXMIRE. Mr. President, when phase III went into effect and many of us complained about its obvious and apparent weakness, we were reassured by the administration and especially by Secretary Shultz that if prices got out of line the administration had a "stick in the closet" which it would not hesitate to use.

In the first quarter of phase III wholesale prices rose at an annual rate of 21.2 percent. But no one was clobbered.

Farm products, food, and feed went up by 37.3 percent. But no stick was unveiled.

Even more important, there was a 15 percent increase in the wholesale price index for industrial products. But the stick remained in the closet.

These are unparalleled increases in peacetime periods. Ordinarily the wholesale price index rises at 1 percent or a little more or less per year. Yet, as prices went through the roof, no action was taken. Nothing.

All we got were bland reassurances and Pollyanna-ish statements delivered by Mr. Shultz or Mr. Stein or by some anonymous statistical interpreter from deep in the bowels of the bureaucracy.

Mr. President, this situation is impossible to describe and even more impossible to understand.

Here is an administration which does not hesitate to unleash the fury of the B–52 bombers on tiny nations abroad, but is impotent in dealing with a domestic crisis at home.

How does one account for this pusillanimous policy in light of the unprecedented price increases we have seen since phase III began?

Phones are tapped. Burglaries receive official sanction. Dissenters are brought to trial. But outrageous price increases, which can be and should be met through entirely legal action provided for by congressional legislation and authority, are allowed to take place without a blink of the eye.

In a Wall Street Journal article for May 30, James P. Gannon detailed these events—or the absence of events. I ask unanimous consent that his article entitled "Phase 3's Unused Stick in the Closet," where the facts and statements concerning phase III are laid out in all their detail, be printed in the RECORD.

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

PHASE III'S UNUSED STICK IN THE CLOSET

(By James P. Gannon)

WASHINGTON.—Somewhere in the White House, there is supposed to be a closet with a stick in it.

The "Stick in the Closet" is the Nixon administration's catch-phrase for the standby powers it has to hit unions and companies which flagrantly violate the quasi-voluntary Phase 3 wage and price controls.

Treasury Secretary George P. Shultz first referred to the stick on Jan. 11, in unveiling the change from the mandatory Phase 2 controls to what he called the "voluntary" Phase 3 curbs. Seeking to distinguish the revamped Phase 3 controls from the voluntary wage and price guidelines of the Kennedy-Johnson years, Mr. Shultz conjured up the "stick in the closet" image and warned that "people who don't comply voluntarily are going to get clobbered."

Inasmuch as this is a time of feverish searching into White House closets, which contain plenty of skeletons if nothing else, it seems timely to ask: Whatever became of the stick?

What seems clear now, after more than four months of the Phase 3 program, is that the stick is more a rhetorical tool than a practical anti-inflation weapon. Nixon administration economic policy-makers, led by Mr. Shultz, believe strongly in basic supply-and-demand strategies to control inflation, rather than in any selective punishing of scapegoats who sin against the wage-price commandments. The mere existence of Mr. Shultz's shillelagh apparently was meant to serve as a deterrent to a possible widespread surge of follow-the-leader type price increases that might follow the expiration of Phase 2 controls.

To be sure, the Phase 3 stick has been rhetorically brandished by Nixon administration economic officials with great vigor and frequency. Alarmed by the widespread reaction that the switch to Phase 3 was actually an abandonment of meaningful controls, Mr. Shultz and his cohorts verbally swing the stick in an effort to restore some of the controls program's damaged credibility.

MR. SHULTZ' WARNING

Only a day after he unveiled the Phase 3 program, Mr. Shultz, who didn't like newspaper headlines that said the White House had "scrapped" controls, summoned a small group of newsmen to his Treasury office to say that the Phase 3 closet contained not only a stick, but a shotgun, a baseball bat and an arsenal of other weapons. And the government wouldn't hesitate to use them, Mr. Nixon's economic policy architect warned.

In the days that followed, as price indexes began ringing inflationary alarms, the administration kept talking a tough controls strategy. William Simon, the new No. 2 man at the Treasury, warned that "Phase 3 is going to get tough if toughness is warranted." Mr. Shultz even strode into that corporate lions' den, the prestigious Business Council, to warn that "someone will get clobbered" if the price and wage rules are broken. "If any of you want to offer yourselves up as that juicy target," the Cabinet officer told the businessmen, "we'll be delighted to clobber you."

So, much has been heard of the stick in the closet. But very little—almost nothing—has been seen of it.

That's not because everything on the inflation front is going swimmingly, of course. As everyone from housewives to purchasing agents knows, the pace of price increases since the Phase 3 program began has been the worst since the Korean war inflation of 1951.

Wholesale prices in the first three months of Phase 3 soared at a seasonally-adjusted annual rate of 21.2%. Forget for a moment the stunning 37.3% annual rate of gain in prices of farm products, processed foods and feeds, and look just at that segment of the economy that ought to be most susceptible to persuasion by the "stick in the closet"—industrial prices. In that three-month period, wholesale quotes of industrial goods zoomed at an annual rate approaching 15%, the steepest in 22 years.

The industrial price escalation reflects sizable markups on steel, nonferrous metals, oil, coal, gasoline, textiles, machinery and many other basic goods. The price of lumber has gone up so much under Phase 3 that, if the White House had to go out today and buy a new stick to put in the closet, it would cost nearly 23% more than in January.

But who has been "clobbered"? Despite the price outbreak, there hasn't been a single case of a company feeling the whack of the Phase 3 stick. The general level of wage settlements under Phase 3 has been much more stable than prices; still, there have been numerous settlements exceeding the admittedly fuzzy 5.5% wage standard, but no disciplining of labor chieftains, either.

Administration men cite various moves as evidence that there really is a stick, but the evidence isn't very persuasive. In March, reacting to climbing fuel prices, the Cost of Living Council reimposed limited mandatory price controls on 23 oil companies. But it has already begun relaxing these in the face of shortages that the companies contend are worsened by the price curbs.

Under political pressures that included a march on Washington by homebuilders, the Cost of Living Council seven weeks ago held public hearings on the soaring price of lumber. Despite the implication that it would stiffen lumber price controls, the Council hasn't followed the hearings with any such action; it is still studying the situation.

As pot roast became a luxury and housewives began boycotting the butcher, the White House took another action that's more symbolic than real: placing price ceilings on beef, pork and lamb at a time when those prices were at historic highs. By locking the barn after the inflationary stampede, the administration again demonstrated its reluctance to tighten controls in any way that really puts the squeeze on anyone.

Currently, the administration faces what may be the crucial test of the whole stick-in-the-closet idea. In the midst of the worst industrial price inflation in two decades, the steel industry, led by U.S. Steel Corp., has served up a 4.8% price hike, effective June 15 on about 45% of the industry product line, principally sheet and strip. Now the ball is in the Cost of Living Council's court, where officials are studying the situation.

In the Kennedy-Johnson era, steel price hikes prompted anti-inflationary sticks to emerge from the White House closet even though there wasn't any direct price-control program. Several times during the 1960s, steelmakers trooped down to the White House to have their allegedly greedy knuckles rapped by wrathful Presidents. It became a sort of ritual dance in which the steelmakers stuck their necks out, took a couple of licks, then retreated halfway, leaving everybody with the feeling that something had been accomplished.

There's no way to predict how the Cost of Living Council will handle the steel-price bid. But it's fair to say that if it doesn't do anything to forestall or reduce a price hike that's bound to ripple throughout the economy in coming months, the stick in the closet can be put down as a myth.

A DEBATABLE ISSUE

There's room for debate over whether the stick really ought to be wielded with force and frequency, of course, a case can be made that now is the crucial time for the administration to demonstrate that it won't allow inflation to get out of hand and that it's willing to whack a few scapegoats. This might restore public confidence.

Administration men argue another case: that beating the lumber industry, oil men or farmers over the head with a price stick isn't going to solve supply tightness in lumber, oil or meat. The administration's anti-inflationary strategy is to find ways to boost production or imports of products that are under heavy demand pressure.

The administration, in fact, seems ready to accept a considerable degree of price upturn in a period of strong demand, such as the present. Prices, Mr. Shultz likes to tell listeners, have an essential rationing function to perform by allocating scarce supplies among those willing to pay what the traffic allows.

Thus, classic supply-demand economics is dominating the administration's policy today and probably will as long as Mr. Shultz, an ardent free-market disciple, remains in charge. It's difficult to fit a punitive stick into that philosophical closet. After all, if a businessman is only helping to ration a scarce commodity among all those customers lined up at his door, should he be walloped for it?

Maybe the administration economists are right in their judgment that a general demand-pull inflation can't be effectively and equitably controlled by application of the stick. But if the stick is any more than a rhetorical wand, now's the time to prove it. If not, they ought to quit kidding everybody about the contents of that closet.

RETIREMENT OF R. L. "BOB" PHINNEY

Mr. TOWER. Mr. President, all too often, we tend to overlook the honest, efficient, dedicated service of the many Federal Government employees and officials who perform their duties in an outstanding manner, without attracting headlines. Such a man is R. L. "Bob" Phinney, who has served as District Director of the Internal Revenue Service's Austin, Tex., district for the past 21 years. Mr. Phinney is retiring in June, after a distinguished career for which the taxpayers of this country should be extremely grateful.

Mr. Phinney has enforced our tax laws throughout the Austin district firmly, efficiently, and fairly. He has done so in a nonpartisan manner which has won him great respect from people of all political persuasions. He has been patient and reasonable while, at the same time, insisting that every dollar due our Government was collected.

He is a man of unquestioned integrity and honor. He is the type of man whose splendid service should make us all feel a bit prouder of our vast governmental machinery. I am confident that his distinguished career will continue to serve, after his retirement, as a wonderful example and inspiration to thousands of other Government employees who have had the privilege of working under his direction. And I wish him many happy years in his well-earned retirement.

THE FUEL SHORTAGE AS IT RELATES TO AGRICULTURE

Mr. HUMPHREY. Mr. President, it is impossible to state too strongly the seriousness of the fuel crisis facing agriculture and agriculture related transportation, especially in the midwestern States, the breadbasket of the Nation. Unless effective action is taken by Government and industry immediately, great damage will be done to our entire economy. Food will be in short supply and many farmers will face financial ruin—for the supply of gasoline is intertwined with the supplies of truck and tractor fuel.

Mr. President, when gasoline or diesel fuel is needed to run a tractor to prepare the ground for planting and then to plant, these activities cannot be delayed. The law of nature determines when planting must be done. If tractor fuel is not available when nature dictates, there will be inadequate crops, which means that there will be not enough bread or beefsteak or other food.

Recently, Mr. Howard J. Simons, who collects reports on farm fuel shortages for the agricultural stabilization and conservation service said:

I don't think we're going to be hurt very much by a fuel shortage this year.

Well, I beg to differ. I have been receiving many letters from farmers who are very concerned about the fuel shortages. They are concerned that most of the public attention has centered on the effect of the fuel shortages on motorists, and little public attention has been given to the fact that if the farmer does not have enough fuel after an already too wet spring, less food is going to be produced and the price will go sky high. The critical problem now is the planting. The bad weather has delayed much of the planting in the key agricultural areas of the Midwest. The next critical need will be in harvesting, crop drying, and transporting the product.

Mr. President, for many weeks I have been calling the attention of the executive branch to this dire situation. Under the administration's voluntary guidelines for gasoline and fuel allocation, farmers have been designated as top priority recipients of dwindling supplies. But, it is one thing to be so designated, and it is another thing to actually receive the fuel. To determine just how serious the situation is, and may become, I am holding hearings in Minneapolis on Saturday. Among those testifying will be representatives from the following organizations: National Farmers Organization; Minnesota Farm Federation; Minnesota Motor Transport Association; Minnesota Petroleum Council; Northwest Petroleum Association; Association of American Railroads; Minnesota Association of Petroleum Retailers; the Department of the Interior's Office of Oil and Gas; and Minnesota's top Civil Defense official.

Mr. President, there are more than 60 agencies of the Government with responsibility for energy planning—and yet right now we do not have enough gasoline to plow the fields in the upper Midwest. Something must be done to rectify this situation, and I am doing everything in my power to make sure that our farmers and truckers are provided for.

A good illustration of why farmers and transporters of farm goods share a deep uncertainty about the inadequacy of fuel supply can be found in two reports which came over the commodity ticker tape yesterday. At the same time the Agricultural Stabilization and Conservation Service issued the statement I have referred to that there is not a fuel shortage problem for agriculture, the news service reported the threat that Kansas wheat fields may be skipped entirely by harvesting crews, because of the fuel shortages, and that two major railroads serving Missouri have reported a severe shortage of diesel fuel.

Mr. President, I ask unanimous consent that these three statements be printed in the RECORD at the end of my remarks.

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

(See exhibit 1.)

Mr. HUMPHREY. Mr. President, another example of the uncertainty is a letter I received recently from the mayor and members of the council of the village of Ellsworth, Minn. They state that—

There are at least 50 farmers without supplies of gasoline and they will probably have enough fuel to get their corn in, but not their beans and other crops.

Mr. President, I ask unanimous consent that this letter be inserted in the RECORD.

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

ELLSWORTH, MINN.,
May 10, 1973.

In the last week we have been faced with a real emergency due to fuel shortage with the closing of Skelly Oil Company in Ellsworth. We are experiencing an acute gas and fuel shortage in our community. There are at least 50 farmers without supplies of gasoline and they will probably have enough fuel to get their corn in, but not their beans and other crops. No other firm can supply their needs because of the cutback in their allocations to supply only their own customers.

Now as the Council of Ellsworth we think this is very critical because the two suppliers in Ellsworth as of their quotas will not be able to keep up with the demand for month of May. We the Village Council think there is something that can be done to eliminate this situation, not entirely, but something to insure the community that crops are important and with the production needed as now, we need this fuel and think it's a main concern of the State of Minnesota to begin thinking of the welfare of the whole state, not just a few. They should try to get enough fuel into Ellsworth to take care of this production of crops in the community and insure them a fair share in the welfare of the county, state, and community.

VILLAGE COUNCIL,
Ellsworth, Minn.
KENNETH HACKING,
Mayor.

Council men Royce Becker, Lowell E. Colwell, Pat Doherty, and Wendell Loviaen.

EXHIBIT 1

TWO RAILROADS FACE SHORTAGE OF DIESEL FUEL

SPRINGFIELD, MO., May 30.—UPI—Two major railroads serving Missouri reported today they face a severe shortage of diesel fuel.

R. C. Grayson, president of Frisco, said the line expects to be 15 million to 18 million gallons short of diesel this year. He said the railroad normally uses 91 million to 92 million gallons, but anticipates a supply of less than 76 million gallons.

President John Lloyd of Missouri Pacific said his railroad needs 180 to 200 million gallons a year and tries to keep a reserve of 12 to 15 million gallons.

"This year we haven't been able to get reserves as high as 10 million gallons," Lloyd said.

Grayson said the rise in fuel prices are "almost unbelievable, with domestic prices up 20 pc."

Both executives said they are searching for foreign fuel at even higher prices to meet load demands.

CUSTOM COMBINES MAY SKIP KANSAS WHEAT HARVEST

TOPEKA, May 30.—UPI—Kansas Agriculture Secretary Roy Freeland says he is having difficulty in compiling a list of custom combine crews available for the Kansas wheat harvest.

Governor Robert Docking requested the information from Freeland after learning from the Governor's advisory council on energy and natural resources that several combine outfits might skip Kansas this season for fear of being stranded by the fuel shortage.

Freeland said he probably will achieve only a rough estimate.

According to Docking's information, most of the crews normally expected in Kansas wheat fields have indicated they will either work selected portions of the State or skip the State entirely because of the fuel shortages.

ASCS DON'T SEE FUEL AS FACTOR IN AFFECTING PRODUCTION

WASHINGTON, May 30.—The Government has taken adequate steps to assure that fuel shortages this summer and fall will not cause higher food prices, an USDA official says.

"I don't think we're going to be hurt very much by a fuel shortage this year," said Howard J. Simons, who collects reports on farm fuel shortages for the Agricultural Stabilization and Conservation Service (ASCS).

"We're right on the ragged edge on fuel and we can't afford to waste any," he said, but added, "we really don't see fuel as being a factor in affecting the production this year."

Farmers need fuel to power their tillers, tractors, harvesters and almost every other piece of farm machinery, let alone the trucks used to deliver the supplies to the farm and the end product to market.

With most of the attention centered on the effect of the fuel shortage on motorists, little public attention has been given to the fact that if the farmers don't have enough fuel after an already too-wet spring, less food is going to be produced and the price will go sky high.

To forestall that possibility the administration designated farmers as top priority recipients for gasoline and other fuel supplies and worked out voluntary agreements with oil companies so farmers and farm suppliers would receive what they need.

The voluntary program was begun less than two weeks ago, and Simons said yesterday he has received about 100 complaints from farmers and farm suppliers in 21 or 22 States about not getting enough fuel. About 14 or 15 of the most critical ones were resolved quickly, he said.

As an example of the program's effectiveness already, he noted that at the start of the program Michigan was in very bad shape. Some farmers were having difficulty getting fuel to run their tractors, he said. But all are receiving fuel now and "Michigan is pretty much out of the woods," he said.

Most of the reports now are coming from Illinois, Iowa, Missouri, Nebraska and Florida, Simons said. Many of the problems turn out not to be problems at all after the farmer or supplier is told by ASCS that his is a priority need which will be filled.

As a result, Simons said, "no significant production has been lost anywhere on account of the fuel shortage."

He said the critical problem now is the planting. The weather delayed much of the planting in the key agricultural areas of the Midwest.

The next critical need will be in harvesting, crop drying and transporting the product. "That's way down the road and hard to see clearly," Simons said, but he doesn't think the problem would be any worse than it has been.

"There are ways to save in farming operations," Simons said. "I think this is important to be brought to farmers' attention. Make every gallon go as far as possible."

To that end, the USDA advises farmers to put off until after the crisis such operations as ditch cleaning and land leveling and to reduce their tillage operations as much as possible.

To determine just how serious the situation is and may become, the USDA has scheduled a one-day meeting in Des Moines, Iowa, tomorrow to hear from Government officials, farmers, farm suppliers and farm organizations on the effects of the gas shortage.

WATERGATE

Mr. SYMINGTON. Mr. President, every Member of the Senate, as well as anyone else really interested in the present Government problem that comes under the overall heading "Watergate," will be glad to have the opportunity to read an article written by one of the ablest of newspapermen, Walter Pincus, associate editor of the New Republic magazine.

I ask unanimous consent that this article entitled "The Puzzling Prosecution: More Unanswered Watergate Questions," be printed in the RECORD.

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

THE PUZZLING PROSECUTION

(By Walter Pincus)

Within hours of the arrest of five men inside Democratic national headquarters in the Watergate building, last June 17, agents of the Justice Department—the local US attorney's office in Washington, DC and the assistant attorney general of the Criminal Division—took charge of the case. Four individuals were involved: Assistant Attorney General Henry E. Petersen, and Assistant US Attorneys Earl Silbert, Seymour Glanzer and Donald Campbell. Of the four, two had ties to main participants in the matter. Petersen, a career Justice official, had been plucked from the bureaucracy by John Mitchell, a man he admired, and given the presidential appointment as head of the criminal division. Silbert, who worked for years in the US attorney's office, had during 1969 been dispatched to the Justice Department to help draw up the DC crime bill. There he dealt not only with Mitchell but also with John Wesley Dean III, then a Mitchell deputy in charge of Justice's congressional relations. For almost a year, these four, along with Attorney General Richard Kleindienst and former acting FBI Director L. Patrick Gray III, exercised primary responsibility for the investigation and prosecutions, not only of those involved in the Watergate burglary and bugging, but of the financing and carrying out of the Nixon campaign organization's widespread political espionage and sabotage. Since March 21, when convicted Watergate conspirator James McCord, Jr., sent a letter to Judge John Sirica alleging political pressures to cover up the original crime, the prosecutors also have been investigating that side of the sordid affair.

From the start, the prosecutors have been the subject of speculation—speculation over whether they could get to the higher-ups who ordered and directed the crime, but who also were *their* bosses; speculation over whether they, the prosecutors, would be subject to political pressures. This concern was expressed during the first Watergate trial by Judge Sirica, who on several occasions interrupted the prosecutors to press questions of his own, seeking to dig out information that seemed to be ignored by the government lawyers.

Now it appears the prosecutors themselves are under investigation by the Ervin Select Senate Committee. And the appointment of a special supervisory government prosecutor, Archibald Cox, makes it likely that still another review of their work will be made. Though hindsight simplifies what may have been obscure at the time, a number of questions are worth asking in assessing the prosecutorial effort to date.

Who narrowed the scope of the original investigation and why?

In a June 19, 1972 summary, the FBI said it was investigating "whether there is a violation of the Interception of Communications Statutes or any other Federal statutes." In another FBI investigative summary little more than one month later, prepared at the request of White House counsel, John Wesley Dean III, and delivered to him through the attorney general, the "direction of investigation" was limited to possible violations of the wiretap statute, although by then information had been developed indicating possible violations of campaign fund laws and fraud statutes. Justice Department spokesman John W. Hushens said recently that Attorney General Kleindienst joined with Assistant Attorney General Petersen in making that "policy" decision within weeks after the break-in. White House aides John Erhlichman and H. R. Haldeman were by then actively intervening in the case in an attempt to get the CIA to limit FBI investigation of Watergate funds, claiming—erroneously—that clandestine activities would be endangered. However, Hushens says the prosecutors were not to his knowledge influenced in their decision by the White House.

On July 10, 1972, FBI agents in Mexico City were told that a $100,000 contribution destined for Maurice Stans, finance chairman of the Nixon reelection campaign, had come from the account of an "American company with operations in Mexico." Federal law prohibits corporations from contributing to presidential elections; yet this alleged violation was not initially pursued by the FBI, according to Mr. Gray, because the assistant US attorney did not request such an inquiry. Recently a federal grand jury in Houston has begun an investigation of Gulf Resources and Development Corp., from whose account the funds initially came.

Telephone records and bank accounts from August 1971 to June 1972 of Donald J. Segretti, an alleged campaign saboteur hired by the Nixon organization, were examined last fall by the FBI at the direction of the US attorney, but no prosecution was immediately brought. Instead, according to Mr. Gray, "there was never any indication from either the assistant attorney general or the US attorney that there was any likelihood of prosecution of Mr. Segretti." Recently an indictment has been brought against Segretti in Florida and investigations of his activities are reportedly underway in several other states.

Why was the Watergate prosecution so slow in coming to trial?

According to former Acting FBI Director Gray, the main part of the investigation was over by mid-July last year. Gray's successor, William Ruckelshaus and other FBI sources reportedly agree that indictments could have been obtained in late July rather than in mid-September, a date that guaranteed no trial would take place until well after the election.

Was the delay in any way part of a cover-up?

Despite statements that the FBI investigation was the "most thorough since the Kennedy assassination," as alleged by Attorney General Kleindienst during his campaign appearances last fall there is ample evidence the inquiry was hesitant when it approached the White House and the reelection committee.

It was five days after the crime before an arraignment could be agreed upon for FBI interviews with White House staff members. White House counsel Dean was permitted to sit in. The contents of Watergate conspirator E. Howard Hunt's safe, kept in Hunt's White House office, were withheld from the bureau for seven days. Then at least two folders were privately given Acting Director Gray with implied instructions from Dean and Ehrlichman to destroy them.

Assistant U.S. Attorney Silbert agreed to permit reelection committee lawyers to sit in on all FBI interviews with campaign personnel, if they would not "interfere with the questioning." This arrangement continued despite the fact that, according to the FBI's July 21 report, at least some reelection committee employees secretly sought FBI reinterviews without committee lawyers present, and others advised agents they were being given the runaround by Nixon committee officials.

The then treasurer of the Nixon reelection effort, Hugh Sloan, Jr., was given unusual treatment by his Nixon committee colleagues and prosecutors alike. Sloan was troubled by those $100 bills in the hands of the Watergate burglars. He immediately tied the break-in to almost $200,000 in cash—mostly $100 bills—which he had given G. Gordon Liddy, a Nixon committee employee. Sloan had asked Finance Chairman Stans about these disbursements and had been told by Stans, after he checked with campaign chairman John Mitchell, that "you don't want to know" about them. On July 14 FBI agents questioned Stans about the Mexican money; he deferred to Sloan. The agents asked for Sloan; Stans told them "Sloan had resigned two weeks ago." But according to a later deposition by Sloan, he did *not* resign until later *that day*, after Stans told him what he had told the FBI.

Sloan then informed both the U.S. attorneys and the grand jury that it had been suggested to him by Mitchell aide Fred LaRue that he, Sloan, take the Fifth Amendment on his disbursements of cash to Liddy. Deputy campaign director Jeb Magruder suggested that he perjure himself and report a smaller amount, $40,000. Alfred C. Baldwin III, the man who monitored some 200 telephone calls over the bugged Democratic phone, also says he was told to take the Fifth Amendment by Nixon committee lawyers. Nevertheless Baldwin on July 10, less than a month after the break-in, told his whole story to the U.S. attorney and the FBI. With all the other defendants and suspects remaining silent, and neither of the two bugs in Democratic headquarters having yet been uncovered, Baldwin's was the first indication that a wiretap had actually been installed.

His statement was important for another reason. He told the prosecutors of the participation of Hunt and Liddy. And he reported that on the night of the arrests, he had taken to McCord's home and given McCord's wife the receiver—over which he heard the conversations—and the walkie-talkies that he and Hunt had used that night.

McCord, at the time he was arrested, had at least one telephone electronic bug in his possession. During the week McCord was in jail, however, no search warrant was taken out for either his home or his business office. The prosecutors now say they had no reasonable cause to get one. Yet an FBI directive, sent to its Miami office on June 20, suggests a search warrant be obtained to examine McCord's Florida apartment. If investigators had searched McCord's home they would have found $18,800 in cash in his basement along with some $20,000 in bugging transmitters and receivers. When he was released from jail, McCord disposed of some of the equipment by burying it or throwing it in a sewer. Strangely enough, three months later—at the time of McCord's indictment—the prosecutors sought from him and got the receiver and walkie-talkies Baldwin had delivered to McCord's home the night of the arrest. Both McCord and the prosecutors are silent on why all this happened as it did, though it is said to have involved the threat of legal action against McCord's wife.

We don't know today why the prosecutors waited so long to get that material, nor why they didn't ask for any other material. It should be pointed out that around the same time, in September, the Democrats—contacted secretly by Baldwin—turned up the bug on the phone of Spencer Oliver, a party official. The appearance of that bug confirmed that an electronic interception had occurred and could have required the prosecutors to retrieve the receiver. The appearance of the bug preceded the Watergate indictment by about two weeks. There has been speculation that if the Democrats had not uncovered the Spencer Oliver bug, the indictment would have been only a conspiracy to intercept, rather than the carrying out of the act of wiretapping.

Did the prosecutors know of attempts to involve the CIA in the cover-up?

On June 23, 1972 White House aides Haldeman and Ehrlichman—aware even before the FBI that the Mexican checks would lead to the Watergate conspirators—sought to have bureau investigation of those checks blocked by the CIA. On July 6, CIA Deputy Director Lt. General Vernon Walters told Acting FBI Director Gray that there was no clandestine CIA connection with the Mexican money and that it appeared the White House was trying to involve CIA in a cover-up. Did Gray ever pass along that information to Assistant Attorney General Petersen or the US attorneys? Beginning in October 1972, and running through December 22, the Watergate prosecutors sought additional information on CIA assistance given Hunt and Liddy in July and August 1971, when both were working on a project that culminated in the September 3, 1971 burglary of Daniel Ellsberg's psychiatrist's office. A CIA official, who refuses to comment on the cover-up allegations, says these questions in late 1972 dealt mainly with proving there was no CIA involvement in the Watergate break-in. He attributes the special interest of the prosecutors in CIA to "rumors around the courthouse that some defendants would use CIA as a defense."

In his Senate committee testimony, James McCord alleges that it was suggested to him, at just this time on December 21, that he use "as my defense during the trial the story that the Watergate operation was a CIA operation." McCord says he refused to go along with what he termed "the White House . . . ploy," and thereafter, he testified, it was dropped.

What was the background of the press release by Assistant Attorney General Petersen on September 16, 1972?

Twenty-four hours earlier, on September 15, the indictments were brought in the Watergate case. The main defendants were Hunt and Liddy. Senator George McGovern, then the Democratic presidential candidate, called for additional investigation into who had paid for the operation. On September 16 McGovern termed the indictment a "whitewash." Later that day a press release emerged from the Justice Department under the name of Assistant Attorney General Henry C. Petersen (his middle initial is E.), stating that "Senator McGovern's charges are completely unfounded and are a grievous attack on the integrity of the 23 good citizens of the District of Columbia who served on the Watergate grand jury." It went on to say there had been no limits on the investigation "conducted under my supervision" and that it was "among the most exhaustive and far-reaching that I have seen in my 25 years in the department." Justice Department press officer Hushens says he worked the language of the statement out with Petersen that afternoon, while Petersen was attending his daughter's wedding. "We had the information ready to go." Hushens said recently, adding that he saw nothing wrong with a career bureaucrat answering the charge of a presidential candidate. "Petersen may have come up from the ranks but he was a Presidential appointee," he said. Hushens, it might be recalled, traveled with Attorney General Kleindienst when the later performed as a surrogate in the Nixon campaign—with his expenses reimbursed by the Nixon reelection committee.

Why did the prosecutors accept so uncritically Magruder's questionable testimony?

As noted earlier, Hugh Sloan told the prosecutors and the grand jury that Magruder sought to have him testify falsely. Nevertheless the prosecution used Magruder as a key witness. It gave credence to Magruder's assertion that Liddy had been given a "legal" intelligence function, an assertion now known to be untrue. Prosecutor Silbert accepted Magruder's statement that in return for $150,000, Liddy had told him 250,000 demonstrators would show up at the Republican Convention in San Diego, and that that intelligence was critical to the decision to move the convention to Miami. McCord noted both in his Senate testimony and in reports filed with the Nixon reelection committee (and thus available to the prosecutors) that the demonstrator figures for San Diego were given McCord by the internal security division of Justice, and not to Liddy. It also should have been noted by the prosecutors that the GOP convention site was transferred primarily because of the ITT scandal (the alleged payment of $400,000 for the convention), and not anxiety about possible demonstrations.

Two other prosecution witnesses were in conflict on the same key cover-up promoted at the trial—the so-called need for a special intelligence unit run by Liddy. Robert Odle, the Nixon reelection committee's director of administration, testified that McCord was hired because he was plugged into investigative agencies such as the FBI, Justice Department, Secret Service and the Metropolitan Police; and indeed he did receive regular reports from those agencies. Herbert Porter, the reelection committee's director of scheduling, testified that the Liddy operation was necessary because the campaign organization was a private body and therefore could not receive reports from Justice, Secret Service, etc. Porter and Odle testified on the same day!

Perhaps the most damaging point concerning the prosecutors at the trial was a leading question put to Magruder, who was asked if he had ever told Liddy how to conduct his "legal" intelligence gathering. "We were very concerned about being sure that the activities of our committee were handled in a legal and ethical manner," Magruder replied. Under questioning he could not recall what prompted that statement to Liddy though he said it took place in a hallway.

What has been the prosecutors' attitude since the trial?

The prosecutors generally have been critical of the press, citing misleading facts and conclusions based on hearsay. Though they talked of searching for higher-ups after conviction of the original seven defendants, the assistant U.S. attorneys stressed to newsmen that, as they had told the jury, Liddy was the boss. There were no superiors to find. During the pre-trial and post-trial period, they offered, on background, numerous theories as to what had happened; for example that Liddy was a zealot, operating on his own and out to make points with Nixon associates. At one time there was even a suggestion put forward that Liddy had stolen $16,000 to finance the operation. A lawyer for Democratic National Committee employees who were wiretapped says chief prosecutor Silbert told him that Hunt was doing the bugging for blackmail, not for political reasons at all. In their summary the prosecutors alleged that McCord was in it for the money—and in trying to prove that they conveniently left out the fact that McCord had a tax free $12,000 a year CIA pension. As McCord recently noted in the Ervin hearings, he was being paid at an annual rate of $20,000 by the Nixon committee and received another $8,000 from the Republican National Committee on top of his pension.

Whether they were simply unable to break the case first time around; whether they were simply politically naive; whether they were manipulated by the White House as were the directors of CIA and the FBI—whatever the truth—the prosecutors should be replaced. That should be one of special prosecutor Cox's first moves.

There is no need to rush the new round of grand jury investigation and indictments. Mr. Cox needs time not only to build up his own staff but also to review the investigative work to date and decide what remains to be done. Of all the inquiries in progress—administrative, legislative and judicial—it is the latter, the criminal justice proceedings, that should be the most carefully prepared. Meanwhile the Ervin committee should take a close look at how justice was administered by the prosecutors who had the case from the beginning.

HIGHWAY SAFETY

Mr. BURDICK. Mr. President, an important piece of legislation passed by the Senate this year was the highway safety bill. This legislation is necessary to combat the high incidence of highway accidents. But as vital as this legislation is, more is needed. I refer to the need for each one of us to be concerned for traffic safety. One man in North Dakota, Robert F. Miller, of Fargo, has been vitally concerned, not only today, but for years. An article published August 23, 1936, in the Fargo Forum, a daily newspaper published in Fargo, N. Dak., gives an account of Mr. Miller's "one man campaign against car accidents." That was almost 37 years ago. He still maintains his scrap-

book and, at every opportunity, reminds the motoring public of the hazards upon the highways, with the admonition to drive carefully. He is making his contribution to safety in his own way.

I ask unanimous consent that the article be printed in the RECORD.

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

"SUDDEN DEATH" SCRAPBOOK IS EX-GARAGEMAN'S HOBBY—FARGOAN FINDS IT HARD TO KEEP PACE WITH ACCIDENT STREAM

And Sudden Death was instilled in his mind when he was high school age—

He has seen the pools of dried blood, the shriveled bits of flesh torn off in the crunching of steel automobile bodies that meant sudden or agonizing death or bodies crippled and twisted for life—

He has seen automobiles in which many had their lives snuffed out, not through any fault of the victims but through highpowered, death-dealing machines in the hands of some irresponsible individual or individuals—

He has cringed when he touched the nerveless steel of automobiles, but he had to—he worked for garages and he often had to haul in the wreckage, many times twisted beyond repair.

A SHOE MAN NOW

He is Robert F. Miller, manager of the Metropole Shoe Repair, who now spends his days mending torn foot-gear rather than tangled masses of automobile steel, in which many times the tender flesh of the human body had been equally torn and tangled.

Miller, who since the first time he saw the suffering caused by misuse of automobiles, was deeply affected by the horrors of this grim reaper of the highways.

In what he terms a "one man campaign against car accidents," Miller has made a hobby of collecting pictures and articles from various newspapers and magazines on highway mishaps and placing them in a scrapbook.

CAUTIONS DRIVERS

Another move in his campaign is to caution any driver he sees breaking traffic laws, either on the highway or on city streets.

Looking through newspapers or magazines, Miller watches for stories or pictures pertaining to accidents. His scrapbook gives a vivid and graphic picture of horrors caused by mishaps.

Most emphasis is placed on speed. But he does not forget that alcohol and gasoline don't mix and that carelessness is the cause of much sorrow and pain.

"I'm having a difficult time keeping my scrapbook up-to-date," he declares, "the accidents are coming too fast."

"From the time children are in the lower grades to the time they are graduated from high school or college they should be taught traffic rules, given driving lessons, and the horrors of car accidents should be presented to them," he said. "This would bring about fewer accidents and less grief, I believe."

WORKED IN HILLSBORO

Born and raised in Hillsboro, Miller first worked for a garage in that Trail county town.

An accident that impressed him most was one in which a 2-year-old child was crushed to death.

Miller was 17. He was one of the garage employees sent out on the highway, now No. 81, near Buxton to gather up the tangled wreckage of the two automobiles.

The mishap occured when a small sedan came in off a side road and struck a larger machine amidship. The larger rolled over and the small one was telescoped. Seven persons were involved, five in the small sedan, that could easily have been killed. Luck rode with the other six.

Another one which remains vividly in his mind is a train-car crash north of Hillsboro. Several were killed, cut to bits.

WITH GARAGES 9 YEARS

Miller was connected with garages for nine years, quitting that occupation about six years ago to go into the shoe repair business.

Asked about the article—And Sudden Death, that descriptive writing by J. C. Furnas on the results of two accidents, Miller said:

"It deeply penetrated my mind, although I have seen much of the same thing. To persons who have not seen much of accident results, it must have knocked them cold."

"The Fargo Forum has not been any too strong on many of their vivid accident stories. It is the only way to make people realize the danger that the highpowered cars can cause if improperly handled. We need more of these stories and pictures."

THE SUBSTANCE OF THE GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, I have been speaking before the Senate for almost 7 years urging our ratification of the Genocide Convention. It is pertinent to review the major features of this human rights convention.

Genocide has been defined as any act designed to destroy a national, ethnic, racial, or religious group. Member nations, who are parties to the convention, agree to punish any person committing an act of genocide, committing an act inciting genocide, or engaging in complicity in genocide.

The convention also makes provision for the punishment of any person, be he public official or private citizen, who commits an act of genocide. I would like to point out that the convention intends for each member country to bring to trial individuals who have committed acts of genocide within their territory. The convention does not establish a world court, as some have maintained. It does allow for an international penal tribunal, whose jurisdiction has been accepted by the involved parties, to examine cases of genocide. Such a court would not, however, supersede the authorized courts of any nation.

Article VII states that genocide will not be considered a political crime and extradition should be granted in accordance with the laws and treaties of the countries involved. If there is a question or dispute between any two countries, article IX allows for the dispute to be heard in the International Court of Justice.

From this brief survey of the basic points of the Genocide Convention it is clear that it would be in the best interest of the United States for us to ratify this human rights document. We must go on record as completely opposed to this monstrous crime.

THE SCIENCE OF WEATHER MODIFICATION

Mr. BELLMON. Mr. President, the science of weather modification has been developing for over 30 years, but only recently has the public demonstrated strong interest in using these techniques to prevent drought or modify severe weather. With growing public interest, there has been a corresponding increase in the number of active weather modification programs in widely separated regions of the Nation. Some of these programs are privately financed, others are financed publicly. Some are undertaken as short duration emergency programs, others are of a continuing nature. Some use ground generators for cloud seeding, while others make use of aircraft for this purpose.

Many of these programs have shown conclusively that weather modification has a highly favorable benefit-to-cost ratio, frequently above 10 to 1. Such evidence indicates these scientific techniques hold great potential for improving the economy and quality of life in many parts of the country by enhancing precipitation and stabilizing weather patterns. But there is still much about weather modification that remains unknown to the scientists and these questions need to be answered.

There is great interest and even greater need for a well managed and operational demonstration project in weather modification to test all known scientific procedures and to carefully monitor results so that we can better learn what works, what does not work and how to accurately predict the results of modifying a storm system.

Probably no State has greater citizen interest in weather modification than Oklahoma, where several cloud seeding contracts are now in effect. The Oklahoma State Legislature has recently acknowledged the need and national significance of a controlled operational program. The State legislature expressed its interest in a formal resolution which pledges the support and cooperation of the State of Oklahoma for designation of a site and operation of a controlled program.

Mr. President, on behalf of myself and my colleague from Oklahoma (Mr. BARTLETT) I ask unanimous consent that the text of HCR 1056, enacted by the Oklahoma State Legislature, be printed in the RECORD.

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

HOUSE CONCURRENT RESOLUTION NO. 1056

A resolution relating to weather modification research; expressing legislative intent that it be officially known that Oklahoma strongly favors establishment of a site in this state by the bureau of reclamation for scientific precipitation augmentation; and directing distribution

Whereas, the Bureau of Reclamation is interested in the selection of a suitable site for an experimental program to test the scientific concepts of precipitation augmentation; and

Whereas, there is general local interest in precipitation augmentation because of need, prior experimentation, educational programs and operational activities; and

Whereas, the Bureau of Reclamation's prior activities in Oklahoma met with general acceptance and the National Oceanographic and Atmospheric Administration has a severe storms laboratory in Oklahoma.

Now, therefore, be it resolved by the House of Representatives of the 1st session of the 34th Oklahoma Legislature, the Senate concurring therein: That the House of Representatives and the Senate of the State of Oklahoma express their interest in and support for an experimentation program in precipitation augmentation by the Bureau of Reclamation that the Governor, the Oklahoma Water Resources Board and other state agencies extend their cooperation to the Bu-

reau of Reclamation in selecting and operating a site for such experimental operations in Oklahoma.

That copies of this Resolution be sent to the Bureau of Reclamation, Dr. Archie M. Kahn, the Honorable David Hall, Governor, the Oklahoma Water Resources Board, the State Department of Agriculture, the Civil Defense Agency, the Governor's Advisory Commission on Weather Modification and the Oklahoma Congressional Delegation.

Adopted by the House of Representatives the 15th day of May, 1973.

REESTABLISHMENT OF GUILT

Mr. BROCK. Mr. President, columnist Jenkin Lloyd Jones had a remarkably perceptive and thought-provoking column, which appeared in the Washington Star last week.

It deals with the subject of guilt, and expresses some very cogent arguments with regard to the potential consequences to a society which allows itself to stray from a belief in individual responsibility for individual actions.

I have long felt that the general philosophical trend away from this belief was an underlying cause of a wide range of social problems in the United States today, and I believe that Mr. Jones' well-considered article deserves the attention of my colleagues.

Accordingly, I ask unanimous consent that it be printed in the RECORD.

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

REESTABLISHMENT OF GUILT

One of these years, before the jungle grows completely over the temples of civilization, Americans may have to rediscover guilt.

Good old go-to-Hell guilt.

Guilt is the sour taste you get when you know you've done badly. Guilt is the pointed finger of society. Guilt is the hand in the cookie jar—or the cash till—that evokes an appropriate response. Guilt is the cry, "Father, I have sinned," and the gut feeling that it's time to hit the sawdust trail.

Now, of course, Puritans and Victorians and prissy people of all eras have overdone guilt. John Bunyan feared that he might be damned for his love of ringing church bells. Cotton Mather slavered over his public denunciation of the girl "who spent the night on a frigate." To many frigid 19th-century ladies, intercourse for any other purpose than procreation set you back 10 spaces in the heavenly parchesi game.

And so here came Sigmund Freud, and he told us that the reason for a lot of misery and breakdowns was because we hadn't been able to come to terms with the animal within us all. And he was probably right.

But because Freud tried to explain why we act as we do, many of us seem to have gone on to the more dubious assumption that anything we do is justly explained away.

We have been deep in the age of alibi.

Not long ago Tom Wicker of The New York Times hit out at law-and-order demanders by explaining once more that crime in the cities was the result of deprivation.

He neglected to explain how it was that the children of people who had lived with reasonable peace and order under real agricultural peonage were turning his city's streets into tiger walks in spite of record outlays for education, uplift and direct relief payments.

More than half a century ago Vachel Lindsay wrote:

Good old preacher in the slums of town
Preached at a sister for her velvet gown.
Howled at a brother for his lowdown ways,
His prowling, guzzling, sneak-thief days.

There's not much of that preaching any more. To charge wrongdoers with wrongdoing is unthinkable in many theological seminaries. Instead, it must be the hard-working, conscientious, law-abiding taxpayer who is tagged for his bigotry, his ungenerosity, his callousness to the disadvantaged, and, therefore, his responsibility for crime.

This type of thing has been going on long enough to reveal a counter-trend. Pulpits filled with bleeding-heart, explain-away-sin preachers are facing diminishing congregations, while old-fashioned fundamentalist sects, which hold that each man remains responsible to God for what he does, are flourishing.

In short, the philosophy of the alibi is not working very well. The more one dwells on the rationale for misbehavior, the more misbehavior seems to increase.

A few years ago two California psychiatrists, Drs. William Glasser and G. L. Harrington, came up with what they called "reality therapy" at a state reform school. They were kindly and understanding, but they bore down on the thesis that no-nos were not maybes. Wrote Dr. Glasser:

"We have met too many fouled-up youngsters who have never had to face their principles in therapy, because traditional therapy requires not that they exercise their values, but only that they understand causes. If everyone working with a delinquent child holds him responsible to himself for what he does the child soon learns the pleasure of doing well and getting credit for it."

Guilt ignored does not necessarily go away. Instead, it often festers. A child is usually bright enough to understand his misbehavior. The quick swat to the britches redresses guilt and tends to clear the air. But the child of weak or permissive parents must live with his guilt, and where they and society, in general, offer no response he is likely to develop contempt for both.

As one juvenile probation officer put it: "Much serious law-breaking among the young is masochistic desire to seek punishment that has been denied."

The concept of sin, not directed at the bystander but at the sinner, is essential to any orderly and productive society. If you embrace the theory that the transgressor is helpless before forces beyond his control then, of course, there is no guilt.

But civilization is measured, not by the right of a man to do as he pleases, but by the freedom of a man from depredations by other men. When restraints, moral and legal, vanish and nothing stands between him and the predators but the strength of his own arm, then we are back to the jungle.

A LOOK AT THE MIDDLE EAST

Mr. BIDEN. Mr. President, Dr. Allen Pollack, a history professor at Yeshiva University in New York, has written an article, published by the American Enterprise Institute, on the Middle East. It is an incisive piece and gives a lucid picture of some problems involved in the Arab-Israeli conflict.

The article lists three major conflicts going on in the Mideast. They are: the continued war between Israel and the Arab States, the involvement of the Great Powers in the dispute, and the internal warfare inside the Arab world itself.

An interesting observation Mr. Pollack makes is that "in the Middle East, Israel plays the same role that the Jews traditionally played in Eastern Europe. It serves as the scapegoat for the domestic problems of the society in which it lives."

One of the most interesting discussions in the article is that of the role of the Soviet Union. Mr. Pollack feels that the Arabs could not continue their war effort without the help of the Soviet Union. The Soviet Union's assistance does not stem from pure motives, Mr. Pollack says, but rather from its desire to achieve total control over the Middle East. The main goal of the Soviet Union in this area has been to eliminate the Western presence in this area. Thus, there is really no inconsistency in its supporting the establishment of the State of Israel, and then their switching to an anti-Israel policy. Both moves were intended to get the British out of the Middle East—first from Israel and then from Egypt.

The Middle East conflict is today, as it has been for years, a volatile and confusing situation, and Mr. Pollack's article helps shed light on some of the underlying causes of the conflict. It is worth reading.

Mr. President, I ask unanimous consent that Mr. Pollack's article "A Just Peace in the Mideast" be printed in the RECORD.

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

A JUST PEACE IN THE MIDEAST

(By Allen Pollack)

In seeking to clarify the most important issues involved in the Middle East, at least three major conflicts in the area should be traced.

The first, and of course, the most familiar of these conflicts is the continued state of war between Israel and the Arab states. The conflict is bitter and genuine rights are involved on both sides. Interestingly enough, however, the outstanding points of this conflict, which is primarily a dispute over territory, could lend themselves fairly easily to compromise. The Security Council Resolution of November 22, 1967 contains the outline of the most feasible settlement. Unfortunately, such a solution is unlikely to come about, because these issues involving territory, the Arab refugees, the city of Jerusalem, or navigation rights through international waterways are but the surface reflections of the more basic forces which underlie the conflict.

The fundamental question is still whether the Arab states are ready to accept the existence of a viable Jewish State of Israel as an equal in their midst. So far it remains a fact that they are unwilling to face reality—they are unwilling, in spite of three humiliating defeats in 20 years, to give unqualified acceptance to the fact of the existence of the sovereign State of Israel. Their unwillingness reflects their deep-seated resentment of what Israel represents in their eyes. It also reflects their frustration and bitterness at their inability to solve the anguishing problems which beset their own societies, as these societies are being forced into a process of dramatic change and social transformation. These processes are more important to the future of Arab society than is any basic clash of nationalisms, such as that which the Arab-Israeli dispute also reflects. This helps explain the continued unwillingness of the Arab states to entertain any compromise in their fundamental opposition to the legitimacy of Israel's existence.

In recent years, the Arab-Israeli dispute has become more complicated with the emergence of Palestinian nationalism. There are now two components to the conflict, related though separate. In the straightforward dispute between Israel and the Arab states the outstanding issues still lend themselves to fairly easy resolution. However, the dispute between Israel and the Palestinians may be much more difficult to resolve if Palestinian

nationalism develops only in an extremist form, as is the case at present—if, that is, no alternative force representing the true interests of the Palestinians emerges to the present guerrilla groups, who define their *minimal* demands as including the dissolution of the State of Israel as presently constituted. In spite of the depth of feeling involved, the Arab-Israeli dispute is actually less important in the Middle East context as a whole than the other conflicts with which it has become intertwined.

The second major conflict in the Middle East concerns the very reason why the area is both so prominent in the news and so menacing to world peace. The Middle East has become the newest and most volatile front, reheating the cold war between East and West. The world can tolerate, as it has in the past, festering wars between small nations. But it cannot survive direct clashes between the Great Powers. This is the war that must be defused, for it contains the threat of potential global destruction. Because of Great Power involvement, the Arab-Israeli dispute has remained unsolved. Because of Soviet actions in recent years, the stakes have been raised, and the issues now far transcend regional considerations.

The third major conflict in the Middle East is the incessant internecine warfare going on inside the Arab world itself. This state of affairs also serves to clarify the Arabs' continued intransigence on the issue of Israel. It is also one of the reasons why the Soviet Union has been able to penetrate into the area so swiftly and easily. These constant internal convulsions are the Middle East variation of the overall struggle for modernization in the underdeveloped world. They reflect the effort of an undoubtedly great people to make the basic social, political, economic, and even cultural changes necessary to transform their societies into modern nation states.

Within the context of struggle and change the rulers of the Arab world have used war with Israel as a means of maintaining themselves in power. To some, the State of Israel has become a convenient excuse for their inability to solve their own domestic problems. To others, it has become the focal point towards which they seek to divert those forces threatening revolutionary change. To all the Arab leaders, Israel has come to serve as a means of uniting a people otherwise deeply rent by splits and fissures. Hostility towards Israel also serves as a foil for their frustrations at their own inability to reach out of their own backwardness. Ironically, in the Middle East, Israel plays the same role that the Jews traditionally played in Eastern Europe. It serves as the scapegoat for the domestic problems of the society in which it lives. Arab antagonism is stimulated and sustained for reasons which have little to do, intrinsically, with Israel itself. For their own reasons, key groups in the Arab world wish to maintain the state of war with Israel. They need the war and therefore they will not end it; and changes threaten and beset the Arab states, the need will continue.

Ultimately, however, as the process of Arab national and social transformation continues, basic stability in a new societal context, will come to the Middle East. Once the threat of internal upheaval is past, there will no longer be need for a scapegoat. At that point the present posture of hostility and intransigence of the Arab states can be expected to dissolve, and compromises on the outstanding issues in the Arab-Israeli dispute can be implemented.

While the ultimate prospects for Arab-Israeli coexistence may be good, the immediate prognosis seems to indicate an indefinite continuation of hostilities. But though the Middle East today presents a basic threat to the peace of the world, the issues must not be confused. It should be clear that only the parties directly involved in a particular struggle can resolve it. Only the United States can meet the Soviet challenge, and in this way reduce the danger of a world conflagration. Only the Arabs can ultimately solve their own internal dilemmas—and in whatever form proves to be acceptable to them. Only the Palestinian Arabs and the Israelis can ultimately resolve their conflict in a form that will be meaningful and lasting for both peoples.

The danger is that the wrong issues will be settled by the wrong parties. It is dangerous to fight a proxy war, and equally dangerous to attempt to impose a proxy peace, and the world has witnessed both in the Middle East in recent months.

The solution to the Arab-Israeli conflict may well be a long-range goal. Great patience is required, as well as the realization that efforts to force a settlement, no matter how well-meaning, could actually prove to be counterproductive. The world may have to accept the fact that until the internal conflicts within the Arab world itself are resolved, the Arabs will not be ready to make peace with Israel. Unpleasant though this fact may be, it can be accepted if the proper conclusions are drawn from the situation: first, that Israel must be kept strong enough militarily to contain the Arab threat until such time as the Arabs are ready to make peace, and second, that the Great Powers must act effectively to remove the Middle East from the global confrontation in which they are engaged. In this way, the danger that the Middle East holds for the world as a whole could be reduced, and the ultimate solutions to the problems of the area could be allowed to evolve.

It is essential to realize that the very existence of Israel and its staggering and continued successes have been a traumatic experience for the Arabs, and something to which they have not yet been able to adjust. The Arabs have been beset by turmoil and have been trying to adjust themselves to the modern world's demands since the turn of the century. Nationalism, engulfing the Arab world, led the Arabs to fault their own weakness as the product of foreign rule and oppression. The triumph of the movement of national independence for most of the Arab states came after World War II. But with its triumph came the unpleasant realization that national liberation, without social and economic transformation, could not solve basic national or social problems.

The Arab states today are in the throes of social upheaval, economic change and national reorientation, and these conflicts and agonies are unceasing. There are conflicting ideologies, antagonistic movements and opposing nationalist programs. The Arab states are contesting for power, competing for loyalties, and bitterly hostile to one another. The Arab world is witnessing the destruction of its traditional society and is suffering from countless problems in its uncertain path towards some new form of society. The creation of Israel, as a Jewish state, is a challenge to the national sensibilities of the Arab world at a time when it is still groping for the form its own national identity will take. Israel's emergence as a modern, Western state is a challenge to the sensibilities of the Arab states still seeking to find their own path to modernity. They are unable to destroy this challenge and unwilling to accept it.

By its very nature, modernization is a destabilizing process. An inevitable byproduct is great internal dissension and unrest, as the existing social and political structure is split and torn off, made vulnerable to groups competing for supremacy and power.

It is a truism that the ruling elite in any society seeks first and foremost to remain in power. The constant struggle with Israel has proved a useful tool to the present leadership of the Arab states as that leadership seeks to preserve its position in the face of rampant instability.

Hatred of Israel also serves as a unifying factor in this period when so many forces encourage confrontation and disintegration. The consequence of the struggle with Israel can be used to mask domestic failures, or to divert threatened revolution. These factors are equally valid in all the Arab states, irrespective of the social system in power.

In the traditional Arab societies, the main interest is to stave off the threatening revolution. King Faisal of Saudi Arabia, thus, gives large sums of money to the Palestinian guerrilla groups, although these groups proclaim themselves to be dedicated to solve revolution and are openly contemptuous of the society he is trying to preserve. Faisal knows, however, that as long as the Palestinian guerrillas continue to focus all radical interest on the destruction of Israel, they will not be preoccupied with the overthrow of the Saudi regime. Similarly, Faisal is ready to give money to Egypt to enable it to continue the struggle with Israel. The longer Egypt is involved with Israel, the less is the danger that some form of Nasserism will threaten the internal stability of Saudi Arabia. The traditional societies then, have a vested interest in keeping the conflict alive, lest they be swept away in the social revolution which would inevitably follow its conclusion.

For the so-called radical states, the problem is more complex. It is relatively easy for groups seeking change in the traditional states to identify all societal ills with the ruling class and to be convinced that overthrowing the existing social order would automatically result in the necessary basic changes. But in many countries the "revolution" occurred, changes were made, and still the basic problems remained. The radical states thus face the problem of satisfying the expectations which their revolutions awakened but have not been able to fulfill. President Nasser, after several years of attempted reform in Egypt, embarked on a program of foreign adventurism, Pan-Arabism and war with Israel. His purpose was, in part, to divert the attention of his people from the unfilled hopes of the revolution, in part to seek control of the oil-rich lands in order to gain the financial resources necessary for the modernization of Egypt, in part to find a scapegoat for his failures. Israel still serves as such a scapegoat for the radical states, which are beset with the danger of still further revolution.

Israel, in short, serves to maintain the power of the existing elites in both inter-Arab and intra-Arab disputes. She then must pay the price for the instability of the Arab world in whose midst she finds herself, and the price is to live in a constant state of war.

Underdeveloped countries are not only extremely conscious of their own instabilities, but hypersensitive to any allusion of their inferity to the more developed nations of the world. They have a great need to reassert constantly their status of full equality in the world of modern nation states. This phenomenon is, to an extent, universal. Many have noted the seeming impropriety of the new states of Africa and Asia which have limited sources of income but which nonetheless spend large sums on questionable projects, such as national airlines or government buildings or chauffeured limousines for their officials.

Yet these projects serve to bolster their self-esteem and symbolize their equality to the other nations. The Arabs tend to have the same sensitivity, perhaps particularly so because they are a great people with a great history and a justifiable sense of pride in their past glory. They feel bitter towards the West in general, on whose past imperialist rule and present economic exploitation they blame their backwardness. Much like

other underdeveloped peoples, they relish any opportunity to show their strength vis-á-vis the Great Powers, and react negatively to any indication of the inherent weakness of their present situation.

This is why the Arab world was so pleased when Nasser "told off" the United States. All Arabs could hold their heads higher when the President of the U.A.R. informed the American government that it could "keep its aid." Similarly all Arabs could vicariously participate in the thrill of seeing Nasser playing off the Great Powers against one another throughout the late 50s and early 60s. Not Nasser alone, but all Arabs rose in their own esteem at the sight of the major world leaders arriving to woo the mighty Nasser. The central role of Nasser in the nonaligned bloc also was noted. While much of this might have been just show, the show itself was important. It was important psychologically.

Equally important to the Arabs is the necessity of avoiding any indication of their real weakness and backwardness. Israel, by its very success, is a constant humiliation, a constant reminder of what the Arabs are not—in spite of all their hopes, in spite of all their dreams, in spite of all their pretenses and in spite of all the self-deception and self-delusions. Israel is a scar upon their self-esteem which they cannot erase and, therefore, they pretend it does not really exist. For this reason the Arabs have made such an important point of ascribing Israel's military victories to Great Power intervention: Soviet support in 1948–49, British and French intervention in 1956, and the great hoax of the U.S. Air Force intervention in 1967. If the Great Powers had really been involved, then the Arab defeats would be understandable. To the Arabs, public acceptance of defeat by Israel would, of necessity, be public confession of basic weakness—and they cannot psychologically overcome this barrier.

In the same vein, the Arabs make a great issue of stating they will not negotiate while their land is occupied. Of course, as many have indicated, this is precisely the normal pattern of behavior, followed throughout history, whenever the armed forces of one state defeat those of another. However, if the Arabs succeed (as so far they evidently have) in not negotiating directly with Israel, then they can continue to maintain they were not defeated.

Arab obsession with self-image is still crucial. Israel, by its physical existence, simply does not allow the Arabs to live in the dream world to which they have become accustomed. It is a constant reminder of the real world, a world that is too painful for the Arabs to acknowledge. Every Israeli success is an Arab humiliation. Israel has drained the swamps, irrigated the deserts, industrialized the land and educated the people. The Arabs, faced with these same problems, have not been so successful in resolving them. It is so much easier to try to explain away Israel's success than to recognize Arab weakness.

The Arabs are bitter about their fate and frustrated by their inability to solve the profound problems which beset them. They fear the West, yet stand in awe of its technology, power, and achievements. To them, Israel represents the West. The Arabs wish to be modern and yet are afraid of losing their unique identity if they modernize. And Israel represents modernity personified, and with a unique identity as well. Israel represents, in short, much of what the Arabs aspire to become, are afraid of becoming, wish to become, and do not know how to become.

The Arabs have constructed a terrible image of Israel: It has been made the focus of all the fears and frustrations which beset the Arab people. As their difficulties and frustrations grow, so does their antagonism toward the Jewish state. To many Arabs, Israel has become the epitome of their own inferiority, the symbol of their discontent, and the cause of all their problems. Too many have made of Israel a test, identifying self-esteem and global equality with their ability to destroy the symbol of their current misfortunes—Israel.

Therefore, the Arabs do not wish to recognize Israel—or to negotiate directly, or to sign a peace treaty, or to reach any kind of meaningful settlement. They view such a process as the ultimate humiliation and as the unveiling of their own weakness. The danger to the Arab states is not Israel itself but what they have made Israel represent.

With the modernization of the Arab world will come economic changes that will enable the Arabs to meet the needs of their own peoples. When the Arabs have solved their own problems, they will no longer need to resent the achievements of Israel. When their own self-image is raised, they will no longer feel inferior to Israel—or envious. Not long ago a leading advisor to Nasser indicated that even if all the political problems between Israel and the U.A.R. were settled, there still could not be normal relations between the two countries. Why? Because given Israel's economic and technological superiority, it could easily dominate the Arab world. When the time comes that the Arabs are secure enough in their own ability to withstand peaceful competition with Israel, such fears will no longer exist.

When Arab nationalism has reached its full development and a new form of Arab national entity is created, the Arabs will no longer see Israel as a threat to their own identity as Arabs. It is too early to foretell whether Pan-Arabism will triumph with one united Arab State, or whether the alliance between the U.A.R., Libya, and Sudan will turn into a new union, or whether a Fertile Crescent state will emerge. As long as Arab nationalism is in flux, Israel is seen as a major block to the achievement of Arab unity. If the Egyptian claim to Arab leadership is stabilized, then Israel will no longer appear as a threat to Egypt's ambitions in the eastern half of the Arab world. Once the Arab national revolution has run its course, then Israel will sink back to its true perspective: a small piece of territory in the vast Arab sea.

Until the time comes when Israel no longer is a symbol to the Arabs but just a country, no solution is really possible to the Arab-Israeli dispute. All the world can do is try to defuse the danger which this dispute entails. Israel must be kept militarily strong so the Arab states cannot destroy her; Israel must be kept viable until the time comes when the Arabs no longer need to destroy her.

In recent years the growth of Palestinian nationalism has added a new and complicating dimension to the problem. For 20 years the Arab states used the Palestinians as a pawn in their battle wih Israel. The defeat of 1967 led to action by Palestinians independent of and in some cases contrary to the wishes of the host Arab states in which they lived. Whether Palestinian nationalism need have evolved at all is questionable. Had the Arab states treated the population displaced by the 1948–49 war with the magnanimity that might have been expected, the problem of the refugees could have been solved with the integration of these people among the Arabs in the U.A.R., Jordan, Syria, Lebanon, and/or Iraq. By keeping them separate, by using them as political pawns, and fostering hatred of Israel among them, the Arab states have become the midwives of a unique Palestinianism. Today there is a Palestinian nationality which demands its self-determination and its own homeland. Most probably this demand for self-determination is as much a reaction against other Arabs who did not accept them as equals as it is against Israelis whom they blame for their homelessness.

In spite of the seemingly intractable problem of two peoples claiming the same land, the problem of the Palestinians could also be solved if there were readiness to seek a true solution, rather than to make use of the difficult situation. Mandated Palestine comprised all the land of present day Israel and Jordan and most of the territory occupied by Israel in the 1967 war. The Arab refugees have not lost their homeland—there never was a Palestine. An Arab Palestine was envisioned in the partition plan of 1947. Arab opposition to this plan precluded this state from being created. Actually, the vast majority of the Palestinians today are still living in Palestine. Many of them have merely, in fact, moved from one section of former Palestinian territory to another—some within the West Bank, some from one side of the Jordan to another. All this territory can, however, be considered part of the "Palestinian homeland." If the readiness existed, there would be a possibility of creating an Arab Palestine in addition to a State of Israel.

The problem remains that no responsible Palestinian leadership has evolved to give expression to aspirations of the people. The guerrilla groups, to date the only meaningful exponent of Palestinian nationalism, demand the elimination of the State of Israel. When Palestinian leaders evolve who are ready to accept a solution that is reasonable although less than their total demands, a territorial compromise can be reached between Israel and the new Palestine. As long as Palestinian nationalism remains only in an extremist form its demands can never be achieved. It serves only to exacerbate an already difficult problem. Almost all the nationalist movements in history have had to compromise on their maximalist demands in order to realize and legitimize their national aspirations. This was true of Jewish nationalism, and it will one day be true of Palestinian nationalism.

But here again, only time and change will lead to the necessary results, which are a prerequisite for coexistence and peace in the Middle East.

The Arabs need and want to live in a world of illusion, maintaining their stance of hatred of Israel and perpetuating their hostility. It is only, however, the actions of the Soviet Union that have enabled the Arabs to continue this policy. Without the intervention of the Soviet Union, the Arabs would long since have had to come to terms with the reality of the Jewish state in their midst.

A differentiation must be made between the goal of the Soviet Union in the Middle East and the means and tactics it is using to achieve this goal. The Soviet Union exploits the Arab states' resentment of the West, and enjoys the fruits of Arab hatred of years of colonial misrule and economic exploitation. The rising Arab intelligentsia is especially bitter about this exploitation. The Arabs also blame the West for "imposing Israel on them" and for supporting the Israel which to them is so disastrous a symbol. The Soviet Union makes use of this antipathy, but the Arab-Israeli conflict is only a means to a much greater end: control of the entire Middle East and, through that control, a radical shift in the world balance of power.

The Soviet Union is, in fact, following the traditional pattern that other great powers have utilized. For 30 years, Great Britain made use of Arab-Jewish conflict in Palestine to maintain and strengthen its position in the Middle East. French policy, dating back to before the 1967 war, has been to support the Arab states as a way of ensuring increased French influence in an area from which France had been effectively eliminated. None of the Great Powers has operated in this area from pure motives, and the nations of the Middle East have suffered from the fact that each of the Great Powers has made use of the Middle East and its prob-

lems for its own selfish ends. Certainly today the problems are exacerbated by their involvement. The best solution for the Middle East, though unfortunately an illusory one, would be for the Great Powers to withdraw from the Middle East. Since such an eventuality is unlikely, it can be understood that the Soviet Union, as any other Great Power, would seek to achieve its own national interest to the greatest extent possible.

Only recently it might have been argued that the basic goal of Soviet policy was primarily defensive: to get the West out of areas where it has been well entrenched and to keep the West out of areas where it has already been expelled. It now seems clear, however, that the Soviet Union has embarked upon a strategy that seeks preeminence for itself in this area. As a result of its present politics it could gain further control in some of the radical Arab states, perhaps even leading to eventual sovietization. The Soviet Union could further the radicalization of some Arab states (Jordan and Lebanon) and work towards the overthrow of those states which are still basically pro-Western (Saudi Arabia and Kuwait). Continuing to make use of the Arab-Israeli dispute, with all the turmoil and social unrest rampant in the Arab world, the Soviet Union hopes to bring about the eventual elimination of all Western influence in the Middle East and replace it with Soviet-supported regimes.

Should this goal be achieved and the Soviet Union attain effective control of the Middle East, it would then be in a greatly strengthened strategic position in global terms. Europe would be outflanked and the U.S. Sixth Fleet placed in a most untenable position. The Soviet Union would be able to exert political blackmail on Western Europe and Japan, both of which are dependent on Middle East oil.

Effective neutralization of these areas would result in the U.S. being forced to return to a "fortress America" concept, while the effective balance of power in the world would shift in favor of the Soviet Union.

Since the stakes are high, it should be understood, that the Arab-Israeli dispute is of vital interest to the Soviet Union. However, the Soviet Union has no intrinsic interest in the merits of the dispute itself, only in prolonging it indefinitely. It should also be noted in passing that while the Soviet Union is not really interested in the destruction of Israel (since this would remove a major cause of Arab antipathy to the West) it might well be prepared to tolerate such an eventuality if this would further its policy of seeking basic control of the entire Middle East.

Hitherto, the balance of power in the world has rested, since the end of World War II, on the knowledge that each of the two Great Powers would be prepared to act if the fundamental balance were challenged. Today, the Soviet Union is embarked upon precisely such a fundamental challenge in the Middle East. President Nixon's statement of July 1, 1970 seemed to indicate that the administration recognized the challenge. However, American policy in the past year has not been consistent with such recognition, and Soviet policy seems to have been predicated on the assumption that the United States was so involved in Vietnam and so torn with internal tensions that it would not stand firm in the Middle East. America's hesitancy in supplying arms to Israel, as one example, has seemed to confirm such an analysis.

In fact, the Soviet government could easily have interpreted American policy as seeking to avoid a confrontation *at all costs*. If a global confrontation is to be avoided, clear and direct action by the United States must be taken to convince the Soviet Union that we will not, as President Nixon has indicated, allow the Soviet Union to achieve complete domination in the Middle East. The issue has really nothing to do with the Arab-Israeli dispute as such. The Soviet Union, as it has done periodically since World War II, is seeking control of an area basic to vital U.S. interests. Continuation of an indecisive U.S. policy in the Middle East may well lead to an immediate disaster for Israel, but the ultimate disaster will be to the United States and to the peace of the world.

The Soviet Union has made such good use of the Arab-Israeli dispute because it has no natural links that would enable it to establish effective ties with the Arab world. The natural trading partners of the Arabs are in the West. The Soviet Union is an oil and cotton exporting nation and, therefore, it does not really need the commodities which are the leading products of the Middle East. Its ties to the Arab world, then, are actually an economic liability. The Arab states need technological assistance to help them overcome the problems inherent in the struggle for modernization. They would prefer to deal with the West, which has more to offer them in terms of such assistance. Since the West needs what the Arabs produce and has what the Arabs want, logic would predict that close links would exist between the Arab world and the Western nations. It is only the Arab antipathy to the West and the existence of the Arab-Israeli dispute which enables the Soviet Union to overcome these natural drawbacks and establish effective ties with the Arab states.

Control of the Middle East has been a historic goal of the Russian state. For hundreds of years, Russian leaders have dreamed of reaching the Mediterranean and achieving warm water ports. Throughout the 19th century a prime objective in British foreign policy was to block Russia from this goal. Through their relations with the Arab states, the Russians have now bypassed Constantinople and have finally achieved the goal of establishing themselves in the Mediterranean basin. Soviet policy, then, can be seen in part as a continuation of a basic trend which has existed over long periods of time.

In addition, Soviet Middle Eastern policy can be understood in terms of how it serves the defensive needs of the Soviet Union. After fighting two disastrous wars in which it lost almost 50 million people, the Soviet Union emerged from World War II determined that never again would its border lands be used as a staging area for potentially hostile forces, Eastern Europe was therefore secured.

Communist victories in China and Soviet establishment of North Korea served this purpose in Asia. Only in the Middle East did Russia fail, in the immediate aftermath of World War II, to eliminate potentially anti-Soviet regimes from along its borders.

Therefore, since World War II the main goal and major interest of the Soviet Union in the Middle East has been to eliminate the presence of the West and/or regimes which tolerate or authorize the Western presence in this area so vital to Russia's security. And Russian policy has been amazingly consistent in following this goal.

Thus, in 1947–48 Russia supported the establishment of the State of Israel as the best means to eliminate the British from Palestine. British Palestine, at that time, was the single greatest Western presence in the Middle East. Soon after, the Soviet Union shifted to an anti-Israel policy in order to get the British out of Egypt and to ingratiate itself with the Arab peoples.

There is nothing contradictory in this shift from a pro-Israel to a vehemently anti-Israel position. The goal was and remains the same—to eliminate the Western presence in the Middle East. The Soviet Union has followed and will follow whatever techniques are best suited to achieve this goal.

The United States, under the leadership of former Secretary of State John Foster Dulles, sought to replace Great Britain and, through the Baghdad Pact, to build up Iraq as an anti-communist bastion along the "northern tier." This was essential to his effort to bring the Middle East directly into the global policy of containing communism. It was logical for the Soviet Union to respond to this attempt to thwart its policy, this challenge to its vital security interests as it saw them. Establishing links with Nasser was the means selected for challenging Dulles' efforts. Given the history of Egyptian-Iraqi competition for supremacy among the Arabs and Egyptian efforts to remove vestiges of British domination, Nasser was receptive to the Soviet attempt. Soviet arms cemented the relationship—thus, the only lasting contribution of the Dulles policy in the Middle East was to make it a major front of the cold war. It has become an increasingly important and volatile front of this war ever since.

Since their main interest is in keeping the West out, the Soviet Union is prepared to support anti-Western governments even if they are not pro-Communist. The Soviet Union, as any great power, seeks to advance its own national interests. If these interests coincide with the interests of international communism, that is an additional benefit. However, the national interests of the Soviet Union are predominant. There are other examples of the Soviet Union's support of regimes which take militant action against local communist parties. The primary goal of Soviet policy in the Middle East today is not to install communist parties in power, but rather to remove any Western influence and to eliminate the possibility of the return of the West to this area. This goal can best be served by supporting and assisting radical regimes in several of the Arab states.

For the past 15 years Soviet policy in the Middle East has met with great success. This, however, is due as much to the reaction of the West to the Soviet policy as it is to any action the Soviet Union has taken. The West has supported the traditional elites in too many Arab states and, therefore, has become overly identified with old regimes which must be changed if the aspirations of the Arab peoples are to be achieved. The economic exploitation of the Arabs, with oil companies taking a disproportionate share of the wealth for their own profit, has furthered this antipathy. Finally, in the Arab-Israeli dispute the West has been identified with the State of Israel, which the Arabs have made the symbol of their own weakness and humiliation. And, interestingly enough, the Soviet Union has succeeded in making most of the Arabs forget that it, even more than the United States, supported the establishment of the State of Israel.

Since the Arab-Israeli dispute remains today the single greatest means by which the Soviet Union strengthens its own position, it has no interest in ending the conflict. Should the Arab-Israeli dispute be resolved, much of the Arab antipathy to the West might dissolve. This would result in increased trade between the Arabs and the West and in strengthened ties. Soviet influence would be limited and Soviet hopes of eliminating the West would be blocked.

The Soviet Union must fear that a large-scale return of Western influence would doom to failure its entire policy of the last 25 years. Peace between Israel and the Arab states, then, would go directly against the vital interests of the Soviet Union as it defines them.

Only two factors might force the Soviet Union to change its policy and give up the great gains which it foresees. The first would be firm American action, since the Soviet Union wishes to avoid a nuclear confronta-

tion. It must be emphasized, however, that American policy to date has not indicated that degree of firmness which would cause the Soviet Union to believe that America is prepared to act, if necessary, to prevent further Soviet expansion.

A second factor that might change Soviet policy could arise out of the potential threat of China. Communist China has been making efforts to gain control over the Palestinian guerrillas. Should the guerrillas become effective Chinese agents and begin to pose a real threat to the existing Arab regimes upon whose survival the Soviet influence rests, then the Middle East might become a Chinese sphere and the southern flank of the Soviet Union would be endangered. Therefore, the Soviet Union is interested in limiting the effectiveness of the guerrillas, to the extent that they can be controlled by the Arab states. Should the guerrilla movement become a real threat to the Arab regimes (except for Jordan, in whose survival the Soviet Union has no basic interest), then the Soviet Union might act to stabilize the situation before these regimes collapsed and Soviet influence with it.

If the United States were to act correctly, the same kind of balance between the Great Powers could be established in the Middle East as has been established in Europe, and the danger of global conflagration eliminated. The Soviet Union and the United States are conducting two-power talks on the Middle East, which is good. But unfortunately, they are talking about the wrong subjects. The United States and the Soviet Union can only effectively agree upon issues which they control. They should be discussing a guarantee of noninvolvement in any new Arab-Israeli conflict, since that is what they are most concerned about. They might also discuss means of stabilizing the Arab-Israeli conflict until such time as the Soviet Union would be prepared to use its influence to encourage a meaningful settlement. If the danger is the escalation of the Arab-Israeli dispute into a Great Power confrontation then this is the danger that has to be met. Any attempt to force a solution of the Arab-Israeli dispute itself would, of necessity, be doomed to failure, since only a basic change in the Arab attitude would permit such a solution.

The realistic options, then, allow us to outline an American policy which would signal the Soviet Union that the United States is prepared to meet the challenge which the Soviet bid for supremacy portends. Once this is done, Israel should be kept militarily strong enough to offset the Arab threat until such time as the Arabs are prepared to live in peace.

As to specifics, it serves little purpose to talk at length about various possible ways of solving the outstanding issues of the Arab-Israeli dispute. Most of the issues could easily be resolved if there were readiness to seek solutions.

The question of Israel's security, for example, could be solved through demilitarization of the Sinai and some special arrangements for the Sharm al Sheikh. The Golan heights could be effectively demilitarized. Most of the West Bank could be returned. A new state might be established, either instead of or in addition to the existing state of Jordan, in order to satisfy the national aspirations of the Palestinian people. Given human ingenuity, arrangements could be made to maintain the unity of Jerusalem (which nobody wants divided again)—and still provide for the religious interests concerned with the city. The refugee problem could be solved through the repatriation of some and the resettlement of others, all within the borders of what was once Palestine. These issues, as already indicated, are but a reflection of the Arab-Israeli dispute and not its cause. When the Arabs are prepared to live at peace with Israel, these problems will be settled. It might also be noted that the United Nations can play only a limited role in any such settlement. When the Arabs are prepared to live with Israel, the two sides will not need the United Nations to bring them together.

And as long as the Arabs are not prepared to live with Israel, no army the United Nations can form is large enough to make them do so.

It also serves little purpose to wax euphoric over the great potential which lies in wait for the nations of the Middle East once peace is attained. It is true that economic relations, scientific exchange and various kinds of technical assistance among the nations of the Middle East would be of great benefit to all the peoples of the area. Similarly, one day, there might be economic confederation and perhaps even political confederation, involving Israel and the Arab states. Only time, however, can bring this about.

To talk of a binational state is the height of ludicrousness. In the best of cases, there are tremendous problems in any binational state. Given the animosity and mistrust which the Arab-Israeli dispute has engendered, a binational state is simply impossible. The truth is, also, that the only binational state the Arabs would be ready to accept is one in which the Jews were second-class citizens in an Arab Palestine. This is the meaning of the "democratic secular Palestine" that the Arab guerrillas have been espousing. It is a guise behind which large numbers of Jews would be eliminated and the remnants would remain as a "tolerated" minority in an Arab land. The Arab peoples, like so many other peoples, have suffered from a by-product of nationalism—the mistreatment of national and religious minorities. Whatever the ultimate relations between the Israelis and Arabs in the Middle East, be they political, economic or cultural, they will be meaningful only to the extent that they come about as the culmination of a natural process of evolution. They cannot be imposed from outside.

The Middle East is beset by many complex problems. Attempts at forcing solutions to these problems, no matter how well meaning, could be disastrous. Only the parties to the conflict can solve the issues of the conflict. Only the United States can meet the challenge of the Soviet Union. Only the Arabs can solve the problems which beset them in a way which they would accept. Only the Arabs and the Israelis can solve the problems which concern them. The world must learn that certain problems may prove to be insoluble and that, therefore, the dangers which these problems present to the world must be avoided while the search for long-term solutions continues. This will no doubt be the fate of the Arab-Israeli dispute. It can and must be defused and stabilized. But only with time and basic changes can it be truly solved.

THE DISMANTLING OF OEO

Mr. McCLURE. Mr. President, in the wake of Judge Jones' injunction to stop the dismantling of OEO, we should pause and take a hard look at the facts. It is unfortunate that an issue of vital importance to so many of our citizens has been debated in highly emotional tones. While it is perfectly obvious that the public relations which accompanied the shift in OEO policy hit an all time low, the Congress, nevertheless, has the job of making a dispassionate evaluation of what the agency has done and what should have been expected of it. We must decide how the taxpayer's dollar may best be used in order to give the less fortunate the most help we can afford.

Theoretically, this evaluation should not be difficult. For once the Congress finds itself in a position where two of its aims—protection of the budget and protection of society's less fortunate people—involve the same actions. Wasting the poor's money hurts the poor most. But we must avoid emotional arguments and use facts and audits if we are to accomplish anything. First, we ought to take a look at the way in which OEO was intended to operate in the first place. The Economic Opportunity Act of 1964 said that OEO was to determine, primarily by research, which new and experimental programs would work. When projects were considered "mature and successful" they were to be transferred to an appropriate agency for continuance. There were no loud cries in 1967 when the Head Start program was transferred to HEW. Although Head Start has since been funded under the Economic Opportunity Act, it has been administered by HEW. The Economic Opportunity Act also provided for the transfer of individual units as well as entire programs. In 1969, a number of health programs went to HEW as they were then considered "mature." A program benefiting the aged was also considered viable and was transferred to social security. Despite the fact that the spinoff concept is not hard to comprehend, previous OEO Director Phillip V. Sanchez found considerable difficulty explaining it to those who could not or would not understand the theory. The office as it was originally conceived was intended to avoid precisely that duplication which later became typical of it.

Two further misunderstandings led to the current confusion. OEO's programs were originally considered as pilots and one of its primary functions as research. Any legitimately operating agency specifically authorized to do research, will, necessarily come up with a significant number of failures. Their identification not only lends the agency credibility, but protects the proper recipients of poverty money. Weeding out failures is as important as establishing the good programs and the identification of either should certainly not be held against the agency doing the research. But OEO followed Parkinson's law instead of the Equal Opportunity Act's mandate, became institutionalized and failed in its object of selectivity, in the interest of building a bureaucracy.

In my opinion, the administration might have clarified its intent by taking a more positive approach to OEO. Congratulating the agency on graduating some of its programs to lasting status might have eliminated the furor that ensued when poor ones were criticized. But regardless of the tone in which people speak, we must still listen to what they say. Probably the best place to look for a dispassionate analysis of OEO's working methods is in the GAO report, "The Need for More Effective Audit Activities." Mr. President, I would like to include a few exerpts from this publication in addition to some of OEO's findings at the conclusion of my remarks. I earnestly hope that the Senators will read them and be guided by the GAO's analysis.

Many people have expressed concern about the phase out of OEO as a funding vehicle. Others are worried about the propriety of the President's reorganization without congressional approval. While congressional responsibility is as important to me as to is to other Senators, I am afraid that if we limit ourselves to this aspect of the argument we are guilty of the same callousness toward the poor, as those at the other extreme who use Federal funds for overt political activity or illegal personal uses. The recipients of our poverty dollars should have first priority in our considerations. It is important to make a distinction between professional poverty parasites and the poor themselves. Most of those who happen to have less than others are not looking for perpetual support from an unseen sugar daddy in Washington. They see their positions as temporary and themselves as needing only the right kind of help in order to join the economic mainstream and earn their own livings. Self-reliance and dignity which are incompatible with the former point of view are certainly consonant with the latter. President Nixon recognized this when he said that people should help themselves. Some, whether maliciously or innocently, have interpreted that to mean that the Nation's poor should fend for themselves, ignored by others.

But this is precisely what he does not mean. By these words the President is acknowledging that desire we all have to be our own masters. And if we happen to be recipients of poverty money we want to be masters of that too. This means that we do not want it paid out to people who sit behind desks and order us around. We do not want it put into fancy offices and underworked staffs. We do not want it filtered through an endless succession of middle men. It has been argued that without OEO we will have riots. Conversely then, these people see OEO as a pacification program. This statement borders on slander. People seeking to participate in economic development do not want to be pacified. They want work. OEO's purpose is to find ways to provide that work. But there is considerable evidence that OEO programs have been doing a good job of keeping the poor poor. The purpose of OEO was not to initiate handouts, for handouts alone perpetuate poverty, but to provide seed money to generate development, and increasingly to involve the private sector, as the programs progressed and became stable. OEO on an overall basis has not come up with an acceptable mobilization rate. Properly managed seed money is expected to generate many times its own amount. Ten to 20 dollars per seed dollar would indicate a normally successful project. But OEO's return has been only 80 cents on the dollar; 75 percent of that is Government cash, 85 percent of which has gone to staff salaries and administrative expenses. There is a certain obvious logic then, to the transferral of the migrant and seasonal farmworkers program, manpower and labor force participation, and the Job Corps to the Labor Department, as there is in removal of alcohol, drug abuse, family planning, health services, and Indian programs to HEW, and the Housing R. & D. activities to HUD. The summary departure of these programs prior to their maturity is probably the only way to save them in terms of doing the poor any real good.

Another bone of contention is the transfer of the CAA's to local control. While there may be a certain initial difficulty in assigning priorities, local control would be a great help in assuring responsibility of the program to those whom it is designed to serve. "No more inaccessible bureaucrats in Washington," should be more of a rallying cry than a tragedy. Any local officials unwilling or unable to accept the responsibilities involved would presumably be replaced.

The facts which follow explain the particular abuses of which the GAO found the OEO guilty. In the face of them it apepars that the demobilization of OEO was a courageous act. And I suppose that courage will be required as long as the transfers are publicized and the abuses are not. Those responsible for the emphasis seem to have forgotten that the poor are the most helpless against these abuses, most subject to the political whims of those handling the money, and utterly without recourse if administrators are incompetent or unfair.

Mr. President, I ask unanimous consent that the material I have previously referred to be printed in the RECORD.

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

COMMUNITY ACTION PROGRAM A SCANDAL-RIDDEN DISASTER THAT HAS FAILED

("This is the essential fact: The government did not know what it was doing."—Daniel P. Moynihan, writing in his book about the Community Action Program, "Maximum Feasible Misunderstanding.")

Since 1964 the Federal Government has spent over $2.8 billion for Community Action operations. While some individual "success" stories exist, there are many more failures.

More important, there is no conclusive evidence that the Community Action Agencies (CAA) have moved significant numbers of people out of poverty. That, basically, is why Federal money for Community Action programs is being ended.

In addition, a whopping 80 percent of all Community Action money is spent on Headquarters salaries and overhead expenses—only 20 percent of the money, if even that, ever makes its way to the poor.

The Community Action Program has been riddled with scandals. Examples:

In Harlem, Montana, a local attorney who was the city attorney of another community received a $20,000 salary as a "tourism specialist."

In Elizabeth, New Jersey, an employee rented a house to the project for $383 a month. He was buying it for $128 a month on a VA loan. A member of the CAA board of directors rented another house to Head Start for $225 a month. He was paying $55 a month to a realty firm for it.

In Las Vegas, New Mexico, the CAA organization provided the organization for a partisan election race by the group's board chairman, and the executive director used staff members to work on his personal residence with materials he charged to the program.

In Fort Lauderdale, Florida, a community action employee and director were convicted of being part of an auto theft ring.

In Canton, Ohio, the project purchased lumber from a firm owned by a board director. One full-time staff member hired his daughter at $300 a month.

In Oklahoma, a regional project purchased a $39,500 building from the brother of one of the project lawyers. Six months earlier, the property had been appraised at $15,200.

In Grand Junction, Colorado, a project attorney used project letterhead to boost the circulation of an underground newspaper in which he had an interest.

In Nassau, New York, all project employees who declined to participate in a "March on Washington" were fired.

In San Juan, Texas, employees were required to kick back part of their salaries to the unemployed board president. Local attorneys were hired for hefty retainers while they worked full time in other organizations. Meanwhile, the board of directors did not meet for an 18-month period and there was no evidence that any poor people, black or white, ever received any services.

In Scottsburg, Indiana, an executive director chartered a private aircraft for personal use and delivered contract work to a relative.

In Yakima, Washington, OEO-funded employees engaged in confrontations with school authorities and also engaged in labor organizing and strike picketing, all during working hours.

In Jersey City, New Jersey, the project was captured by the Black Panther Party which used the organization's funds to spread hate literature and provide bail bonds for party members arrested on criminal charges, including the bombing of police precinct houses.

In Grants, New Mexico, the program paid for dentures for the wife of the community action board chairman, among other unusual expenses.

In York, Pennsylvania, CAA staff members were the subjects of active narcotics investigation by the local police and an associate director was convicted of attempting arson, being apprehended with a fire-bomb at a school.

In Portland, Oregon, the CAA board chairman was convicted of firebombing, as the leader of an arson gang that fired at least seven major structures.

Thus it is clear that the only people who have gained from the Community Action Program are the professional poverty czars who have managed to get fat at the Federal trough while poor people are brazenly exploited by these modern-day money changers. There is no more justification for this scandal-ridden, no-result program. The burden of proof is on those who wish to continue it.

In our evaluation we (1) audited the operations of selected grantees and determined whether the findings revealed by our audits had been reported in the independent public accountants' reports and (2) examined the disposition of expenditures questioned and the actions taken to correct internal control, accounting system, and other deficiencies reported in the independent public accountants' reports.

About 60 percent of over 1,000 audit reports on grantee operations issued in fisca. year 1970 reported no major accounting system or internal control deficiencies. We selected 27 reports from this group for our review.

Of the 27 public accountants' reports, 17 did not disclose what we believe were significant deficiencies in the financial operations of OEO grantees. Some public accountants informally reported such deficiencies to their grantee-clients rather than including them in their formal audit reports. Also, some public accountants were not sufficiently familiar with OEO's special audit requirements covering compliance with grant conditions and allowability of costs. We considered only those grantees which had an audit report showing no adverse comments on their financial operations (unqualified opinion) and which had received a favorable opinion on their accounting systems and internal controls.

DEFICIENCIES IN ACCOUNTING SYSTEMS AND CONTROLS NOT DISCLOSED IN AUDIT REPORTS

Of the 27 grantees, 17 had been operating with what we considered to be significant deficiencies in their accounting systems and/or internal controls that had not been reported in the public accountants' audit reports. Some of the matters described in this report dealing with work done by public accountants could not be accepted as adequate professional performance by public accountants.

The deficiencies included inadequate controls over cash, payroll, travel expense, procurement, consultant services, and property. In two cases, misappropriations of funds had occurred which were traceable to deficiencies in their respective grantees' management controls.

The public accountants had known of some of the deficiencies, including the two cases of misappropriations, and had discussed them with employees of the grantees. We found no evidence that the public accountants had noted certain other deficiencies revealed by our review. In several cases we were unable to ascertain the extent of the accountants' findings or scope of work because they did not prepare or retain workpapers showing the nature and extent of the audit work done. The OEO audit guide requires that such matters as defalcations, thefts, or other irregularities be immediately reported and that information on them be included in the accountants' audit reports.

Case I

A grantee agency in Iowa, whose CPA had reported an adequate accounting system and adequate internal controls, had been operating with several serious deficiencies in controls over funds and in personnel, travel, and procurement practices.

We found that blank checks were being stored in an unlocked desk drawer, and facsimile signature check-signing machine was not being controlled. This enabled one employee to make unauthorized payments to himself amounting to $7,035 during a 7-month period. Of this sum, $6,565 was recorded as salary advances and $470 as travel advances. The grantee's board of directors initiated action to recover the unauthorized advances after the grantee's bookkeeper, who had discovered them, had brought them to the attention of the executive director; about 17 months later all the unauthorized advances had been recorded as recovered.

The CPA firm was aware of, and had discussed with grantee officials, the unauthorized advances and had recommended that the employee be discharged. Officials of the firm informed us that the audit report did not disclose these matters because complete disclosure of all facts had been made to their grantee-client and corrective action had been promised. They said that mentioning these matters in the audit report might cause OEO to terminate the funding of the grantee, which in their opinion, would result in an injustice to the community.

In addition to noting the lack of time and attendance and leave records for some employees, we noted that (1) employees were being granted compensatory time in excess of the amount of leave that they had earned, (2) salary increases were being granted to employees in excess of the 20-percent limitation in OEO regulations and without the required OEO waiver, (3) purchases were not properly controlled because purchase orders either were not prepared or were prepared after the purchases had been made, and (4) a significant number of travel payments were made which were not supported by travel vouchers.

The CPA informed us that he was aware of, but had not formally reported, the above weaknesses. The CPA firm informed us that its report had qualified the adequacy of the internal control system and had enumerated the weaknesses; however, OEO advised the firm that it had to state that the system was generally adequate unless it believed the system was totally inadequate. Although the CPA informed us that he had enumerated weaknesses in his report, our review, as described above, revealed a number of serious deficiencies that were not commented on in his audit report.

Case II

A CPA firm's audit report on the operations of a grantee agency in Texas stated that the grantee's accounting system and internal controls were adequate and that no significant weaknesses requiring corrective action were noted.

In our review of the grantee's financial operations, we noted other deficiencies which we believe should have been disclosed in the audit report: (1) no time and attendance records were kept on salaried employees, (2) no records were maintained on employees' leave earned or used, (3) OEO's limitation on starting salaries of grantees' employees was not complied with, (4) written purchase orders were not prepared and vendor invoices were paid without evidence that the goods had been received, and (5) property records were not maintained.

The public accountant told us that he was aware of the above conditions but that he did not consider them reportable deficiencies. He stated that his management letter opinion, indicating an adequate accounting system and adequate internal controls, did not reflect actual conditions. He told us, however, that, if he had reported to OEO that the grantee's records were not in an auditable condition, OEO probably would have diverted program funds to hire qualified personnel to correct accounting weaknesses, which he felt would have hurt the program.

Case III

A CPA firm reporting on the activities of a grantee agency in California stated that the accounting system and internal controls were adequate. No deficiencies were reported and no costs were questioned in the audit report. Our review covering the same period disclosed numerous deficiencies that the auditor should have reported in the management letter. These included:

Personnel Practices

1. About 20 percent of the employees' leave records were not being maintained on a current basis.

2. No personnel records were maintained for part-time employees; their salaries were charged to miscellaneous expense.

3. The grantee had not complied with the Internal Revenue Code requirement that Federal income and social security taxes be withheld from wages paid to employees.

4. Employees were granted compensatory time in lieu of overtime without specific approval or generally without showing the reason for working the additional hours.

Travel Practices

1. Written travel authorization were not used in conjunction with out-of-town travel.

2. Travel advances were charged directly to expense with no further accounting unless the employees' expenses exceeded the advance, in which case expense vouchers would be prepared to justify additional reimbursements.

3. Per diem was determined on a basis other than the quarter-day required by the Standardized Government Travel Regulations which apply to OEO grantees.

Procurement and Property Control Practices

1. Purchase orders were not consistently used and, when used, were not forwarded to the accounting section to vouch vendor invoices.

2. A significant number of vendors' invoices were paid without evidence that the goods had been received.

3. Property records to control and account for nonexpendable equipment were not maintained on a current basis.

Contracting Practices

1. No records were maintained showing the basis for selecting a particular contractor or determining his fees.

2. Contracts awarded by the agency were not specific about the scope of the services to be provided or the payment terms.

The public accountant informed us that he was not aware of the personnel and contracting practices mentioned above and that, although he was generally aware of the travel, procurement, and property control practices, he did not believe that they warranted reporting. He also said that he had discussed the property control deficiency with the grantee's fiscal manager.

The public accountant's workpapers did not show that any tests or reviews of the grantee's financial operations had been made, which precluded an evaluation of the adequacy of his reviews. He stated, however, that he had reviewed the grantee's accounting system but had not noted this in his workpapers and that he had told the grantee's fiscal manager about his observations.

Case 4

A licensed public accountant reviewed the operations of a California grantee and reported that (1) no significant weaknesses were noted in the accounting system and (2) only minor weaknesses in the area of personnel records were noted and corrective action had been taken.

We found, however, that (1) the grantee had poor financial controls over some of its activities, (2) the grantee's board of directors was considering holding the executive director personally liable for misuse of agency funds, (3) contracting procedures were so poor that the grantee was forced to pay for undesired services, (4) inventory shortages were not reconciled, (5) some travel costs were unauthorized or were for personal benefits, (6) books of blank airline tickets were not adequately controlled, (7) travel was 40 percent over the budget, and (8) many of the time and attendance sheets we reviewed had not been signed by an approving supervisor. We noted further that, in addition to auditing, the public accountant had been furnishing extensive bookkeeping services to the grantee.

Cash Disbursements

A number of checks had been drawn to cash or to the order of employees without adequate documentation that they had been used to pay for program expenses. Two large checks ($15,000 and $7,942) were issued for the stated purpose of providing a camping experience for 1,000 Indian boys but were made out to an individual in the organization providing the services, rather than to the organization. In some cases, the disposition of funds from checks drawn to cash could not be determined. The grantee's executive director was being held liable by the grantee's board of directors for the personal use of $768 which had been entrusted to him to reimburse board members for travel.

Payroll Procedures

Many of the time and attendance sheets we reviewed had not been approved by the supervisors, and the reasons for grantee employees' working overtime and receiving compensatory time were not shown.

Bookkeeping Services

During the year under audit, the public accountant furnished substantial accounting assistance to the grantee—he directly supervised the bookkeeping and personally made changes in accounts. He said this assistance was necessitated by the inexperience and lack of knowledge of the bookkeeper. Although OEO officials determined that the accountant's actions did not constitute a conflict of interest, they suggested that a different accountant perform the audit in the future. However, the same accountant made the next audit.

As a result of poor controls over funds, a loan to an outside activity was concealed through recording it as a loan to five grantee employees.

Both the public accountant and the grantee were aware of poor controls, and the accountant was aware also of the concealed loan. He did not review the contracting activity, although he was aware of some weaknesses, and he did not review property controls. He was aware of the weaknesses in travel controls, particularly in the uncontrolled use of credit cards, and he had recommended against their use; however, he made all recommendations verbally to the grantee. We noted that the use of credit cards was still uncontrolled in that procedures had not been established as to who would be authorized to use the cards and for what purposes. The public accountant stated that he had not attempted to trace travel advances back to individuals because the travel ledger book, the only means of identifying amounts owed by individuals, was not available. He did not recall making any recommendations to the grantee on this.

Property Accountability

A physical inventory of equipment was taken by the grantee but was not reconciled with existing property listings. Several items appearing on the property listings—such as typewriters, calculators, desks, chairs, and cameras—did not appear on the physical inventory list and could not be physically accounted for at the time of our visit. We also noted the property listings were not current since several recent equipment acquisitions were not included.

Travel Costs

Travel costs as reported by the public accountant to OEO were 40 percent ($20,000) over the budget. The grantee did not maintain such customary controls as (1) approving travel prior to commencement, (2) approving travel claims prior to payment, and (3) showing the periods of travel to support the per diem claimed. These weaknesses were not mentioned in the public accountant's report. In the program year covered by the audit report, grant funds amounting to about $4,500 were expended for an unauthorized trip by grantee personnel to Alaska without the required advance approval by OEO. The grantee's board of directors later determined that the expenditure was not a proper charge to grant funds and, at the time of our review, was considering holding the executive director liable if reimbursement could not be obtained from other sources. In another instance, the lack of proper approval requirements allowed about $470 of grant funds to be used to pay for an automobile rented for the personal use of an employee. As of the date of our review, the employee was making restitution of this amount. Also books of blank airline tickets were not adequately controlled by an assigned individual.

Case 5

A CPA firm reviewed a grantee agency in Missouri and stated in its audit report that the financial statements fairly presented the financial position of the grantee at August 31, 1970, and the results of operations for the period then ended, except that prepaid leases of $18,744 had been expensed. The treatment of the prepaid leases as an expense was disclosed in a footnote to the financial statements.

The improper treatment of the lease as an expense, together with an overstatement of $12,107 in the grantee's accounts payable, resulted in a misstatement of the financial position of the agency and the results of its operations.

In the matter of the lease, on July 28, 1970, the grantee entered into an agreement to lease vehicles from an automobile rental company. The agreement set forth only general lease terms and did not specify amounts. Funds to pay the leasing costs had been entered in the grantee's books of account earlier by a charge to expense and an offsetting credit to a reserve account. At August 31, 1970, the end of the grantee's program year, the reserve account had a balance of $24,000. In November 1970 the grantee and the company executed a vehicle lease order which provided for leasing 11 vehicles at a monthly rental of $142 per vehicle; the grantee paid 1 year's advance rental of $18,744. Seven vehicles were delivered in December 1970.

Even though the lease order, the prepayment of the rental, and the first vehicle delivery did not occur until November or later, the CPA, during his review of the grantee's program year ended August 31, 1970, made an adjusting entry reducing the reserve account and the cash account by $24,000 and $18,744, respectively, and increasing the account—unused Federal funds—with the excess of $5,256 from the reserve account. This adjustment understated the grantee's cash account by $18,744 and overstated the grantee's expenses. It also understated the grantee's carryover balance of Federal funds to the next program year and enabled the grantee to receive additional Federal funds to which it was not entitled.

The CPA firm advised us that:

The regional office of the Office of Economic Opportuntiy had instructed the grantee, through one of their field representatives to make the adjustment recorded as an adjusting entry. This was not in conformity with generally accepted accounting principles but the opinion letter states the fact that some items are only in conformity with provisions of the Office of Economic Opportunity, including the leases.

After our discussion the firm issued a revised audit report which showed an increase of $18,744 in the grantee's cash account and the reestablishment of a reserve account of $18,744; however, no adjustment was made to reduce the expense account which had been charged with the $24,000 estimated annual cost.

Concerning the overstatement, that liabilities reflected in the financial statements amounted to $28,116, of which $23,059 represented accounts payable. Our discussion with grantee officials and our tests disclosed that $12,107 of the accounts payable pertained to orders for goods and services which had not yet been received as of the end of the program year.

The CPA stated that he believed a valid liability and expense existed as long as an order was placed before the close of the year. OEO instructions, however, provide that for a financial liability to exist (1) there must have been a need, (2) there must have been supporting evidence, such as an invoice, and (3) goods or services must have been received during the grant year. Since the goods had not been received by the end of the grant year, these transactions did not qualify as a liability. These transactions also reduced the grantee's carryover balance of Federal funds to the next program year and enabled it to receive additional Federal funds to which it was not entitled.

We discussed these matters with the OEO regional office officials who agreed to examine the situation. On March 30, 1971, OEO reduced the Federal grant by $30,851 ($18,744 plus $12,107) for the program year beginning September 1, 1970.

Case 6

After reviewing a grantee's operations in Nevada, a CPA firm issued a report which stated that the grantee's accounting system and internal controls were adequate. The report noted no system deficiencies.

Our review of the grantee's operations during the same period disclosed the following weaknesses in personnel, travel, and procurement and property control practices.

Personnel Practice

1. Salaries received by employees immediately preceding employment with the grantee were not verified to insure that salaries paid by the grantee were in accordance with OEO regulations.

2. Employees were accumulating compensatory time in lieu of overtime without specific approval or justification and were allowed to take time off in excess of earned leave.

3. Vacation and sick leave were advanced to employees without prior approval, and in many cases leave taken was not supported by leave authorizations.

Travel Practices

1. Travel advances were charged directly to an expense account rather than initially to an advance account.

2. The Standardized Government Travel Regulations, which OEO grantees are required to follow, required that per diem in lieu of actual subsistence be computed on a quarter-day basis and that travelers submit vouchers to support expenditures properly chargeable to the grant. However, the grantee was computing per diem in whole days and did not require travelers to submit travel vouchers. As a result, the per diem to which employees were entitled could not be determined.

Procurement and Property Control Practices

1. Many procurements were not supported by purchase orders.

2. Current records to control and account for nonexpendable property could not be located by the grantee for our review.

Our discussion with the CPA and a review of his workpapers disclosed that he was aware of most of the weaknesses noted above. The CPA stated that he was aware of the lack of verification of prior salaries and that, in accordance with his contractual responsibilities to the grantee, he had brought the matter to its attention.

The CPA also indicated that he was aware of the absence of specific approval or justification for compensatory time earned but did not believe this to be a significant matter. He stated that he did not know that employees were taking leave and compensatory time in excess of that accumulated by them or that leave taken was not supported by leave authorizations. He agreed, however, that vacation and sick leave taken in excess of that earned should be on a without-pay basis or specifically approved in writing by grantee officials.

The CPA stated that he was not aware of how the grantee was handling travel advances. He said that such payments should initially be established as advances and would have so recommended had he known how the grantee was handling advances. Our review of the same period examined by the CPA disclosed 10 disbursements for out-of-town travel—all of which were charged to travel expense and 8 of which were travel advances. The CPA stated that he was aware of the erroneous computation of per diem and the absence of travel vouchers and had brought them to the grantee's attention.

The CPA's workpapers indicated that he was also aware of the absence of purchase orders and property record cards. Although he did not consider the lack of purchase orders a significant weakness, he said that he had discussed the lack of control over nonexpendable property with the grantee.

The CPA believed that he is responsible not to OEO but to the grantee because the grantee hired him. If minor deficiencies noted during the audit did not affect the overall. . . .

PUBLIC ACCOUNTANTS' INDEPENDENCE MAY BE AFFECTED BY OTHER SERVICES TO GRANTEE-CLIENTS

In 10 cases reviewed the public accountants were performing services for the grantees which could affect their independence. In six cases the public accountants performed or supervised day-to-day and/or periodic bookkeeping functions. In nine cases they adjusted, closed, and summarized the books of account at yearend. In two cases they prepared budgets and/or financial statements

and functioned as the grantees' financial consultants. In one case the accountant was a member of the grantee's board of directors.

Although the accounting profession's ethical standards permit accountants to perform many of these services, the fact that the accountants did not always include significant grantee financial management deficiencies in their audit reports, coupled with such services, raises a question of whether their independence may have been impaired in some situations.

AICPA, in its statement on the independence of the auditor, states:

"He must be without bias with respect to the client under audit, since otherwise he would lack that impartiality necessary for the dependability of his findings, however excellent his technical proficiency may be.

"It is of utmost importance to the profession that the general public maintain confidence in the independence of the independent auditors. Public confidence would be impaired by evidence that independence was actually lacking and it might also be impaired by the existence of circumstances which reasonable people might believe likely to influence independence.

"Independent auditors should not only be independent in fact; they should avoid situations that may lead outsiders to doubt their independence."

AICPA's ethical standards permit its members to perform certain bookkeeping functions for their clients, provided they do not engage in any administrative decisionmaking capacity. Although the standards permit the public accountants to perform such services, they also establish precepts to guard against the presumption of loss of independence. AICPA states " 'Presumption' is stressed because the possession of instrinsic independence is a matter of personal quality rather than of rules that formulate certain objective tests."

Much of the detailed accounting work was done by the public accountants because some grantee employees lacked training or competence in accounting. Although OEO instructions anticipate that grantees will employ only persons qualified to perform their duties, grantees are required, by law and by OEO regulations, to give every consideration to providing employment opportunities to disadvantaged persons from the low-income areas they serve. Such disadvantaged persons frequently do not have the training and experience needed to fully understand the need for compliance with OEO's financial requirements or to understand the significance of highly technical verbal recommendations made to them by their auditors. This lack of training and experience is also found among some of the top officials of the grantees, who usually are drawn from fields unrelated to financial areas. OEO officials informed us that a very pragmatic problem its grantees face is a lack of available persons in low-income areas who are expert in a particular discipline and the reluctance of nonresidents who are expert to work in the target areas.

Also, the public accountant in many instances finds the books of account and other financial records to be in an unauditable condition and considers it necessary to perform basic accounting work before beginning his audit.

OEO stated that, in all of the cases mentioned in the report—with the possible exception of the accountant who was a grantee board member—it believed that the independent accountants' actions did not necessarily violate AICPA's ethical standards regarding independence and that GAO had substantiated this position by stating that the accounting profession's ethical standards permit the accountants to perform many of these services.

We recognize and note in this report that the accounting profession's ethical standards permit accountants to perform various bookkeeping and other services for their clients and also render an opinion on the clients' financial condition. The AICPA stresses that the public's confidence in a public accountant may be impaired by circumstances which reasonable people might believe likely to influence independence.

We believe that the presumption of independence is open to question for those public accountants who performed various bookkeeping and other services normally performed by clients' employees and whose audit reports did not always include significant financial management deficiencies.

The number of public accountants who provide accounting as well as auditing services for the same grantee-clients indicates a need for OEO to closely monitor such a relationship to safeguard the integrity of the audit function. Our review has shown that this matter has not received sufficient attention by the public accountants and their grantee-clients. In one case, the grantee did not heed OEO's specific advice that the two functions be assigned to different contractors. We believe that OEO should increase its emphasis on this important standard governing professional auditing work, both in its audit guidelines and in its specific instructions to all grantees to which the annual audit requirement applies.

Audit Reports Closed Without Responses To Reported Deficiences

Case 1

On March 3, 1970, OEO requested comments from a grantee in California on an audit report prepared by a CPA which listed eight major deficiencies.

1. Inadequate controls over petty cash fund transactions.
2. Inadequate maintenance of employees' personnel files and failure to obtain employees' former employment salary rates.
3. Incomplete and unapproved time and attendance records.
4. Failure to implement effective procurement procedures.
5. Need to improve property records and controls.
6. Need to improve procedures for processing accounts payable.
7. Travel claims paid in excess of the maximum allowances contained in the Standardized Government Travel Regulations and claims for mileage not supported in accordance with the grantee's procedures.
8. Failure to establish budgetary control reporting procedures.

The grantee replied on March 20, 1970, requesting waivers on various monetary exceptions, but made no reply to OEO about actions taken or planned to correct the above deficiencies. On September 9, 1970, OEO closed the report on the basis that corrective actions would be monitored during an upcoming field examination prior to refunding and that the grantee's lack of corrective actions would be reported in subsequent audits. We visited the grantee in March 1971 and determined that seven of the eight deficiencies had not been corrected. Grantee personnel informed us that they had not replied to the deficiencies because they were unaware that a reply was required.

Case 2

On May 18, 1970, OEO requested comments from a grantee in Texas on an audit report prepared by a CPA which listed deficiencies in the following areas.

1. Documentation and recording of non-Federal share.
2. Supervisory approval of time sheets and travel vouchers.
3. Procurement and inventory procedures.
4. Personnel files and controls.
5. Centralized program administration.

The grantee did not respond to OEO on the deficiencies, but on July 21, 1970, OEO closed the audit report with a notation that the grantee had been instructed to furnish a response to the weaknesses in the accounting system and internal controls. A subsequent audit report received by OEO in September 1970 showed that none of the deficiencies had been corrected.

Audit Reports Closed on the Basis of Unverified Responses of Grantees

Case 1

On January 22, 1970, a CPA issued an audit report on a grantee in Mississippi which listed 23 deficiencies and recommendations for corrective actions in financial management and internal controls. OEO reviewed the report and on June 1, 1970, forwarded it to the grantee for action and response. By letter dated June 11, 1970, the grantee informed OEO that it had taken steps to implement all recommendations in the audit report. Without verifying the grantee's response, OEO closed the audit file on October 21, 1970. On December 29, 1970, we visited the grantee and determined that eight of the deficiencies listed in the audit report had not been corrected. These included failure to (1) reconcile the bank statement with the books of account, (2) approve invoices before payment, (3) verify payroll to personnel records, (4) post transactions in the general ledger at regular intervals, and (5) identify the applicable invoices on check payments. The grantee informed us that it would obtain assistance from the independent accountant to correct the deficiencies.

Case 2

A CPA issued an audit report in November 1969 which covered the activities of a grantee in Georgia and which listed 12 deficiencies in the grantee's accounting system and internal controls and recommendations for corrective actions. By letter dated November 11, 1970, the grantee informed OEO that the CPA's recommendations had been implemented, and on this basis OEO closed the audit file on November 20, 1970. We visited the grantee in December 1970 and found that the following three deficiencies still existed.

QUESTIONABLE EXPENDITURES CLEARED

In examining 46 closed audit reports which had monetary exceptions totaling $9,160,000, we found that OEO allowed $8,995,000 as charges to grant funds and disallowed $165,000. The auditors questioned most of the costs because (1) documentation was inadequate, (2) the expenditure was not provided for in the approved budget, (3) the expenditure was in excess of approved budgets, or (4) deficiencies existed in the documentation relative to the non-Federal contribution.

On a nationwide basis, monetary audit exceptions for OEO grantees totaled $207.9 million for the period July 1, 1966, through December 31, 1972. The total expenditures incurred under all grants audited during this period were about $5.4 billion. At December 31, 1972, of the $207.9 million in questioned costs, $113.4 million had been determined as allowable, $25.7 million was disallowed, and $68.8 million remained unresolved.

PHASE III CONTROLS—REGULATION OR RELAXATION

Mr. BIDEN. Mr. President, after 4 months of phase III, the voluntary wage-and-price controls, it is becoming increasingly evident that the general reaction to the anti-inflationary program is a disregard of meaningful phase II controls. Administrative efforts to maintain a policy of actively curbing the rising cost of living with any effectiveness seem nonexistent.

James P. Gannon, addressing himself to this issue in the Wall Street Journal of May 30, 1973, states that, although Treasury Secretary George Shultz promises brandishments to those who flagrantly violate the administration's attempt to curb the rising costs of living, he has yet to use his "stick in the closet," the catch-phrase for the standby powers which are available to him for violators of the voluntary controls.

Mr. Gannon specifically points to the ineffectiveness of the administration's economic program:

Wholesale prices in the first three months of Phase III soared at a seasonally-adjusted annual rate of 21% . . . In that 3 month period, wholesale quotes of industrial goods zoomed at an annual rate rate approaching 15%, the steepest in 2° years.

At the same time, Gannon notes the administration's claim that it is still talking tough control strategy. Mr. Shultz, after unveiling phase III, said he would not hesitate to use all possible means to punish the violators. Gannon contrasts these adamant claims with the fact that nothing yet has warranted adminisrative control. He questions these claims as rhetoric.

The administration, says Gannon, is now faced with the crucial test of the program—

In the midst of the worst industrial price inflation in two decades, the steel industry has proposed a 4.8% price hike.

There is no way to predict how the President's Cost of Living Council's court will decide the bid. Gannon raises the question:

Could this be the appropriate occasion for the unused stick in the closet.

A case can be made that now is the crucial time for the Administration to demonstrate that it won't allow inflation to get out of hand and that it is willing to whack a few scapegoats. This might restore public confidence.

The editorial also acknowledges the question of the effectiveness of any punitive system in a general demand-pull inflation. However, perhaps it deserves at least a chance to prove itself.

I ask unanimous consent that the text of the Wall Street Journal article, "Phase III's Unused Stock in the Closet," be printed in the RECORD at this point in my remarks:

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

PHASE III'S UNUSED STICK IN THE CLOSET

(By James P. Gannon)

WASHINGTON.—Somewhere in the White House, there is supposed to be a closet with a stick in it.

The "Stick in the Closet" is the Nixon administration's catch-phrase for the standby powers it has to hit unions and companies which flagrantly violate the quasi-voluntary Phase 3 wage and price controls.

Treasury Secretary George P. Shultz first referred to the stick on Jan. 11, in unveiling the change from the mandatory Phase 2 controls to what he called the "voluntary" Phase 3 curbs. Seeking to distinguish the revamped Phase 3 controls from the voluntary wage and price guidelines of the Kennedy-Johnson years, Mr. Shultz conjured up the "stick in the closet" image and warned that "people who don't comply voluntarily are going to get clobbered."

Inasmuch as this is a time of feverish searching into White House closets, which contain plenty of skeletons if nothing else, it seems timely to ask: Whatever became of the stick?

What seems clear now, after more than four months of the Phase 3 program, is that the stick is more a rhetorical tool than a practical anti-inflation weapon. Nixon administration economic policy-makers, led by Mr. Shultz, believes strongly in basic supply-and-demand strategies to control inflation, rather than in any selective punishing of scapegoats who sin aaginst the wage-price commandments. The mere existence of Mr. Shultz's shillelagh apparently was meant to serve as a deterrent to a possible widespread surge of follow-the-leader type price increases that might follow the expiration of Phase 2 controls.

To be sure, the Phase 3 stick has been rhetorically brandished by Nixon administration economic officials with great vigor and frequency. Alarmed by the widespread reaction that the switch to Phase 3 was actually an abandonment of meaningful controls, Mr. Shultz and his cohorts verbally swing the stick in an effort to restore some of the controls program's damaged credibility.

MR. SHULTZ' WARNINGS

Only a day after he unveiled the Phase 3 program, Mr. Shultz, who didn't like newspaper headlines that said the White House had "scrapped" controls, summoned a small group of newsmen to his Treasury office to say that the Phase 3 closet contained not only a stick, but a shotgun, a baseball bat and an arsenal of other weapons. And the government wouldn't hesitate to use them, Mr. Nixon's economic policy architect warned.

In the days that followed, as price indexes began ringing inflationary alarms, the administration kept talking a tough controls strategy. William Simon, the new No. 2 man at the Treasury, warned that "Phase 3 is going to get tough if toughness is warranted." Mr. Shultz even strode into that corporate lions' den, the prestigious Business Council, to warn that "someone will get clobbered" if the price and wage rules are broken. "If any of you want to offer yourselves up as that juicy target," the Cabinet officer told the businessmen, "we'll be delighted to clobber you."

So, much has been heard of the stick in the closet. But very little—almost nothing—has been seen of it.

That's not because everything on the inflation front is going swimmingly, of course. As everyone from housewives to purchasing agents knows, the pace of price increases since the Phase 3 program began has been the worst since the Korean war inflation of 1951.

Wholesale prices in the first three months of Phase 3 soared at a seasonally-adjusted annual rate of 21.2%. Forget for a moment the stunning 37.3% annual rate of gain in prices of farm products, processed foods and feeds, and look just at that segment of the economy that ought to be most susceptible to persuasion by the "stick in the closet"—industrial prices. In that three-month period, wholesale quotes of industrial goods zoomed at an annual rate approaching 15%, the steepest in 22 years.

The industrial price escalation reflects sizable markups on steel, nonferrous metals, oil, coal, gasoline, textiles, machinery and many other basic goods. The price of lumber has gone up so much under Phase 3 that, if the White House had to go out today and buy a new stick to put in the closet, it would cost nearly 23% more than in January.

But who has been "clobbered"? Despite the price outbreak, there hasn't been a single case of a company feeling the whack of the Phase 3 strick. The general level of wage settlements under Phase 3 has been much more stable than prices; still, there have been numerous settlements exceeding the admittedly fuzzy 5.5% wage standard, but no disciplining of labor chieftains, either.

Administration men cite various moves as evidence that there really is a stick, but the evidence isn't very persuasive. In March, reacting to climbing fuel prices, the Cost of Living Council reimposed limited mandatory price controls on 23 oil companies. But it has already begun relaxing these in the face of shortages that the companies contend are worsened by the price curbs.

Under political pressures that included a march on Washington by homebuilders, the Cost of Living Council seven weeks ago held public hearings on the soaring price of lumber. Despite the implication that it would stiffen lumber price controls, the Council hasn't followed the hearings with any such action; it is still studying the situation.

As pot roast became a luxury and housewives began boycotting the butcher, the White House took another action that's more symbolic than real: placing price ceilings on beef, pork and lamb at a time when those prices were at historic highs. By locking the barn after the inflationary stampede, the administration again demonstrated its reluctance to tighten controls in any way that really puts the squeeze on anyone.

Currently, the administration faces what may be the crucial test of the whole stick-in-the-closet idea. In the midst of the worst industrial price inflation in two decades, the steel industry, led by U.S. Steel Corp., has served up a 4.8% price hike, effective June 15, on about 45% of the industry product line, principally sheet and strip. Now the ball is in the Cost of Living Council's court, where officials are study the situation.

In the Kennedy-Johnson era, steel price hikes prompted anti-inflationary sticks to emerge from the White House closet even though there wasn't any direct price-control program. Several times during the 1960s, steelmakers trooped down to the White House to have their allegedly greedy knuckles rapped by wrathful Presidents. It became a sort of ritual dance in which the steelmakers stuck their necks out, took a couple of licks, and retreated halfway, leaving everybody with the feeling that something had been accomplished.

There's no way to predict how the Cost of Living Council will handle the steel-price bid. But it's fair to say that if it doesn't do anything to forestall or reduce a price hike that's bound to ripple throughout the economy in coming months, the stick in the closet can be put down as a myth.

A DEBATABLE ISSUE

There's room for debate over whether the stick really ought to be wielded with force and frequency, of course. A case can be made that now is the crucial time for the administration to demonstrate that it won't allow inflation to get out of hand and that it's willing to whack a few scapegoats. This might restore public confidence.

Administration men argue another case: that beating the lumber industry, oil men or farmers over the head with a price stick isn't going to solve supply tightness in lumber, oil or meat. The administration's anti-inflationary strategy is to find ways to boost production or imports of products that are under heavy demand pressure.

The administration, in fact, seems ready to accept a considerable degree of price upturn in a period of strong demand, such as the present. Prices, Mr. Schultz like to tell listeners, have an essential rationing function to perform by allocating scarce supplies among those willing to pay what the traffic allows.

Thus, classic supply-demand economics is dominating the administration's policy today and probably will as long as Mr. Shultz, an ardent free-market disciple, remains in charge. It's difficult to fit a punitive stick into that philosophical closet. After a'l, if a

businessman is only helping to ration a scarce commodity among all those customers lined up at his door, should he be walloped for it?

Maybe the administration economists are right in their judgment that a general demand-pull inflation can't be effectively and equitably controlled by application of the stick. But if the stick is any more than a rhetorical wand, now's the time to prove it. If not, they ought to quit kidding everybody about the contents of that closet.

COMMENDATION OF 1973 MINNESOTA LEGISLATURE

Mr. MONDALE. Mr. President, the 1973 session of the Minnesota Legislature achieved a record which is in many ways remarkable. It is the first legislature in Minnesota's history in which the Democratic Farmer-Labor Party has held a majority in both the house and senate.

Among the most important legislative gains made this year were the ratification of the Equal Rights Amendment, the lowering of the age of majority to 18, approval of a school aid bill which provides special benefits for disadvantaged students, reform in the organization of State government, tax relief for homeowners and renters, and passage of several major environmental measures.

But notwithstanding the many significant bills which were adopted this session, I believe the greatest achievement was in the approval of new rules designed to increase openness in the legislature itself. As a result, the press and the public this year were able to attend most committee meetings and to follow the activities of the legislature more closely. This in turn helped to permit a better understanding of the legislative process and to encourage more responsive government.

Many of the candidates who ran for legislative office last November promised, if elected, to work for greater openness in government. They deserve great credit for having opened up the legislature to full public view because of their dedication. I believe the 1973 session may be remembered as among the most farsighted and productive in our State's history. Its achievements are worthy of national attention.

I would like to urge my colleagues in the Senate to take a moment to read two editorials which recently appeared in the Minneapolis Tribune and the St. Paul Pioneer Press, expressing the sense of pride the citizens of Minnesota can rightly take in the openness that was achieved by the legislature this session.

Mr. President, I ask unanimous consent that the full text of the following editorials be printed in the RECORD:

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

THE LEGISLATURE'S RECORD

The Minnesota Legislature's 1973 session was both productive and disappointing—productive because of the major accomplishments, the quantity of legislation enacted, the movement on issues that had never gone anywhere in previous sessions; disappointing because some worthwhile bills were passed only in watered-down form and because the lawmakers failed to act on some crucial bills. But this session was also the most open in the state's history—and that may turn out to be this Legislature's most significant accomplishment in the long run.

The major accomplishments began early in the session with the ratification of the Equal-Rights Amendment to the U.S. Constitution and the enactment of a law providing for party designation for legislative candidates. The list continues with the lowering of the age of majority to 18; the opening of the state's liquor-wholesaling system to increased competition; the enactment of a school-aid bill that will be of special benefit to central-city districts because of its provisions for school systems with high concentrations of disadvantaged students; the long-overdue abolishing of the township relief system, which will ease an inequitable burden on Minneapolis taxpayers.

This Legislature can also take credit for reorganizing state government, in line with a proposal of the Loaned Executives Action Program, by establishing departments of finance and personnel; for providing more tax-relief for homeowners and renters; for removing inequities from the mechanic's-lien law; for increasing state funding of grants and scholarships for college students; for strengthening the open-meeting law; for making Minnesota one of the few states to become involved in the regulation of cable television; for approving a state zoo; for voting a bonus for Vietnam veterans; for providing better protection for the Lower St. Croix River and for the land around tourist attractions; for allocating $1.5 million for the establishment of regional recycling plants; for resisting an attempt to phase out the state's Pollution Control Agency.

The Legislature had a mixed record on consumer legislation. It provided only a minimal requirement for open dating of perishable foods, after rejecting a broader bill that would have been far more useful to shoppers. It took the heart out of a bill that would have allowed druggists to advertise prescription-drug prices, leaving only a requirement that pharmacists post prices and answer telephone inquiries. It imposed regulations on hearing-aid sales—but only sales to persons under the age of 18 or over 60. On the other hand, the Legislature did approve a bill calling for the posting of gasoline octane ratings and another requiring funeral directors to itemize their bills.

A major disappointment, however, was the Legislature's failure to deal with the need for clarifying the roles of metropolitan agencies in such a way as to establish the planning and coordinating authority of the Metropolitan Council. Another was its failure to end the impasse between the council and the Metropolitan Transit Commission over what kind of mass-transit system is to be built in the Twin Cities area. Still another was its failure to pass a no-fault auto insurance bill. Also, disappointing was the failure of Gov. Anderson to provide strong leadership in some of these areas.

On balance, however, the session was productive—far more productive than it was disappointing. And with the scheduling flexibility now available to it, there is a chance for the Legislature to erase the disappointments when it reconvenes next January. As for this session's openness, which saw rules and conference committees open to the public for the first time, it proved that the light of public scrutiny need not inhibit the free, full and, at times, heated discussion of issues that is necessary to the legislative process. The opening up of the Legislature is to the credit of the DFL majorities in the Senate and House whose campaign pledge it was to do so. And it is to the credit of the entire Legislature that the openness was made to work.

LEGISLATURE PROVES IT CAN MOVE OPENLY

One area in which the Minnesota Legislature has made considerable progress during the 1973 session is openness.

Many DFL candidates made openness in state government a campaign issue last fall. To their credit, they followed through when they gained a majority in both the Senate and the House, and established rules that opened up many committee meetings that formerly were closed to the public and the press. Meetings of the Rules committees were opened for the first time, as were the meetings of Senate-House conference committees.

Not that the Legislature has ever been a darkly secretive place. But many committees had been closed traditionally and occasionally important business was conducted in unscheduled, secret sessions. There seemed to be fewer of the secret discussions this year, along with the greater visibility of committee work. The public and the press have been able to observe the legislators wrestling with all kinds of problems—fiscal and philosophical—on a day-to-day basis during this session.

This increased openness does two things. It enables the voter who really cares about what his elected representatives are doing to follow their actions more closely. And it allows the press to present a more complete report on the Legislature's daily business. The result should be a greater understanding of the legislative process and of the legislators' problems.

Reporters were pleased to find that they could get into any committee meeting they wanted to. Their freedom of coverage was so extensive that one newsman jokingly remarked, "We were wishing they'd close the Adult Committee meetings—we got so bored."

What a refreshing contrast that is to the complaints of reporters who have been banned from meetings of local government bodies and school boards, or who have had to pursue elected public officials to secret, unscheduled meetings in order to gather the news. Some public officials seem to devote as much effort to circumventing the state's open-meeting law as they do serving their constituents.

We hear all sorts of supercilious claptrap about why village councils and school boards should meet in secret. Some matters are just too delicate to be aired in public, elected officials claim. Or some officials will be afraid to speak, while others will seek publicity, if they are forced to debate the issues in public.

Our legislators have demonstrated just how ridiculous those excuses are. Legislative committees dealt with all sorts of controversial and delicate issues in public sessions. Legislators who had something to say did not seem unduly reluctant to speak and there were no outlandish cases of grandstanding. Most legislators seem to be accepting the fact that a public body should do its work in public. If the state's problems can be dealt with openly, there is no reason that the lesser problems of a village or a school district cannot be solved in an equally open manner.

Whatever quarrels one may have with the actions of the Legislature during the 1973 session, there is no denying that they did their work in full view of the public. We applaud them.

RETIREMENT OF DILLON GRAHAM

Mr. SPARKMAN. Mr. President, my good friend Dillon Graham, who first came to Washington with the Associated Press in 1934 and who has covered Capitol Hill for AP almost continually since 1947 is retiring today. I know that all Members of this body share the high regard and deep respect that I have for Dillon.

Dillon first joined the AP in Atlanta in 1929, and, in addition to Atlanta and Washington, he has served AP in Charlotte, N.C., and in New York City. In the many years that I have known Dillon

Graham, he has always been completely thorough and fair in carrying out the responsibilities that he had in covering the news here in the Nation's Capital.

Dillon and his lovely wife Gigi are moving to Myrtle Beach, S.C. I shall miss them, as will the other Senators. I wish for them the very best, and I hope that it will be possible for them to come back to Washington often to visit with us during the years ahead.

SOVIET COPYRIGHT LAW

Mr. McCLELLAN. Mr. President, on March 26, I introduced S. 1359 to amend section 9 of the Copyright Act in response to events surrounding the adherence of the Union of Soviet Socialist Republics to the Universal Copyright Convention. The Authors League of America, various Soviet affairs scholars and others have expressed to me their serious concern that the purpose of the Soviet ratification of the Copyright Convention was primarily to facilitate the suppression abroad of the writings of dissident Soviet authors. My bill provides that a U.S. copyright secured to citizens of a foreign nation shall be deemed to vest in the author of the copyrighted work, or his voluntary assigns.

In my remarks on March 26, I stated—

Before this legislation is processed by the Congress it will obviously be desirable to secure clarification of the intentions of the Soviet Government.

The most reliable method of judging the true intention of the Soviet Government is to consider, to the extent that it can be ascertained, the analysis of Soviet authors and intellectuals. I have previously brought to the attention of the Senate an open letter on this subject by a distinguished group of Soviet intellectuals to the United Nations Educational, Scientific, and Cultural Organization.

The New York Times of May 28 contains a dispatch from Moscow reporting recent events relating to the Soviet adherence to the Copyright Convention. The article states—

The intent of the Soviet decision has become increasingly clear in informal discussions with Soviet publishing officials and authors. It is, first, to stop the flow of underground literature to Western publishers.

The May 28 issue of Time included an article based on an interview with Zhores Medvedev, a leading Soviet intellectual and biographer of Alexander Solzhenitsyn, the foremost living Russian novelist. The article states in part:

Why has Medvedev risked his Soviet citizenship by publishing the book now? In a conversation with Time Correspondent Lawrence Malkin in London last week, Medvedev disclosed that he had completed the biography before he was granted permission to leave the Soviet Union. When he learned that the U.S.S.R. was going to join the Universal Copyright Convention on May 27, he decided that he would publish the book as soon as possible. He obviously was convinced that the new copyright law would enable Soviet officials to censor writers who are critical of Soviet society.

Moreover, said Medvedev, once the deadline has passed, "a direct approach (to a publisher) may become a criminal matter." As for whether he will be allowed to go home again, Medvedev remarked dryly that Soviet officials "must read the book and make their own decisions."

Mr. President, I ask unanimous consent that the articles from the New York Times and Time be printed in the RECORD.

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

[From the New York Times, May 28, 1973]

SOVIET UNION JOINS COPYRIGHT NATIONS

Moscow, May 27.—Confusion appeared to reign in the Soviet publishing industry and among writers as Moscow's adherence to the International Copyright Convention became effective today.

"Absolutely nothing is yet decided," said a spokesman for the domestic copyright office when he was asked how the Soviet Union planned to implement its controversial decision to enter international copyright arrangements.

By becoming a member of the convention—concluded in 1952 in Geneva—the Soviet Union undertook to grant the same protection to foreign authors as it accords to its own citizens. Similarly, Soviet authors became entitled to copyright protection in other member countries. Previously, each side could reproduce the other's work at will.

Although two months have passed since Moscow declared its intention to join the convention, no Soviet agency appears to have been empowered to deal with the vast amount of work involving foreign contract negotiations and royalty payments.

VAGUE REPLIES GIVEN

Inquiries made on Friday at Government offices authorized to deal with foreigners on publishing matters yielded either no comment or vague replies.

The foreign relations department of the State Committee on Publishing, which runs this country's vast book trade, said no one would be available all day for questions.

The foreign commission of the Soviet Writers Union also had no comment. Callers were advised that all officials were attending an international conference of literary critics, under way in Moscow.

Only at the Administration for Copyright Protection, a domestic agency, was some explanation offered. Regina M. Gorelik, head of the agency's foreign department, said that pending a decision on international copyright arrangements, "technical questions" were being referred to her department.

The evident disarray tended to reinforce a widely held impression that the decision to join the copyright convention had been a sudden top level move, presumably by the ruling Politburo, and had caught executive agencies totally unprepared.

However, the intent of the Soviet decision has become increasingly clear in informal discussions with Soviet publishing officials and authors. It is, first, to stop the flow of underground literature to Western publishers and, second, to try to promote the marketing of Soviet fiction and nonfiction through foreign channels.

Domestically, the Soviet copyright move does not portend any increase in the number of Western authors available to the average reader here. In fact, the new requirement that royalties will have to be paid to foreign writers, at least in part from the Government's dollar reserves, is likely to reduce the number of book titles that will be translated here.

Although the Soviet Government is making an all-out effort to improve relations with the United States in the political and economic spheres, this does not imply any relaxation on the inflow of ideas and information from abroad.

Boris Stukalin, chairman of the Government's State Committee on Publishing, made this clear in an interview published in March in the foreign-affairs weekly New Times.

"The Soviet Union will continue to acquaint its citizens with the best in progressive world culture. Needless to say, writings advocating war and violence, immorality, chauvinism and ways of life alien to us will not be disseminated."

Writers and publishers in the United States have expressed concern at the prospect that the Soviet Government can claim copyright control over works of Soviet citizens and can take Western publishers to court if they publish unauthorized Soviet writers.

The Authors League of America has sought legislative action to prevent Moscow from using American courts for that purpose. Senator John L. McClellan, Democrat of Arkansas and chairman of the Senate Judiciary subcommittee on copyright, has been reported to share the league's concern.

[From Time, May 28, 1973]

HOMAGE TO SOLZHENITSYN

(Is it possible that we are again on our way toward the rule of violence and tyranny? Is art, after sparkling before us in a few—and certainly not in all—colors of the rainbow destined again to be painted in just one color?)

The questions are asked by Russian Geneticist Zhores Medvedev, a leading Soviet intellectual and close friend of the man who for years has had to bear the weight of official Soviet censorship—Alexander Solzhenitsyn. That such questions are being put forward by a Soviet citizen who has been given official permission to live in London for a year—and presumably could be "recalled" home for simply asking them—is significant enough. Even more important, they have been raised in the first biography by a Russian of the country's greatest living novelist.

Ten Years After One Day in the Life of Ivan Denisovich, which will be initially published (in Russian) by Macmillan of London this week, is described by Medvedev as a Festschrift (German for a written homage). In part, it is a vivid account of an artist who has struggled to write and publish under extraordinarily hazardous conditions. Ten Years is also a detailed analysis of Soviet cultural life from Nikita Khruschev's brief era of liberalization in 1962 (when One Day was published in the Soviet Union) down through the repressive climate of the present day.

TRAGIC HISTORY

At the center of the book is the tragic literary history of Solzhenitsyn. Ironically, his troubles began with the publication of One Day by the literary magazine Novy Mir in 1962. Eventually that book became an increasingly intolerable burden to the new leadership of the Communist Party. In the shifts of party policy that followed Khrushchev's downfall, mere mention of any crimes committed in the Stalinist era was anathema. Friends of Solzhenitsyn who tried to defend his subsequent anti-Stalinist books (including The Cancer Ward and The First Circle) were condemned by the official press, and many lost their jobs. Solzhenitsyn himself was ousted from the Soviet Writers Union in 1969.

Alexander Tvardovsky, one of Russia's best known poets, had published One Day while editor of Novy Mir. He soon fell into disgrace and was forced to leave the magazine. At his funeral in 1971, writes Medvedev, no friends were allowed to give eulogies. The ceremonies were strictly supervised by party functionaries who made no mention of Tvardovsky's role in the publication of Russia's great postwar novel.

Medvedev singles out a number of people who have made notable efforts to discredit Solzhenitsyn. For instance, Culture Minister Yekaterina Furtseva helped prevent Solzhenitsyn from receiving the 1964 Lenin Prize for Literature, one of the Soviet Union's

most prestigious awards. Medvedev also attacks Victor Louis, a roaming Soviet correspondent noted for providing leaks on Soviet policy shifts to the Western press. The author describes him as a "special agent of the KGB." Louis, claims Medvedev, planted a stolen copy of Solzhenisyn's *The Cancer Ward* with the Russian émigré publication *Posev*, which is based in West Germany. Since this magazine is considered an anti-Soviet journal, its publication of a book by a Russian writer may constitute grounds for arrest and imprisonment.

Interestingly enough, Medvedev reserves some of his strongest criticism for Western publishers. Solzhenitsyn, he writes, was "appalled" by the poor translations of *One Day*. Further, says Medvedev, Dial Press and Farrar, Straus & Giroux published *The Cancer Ward* without permission (the publishers deny it). Medvedev also claims that Praeger Publishers ignored his repeated requests on behalf of Solzhenitsyn that they provide rare drugs for a dying Russian girl from royalties that the company had agreed to pay the writer for *One Day*. A Praeger spokesman has denied this charge, too, insisting that "there never was any question of our refusing to pay royalties to Solzhenitsyn."

Perhaps the worst villains in the book are the Swedes. According to Medvedev, Gunnar Jarring, the Swedish ambassador to Moscow, did not even send a customary cable of congratulation to Solzhenitsyn when he won the Nobel Prize. If the Swedes had offered to help Solzhenitsyn receive the prize instead of backing away timidly after learning of Soviet displeasure, Medvedev argues, the Russians, would have granted Solzhenitsyn the right to return to his homeland, which otherwise he feared would be refused him.

DIRECT APPROACH

Why has Medvedev risked his Soviet citizenship by publishing the book now? In conversation with TIME Correspondent Lawrence Malkin in London last week, Medvedev disclosed that he had completed the biography before he was granted permission to leave the Soviet Union. When he learned that the U.S.S.R. was going to join the Universal Copyright Convention on May 27, he decided that he would publish the book as soon as possible. He obviously was convinced that the new copyright law would enable Soviet officials to censor writers who are critical of Soviet society.

Moreover, said Medvedev, once the deadline has passed, "a direct approach [to a publisher] may become a criminal matter." As for whether he will be allowed to go home again, Medvedev remarked dryly that Soviet officials "must read the book and make their own decisions."

WATER TO MAKE UTAH GO

Mr. MOSS. Mr. President, on the 22d of May of this year, the Utah congressional delegation, accompanied by the Governor of the State of Utah, and with a number of knowledgeable officials of that State, testified before the Appropriations Committee on behalf of funding for the Central Utah project and especially funding for the Bonneville Unit of that project. I was totally shocked and dismayed to learn that on the day following a Dr. David Raskin appeared before the subcommittee and asked that appropriation of funds for Central Utah project be terminated. Dr. Raskin, who claims to be a resident of the State, cited some unbelievably inaccurate figures on the question of water supply in the Great Basin and especially in the Salt Lake City area. He argued that there was adequate water available for the remainder of the century and then cited figures that some fishing streams and other areas would be changed by building the project. He also took the occasion to again urge that Lake Powell be drained down to half of its capacity, blithely ignoring the adverse impact that this would have on the building of the remaining projects in the Upper Basin and the loss of electric power to be generated at the dam. Never in my experience have I seen such an irresponsible argument presented from a resident of Utah concerning the needs in my State for water supply.

On the 29th of May, the Salt Lake Tribune, one of our great daily newspapers in Salt Lake City, printed an editorial which was in part an answer to the irresponsible allegations of Dr. Raskin. I ask unanimous consent that the editorial entitled "Water To Make Utah Go" be printed in the RECORD.

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

WATER TO MAKE UTAH GO

For 17 years the Central Utah Project has been authorized by Congress, yet the most complex of its units—the Bonneville Unit—stands only 14 percent complete. The reason? Primarily the reluctance of Congress to appropriate money to build the combination of dams, canals, tunnels and earthworks to bring urgently needed water to the fast-growing Wasatch Front.

Initially, cost of the Bonneville Unit was estimated at a half billion dollars. This was based on a construction schedule envisioning a 1968 completion date. Considering the dalliance of Congress in appropriating money, coupled with ongoing inflation, the validity of the cost estimate and the construction schedule comes into question.

In an appearance before Senate and House public works appropriations subcommittees, Utahns, including Gov. Rampton and officials from water districts, sought $23,796,000 in CUP construction funds for fiscal year 1974. The money would include about $20 million for the Bonneville Unit.

The $20 million contrasts sharply with the niggardly $6,280,000 the Nixon administration has asked for. The wisdom of frugality in government expenditures cannot be questioned. Neither can the premise that exorbitant federal spending contributes substantially to inflation be very seriously doubted.

Yet, there is something "penny wise and pound foolish" about not appropriating enough money to quickly finish a vitally needed water project, one that has already cost more than $80 million.

Despite repeated rosy prediction by presidential economic advisers that the threat of inflation is going to ease, the truth is prices have continued to climb. Even the economic guidelines outlined by Phase III administrators allow a national inflation rate of 3 percent.

That being the case, if Congress continues to deny the CUP needed construction funds the whole project is in danger of becoming prohibitively costly.

But, putting the matter of costs aside, the fact remains that Utah needs the water the Central Utah Project, particularly its Bonneville Unit, will provide. During the same hearings attended by Gov. Rampton, water officials testified to need for more water distribution and retention facilities.

Robert I. Hilbert, manager, Salt Lake County Water Conservancy District, was one of those concerned water managers. He told the subcommittees that a continued slowdown of the Bonneville Unit could mean that "if we are subjected to a below-normal precipitation condition the (district) will be required to initiate a positive water-rationing program."

With the ability of existing facilities to continue supplying sufficient water to people and industry along the Wasatch Front already in some jeopardy, it becomes mandatory that the Central Utah Project's Bonneville Unit be completed soon. The same applies, possibly to a lesser degree, to the other CUP units.

To appropriate less than the $23,796,000 requested by Gov. Rampton, Utah's congressional delegation and other Utahns would be parsimony of the highest order. It is, admittedly, trite, but the fact remains, Utah needs the water, it can't afford to go ahead without it. The CUP is the only way to get water where it is needed today and will be needed even more tomorrow.

A STUDY OF FUEL AND ENERGY POLICY

Mr. JACKSON. Mr. President, last Friday, May 25, as chairman of the Senate Committee on Interior and Insular Affairs, I authorized Senator JAMES ABOUREZK of South Dakota to conduct a field hearing in Sioux Falls as part of the Interior Committee's current study of fuels and energy policy.

This particular hearing dealt with the very serious fuels shortage confronting the Nation and particularly with respect to the problems facing the agricultural sector.

Senator ABOUREZK has presented to me a very fine report summarizing some of the important testimony given at this hearing. Since this information is very relevant to the Senate's consideration of S. 1570, the emergency petroleum allocation bill, which will be debated in the Senate tomorrow, I ask unanimous consent that his report to me of this hearing be printed in the RECORD.

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

MAY 31, 1973.

Hon. HENRY M. JACKSON,
Chairman, Senate Interior Committee, New Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: As you are so keenly aware, this is a crucial time for action to allocate adequate supplies of gasoline and diesel fuel to agricultural producing areas of the nation.

It is for this reason that you authorized me to conduct a special hearing of the full Senate Interior Committee in Sioux Falls on May 25 on fuel supply, especially as this supply is needed by farmers and ranchers.

Because of the critical nature of this situation, I have prepared this letter as an interim and immediate report on our hearing prior to recept of the hearing record.

Nebraska Governor J. James Exon, one of the witnesses who filed a statement with the Committee, summarized the situation succinctly with this comment:

"Where the cut-off of fuel has already occurred on a limited basis, the pattern is most evident of how rapidly a widespread shortage for a few days during harvest could reach the frightening stage of a calamity. Allowed to spread for only a few critical weeks during planting or harvest and you have the stage set for a national emergency that would threaten disaster to the entire nation."

Mr. Chairman, after listening to more than 30 witnesses in Sioux Falls, reviewing testimony of those who filed statements with the Committee and visiting with scores of others, I am convinced that Governor Exon is not exaggerating by one iota a situation that could occur.

I am as equally convinced that the present voluntary program of this Administration will not avert such a disastrous situation.

And, I am alarmed by how the restrictions on the amount of fuel available to the Midwestern agricultural producing states will cripple many businesses and industries, processing and marketing and all of them important to the economic well-being of the Upper Great Plains region.

Testimony at the hearing is most relevant to the evaluating the voluntary program of the Administration and the need for S. 1570, which would make action by the Administration mandatory.

THE FUEL FARM SUPPLY

For several reasons, farmers and ranchers need more fuel this year than they did last. An extremely wet Fall in many areas made it impossible to do Fall plowing. That delay caused the ground to be hard this year requiring extra fuel for plowing this Spring. Farmers are planting extra acres as requested by the Administration.

The Agriculture Department reports that as of May 1, approximately 50 per cent of the 50,000,000 additional acres removed from the set-aside program had been planted.

Farmers and ranchers, in many cases, are having great difficulty obtaining fuel for their present operations. This occurs for two major reasons: the major oil companies are providing from 85 to 100 per cent of the fuel that they provided in 1972. Many independent dealers have had their supplies cut off. Many others have been told that they will not have supplies after a specified date or that their supply is on a month-to-month basis. Farmers who have relied on independent dealers for their fuel are being refused fuel supplies from outlets of the major companies, which have told their retail outlets to refuse new customers. Some farmers have obtained fuel only by paying a premium price on what is plainly a black market.

One farmer near Wolsey, South Dakota, who testified at the hearing, farms 5000 acres of land and feeds 7000 head of cattle. He had purchased his fuel from an independent dealer. The independent dealer lost his source of supply. Outlets of the major companies could not supply him. At present, he has about 10 days supply of fuel.

Maurice Bergh, farmer near Florence, South Dakota, summarized the feeling of all farmers, I believe, with this comment: "As farmers, we can face drought, floods, hail, winds or almost any natural disaster and come fighting back, but we will not accept a disaster caused by man's planning or lack of planning. Agriculture must have top priority in the use of petroleum products—not only the farmer but those who are handling agricultural products must have high priority."

The unavailability of fuel for farmers and ranchers has to some degree already limited our farm production, the degree to which will not be determined until it is determined how many acres have been planted.

If the present situation is allowed to continue the nation, as Governor Exon warns, is heading for a national disaster.

One of the most disturbing comments at the hearing was a report from one farmer that custom combiners, who harvest a substantial portion of the grain in the Upper Great Plains, are not now planning to move their equipment northward in the harvest season because they do not have assurance of a fuel supply to operate this machinery. Those who relied on custom combiners cannot get fuel for any alternative machinery because all allocations are being based on 1972 supplies. This is true also for farmers who have purchased larger tractors requiring more fuel.

Besides requiring additional fuel for planting and for all of the farm operations through harvest, additional fuel is required for transporting these farm products. Governor Exon reports that Nebraska has the most extensive tie-up of transportation in the history of the state, with 472,000,000 bushels of grain in their elevators.

The representatives of the trucking industry in South Dakota report that their fuel supplies range from 70 to 80 per cent of their supply in 1972. New contracts for fuel have a minimum increase of 50 per cent over last year. The need for fuel by the trucking industry is 130 per cent of that requirement last year.

The supply of LP gas for drying crops creates another impending crisis. The suppliers of this fuel have no assurance of the amount that they will have this year. The general estimate is that about 40 per cent of the supply last year will be available this year. A cooperative manager in Tyndall, South Dakota, emphasizing that a large part of the milo and corn has to be dried for safe storage and shipment, projects that the shortage of this fuel could create a potential loss of $200,000,000 of farm products of South Dakota.

Besides the effect on agriculture and related business, the restrictions on fuel supply is causing many other economic losses in South Dakota:

INDEPENDENT DEALERS

Hunreds of independent oil dealers have been forced out of business in the Midwest.

CONSTRUCTION

A spokesman for the construction industry of South Dakota foresees that the severe shortages, already affecting some construction work, will affect some 300 South Dakota businesses with as many as 30,000 people being out of work.

TOURISM

This is the second largest industry in South Dakota. Restrictions on fuel supply threaten seriously this important industry to my state.

PUBLIC BODIES

School districts, municipal bodies and other public bodies are unable to get bids for the heating fuel that they will need this Fall. Bids for part of the supply are at a greatly increased price.

The President has the authority to act to meet these crises under authority already given to him by the Congress. The voluntary program is not working. He should immediately require mandatory allocations under this authority. The nation cannot gamble on either its fuel or food supply. That mandatory action must be required by passage of S. 1570.

Accompanying this letter are summary comments from key witnesses at the hearing in Sioux Falls. I believe they provide a body of valuable evidence for support of S. 1570.

With best wishes,

Sincerely,

JAMES ABOUREZK,
U.S. Senate.

COMMENTS AT INTERIOR COMMITTEE HEARING, SIOUX FALLS, S. DAK., MAY 25, 1973

Ed Smith, Vice President of the National Farmers Union and President of the North Dakota Farmers Union, Jamestown, North Dakota: In North Dakota, fuel distributors, both retail and bulk, are existing on a month-to-month basis, if not on a day-to-day basis, and are hoping that somehow they will be able to secure adequate supplies. Almost every outlet has had some restriction placed on their supply. He urged national planning to avert a crisis at harvest time and an investigation to see if the anti-trust laws are being adequately enforced.

Duane Struck, Rural Route, 2, Wolsey, South Dakota: Mr. Struck is a farmer and cattle feeder, farming 5000 acres of land and feeding 7000 head of cattle yearly. His supplier, Mid-West Oil Co., Sioux Falls, wrote him in November that he would supply him in 1973 the same amount, on a monthly basis, as he did in 1972. In April, when Struck was out of fuel, Mid-West informed Struck that he could no longer supply him. At the time of the hearing, Struck had a 10–15 day supply of fuel that he had received from a supplier in Huron. Struck has been informed that major companies will not supply him because if they take on new customers they will be cut off from their supplies. If he cannot obtain fuel, "we will be forced to sell cattle as we will not be able to run feeding equipment or be able to raise feed." He submitted statements showing increases in prices since January 3, 1973.

James Exon, Governor of Nebraska: Governor Exon said that for the period of April 22–July 31, 1973 the extra acres brought into production through action of the Nixon Administration planners will require an increase of an estimated 5,000,000 gallons of diesel fuel and 3,300,00 gallons of gasoline. The Governor also made clear two other factors involved in agriculture production at this time:

"Extra fuel requirements will be required for increased irrigation power and transport of supplies and grain."

"This pressure on fuel supplies is further complicated by the most extensive transportation tie-up our state grain industry has ever faced. As of July 1, 1973, it is estimated by the state-federal agricultural statistician that there will be 472,000,000 bushels of grain on hand in our elevators."

"Where the cut-off of fuel has already occurred on a limited basis, the pattern is most evident of how rapidly a widespread shortage for a few days during harvest could reach the frightening stage of a calamity. Allowed to spread for only a few critical weeks during planting and harvest and you have the stage for a national emergency that would threaten disaster to the entire nation."

Maurice Bergh, one of the principal farmer witnesses, Florence, South Dakota: He cautioned on the need for extra gas for the increased acres. "As farmers, we can face drought, floods, hail, winds or almost any natural disaster and come fighting back, but we *will not* accept a disaster caused by man's planning or lack of planning. Agriculture must have top priority in the use of petroleum products—not only the farmer but those who are handling agricultural products must have high priority."

Bergh asked that the National Guard exercises be limited.

John Engel, Avon, South Dakota, Attorney: He represented a group of independent oil dealers, and told the committee that ten independent suppliers are out of business in the Tyndall area. Each of these suppliers has been providing gasoline and fuel oil for from 75 to 150 farmers.

John Zebroski, Onida, South Dakota: Mr Zebroski, who does custom combining, said that he has been advised that custom combiners from out-of-state are not coming back to South Dakota this year because they cannot gamble on having fuel when they arrive there.

Representative James Abdnor, Congressman, Second District, South Dakota: Abdnor discussed ways in which fuel could be conserved and said he would support legislation to solve the shortage if necessary. He would support that legislation, but he has not been convinced at this time.

Representative Neal Smith, Congressman, Iowa: Congressman Smith wrote in a letter to be inserted in the record of the hearing, as follows:

"Due to some unexpected warm weather in March, the shortage of diesel fuel (which is interchangeable with No. 2 fuel oil) is not as critical yet (as it was in December, 1972.) However, the best estimates we can get is that farmers this year will need 30 per cent more fuel than last year."

Congressman Smith cites as reason for this increased need: fields were wet last year and fall work was not done, increased acres

and the land being harder to work than in previous years. He added, "Suppliers tell me they simply do not have these kinds of additional supplies available."

Senator Carl Curtis, Nebraska: Senator Curtis called the fuel shortage in rural Nebraska "critical to a point bordering on disaster." Senator Curtis said he asked the Department of Defense if fuel supplies for the military could be diverted to agricultural production and was advised that there are no such supplies in the United States that could be used for this purpose.

Senator Curtis believes that a mandatory plan is necessary. He reported that about half of the major oil companies also agree that a mandatory program is necessary. The Senator cites black market operations in Nebraska in which "diesel fuel at wholesale is selling for 13.5 cents on the legal market and being offered for 23 cents on the black market. Propane that is selling at wholesale for 11 cents on a gallon on the legal market is being offered for sale on the black market at 21 cents." In response to queries that he has made, major oil companies say that they do not know about the priorities of the voluntary market and that others are not acting because they do not know of the legal ramifications of canceling contracts.

Representative John Zwach, Congressman, Sixth District, Minnesota: Congressman Zwach testified that he favors a mandatory allocation program. He cited the closing down of a bulk supplier in his district that is resulting in farmers not being able to plant corn. He warns of a shortage of propane for corn drying this Fall.

Among the letters that he includes is one from the McFarland Company, Marshall, Minnesota. This company has been informed by its supplier that it could commit only 1000 gallons of propane for use this Fall. Last year the McFarland Company used 2900 gallons of propane.

John M. Rodenberg, Manager, Co-op Inc., Tyndall, South Dakota: Manager of this farmer-owned cooperative, he said that shortage of propane in 1972 caused a loss of $30,000 of grain to the members of this cooperative.

"As you probably know, a large percentage of the milo and corn has to be dried for safe storage and shipment. If grain elevators were unable to get the needed fuel we would be unable to purchase corn as it would be impossible for us to ship grain that has not been dried."

"All grain contracts sold by country elevators have to guarantee that the grain is cool and sweet upon arrival of destination. This would be impossible if we were unable to dry the grain before shipment. This in turn would cause financial losses to the farmers in Bon Homme County of one to two million dollars. For the state of South Dakota the financial loss could run as high as 200 million dollars."

Ben Radcliffe, President, South Dakota Farmers Union, Huron, S.D.: "Not only do we have the new acres that have been taken out of the set-aside land retirement program, we have the acres that could not be planted in 1972 because of the excess rain. Weather conditions so far this Spring have enabled farmers to use more fertilizer, and applying the fertilizer has also accelerated the consumption of petroleum. Coping with this increased demand for petroleum products is a serious situation, but it is worsened by the fact that some service stations have gone out of business."

Radcliffe said that five stations have gone out of business since January 1 in Huron. He said that the voluntary program would not work because by its nature it is unenforceable.

Ray Rowell, Executive Secretary, South Dakota-Nebraska L–P Gas Association, Huron, South Dakota: He said that at present there are many LP Gas dealers or marketers who do not have a contract for their supply of fuel and a smaller number who cannot buy fuel today. A number of marketers have had the amount of products they can buy from their supplier reduced by as much as 40 per cent. He said that some marketers now plan on curtailing their sale of propane for irrigation this Summer and for crop drying this Fall.

He supported the voluntary program. He urged as a solution relaxing of restrictions so that prices could be increased.

Governor Art Link, State of North Dakota: He noted that while there is little shortage of fuel for agricultural production in his state at this time, he warns of an impending shortage. He also emphasized the importance of fuel for transporting agricultural products and the effect of higher fuel prices on the cost of consumer food supplies.

Senator Walter F. Mondale, Minnesota: He noted that about 150 independent stations in Minnesota have been closed down and that shortages have occurred because of this. Senator Mondale supports a mandatory program of allocation—if not under the existing legislation then one required by new legislation.

Charles Ingersoll, General Manager, South Dakota Motor Carriers Association, representing every type and class of truck operation in the state, both for hire and private: Ingersoll said typical price for diesel fuel (number two) for a substantial trucking company in Sioux Falls has been 11.5 to 12 cents per gallon. Suppliers are not entering into new contracts when existing contracts expire. They are entering into contracts for a supply ranging from 70 to 80 per cent of last year's amount—at minimum price increase of 50 per cent over the previous year. No fuel appears to be available for the additional supply. Total need for fuel this year is 130 per cent of that requirement last year.

"Motor carriers are facing a day-to-day probability that they will not be able to secure enough motor fuel to continue their operations. The price which they pay for motor fuel which they can obtain has increased 50 to 100 per cent over recent contract prices.

The motor carrier industry in South Dakota and the nation is facing an emergency situation in respect to motor fuel. When fuel is not available to turn the wheels of motor carriers, the economy of the State of South Dakota and the nation will be devastated. Planting a crop or raising livestock is an exercise in futility if that crop or livestock cannot be transported to the market place."

The Motor Carriers support S. 1570.

John M. Heisler, All-American Transport, Inc.: This trucking firm, one of the 50 largest motor transportation companies of 15,000 in the nation, at some point within its system handles directly or indirectly 50% of all finished goods that are used in South Dakota. Major oil companies are allocating between 70 to 80% of the bulk fuel purchased from them for the 12 months ending September 30, 1972. Due to increased demand for services, the company will increase its consumption by 30% as compared to 1972. The company will be short nearly five million gallons of both gasoline and diesel fuel throughout the season, if the present situation and allocations are unchanged, thereby reducing operating capabilities to South Dakota by at least 35%.

Russell F. Ripley, Luverne, Minnesota: He operated over 30 gasoline outlets and bulk delivery stations, six of them being in South Dakota, purchasing from Murphy Oil and several other suppliers. He employed 170 people at one time through these enterprises. He is now employing seven people at one station that is to close soon. Jobbers of the major oil companies have told him that if they sell to independent dealers their supply will be cut off.

Luther W. Miller, oil dealer, White Lake, South Dakota: He wrote that his total supply is being cut off from Champlin Oil Company, after 25 years in business. Nearly 100 per cent of his customers are farmers.

Marion Van Wyck, Executive Director, South Dakota Independent Oilmen's Association: Van Wyck reported on findings of seven meetings with distributors throughout the state, representing 65 per cent of the retail marketers of the state. In brief his findings were:

(1) Almost without exception, the distributors had restrictions placed on the amount of product available to them.

(2) They were urging conservation to make more fuel available for farmers.

(3) There was greater need for fuel because of earlier planting season.

(4) Increased acreage was being planted.

(5) Farmers were storing fuel.

(6) No farmer, to his knowledge, lacked fuel.

(7) Franchises, in some cases would not be renewed when they expired.

His members, generally, are not independent dealers in the usual sense, but local businessmen who have a contract with a major oil company. They include cooperatives.

Van Wyck supports the voluntary program.

James Erchul, Director of Minnesota Civil Defense, representing Governor Wendell R. Anderson: Erchul recalled the shortage of heating fuel this past winter. He said that the voluntary program of the Administration has not been in effect long enough to make a judgment on it.

Ronald R. Williamson, Executive Director, South Dakota Municipal League: ". . . . . in Custer, for example, the construction of their waste water treatment plant has been stopped because the contractor is unable to obtain fuel. . . . I don't believe that any large community has been successful in negotiating an acceptable contract. Specifically, Sioux Falls, Huron, Mitchell, Pierre, and Vermillion have not received an answer to their request for bids.

Representative Wiley Mayne, Congressman, Sixth District, Iowa: Congressman Mayne reviewed the voluntary program and reported that representatives of the Agriculture Department have been assigned to work with the Office of Oil and Gas of the Interior Department administering this voluntary program.

Glen L. Westberg, President, Whitewood Post and Pole Co., Inc. Whitewood, South Dakota: In a statement filed with the Committee, Mr. Westberg reports that Standard Oil canceled its contract with them on May 1. He reports that much of the production of the company is used for pole-type buildings for production of meat and other farm commodities.

William P. McGrath, Manager, Homestake Forest Products Company, Spearfish, South Dakota: In a statement filed with the Committee, he said that this firm would have to close without fuel. It employs 140 people who receive an annual payroll of $1,200,000.

Steve Davis, representing South Dakota Governor Richard Kneip: The Governor's statement noted that the increased demand for fuel products would occur this Summer when the supply is predicted to be short. The Governor recommended that a study be made of the existing supplies and the transportation system to deliver those supplies.

MISCELLANEOUS COMMENTS

(1) *Parcel Oil Co.*, Aberdeen, South Dakota, wants some protection for the branded dealers as well as the independents.

(2) *William H. Pulse*, Kimball Tri-County State Bank, wants the Congress to set some standards so that cars don't use so much gas—and to build the Alaskan pipeline—but he doesn't say where.

(3) *Art Schimkat Construction Co.*, Fort Pierre, South Dakota was notified by wire by

Texaco on May 23 that it could no longer supply gas for interstate construction project between Pierre and Rapid City.

(4) *Lloyd E. Keszler,* Executive Secretary, South Dakota Black Hills, Badlands, and Lakes Association, points out that allocation is based on last year's situation, when the Flood cut down travel by 12 to 17 per cent. He points out that tourism is second largest industry, providing 300 to 350 million dollars in economy.

(5) *Jay R. Carr,* construction company, White River, South Dakota is cut off by fuel suppliers and will not be able to fulfill his contracts.

(6) *Robert T. Weld,* head teacher in a small rural school, has difficulty getting gas. The only station in Norris, South Dakota closed down.

(7) *Charles Pederson,* President, Local 738 Allied Industrial Workers of America, cited shortage of LP gas and its effect on agricultural production. (His address is Sioux Falls)

(8) *Lee McCahren,* attorney for "Keep Our Railroad," an organization formed to oppose abandonment of the Chicago Northwestern Railroad's line from Wren, Iowa to Iroquois, S.D. said that the additional fuel required to move the tonnage which the railroad hauled in 1972 would be in excess of a half million gallons.

RESTORING FOOD STAMP BENEFITS

Mr. HUMPHREY. Mr. President, once again, the Federal Government seems to be taking policy actions that will result in a loss of benefits to the elderly of this Nation. Last fall, the Congress passed and the President signed amendments to the Social Security Act establishing a new supplemental security income program, providing for an increase in cash grants to older Americans now participating in programs of old-age assistance, aid to blind, and aid to disabled. In effect, this new program would replace those categorical programs.

However, at the same time, more than 1.5 million current aged, blind, or disabled, recipients face the loss of food stamps and another 150,000 face the possible loss of medicaid benefits because of this new program. The net result will likely be that many recipients will be worse off income wise than they were before the passage of the administration's program.

Mr. President, I have previously addressed myself to this old problem of giving with one hand and taking away with the other.

The same situation existed with the passage of the 20 percent increase in social security benefits last fall—this increase was not completely passed through to recipients, causing many to lose food stamp benefits, public housing benefits, and medicaid benefits.

This year, I have introduced S. 835, the Full Social Security Benefits Act, to "pass through" the entire benefits of the social security increase.

And, I am pleased to take note that the Senate Agriculture Committee, in its mark-up of the farm legislation added a provision that would restore food stamp eligibility to aged, blind, and disabled persons threatened with the loss of such benefits by this new program.

Section 808 of the Agriculture and Consumer Protection Act of 1973 states:

Notwithstanding any other provision of law, households in which members are included in a federally aided public assistance program pursuant to Title XVI of the Social Security Act shall be eligible to participate in the food stamp program or the program of distribution of federally donated foods if they satisfy the appropriate income and resource eligibility criteria.

Mr. President, this section of the farm bill would correct the deficiency now scheduled to go into effect on January 1, 1974.

I would hope that the Senate would be aware of this section of the Agriculture Act of 1973. It meets the need. It serves the purpose.

Mr. President, I ask unanimous consent that an article detailing this possible loss of benefits to aged, disabled, and blind persons be printed in the RECORD.

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

[From the New York Times]

MANY ARE FACING FOOD STAMP LOSS—HEW TELLS OF THE EFFECTS OF NEW U.S. INCOME PLAN

WASHINGTON, May 30.—About 1.5 million aged blind and disabled welfare recipients will lose eligibility for food stamps, and up to 150,000 other persons may no longer receive Medicaid benefits when a new Federal guaranteed income plan takes effect next Jan. 1, the Department of Health, Education and Welfare said today.

Under Secretary Frank C. Carlucci 3d announced at a news conference that a new supplemental security income program, created by welfare reform legislation last fall, would replace current state-administered old-age assistance, aid to the needy blind and aid to the disabled.

It will provide instead, he said, for a minimum cash income to such persons of $130 a month per person, or $195 per couple. Mr. Carlucci estimated that 6.2 million persons would receive a total of $4.5-billion in combined Federal and state payments.

At a Senate hearing on nutrition and the elderly earlier today, Mr. Carlucci told the Select Committee on Nutrition and Human Needs that 24 states, including New York, currently provide public assistance at a level higher than the proposed Federal payment.

SUPPLEMENT SOUGHT

These states will be called upon to provide money to supplement the Federal payment up to the amount of their expenditures for assistance to the aged, blind and disabled in 1972, he said.

Mr. Carlucci termed this 1972 "harmless level" an "incentive" for states to decide in favor of supplemental funding. He noted also that the basic Federal payment would "release the states financially for the cost of the state's share of the public assistance payments," and said this "saving" could be used to pay the supplements.

Mr. Carlucci was pressed for information on the number of states that had agreed to provide supplemental payments. He replied that his department had "only begun to meet with the states to determine their hold harmless level—on they can OPI for supplementation."

Under persistent questioning from Senator Edward M. Kennedy, Democrat of Massachusetts, as to "who in the states have said they will underwrite this program," Mr. Carlucci replied that he "cannot give categorical assurances at this time" on participation by individual states.

Senator Kennedy and Senator Charles H. Percy, Republican of Illinois, indicated that they were considering legislation to restore the food stamp benefits that will end next January. Mr. Carlucci warned that any such legislation would give states "a disincentive to supplement."

NEW LIGHT ON THE FAMILY FARM

Mr. McGOVERN. Mr. President, those of us in the Congress who have spoken frequently of the importance of the family farm in the American economy and society have been subject to criticism by those who do not share our view.

Last year, the Department of Agriculture, accusing us of crying wolf, claimed that corporate farming was no danger to the family farm.

Although I have agreed with the Secretary of Agriculture, Mr. Butz, on many occasions in the last few months, he and I do not agree on what is happening to the family farm in America. Last July, Secretary Butz sought to characterize my warnings against intrusions of corporate farming as an attempt on my part to create a straw man. At a press conference in Kansas City, Mo., on July 17, the Secretary said corporate farms amounted to only 1 percent of all farming, and claimed that most corporate farms were family corporations.

Secretary Butz' claim that only 1 percent of America's farms are corporate farms apparently is based on research by USDA economists over the past 2 years which attempted to analyze census of agriculture data. That study apparently served also as the basis for testimony last year by J. Phil Campbell, Under Secretary of Agriculture, in opposition to a bill which would have limited nonresident, nonfamily corporation farming.

As a corollary to Secretary Butz' statement that only 1 percent of the farms are corporate farms, Under Secretary Campbell maintained that family farms produce 95 percent of America's farm production.

During recent days, Mr. President, new evidence has come to light which suggests that the optimistic picture which the USDA paints of the future of the family farm may not be so bright after all.

It is in the form of a paper delivered by Prof. Richard D. Rodefeld of the Department of Sociology, Michigan State University, East Lansing, Mich., on April 27, 1973, to the First National Conference on Land Reform in San Francisco, Calif.

Professor Rodefeld's conclusions are disturbing to me as a Senator from a State in which the family farm and ranch has been the economic and social backbone since the land was settled.

Whereas USDA continues to maintain that family farms dominate farm numbers, farm production and sales, and that there has been no trend from family farms to corporate farms, the Rodefeld paper contends differently.

Based on a searching analysis of USDA's research methods and results, backed up by a prodigious amount of his own original research, Professor Rodefeld concludes that: First, family farms are less dominant numerically than supposed; second, family farms do not dominate farm production and sales and have not at least since 1959; third, there has been at least a 20-year trend of erosion of family farms and growth of nonfamily

farms in terms of their proportion of sales of farm products; fourth, corporate farms presently account for a significant proportion of all farm product sales; and fifth, from 1959 through 1964, corporate farm numbers and sales increased at a rate substantially greater than that of family farm numbers and sales.

According to Professor Rodefeld, family farms accounted for 80 percent of the farm numbers, but since corporate and industrial-type farms are much larger units, family farms sold only 50 percent of farm products in 1959 and only 49 percent in 1964. It is his statement that corporate or industrial size farms increased in number by 23 percent from 1959 to 1964, while the number of family farm units decreased by 12 percent. Simultaneously, he maintains, corporate and industrial size farms increased their sales by 73 percent while family farm sales grew by only 12 percent.

While this new information obviously troubles those of us who represent rural areas, it should cause great concern to every urban Member of Congress and to every resident of city and suburb as well.

For a continued erosion of the family farm, and its replacement by corporate farm, means two things to the majority of Americans who do not live in rural America:

First. Continued depopulation of rural areas means continued crowding in the cities and suburbs, with a reduction in the quality of life both in the city and countryside.

Second. Corporate control of agriculture inevitably means higher food prices.

A South Dakota farm widow wrote a poignant letter to me last week:

My husband . . . was completely tied to the work, and we never got our time together as we both worked so hard. I always went to the field from early spring through corn-picking until my health failed too.

My point is you have to love this land to do this—and work, and hope, and pray.

Now if corporations own the land and run it, they will have hired labor. Most people nowadays want shorter work hours and work weeks and most of labor never renews contracts without raises. So you know and I know these big companies are going to pass on the costs, which we never are able to do.

Think what food will cost! I believe, for the good of our whole country, we must preserve the family farmer—not let it get in the hands of a few to price things as they wish.

I think rural people should be classed as human beings, not just slaves to feed the world.

This woman's letter is an articulate expression, from the heart of rural America of the threat which Professor Rodefeld describes, but which the Department of Agriculture hopes to ignore.

There is clear evidence that the South Dakota farm woman is correct in warning that higher food prices result from corporate farm ownership. The single argument advanced in justification of large-scale, corporate-type farming is efficiency in bigness.

Last month, the Senate Committee on Agriculture and Forestry held a field hearing at Huron, S. Dak. One of the documents included in the record of that hearing is a study done for USDA's own Economic Research Service entitled, "Midwestern Corn Farms: Economic Status and the Potential for Large and Family-Sized Units."

The authors of that study conclude that the large farms—they used 5,000 acres of Illinois corn land for a model—can obtain some economic advantages not available to family-sized corn farms—they used 500 acres for this study. But, they concluded, such efficiencies are not due to better operation but to external financial factors:

They can employ various measures to reduce or eliminate Federal income tax costs . . . obtaining discounts on inputs purchased in large volume . . . such as petroleum products, machinery, crop chemicals, fertilizer, and seed, that was 20 percent greater than that obtained by a 500-acre family-sized corn farm.

The report demonstrates once again that "efficiency" of large, corporate-style farming is illusory; it is based not on farm operations but on external factors such as loopholes in tax laws.

Studies by the South Dakota Crop and Livestock Reporting Service and others have shown that, for every six farms which goes out of business, one store on a small town's main street fails also.

So all of us should be concerned, as indeed many of us are. A year ago in March, the Public Broadcasting Service television program, "The Advocates," debated whether Congress should prohibit large corporations from farming. More than 81 percent of the respondents agreed; fewer than 18 percent opposed the view that corporations should be kept from farming.

Mr. President, there is pending before the Senate Committee on the Judiciary S. 950, the Family Farm Antitrust Act of 1973, which I have cosponsored with Senators NELSON, ABOUREZK, METCALF, MCGEE, HATFIELD, and BURDICK.

Our bill would amend the Clayton Act to prohibit persons with nonfarming assets of more than $3 million from engaging in agriculture, and requires that those presently over that standard divest themselves of their prohibited holdings within 5 years. The bill creates authority for the Farmers Home Administration to acquire, at fair market value, any holdings which would be divested as a result of this legislation. In turn, Farmers Home Administration would be required to sell such acquisitions in 2 years or less.

The findings of Professor Rodefeld underscore the need for enactment of the Family Farm Antitrust Act of 1973. The Nation can ill afford to delay the decisive steps which will be required to reverse the migration of people from rural to urban areas. This bill is one step.

I ask unanimous consent that the text of Professor Rodefeld's paper be printed in the RECORD.

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

A REASSESSMENT OF THE STATUS AND TRENDS IN "FAMILY" AND "CORPORATE" FARMS IN U.S. SOCIETY

(By Prof. Richard D. Rodefeld)

PREFACE

"We in the National Farmers Union believe 'the corporate invasion of American agriculture' by non-farm interests is real. It is leaving behind 'wasted towns, deserted communities, depleted resources, empty institutions, and people without hope and without a future.' The invasion is still in the beginning stage. Some people see this trend as inevitable—that is, cannot be stopped. Not only can it be stopped, it must be stopped." (Tony T. DeChant, President, National Farmers Union from the introduction to *The Corporate Invasion of American Agriculture.*)

"These data document the extremely low involvement of nonfamily types of corporations in farming and refute the alleged takeover of farming by outside corporations." (Testimony of J. Phil Campbell, UnderSecretary, Department of Agriculture, p. 20, *Family Farm Act,* Hearings Before Antitrust Subcommittee, March 22, 1972.)

"This group of fairly conservative agricultural economists (more than a dozen agricultural economists teaching at Midwest Universities) expects a continued increase in the concentration of production on fewer and fewer farms. In 25 years, this could result in a nearly complete demise of typical family farms in the units classified as commercial full-time farms." (Statement of Dr. Leonard Kyle, Michigan State University Agricultural Economist, *The State Journal,* Lansing, Michigan, April 15, 1973.)

"In conclusion I would say we do not feel this bill is necessary (The Family Farm Act of 1972) because the facts of the case in agriculture do not point to any conclusion that the family farm is presently in jeopardy." (Testimony of J. Phil Campbell, UnderSecretary, Dept. of Agriculture, p. 24, *Family Farm Act,* . . . , March 22, 1972.)

"The large integrated agribusiness concerns and conglomerates are taking over farming and ranching today in this country. Either laws now on the books or those who are supposed to enforce them are failing to stem the tide that threatens the very existence of the remaining individual farm and ranch operators." (Testimony of Oren Lee Staley, President, National Farmers Organization, p. 101, *Family Farm Act,* . . ., March 22, 1972.)

"Subsequently, the Board of Directors of the American Farm Bureau Federation gave consideration to provisions of H.R. 11654 (Family Farm Act of 1972). On the basis of present available data relative to corporate farming in the United States, the Board took action opposing the principles of this legislation." . . . "The entry of huge conglomerate corporations into agriculture in recent years has attracted a great deal of attention; however, there is little solid evidence that this is a serious problem." (Letter submitted to the Hearings record by William J. Kuhfuss, President, American Farm Bureau Federation, p. 138, *Family Farm Act,* . . ., March 22, 1972.

"Chairman CELLER. (addressing a question to Sec. Campbell) Tenneco recently sold 30,000 of its 130,000 acres of California farmland. Did you encourage that, or had you admonished them in any way?

Mr. CAMPBELL. We had nothing to do with that, Mr. Chairman.

Chairman CELLER. Why wouldn't you have something to do with that? Or more accurately, what was your interest?

Mr. CAMPBELL. Under the free enterprise competitive system, it took care of itself, and we had no law to do anything in the first place, and we would not be suggesting that we be given any authority because our family farmers are doing so well for themselves these people can't compete with them.

Chairman CELLER. Would you want the Congress to give you some authority in that regard?

Mr. CAMPBELL. Not at the present time, because our family farmers are taking care of the problems themselves.

Chairman CELLER. You would not want any authority after the cow gets out of the stable, but as a prevention would you want some authority?

Mr. CAMPBELL. Not at the present time, because we see no danger to the family farm at all Mr. Chairman. . . .

Mr. HUNGATE (U.S. Representative in

Congress from the State of Missouri). Thank you Mr. Chairman (Celler). Mr. Secretary, I want to be sure I understood this. Was it actually your statement, as I understood it, that the family farm is in no jeopardy?

Mr. CAMPBELL. That is correct. The figures I have given show that the family farmer produces 95 percent of everything that is being produced today. (The figures referred to show that family-sized farms in 1968 were estimated to account for 95 percent of all farms and 65 percent of all products sold). (Verbal Testimony, *Family Farm Act*, pp. 29–30, . . ., March 22, 1972).

INTRODUCTION

As indicated in the program the subject I will be addressing today is the role of the USDA and land grant colleges in relation to the needs of family farmers. There are a number of ways in which this question could be addressed. For instance, a list of all the major needs of family farmers could be compiled followed by an analysis and discussion of the extent to which the USDA and land grant colleges (LGC) have met or failed to meet these needs. Further analysis could be carried out to determine the major reasons for success and/or failure in meeting these needs. This would be an interesting, informative and valuable exercise. This is not what I will attempt today, however.

Instead I would like to address two specific needs of family farmers which really take precedence over all others. The first is the need of survival. The second need is for the larger society to have the most accurate, unbiased, and complete information as possible on: the present status of family and nonfamily farms; changes taking place in their status (trends); the causes of any such changes; and the implications or effects for society (costs and benefits) of any changes in their status. The society must have this information if it hopes to formulate, enact and implement policies for the farm and rural sector which will maximize the positive effects emanating to it from the rural sector and minimize the negative effects.

Of these two needs, the second clearly precedes the first in importance because society, through its elected representatives, will decide what the future of family farms is to be. Family farmers and rural people assuredly will play an active role in this decision-making process. Fifty or 60 years ago this activity would have been decisive. Farmers and those dependent upon them for their livelihood comprised a majority of the population and certainly would have voted for collective self-preservation. The resulting societal decision unquestionably would have been to preserve or enhance the status of family farms. Today, however, family farmers and those dependent on them do not have this power.

Farmers presently comprise less than 5 percent of the population and only 22 percent of the total population is rural nonfarm. Farmer and rural political strength has eroded through their reduced numbers and proportion of the electorate and the one-man, one-vote rule. Today and in the future, the status of family farmers will be determined by the nonfarm, nonrural majority through its elected national and state representatives. Furthermore, the status of family farms will be preserved and enhanced by society only if they are believed by society to be in its collective best interests. Rather strong evidence exists which suggests family farms, historically and presently, are still preferred by a majority of the population, at least in principle.

A serious problem arises at this point, however. Most of society knows little about present day farming and rural society. How can society make any sound policy decisions about family farms or anything else "rural" when collectively it knows so little about these subjects? Society must of necessity rely on other institutions, organizations and specialists for this information. Farmers, rural people and their organizations perform this function or fulfill this societal need to a certain extent. Society cannot rely exclusively or primarily on these sources, however. The identification of problems and their causes may be inadequate or incorrect. If so, remedial action on the part of society will be ineffective. The magnitude of problems may be exaggerated resulting in unnecessary or wasted societal expenditures. Furthermore, these sources have vested interests. The policies they recommend as being best for themselves may or may not be the best for society as a whole. Society clearly needs additional information from sources relatively independent of farmers and rural people. Society has given a major charge and responsibility for the provision of this information to the USDA Land Grant College (LGC) system.

The larger society, through its taxes and policies, makes the USDA–LGC system possible. In this sense, these institutions are responsible first and foremost to the larger, urban society. Many things are expected in return for this support, the most relevant of which for this paper are: a monitoring of the present status of family and nonfamily farms; the discovery of any significant changes taking place or foreseen in the relative positions of family and nonfamily farms; a specification of the causes of any such changes in farm types; and, a specification of the implication or effects, positive and negative, for all levels of society, of a change from family to nonfamily farm types (or vice-versa). Society also expects that this information and its interpretations and recommendations will be objective, unbiased, accurate and will be communicated in a like manner to society's elected representatives and policy makers.

Since society relies to such a great extent on the USDA LGC system for its farm information, what assurances does society have it is receiving high quality information from this source. One of the safeguards which functions to assure this is the training process of future USDA LGC staff members where students are taught and acquire the skills, values and commitments of objective scientists searching for truth. If for any reason this process fails, professional socities and journals have been created and function as institutional forces not only to disseminate knowledge and research findings, but also to insure these findings are free from major biases and inaccuracies and follow the established dictums of logic and scientific inquiry. The subjection of manuscripts to the critical review of colleagues is the common procedure followed in obtaining this assessment. Thus, the society has numerous reasons to believe or assume it is obtaining accurate information and sound recommendations about family farms from the USDA–LGC system. This, of course, does not speak to the point of how society can insure that needed research gets carried out.[1]

If society will decide the future of the family farm; and the USDA–LGC system is to be the major source of the information those decisions are based on, then, in essence, the USDA–LGC system will determine the future of the family farm through its research and recommendations. This situation suggests a third major family farm need, the need for the USDA–LGC system to obtain the maximum amount of accurate information on the present status of family and nonfamily farms changes occurring in the relative importance of these farms, the causes of any such changes, and the implication for society of any such changes and the effective communication of this knowledge to society. If this need is satisfied, then society's need for this information will also be satisfied.

Assuming family farms maximize positive benefits to society emanating from the rural sector and that society recognizing this, still prefers family farms, then any accurate assessments of family farms by the USDA LGC system can only help the status of family farms. If family farms are found by the USDA LGC system to be dominant numerically and in production and sales and their proportions in these areas are not declining relative to nonfamily types of farms (including "corporate" farms), this is evidence the society's policies formulated and enacted to maintain and enhance family farms are succeeding. These policies will be maintained and it is unlikely any major changes will be proposed or made in this area.

On the other hand, if family farms are found by the USDA–LGC system to be: less dominant than previously thought; not dominant in production and sales; and declining in importance relative to nonfamily and corporate farms; then society will rightfully conclude that its policies designed to maintain family farms were failing. Hopefully, the USDA LGC system in this situation could point out where the family farm policies had failed, what changes in these policies were suggested and recommend what new programs and policies might be needed. The necessary changes could be made by society and famly farms would be returned to their former status.

In other words, as long as the USDA–LGC system does the job society and family farmers expect it to in this area, no one will lose—society, family farmers or the USDA–LGC system. What will the effects be, however, if the USDA–LGC system fails in its responsibilities to society and family farmers in this area, i.e., if it provides society with inaccurate, misleading and inadequate information about the status and changing status of family and nonfamily farms and as a result recommends unsound and incorrect policies to society?

If the USDA–LGC system concludes family farms are declining, when in reality they are not, the major effects would be: additional legislation supportive of family farms and/or detrimental to nonfamily farms, which would improve the status of family farms in society and perhaps increase the positive effects to society emanating from the rural sector. Since both family farmers and society would either be gaining or not losing from this USDA-LGC system error, confidence in the reliability of this system probably would not be greatly diminished, it might even be enhanced.

The other incorrect position which the USDA-LGC system could reach in this area is to conclude family farms are increasing or remaining stable in status while in reality they are declining in status and being replaced by nonfamily farms. In this situation, the society would be inactive, policy-wise, because there would be no evident reason or justification for action. Because of this inaction, family farmers would continue to be replaced by nonfamily farms. Family farmers, society and the USDA–LGC system would all lose in this situation. Family farmers would increasingly be lost to a society which in reality preferred family farms, desired their retention and believed them to provide more positive benefits than nonfamily farms. The status, legitimacy and confidence in the reliability of the USDA-LGC system vis-a-vis both family farmers and society as a whole, would be greatly diminished if the USDA-LGC system made such an error, and as a

[1] This is another matter entirely and is a subject worthy of much more thought and discussion than has occurred to date.

result irreparable, unjustifiable damage was done to family farmers by society.

If, as has been assumed, family farms maximize benefits and minimize costs to society and as a result society desires policies supportive of family farms, then clearly this last situation, where everyone loses and only nonfamily farms gain, is to be avoided at all costs. I only present this lengthy introduction because of my belief it is this last situation, the least desirable of all for everyone, we are presently entering.

As indicated by the quotes at the beginning of this paper, the USDA and others accepting the USDA's evidence, such as the Farm Bureau, argue that:

1. Family farms presently dominate farm numbers.

2. Family farms presently dominate farm production and sales.

3. There has been no trend away from family farms or towards nonfamily farms in terms of their proportions of:

a. Farm numbers

b. Farm sales

4. The number and importance of "corporate" farms in the U.S. is an insignificant proportion of total farm numbers and average.

Thus, the USDA and others following their lead see no present problems with "corporate" farms, nonfamily farms or with family farm decline. Furthermore, there is no indication they expect any of these problems in the immediate future. As a result, no need is perceived for "pro" family farms or "anti" corporate farm legislation. The USDA desires no additional power to deal with what they view as a nonexistent "corporate" farm problem.

Unfortunately for family farmers, society and the USDA-LGC system, I think the USDA, Farm Bureau and others are more wrong than right on these issues. I will argue and present evidence showing:

1. Family farms are less dominant numerically than supposed.

2. Family farms do not dominate farm production and sales and have not since at least 1959.

3. There has in fact been a clear, uninterrupted 20-year trend away from family farms and toward nonfamily farms in terms of their proportion of all farm sales.

4. "Corporate" farms presently account for a significant proportion of all farm sales.

5. From 1959 to 1964, (the only time period for which adequate data was available corporate farm numbers and sales increased at a rate substantially greater than for family farms.

The remainder of this paper will be devoted to developing and presenting the evidence upon which these assertions are based. I will begin by summarizing the evidence upon which the USDA has based its position followed by a critical review of this evidence and the presentation of new evidence. The paper will conclude with a summary and recommendations.

THE USDA CASE SUPPORTING FAMILY FARM PREDOMINANCE AND STABILITY OVER TIME

Evidence supportive of the USDA claims has (or could have) been derived and based on four types of information: research carried out by R. Nikolitch, based on special Census of Agriculture tabulations on family and larger than family sized farms; Census of Agriculture land tenure data; Census of Agriculture and USDA-ERS survey data on farms classified by type of business organization; and Nikolitch data on the composition of the total farm work force.

If there is any one piece of evidence most crucial and central to the USDA position, it is the results of a special Census of Agriculture tabulation carried out by R. Nikolitch. Nikolitch divided all farms into two categories: those where the majority of the work was done by the farm operator and his family, and those farms where hired labor did more than half the work. Most would undoubtedly agree this classification is quite reasonable and useful. Everyone would agree that "family" farms are worked primarily by family members and that farms using large quantities of hired labor are "nonfamily". This definition of "family" farms is the same as that used by the USDA. (Family Farm Act of 1972, 1950).

Nikolitch classified all farms into these two categories for 1949, 1959, 1964 and 1969 (estimates) and then analyzed various characteristics of the two farm types for the various years. The USDA in testifying against the Family Farm Act of 1972 quoted one of the major findings of this research as follows: "Family Farms, those using predominantly family labor, make up about 95 percent of all farms and produce 65 percent of all farm products sold in the U.S. Although these percentages have fluctuated slightly, they have been substantially the same for the last 30 years, despite the decline in total farm numbers." (Ibid., pp. 17–18). This quote and evidence is based on Nikolitch's research which showed family farms accounted for 95 percent of all farms in 1949 and 1969 and 63 and 62 percent of all farm sales in these respective years. "Other" or larger-than-family sized farms were found to account for 5 percent of all farms in 1949 and 1969 and 37 and 38 percent of all sales in these respective years. (Nikolitch, p. 4). If one accepts the definitions of "family" and "nonfamily" farms used in this research, then the data presented does in fact show present family farm predominance in numbers and sales and no difference in this status from 1949 to 1969.

The second source of evidence which could be used to demonstrate the predominant position of family in U.S. society and no lessening of this predominance over time is land tenure data from the Census of Agriculture. Up to 1969 the Census of Agriculture classified all farm operators in terms of their relationship to land ownership. The resultant four categories of operators were: full owners (operator owned all land); part owners (operator owned and rented land); hired manager (operator owned none of land); and tenants (all lands rented by the operator).

If most or all "family" farms are defined or thought of as family owned and managed farms; then a present predominance of "owner-operated" farms would seem to be consistent with the assertion that "family" farms also are presently predominant. If owner-operated (family owned and managed) farms are found to have been predominant in the past and presently, and their position relative to nonowner-operated farms has remained stable or improved over time, then these findings would be consistent with the assertion family farms are presently predominant and not declining. This is in fact what the data on farms classified by land tenure show.

Presently, owner-operated farms (full and part) occupy a clear, predominant position numerically and acreage-wise. The predominant position of owner-operated farms relative to nonowner-operated farms in the areas assessed has increased over time. Essentially the same results would be observed if proportion of all sales was assessed. In 1964, owner operated farms accounted for approximately 75 percent of all farm sales. Tenant operated farms have declined in numbers and land operated since 1935, while hired manager operated farms have consistently accounted for less than one percent of all farms and about 10 percent of the farm land. These findings then are also consistent with the assertion "family" farms are presently predominant and are not declining relative to "nonfamily" farms.

TABLE 1.—PERCENTAGE DISTRIBUTION OF FARMS AND LAND IN FARMS, BY TENURE OF OPERATOR, UNITED STATES, 1900–69, (MOYER, ET AL., P. 14 AND 1969 CENSUS OF AGRICULTURE)

ITEM	Farms		Land	
	Owner-operated	Nonowner-operated	Owner-operated	Nonowner-operated
1900	63.7	36.3	66.3	33.7
1920	60.9	39.1	66.7	33.3
1940	60.7	39.3	64.3	35.7
1964	82.4	17.6	76.7	23.3
1969	88.1	11.9	86.9	13.1

The third source of information and evidence used by the USDA is that based on the classification of farms by type of organization: individual or family (sole proprietorship); partnership; corporation (10 or fewer shareholders or more tan 10 shareholders), and other. In reality this classification is based on the type of legal owner. The first information of this kind was obtained in a nationwide USDA-ERS survey of all legally incorporated businesses with agricultural operations in 1967 which was initiated in response to concern at that time with "corporate" farms. The second source of information about farms classified by type of organization is the 1969 Census of Agriculture, which in that year classified farms for the first time in this way. According to the Census, "This information was collected for class 1–5 farms in response to the demand for data more descriptive of current farm organizational structure than the traditional tenure of farm operator classification." (1969 *Census of Agriculture*, Vol. I, p. A–6).

Since no nationwide data exists on farms classified in this manner before 1969, no assessment of trends is possible. It is, of course, possible to assess the present status of such farms. If most or all "family" farms are defined or thought of as farms which are owned by an individual or family, then a present predominance of individual or family owned farms would be consistent with the assertion that "family" farms are presently predominant in society. Similarly if "family" farms are in actuality presently predominant, then "nonfamily" owned farms cannot be predominant or very significant. In terms of this classification method, farms organized as a sole proprietorship (owned by an individual or family) and most partnerships would clearly fall in the category of family owned farms. The USDA has also argued that all or most of the corporations with 10 or fewer shareholders are also family owned. In 1972 Secretary of Agriculture Butz stated "Less than one percent of our total farms are corporate farms, and about 6 out of 7 (86%) of these are family corporation farms. They are really family farms." (*Wisconsin Agriculturist*, p. 12). The 86 percent referred to by Sec. Butz would consist almost entirely of those corporations with 10 or fewer shareholders.

Sole proprietorships, partnerships and corporations with 10 or fewer shareholders will therefore be viewed as largely or exclusively individual or family owned farms. Farm corporations with more than 10 shareholders will be viewed as nonfamily owned farms. In 1969, sole proprietorships, partnerships and family corporations accounted for 85.4, 12.8 and 1.1 percent of all commercial farm numbers respectively (99.3 percent of the total) and 72.5, 17.8 and 7.2 percent respectively of all commercial farm acreage (97.5% total). Nonfamily owned farm corporations accounted for .1 percent (1,797) of all commercial farm numbers and 1.6 percent of all acreage (14,360,000). (1969 *Census of Agriculture.*)

Based on its 1967 survey of corporations with farming operations, the USDA estimated "sales from all corporate farms accounted

for about eight percent of total sales of all farms. Sales from nonfamily types of farm corporations were about two percent of total sales." (Family Farm Act of 1972, p. 20). If all or most "family" farms are owned by an individual or family, this data is consistent with the assertion family farms are presently predominant in society. The low number and acreage of "nonfamily" owned farm corporations is consistent with the assertion "corporate" farms are presently of little significance.

The fourth source of data used by the USDA to support its contentions about the status of "family" and "nonfamily" or "corporate" farms is the composition of the farm work force. The interest on this question apparently stems from the work of Nikolitch who has argued "If technological and other economic changes had an adverse effect on family farms, several consequences would follow. . . . Family labor would represent a decreasing proportion of total farm labor." (*Size, Structure and Future of Farming*, p. 251.) The USDA summarizes the data in this area as follows: "Although the proportion of labor hired has remained fairly constant at 25 to 30 percent of total labor used on farms, the total amount of hired labor has declined steadily with the decline in total farm population. Operator and family labor provides about 70 to 75 percent of the total labor used on farms, and has provided about this proportion at least since the mid-1950's." (Family Farm Act of 1972, p. 19.) If "family" farms are defined or viewed as farms where the family does all or the majority of work, this data is consistent with the assertion family farms are predominant presently and are not declining and the reverse is suggested vis-a-vis "nonfamily" or "corporate" farms which use large amounts of hired labor.

If family farms are in fact dominant, then you would also have to observe a predominance of: family-size farms, owner-operated farms, individual and family owned farms, and family worked farms. The data used by the USDA (or which could be) provides evidence demonstrating rather convincingly that each of these four conditions consistent with family farm dominance does in fact exist. Corresponding evidence of an equally convincing nature is presented for three of these areas showing little change in the level of predominance over time.

Based on this evidence, the USDA and others have concluded in rather strong terms: family farms are predominant in numbers and sales, corporate or nonfamily farms are relatively insignificant in numbers and sales; family farms are not declining in their proportion of numbers and sales; and corporate or nonfamily farms are not increasing in these areas. Apparently the vast majority of land-grant college personnel with interests and competencies in this area agree with the USDA, judging from the relative lack or nonexistence of any significant challenges to these conclusions or assumptions. It is clear from the quotes in the preface not everyone agrees with the USDA's conclusions, but the empirical base for these disagreements is almost nonexistent or highly questionable.

THE CASE AGAINST THE USDA AND THE BELIEF IN FAMILY FARM DOMINANCE

Given the reasonable logic and the quality and quantity of the evidence upon which the USDA conclusions are based, any challenge, let alone a significant or major one, would seem doomed to an early and futile death. I hope I can demonstrate this is not the case because of the immense social, political and economic implications associated with the issue of family and nonfamily or corporate farms. I will begin by addressing each of the four major bodies of evidence used to support the USDA's conclusions.

THE CLASSIFICATION OF FARMS BY AMOUNT OF LABOR HIRED

The argument and supporting evidence used by the USDA to argue there has been no decline in family-sized farms relative to larger than family sized farms over the last 30 years has four errors or misrepresentations associated with it; one of these errors is relatively minor, the other three quite significant. In order to understand these errors or misrepresentations, the Nikolitch findings used by the USDA are reproduced in Table 2.

TABLE 2.—NUMBER OF FARMS AND SALES OF FARM PRODUCTS BY ALL FARMS, OTHER THAN FAMILY FARMS, AND ALL FARMS, AND AS A PERCENTAGE OF ALL FARMS, 1949, 1959, 1964, AND 1969 (NIKOLITCH, P. 4)

Size of farm	Number of farms				Percent of all farms				Percent of all sales			
	1949	1959	1964	1969	1949	1959	1964	1969	1949	1959	1964	1969
1,000 farms:												
All farms	4,905	3,695	3,150	2,726	100	100	100	100	100	100	100	100
Other than family	264	165	154	146	5	5	5	5	37	30	35	38
Family	4,641	3,530	2,996	2,580	95	95	95	95	63	70	65	62

The first USDA error, the most minor, was their inaccurate statement of the number of years covered by their trend data. Nikolitch only assessed a 20-year period, not a 30-year period. He makes no reference to data going back to 1939. If it existed, I assume he would have included it or made reference to it. I have been unable to find any such reference in any of his work familiar to me. The source of this inaccuracy is found in the foreword to the Nikolitch publication, Family-Size Farms in U.S. Agriculture, written by R. L. Mighell, Chief of the Production Resources Branch, FPED ERS (Nikolitch, p. iii). The entire paragraph in which this error occurs was repeated verbatim in the USDA testimony against the Family Farm Act of 1972 (unreferenced and without quotes). This is a minor but not insignificant point. The degree of confidence which can be accorded to trend data covering 30 years is a good deal more than what can be accorded to a 20-year period. Thus, the statement of the period covered by the trend data was inaccurate and the research findings as a result were misrepresented and misleading when communicated to audiences not familiar with the original research source. The effect of this was to accord more stability to family farms than is actually known at this time.

The second error is one of excluding information inconsistent with the conclusion reached. From 1959 to 1969 little change occurred in the proportion of all farm numbers, family and larger than family sized. The same cannot be said concerning sales. Family sized farms experienced a decline in their proportion of total sales from 70 percent in 1959 to 65 and 62 percent in 1964 and 1969, respectively. Thus, for the most recent time period, the last ten years, family farms have been declining in their proportion of all farm sales. Assuming conditions in the future will be more similar to the 1959–69 period than the 1949–59 period, then what has happened to family farms in the last ten years should have higher predictive ability and accuracy than what happened from 1949–59 or from 1949–69. It is clear, the trend in family farm sales for the most recent ten year period is at considerable variance with the USDA's overall conclusion on this matter.

The third error is one of rather major dimensions. Referring again to Table 2, notice the drop in other than family farm numbers from 1949 to 1959 and the corresponding drop in the proportion of all sales. The number of other than family sized farms was reduced by 99,000 farms from 1949 to 1959. This was a 37 percent decline. The number of family sized farms, on the other hand, declined by only 24 percent. The absolute amount of other than family farm sales increased from 1949–59 by only 12 percent while family sized farms increased their sales by 51 percent. This is a curious situation because conventional wisdom and accumulated knowledge suggest that smaller farms have higher mortality rates than larger farms. If so, the figures just quoted for 1949–59 should have been reversed and more like the comparable figures for the 1959–69 period. In this period family sized farms experienced a decline in their number of 27 percent while other than family farms dropped by only 11 percent.

What happened to the other than family farms between 1949 and 1959? Some kind of economic disaster or calamity? Well, it was nothing as dramatic as that. The explanation is given by Nikolitch in a footnote to the table where these figures were derived. For the 1949 figures, he states "sharecropper operations not considered as independent farms, but as parts of respective multiple-unit operations." (Nikolitch, p. 4). This is the solution to the mystery. The numbers and sales of other than family farms in 1949 were inflated vis-a-vis the 1959–69 figures because plantations were included in the 1949 figures as single operations, most of which undoubtedly were other than family sized.

In 1959 and later, however, these "multiple-unit operations" were not counted as single units but instead all the sharecropper units on these places were counted separately. Hence, other than family farms experienced a big drop from 1949 to 1959 because of the loss of these multiple-unit operations. Family sized farms increased their proportion of sales considerably through the definitional acquisition of all the individual sharecropper operations and the sales which in 1949 were associated with the multiple unit operation.

This gain by the family sized category was not detectable in the changes in farm numbers because the loss of family farms from 1949–59 more than offset the numbers gained by the definitional change.

This third error was the direct cause of the fourth major error made by the USDA. The high level of apparent family farm stability from 1949 to 1969 was in fact a statistical artifact caused by the use of different definitions for family and other than family sized farms in 1949 and 1969. If multiple-unit sharecropper operations had been included for the years 1959, 1964 and 1969, then other than family farms would have consistently accounted for an increasing proportion of all farm sales from 1949 to 1969. Furthermore, if this had been done, then family sized farms at the present time would account for a good deal less than their present 62 percent of all farm sales. In other words, family sized farms while still predominant nu-

merically would be a good deal less predominant in sales.

If the same definition had been used in 1949 as in later years, then the number of other than family sized farms in 1949 would have been much lower and their proportion of all sales would have also been much lower. If this had been done, family farms would have been observed declining in their proportion of all sales consistently from 1949 to 1969 and other than family farms would have been observed consistently increasing.

This fourth error is one of immense magnitude because if consistent definitions had been used, the conclusions reached would have been the exact opposite of those reached by Nikolitch and the USDA. This data instead of being evidence for family farm stability is in actuality evidence of systematic, linear family farm decline and larger than family size farm growth.

Even if no additional information was to be presented in this paper, some serious questions could be raised at this point about the meaningfulness of the other evidence upon which the USDA has based its case. If family farms are much less dominant than previously thought and/or family farms have been systematically declining in importance, why weren't these facts observable or detected in the other evidence presented by the USDA? I will attempt to answer this question in the later sections.

Actually, Nikolitch presented a good deal of additional data which by itself should have raised some serious questions about the conclusions reported by the USDA on the present status and trends in family farms. For instance Nikolitch presented information by region on changes from 1959 to 1964 on the proportion of all sales accounted for by family sized farms. In each of the 11 regions, family sized farms declined in sales from 1959 to 1964. The amount of reduction varied from 1 to 13 points while for the U.S. as a whole, the reduction was 5 points. (Nikolitch, p. 9). This information certainly wasn't consistent with the conclusion presented by the USDA.

The present predominant status of family sized farms inferred from their proportion of sales for the entire U.S. would also have been much less clear or certain if the USDA had presented data on the present status of family sized farms by region, state and type of production. A summary of this data appears in Table 3.

TABLE 3.—THE PERCENTAGE OF ALL FARM NUMBERS AND OF ALL SALES BY OTHER THAN FAMILY SIZED FARMS BY REGION, STATE AND TYPE OF PRODUCTION FOR 1964 (NIKOLITCH, PP. 7, 9–10)

Region	Percent		State	Percent of sales	Type of production	Percent	
	Farms	Sales				Farms	Sales
Pacific	13	71	Arizona	89	Vegetables	17	85
Southeastern	6	56	California–Nevada	79, 70	Fruit and nuts	17	71
Mountain	9	54	New Mexico	63	Other field crops	20	70
Delta	8	51	Colorado-Massachusetts	57, 56	Cotton	10	58
New England	11	49	Mississippi	55	Poultry	8	43
Southern Plains	6	45	Maine-South Carolina	53	Other livestock	3	31
Lake States	2	14	Texas	52	General	5	30
Corn Belt	2	13	Arkansas	50	Dairy	6	23
Northern Plains	2	18	Louisiana	48	Tobacco	3	18
Appalachian	4	27	Washington-Oregon	46	Cash grain	3	15
			Wyoming, Georgia, Idaho	43			
			Michigan	21			
			Wisconsin, Illinois, North Dakota	13			
			Iowa	9			

[1] The percent of all farms which were other than family sized was not available on a State basis in the Nikolitch publication.

Table 3 indicates if statistics had been presented for regions, states and enterprise areas, it would have been quite clear (contrary to the impression given by the national level figures quoted by the USDA) that other than family farms were either predominant (or close to it) in most regions and states other than the midwest as early as 1964. This was also true for most types of production other than those concentrated in the midwest.

Another shortcoming of classifying farms on the basis of quantity of labor hired is that land ownership and the ownership of nonland resources (capital) are not taken into consideration in the classification scheme. What proportion of family sized farms are owner and nonowner operated? What are the proportions for larger than family sized farms? Regardless of one's own preference as to what a family farm is, the questions of whether or not (or to what extent) the farm operator owns the land (or holds title to it) and the nonland production resources are easily defended on historical, practical and conceptual grounds as desirable and necessary elements of any ideal classification scheme (in addition to an assessment of labor). As pointed out earlier, it appears the bulk of sharecropper farms presently are included in the family sized farm category. In addition, a high proportion of other farms classified as tenant operated are undoubtedly classified as family sized. If these farms and their sales were removed from the family sized farm category, what proportion of all sales would the remaining owner operated: family sized farms account for? It could conceivably be less than 50 percent. Would this alter or affect our conclusions as to whether "family" farms are presently predominant in society?

THE CLASSIFICATION OF FARMS BY LAND TENURE

Given the trends in family and larger than family sized farms since 1949, some serious questions must be raised about the utility and meaningfulness of relying on land tenure data (as defined by the Census) to assess and measure significant alterations taking place in the structural characteristics of U.S. farms and changes taking place in the relative importance of different structural types. The land tenure information suggests or leads one to conclude family farms are predominant presently and their amount of predominance has been increasing. On the other hand, family sized farms have been becoming less predominant in sales since 1949 suggesting or leading one to conclude family farms are declining. The explanation for this incongruity is the fact that while the land tenure classification assesses changes taking place in the status of farms classified by the relationship of the farm operator to the ownership of the land he operates (owner and nonowner operated farms) the amount of hired labor and the ownership of nonland production resources (capital) are not included as a part of the classification.

Because of this omission we do not know the proportions of all owner operated farms which are family and larger than family sized. The same information is also lacking for nonowner operated farms. Since family sized farms have been declining even as owner-operated farms were increasing, it's quite clear some of the owner operated farms are larger than family sized. An important question is what proportion of all owner operated farms and their sales are accounted for by farms which are larger than family sized? The land tenure classification as it exists cannot be used to assess trends on "family" farms if one includes as a minimal part of his family farm definition the requirement that the operator and his family do a majority of the work and/or that the operator owns the majority of the farm's nonland resources used in production. Since the land tenure classification excludes these two major structural dimensions or characteristics of farms, it falls far short of the ideal classification system.

Any one using land tenure data should also be alerted to the fact that the Census changed their minimal requirements to qualify as a farm operator in 1969. The 1969 tenure classification no longer allows a meaningful distinction or classification of farms in terms of the relationship between the person managing the farm on a daily basis and the extent to which that manager owns the land managed (operated). Furthermore, pre-1969 hired manager farms are now classified as owner and tenant operated farms. The latter point explains to a large extent why owner operated farms increased in their proportion of all farm numbers, acreage and sales from 1964 to 1969. Large corporations like Tenneco and Del Monte, etc. are now classified as owner operated farms if they own any of the land they operate.

This reclassification was made possible by changing the definition of a farm operator from "a person . . . either doing the (farm) work himself or directly supervising the work" to "the person in charge of the farm or ranch operation." (1969 Census of Agriculture, p. A–6). Semantically there seems to be little difference here but what the new definition allows that the old one did not is for absentee farm owners to be classified as "owner-operators." Obviously, if one owns a farm or any part of a farm, legally and technically he is the person or entity (corporations) *in charge* of the farm operation (assuming the land owned is not all rented out).

THE CLASSIFICATION OF FARMS BY TYPE OF ORGANIZATION

What contribution does a knowledge of type of farm legal organization (sole proprietorship, partnership, corporation with 10 or fewer or more than 10 shareholders) make to understanding the present position or trends in the same of "family" and "corporate" farms and farm organizational structure generally? Was the conclusion of the USDA in the preface justified, that "these data document the extremely low involvement of nonfamily types of corporations in farming and refute the alleged takeover of farming by outside corporations?" (Family Farm Act of 1972, p. 20).

Technically, this information provides no evidence whatsoever on either the present or changing status of "family" farms. As pointed out earlier, if "family" farms are in fact predominant you would also have to observe a predominance of individual and

family ownership. But, the observation of individual and family ownership predominance, by itself, does not prove "family" farms are predominant. Why? Because in either a practical or ideal sense more information than just type of owner is necessary to identify a "family" farm. Family owned farms which would under no circumstances be classified as "family" farms are: absentee family owned farms with hired managers and hired workers; and, family owned and managed farms with high inputs of hired labor. Ideally, one would also like to know if the individual or family owner was also managing the farm directly (or was absentee) and if these owners also owned the nonland production resources (capital). None of these necessary or desirable distinctions can be made by knowing only the type of owner because information is not available on the involvement of these various owners in management, labor or the provision of capital.

Is the USDA's quoted assertion about "corporate" farms correct? Well, as a matter of fact it is, if you accept the USDA's definition of a "corporate" farm as exhaustive or inclusive of all "corporate" farms. No one will argue with the USDA that all or most of the farming corporations with more than 10 shareholders are "corporate" farms. There are very solid practical and conceptual reasons to disagree with the USDA, however, that their definition includes all "corporate" farms. This is very clear when one begins specifying the most likely structural characteristics of those farms identified by the USDA as "corporate". These farms most likely are large (acreage and/or sales-wise), have absentee owners, hired managers and hired workers and provide their own capital. Many would argue that the structural characteristics just enumerated constitute the definition of a "corporate" farm at the most general level. This type of farm is the polar extreme structurally of what Harris has defined as the ideal "family" type farm (Harris, p. 519).

If this structural definition of a "corporate" farm is accepted, then it is clear the USDA definition of a "corporate" farm not only does not include all "corporate" farms; it probably does not even include "most" "corporate" farms. For a farm to be structurally defined as "corporate", it need not be legally incorporated. This is not true of the USDA's definition. Furthermore, the structural definition of a "corporate" farm places no a priori limits on the minimum number of owners as with the USDA's definition. The structurally defined "corporate" farm may have any kind or number of absentee owners. The owner may be an individual, family, small or large group of unrelated individuals or any combination of these. That the USDA's definition of a "corporate" farm may be excluding the majority of structurally defined "corporate" farms is indicated by research I was involved with at Wisconsin, where it was found that approximately 75 percent of all structurally defined legally incorporated "corporate" farms were owned by an individual, family or small group of unrelated individuals. None of these "corporate" farms would have been included in the USDA's "corporate" farm category. The percentage of structurally defined "corporate" farms excluded from the USDA's "corporate" farm category undoubtedly is even greater than 75 percent because no assessment was possible on the number of such farms unincorporated in Wisconsin.

If you accept the USDA's definition as including all "corporate" farms, then the USDA is quite correct in its assertion that "corporate" farms have a low involvement in farming and are light years away from predominance in farming. If you do not accept the USDA definition of a "corporate" farm, then the USDA figures on "corporate" farms as they define them are rock bottom estimates of the present levels of "corporate" farms. If "corporate" farms are defined structurally, then the USDA has not presented data documenting low "corporate" farm involvement in agriculture and definitely has not refuted either the alleged takeover of farming by "corporate" farms or more correctly, in terms of what has been charged, a trend toward "corporate" farms.

Since the 1967 USDA–ERS survey of farming corporations has been highly quoted in the past and will undoubtedly continue to be in the future, a few comments about this research appear justified. Essentially the same definition of a "corporate" farm was used in this research as that presently being used by the USDA so all of the previous comments apply equally as well to this research. There is one feature of this research, however, which distinguished it from the similar Census of Agriculture based data. This feature is that it may have been highly inaccurate. Information on this topic has been presented in two previous papers, so I will not go into very much detail on this (Rodefeld, March and May, 1972).

I pointed out in these papers that in Wisconsin 37 percent of the USDA enumerated farming corporations were not qualified for inclusion and 43 percent of all farming corporations actually found in the state were left out by the USDA. The USDA research was found to have underestimated acres operated by 46 percent, acres rented by 298 percent, cattle fed by 46 percent, etc. This research was easily dismissed by the USDA since it only covered one state but it should be pointed out that a comparison of the 1969 Census of Agriculture data on farming corporations with the 1968 data of the USDA is consistent with the results of the Wisconsin research. For instance, the Census found 61 percent more farming corporations and 34.5 percent more acres operated by farming corporations than found in the USDA survey for the USDA as a whole.

COMPOSITION OF THE FARM WORK FORCE

Nikolitch and the USDA have argued (or implied) that if family farms were declining, family labor would represent a decreasing proportion of total farm labor. These authors observe no such decrease which suggests or is consistent with the assertion "family" farms have not been declining. These arguments, data and inferences, however, are not well founded. Family farms could in fact be declining even as the proportion of family workers in the total work force remained stable. This is clearly supported by the trends in family and larger than family sized farms. The proportion of the work force hired has not changed even while larger than family sized farms over the last 20 years have accounted for an increasing proportion of all farm sales. What has been happening in the farm labor sector is quite clear. Family and hired workers have been decreasing at about the same rates even while those farms using hired labor have been increasing their work force sizes. Thus, even while all hired labor is being reduced, that remaining is becoming more highly concentrated on the larger farms. For instance from 1959 to 1964 farms with sales exceeding $100,000 increased their proportion of hired labor on all farms from 30.1 to 40.6 percent (Nikolitch, p. 18). For the same time period the average number of hired workers on commercial farms reporting regular hired workers increased from an average of 2.2 to 2.6 while the number on hired manager farms increased from 8.5 to 12.0 (Moyer, et al., p. 19).

In conclusion, while stability in the proportion of the work force which is family labor is consistent with the assertion of stability in "family" farm status, the former is not and cannot be used by itself as evidence of "family" farm stability since "family" farms can and in fact have declined even while the proportion of the work force which was family labor remained constant.

OTHER EVIDENCE SUGGESTING FAMILY FARM DECLINE AND LESS PREDOMINANCE THAN SUGGESTED BY THE USDA

Other evidence also exists more supportive of my claim that "family" farms are less dominant than suggested by the USDA and have been declining in importance rather than remaining stable. The present concentration of operated farm land suggests family farms are less dominant than supposed. In 1969 farms with 1000 or more acres (150,946) accounted for only 5.5 percent of all farms, but operated 54.4 percent (578.4 million acres) of all land in farms. Farms with 2,000 or more acres were 2.2 percent (59,907) of all farms but operated 42.8 percent (454.8 million) of all land in farms. There were 130,995 (5.9 percent) farms with harvested crop land with acreages exceeding 1000 acres that accounted for 29.2 (79.8 million acres) percent of all harvested crop land acreage. Farms with acreages exceeding 1000 acres accounted for only 14.1 percent of all farms with irrigated acreage, but 47.8 percent (18.7 million acres) of the irrigated acreage (1969 Census of Agriculture).

Trends in the number and proportion of sales of the largest farms also support the contention of family farm decline. The number of farms with sales exceeding $100,000 per year has increased from 20,000 (.5 percent of the total) in 1959 to 31,000 (1.0 percent) in 1964, to an estimated 54,000 (1.8 percent) in 1970. The sales accounted for by these farms has increased from $5.0 billion (16.3 percent of the total) in 1959 to $17.2 billion (32.6 percent) in 1970. (*Our 31,000 Largest Farms*, p. 4 and *Family Farm Act of 1972*, p. 24.) This is evidence of the declining position of the "family" farm since in 1964, 86 percent of these largest farms were larger than family sized and they accounted for 92 percent of all sales by these largest farms (Nikolitch, p. 5). From 1959 to 1964, these largest farms increased their proportion of all farm sales in every single region in the U.S.

WHAT IS THE PRESENT STATUS OF THE FAMILY FARM AND HOW IS IT CHANGING?

As pointed out previously, it is technically and conceptually impossible to answer the question of what the present status of the family farm is and how this status has been changing to everyone's satisfaction with presently available data. The family sized-larger than family sized distinction probably is the most useful, insightful, and generally acceptable classification presently available. Even this classification does not assess two important farm structural characteristics, however, land ownership and the ownership of nonland production resources (capital). For policy making it would seem quite important to know the extent to which family and larger than family sized farms were owner and nonowner operated and who provided the capital on these farms (land owner, farm manager, both, neither).

The land tenure classification is useful because prior to 1969, it assessed the relationship between land ownership and farm management, i.e., it classified farms on the basis of whether or not the farm manager (operator) owned the land which was being managed. It was deficient in the sense it did not assess the farm structural characteristics of labor and nonland resource ownership. Hence, even though owner and nonowner operated farms were distinguished, there was no way of knowing which of these farms were family sized (used little or no hired labor) and which were larger than family sized (used a good deal of hired labor). There also was no way of knowing from this classification who was providing the capital on these farms.

A significant step forward in understanding what is happening to the "family" farm would be a synthesis or combination of the family-larger than family sized classification with land tenure classification (owner and

nonowner operated). Such a synthesis would result in four farm types. At the one extreme you would have the owner operated: family sized farm. This is a farm owned, managed and worked by an individual or family. This is the farm type which historically and presently has been predominant throughout the greater Midwestern area. It is consistent with the definition of the ideal "family" type on the three structural dimensions included in the definition (no or little differentiation between land ownership, management and labor). The ownership of nonland production resources (capital) is the only other factor of production or input not included.

The other extreme is the polar opposite, structurally from the preceding farm type. This is the nonowner operated; larger than family sized farm. This is a farm with absentee ownership, and a nonland owning manager where all or most of the work is done by hired nonowning workers. Structurally, this is the most highly differentiated farm type because in contrast to the ideal "family" type farm, different individuals provide for each of the farm structural characteristics of land ownership, management and labor. This type of farm is undoubtedly what most people have referred to as the "corporate" or "industrial type" farm. Undoubtedly most "plantation" farms would also be classified in this category.

Two farm types occupy positions between the two extreme farm types: owner operated: larger than family sized and nonowner operated: family sized. These two types are clearly intermediate on the structural differentiation continuum since each shares a common characteristic with the extreme farm types while the extremes share no commonalities. The first of these intermediate types is a farm which is owned and managed by an individual or family where all or most of the physical labor is performed by hired nonowning workers. It is the same as the ideal "family" type farm in the sense there is no differentiation between land ownership and management. It is different from the "family" farm and the same as the "corporate" farm in that the bulk of the work is done by hired workers. Many fresh vegetable, fruit, livestock ranches and some plantations would be found classified as this type of farm.

The second intermediate type farm has absentee ownership and a nonland owning manager who himself or with his family does all or most of the work. This farm type is the same as the ideal "family" farm since there is no differentiation between management and labor. It is different from the family farm and the same as the "corporate" farm since it has absentee ownership and a nonland owning manager. Included in this category are all family sized rented and leased farms and farms worked on shares (50–50, 40–60, etc.). If plantations are not enumerated as single units, sharecropper farms would also be included in this category. The knowledge of nonland production resource ownership is necessary here to distinguish among the various sub-types of this general farm type.

How many farms are there in each of these categories? How much acreage and sales are accounted for by each? What changes have taken place in the numbers and sales of each over time? This information has never been available up to this point in time because farms have never been classified in this way. I have been able, however, to determine the answers to these questions for 1959 and 1964 on the basis of existing data on family and larger than family sized farms and owner and nonowner operated farms. This information is provided in Table 4.

TABLE 4.—FARM NUMBERS, SALES, PERCENTAGE OF ALL FARM NUMBERS AND SALES AND PERCENTAGE CHANGE IN FARM NUMBERS AND SALES FOR 1959 AND 1964 BY FARM TYPE [1]

	Farms (thousands)			Sales (millions)		
	1959	1964	Percent change 1959–64	1959	1964	Percent change 1959–64
All farms	3,695	3,150	−14.7	$30,362	$35,075	+$15.5
Owner operated: Family sized (family)	2,808	2,475	−11.9	15,224	17,276	+11.9
Nonowner operated: Family sized (tenant)	721	521	−27.7	5,912	5,372	−9.1
Owner operated: Larger than family sized (larger than family)	139	122	−12.2	7,202	8,915	+23.8
Nonowner operated: Larger than family sized (Industrial type)	26	32	+23.1	2,024	3,512	+73.5

	Percent of all farms		Percent of all sales	
	1959	1964	1959	1964
All farms	100.0	100.0	100.0	100.0
Family	76.0	78.6	50.1	49.3
Tenant	19.5	16.5	19.5	15.3
Larger than family	3.8	3.9	23.7	25.4
Industrial type	.7	1.0	6.7	10.0

[1] The 1st step in deriving these figures was to determine the numbers and sales for the marginals. The marginals for family and larger than family sized farms were provided by Nikolitch. The census provided the data for the owner and nonowner operated farms for 1959 and 1964. There was a problem here, however, because Nikolitch excluded all the farms in Alaska and Hawaii and all institutional farms. To get comparable marginals, these farms and their sales also had to be removed from the census land tenure totals. It was possible to determine from State data in the 1959 and 1964 Census of Agriculture the total number and sales by land tenure type of Alaska and Hawaii farms. For 1959 and 1964 these farm numbers and sales were subtracted from the U.S. totals by land tenure class. The remaining differences in total numbers and sales between the 1959 and 1964 census and Nikolitch's totals for these years was the number and sales of institutional farms removed by Nikolitch in his analysis. It was assumed all of these farms and their sales were classified in the census as hired manager farms. Hence for 1959 and 1964, these farms and their sales were subtracted from the census hired manager numbers and sales. The remaining hired manager numbers and their sales for the 2 years were placed in the nonowner operated larger than family sized cell of the table. This was appropriate because Nikolitch classified all hired manager farms as larger than family sized. This cell, however, was not complete because Nikolitch classified all farms with 1 to 5 man-years or more of hired labor as larger than family sized. To fill out this cell it was necessary to know how many tenant operated farms were larger than family sized. An estimate of this number was made by assuming all commercial tenant operated farms with 2 or more regular hired workers would have been classified by Nikolitch as larger than family sized. These numbers for 1959 and 1964 were available from the Census of Agriculture. This number plus the already established number of hired manager farms equalized the number of nonowner operated: larger than family sized farms in 1959 and 1964. Since all the marginal numbers were known, once the number was known for this 1 cell, all the other cell numbers were easily determined by subtraction. The sales accounted for by each cell in the table were determined by first assuming the tenant operated larger than family sized farms had the same average sales per farm as the larger than family sized farms remaining after subtracting the hired manager farm number and their sales from the total of all larger than family sized farms. Multiplying the estimated number of tenant operated larger than family sized farms by the average sales per farm for larger than family sized farms minus hired manager farms equalled the total sales of tenant operated larger than family sized farms for 1959 and 1964. These totals for 1959 and 1964 plus the already determined totals for hired manager farms equalled the total sales of nonowner operated larger than family sized farms for 1959 and 1964. Since the marginals for sales were already determined, the amount of sales for the remaining three cells were easily determined through a residualization process.

Since no such information or determination has been provided or accomplished previously, a description of the procedure followed appears as a footnote to Table 4. What does Table 4 show? First, as might have been expected owner operated: family sized farms (family) predominated in farm numbers in both 1959 and 1964, accounting for 76 and 79 percent of all farm numbers in these respective years. Numerically in both years nonowner operated: family sized farms (tenant) ranked next in importance accounting for 19 and 16 percent of all farms in these respective years. Owner operated: larger than family sized farms (larger than family) and nonowner operated: larger than family sized farms (industrial type) accounted for only 4.5 and 4.9 percent of all farm numbers in 1959 and 1964 respectively. In conclusion, previous assertions about family farm numeric predominance have been well founded.

In terms of numeric changes from 1959 to 1964, the total number of farms declined by about 15 percent. The greatest losses were experienced by tenant farms while family and larger than family farm declined at lower rates with little difference between them in their rates. Industrial type farms, however, increased by about 23 percent; the only one of the four farm types experiencing an increase in numbers.

Family farms while accounting for almost 80 percent of all farm numbers, accounted for only 50 percent of the sales in 1959 and less than 50 percent (49) in 1964. It is based on this evidence that I argue family farms have not been predominant in sales since as early as 1959. Given the continuing increases in proportion of sales by larger than family size farms and the largest (sales exceeding $100,000) farms, it appears quite likely the proportion of sales presently accounted for by family farms is less than their 1964 level. Furthermore, the percentage of all sales accounted for by family farms is considerably less than what "owner-operated" farms accounted for in 1964 (75) and what "family sized" farms accounted for in 1964 (65).

Tenant farms also account for a lower proportion of the total sales than what one would expect on the basis of their proportion of farm numbers. This difference is not as discrepant as that for family farms, however. Larger than family farms while accounting for only 4 percent of all farms, accounted for a quarter of all farm sales in 1964. Industrial type farms accounted for 10 percent of all farm sales in 1964, while accounting for only 1 percent of the farms.

It should be pointed out that the number and sales of industrial farms are extremely conservative estimates. Specifically, the number of tenant operated: larger than family sized farms is underestimated because no estimate was possible of the tenant operated farms classified by Nikolitch as larger than family sized because of the use of seasonal workers. Furthermore, if plantations

were enumerated instead of individual sharecropper operations, tenant farm numbers and sales would be decreased and larger than family and industrial type farm numbers and sales would correspondingly be increased. It also should be pointed out that if these computations had been made for commercial farms which in 1964 accounted for 69 percent of all farm numbers and 97.4 percent of all farm sales, then the percentage of family farms would be reduced considerably (since 91 percent of all noncommercial farms are owner operated and undoubtedly family sized), and the percentage of all commercial farm sales by family farms would also be lower than the 49 percent of all farm sales.

The total amount of sales by all farms increased about 15 percent from 1959 to 1964. Tenant farms were the only farm type experiencing an absolute reduction in sales over this period. Family farms increased, but at a rate lower than the average for all farms. Larger than family farms, and especially industrial type farms, experienced substantial increases, the former farm type by 24 percent and industrial type farms by 73 percent.

In 1964 family farms accounted for 95 percent of all "owner operated" farms but only 66 percent of the sales by "owner operated" farms. Family farms also accounted for 83 percent of all "family-sized" farms in 1964 and 76 percent of their sales. Larger than family farms accounted for 79 percent of all "larger than family sized" farms in 1964 and 72 percent of their sales. Tenant farms in 1964 accounted for 94 percent of all "nonowner operated" farms, but only 60 percent of their sales.

The percentage of "owner operated" sales accounted for by family farms decreased from 1959 to 1964 (68–66), while family farms increased their percentage of "family sized" farm sales (72–76) in the same period. Larger than family farms accounted for 78 percent of all "larger than family sized" farm sales in 1959 and 72 percent in 1964. Tenant farms while accounting for 75 percent of all "nonowner operated" farm sales of 1959 experienced a substantial drop to 60 percent by 1964. Average sales per farm by type of farm for 1964 were: family=6980; tenant=10,304; larger than family=73,041 and industrial type=109,569. In 1959 larger than family farms had average sales of 51,981 and industrial type farms averaged 77,057.

CONCLUSIONS

Since the mid to late 1960's, numerous farm organizations, (especially the Farmers Union and NFO) rural people, legislators and other interested parties have argued that family farms were declining and were being replaced by nonfamily farms, especially "corporate" and/or industrial type farms.

The USDA explicitly, and the land grant college system by acquiescence, have consistently maintained quite to the contrary that: family farms continue to predominate in farm numbers and sales; "corporate" farms are presently an insignificant force in American agriculture; there has been no change over the last 30 years in the proportion of all farm numbers and farm sales accounted for by family farms, i.e., there has been no decline in family farms and no increase in nonfamily farms over the last 30 years; and there has been no trend toward corporate farms.

I think I have proven in this paper that those who have maintained that "family" farms are declining and "corporate" or "industrial type" farms are increasing are a good deal closer to the truth than the USDA and others who have supported its position. If a family farm is defined as an owner operated: family sized farm, then this type of farm has not predominated in farm sales since at least 1959. If one wanted to be a little dramatic, one could use the fact that such family farms account for less than 50 percent of all farm sales to assert that U.S. rural society can no longer be correctly characterized as one dominated by family farms and farmers. Rather, it is now dominated by "nonfamily" farms and farmers. "Nonfamily" farms can be viewed as insignificant in U.S. society only if one is willing not to attach very much import to farm types which account for more than 50 percent of all sales, even though they only accounted for 21 percent of the farms and farm operators in 1964. "Corporate" and "industrial type" farms can be viewed as insignificant only if 10 percent of all farm sales in 1964, and undoubtedly more 9 years later, is also viewed as insignificant.

There has, in fact, been a systematic, uninterrupted 20-year decline in the proportion of all farm sales accounted for by family sized farms and a corresponding systematic increase in the sales accounted for by larger than family sized farms over the same 20-year period. The USDA's own data is evidence for this statement when errors in the reporting, inconsistencies in the definitions of the farm types, and the interpretations of that data are accounted for or corrected. From 1959 to 1964 there was, in fact, a trend toward "corporate" or "industrial type" farms. This type of farm was the only farm type of the four analyzed that experienced an absolute increase in farm numbers from 1959 to 1964, a 23 percent increase over a 5-year period. Family farms for the same period decreased in number by 12 percent. "Corporate" or "industrial type" farms also experienced the greatest increase in sales from 1959 to 1964, a 73 percent increase. Family farm sales for the same time period registered only a 12 percent increase.

The pattern of family farm decline and "nonfamily", "corporate" and/or industrial type farm ascendency established in this paper takes on added credibility when viewed in conjunction with the existent high levels of land concentration by farms exceeding 1000 acres; the proportion of all sales accounted for by farms with sales exceeding $100,000; the concentration of hired workers on these largest farms; and the existent high levels of production concentration in some areas pointed out by the USDA in its testimony against the Family Farm Act of 1972.

The USDA-LGC system has been vested with the responsibility by society of providing it with the information it needs to make policy decisions about the farm and rural sectors. The society expects and assumes that this information will be accurate, adequate and correctly interpreted. The greater the extent to which this is not true, the greater the probability is that society will not make policy decisions maximizing its own best interests.

I do not think society has been receiving accurate, adequate and correctly interpreted information on the present and changing status of family farms and farmers. Society has not received the information it seeks because of the reasons outlined previously in this paper. Furthermore, policy recommendations which have been made to society by the USDA and others based on this inaccurate, etc., information are questionable. They may, in fact, have made the same recommendations even after taking into account the points raised in this paper. I would venture the prediction, however, that if these recommendations were the same they would be justified or defended for considerably different reasons.

The past positions of the USDA (and others who have agreed with them) on "family" and "corporate" farms has already had a number of detrimental effects. For instance, their pronouncements on the continuing health of the family farm has lulled the nonfarm population and some segments of the farm population into a false sense of security about the well-being of family farms and farmers. An acceptance of the USDA position has had the effect, and will continue to have the effect in the future, of seriously undermining and diminishing the nonfarm-urban support which family farmers must of necessity have in their attempts to preserve the family farm or anything remotely resembling it in the future. Another effect of the USDA position on "family" and "corporate" farms is that it has effectively to date hindered both research in the area and legislation addressed to the "family farm" problem. Significant, large scale, expensive research tends not to be formulated, funded or carried out on nonexistent problems or problems expected only in the far and distant future. The same situation would seem to hold for new legislation or major modifications to existing legislation.

RECOMMENDATIONS

1. The Census Bureau, USDA or land grant college personnel should, at the earliest possible date, carry out a reanalysis of Census of Agriculture data for at least the last two decades. Farm types in this reanalysis should be conceptualized and classified at a level of specificity minimally equal to that employed in the last table of this paper.

2. In light of the evidence presented in this paper, the USDA should at its earliest convenience begin a detailed and systematic review of its definitions of farm types and data which it has used in making past assessments of proposed legislation and public pronouncements concerning "family" farm characteristics and trends.

3. Any person or organization which has based its evaluation of trends in "family" and "corporate" farms on past USDA generated data and pronouncements should undertake a reevaluation of their positions in light of the data and arguments presented here today.

4. Research should begin immediately addressed to the question of what effects have and will be associated at all levels of society with a change from family farms to either larger than family farms or industrial type farms since at this point in time this seems to be the direction we are heading.

5. If any of the Census data analysis or other research suggested here is not initiated soon (within a year), farm organizations should consider joining together in the creation of a research foundation to contract with individual researchers for the information society needs.

REFERENCES

Ball and Heady (ed.) *Size, Structure and Future of Farms.* The Iowa State University Press, Ames, Iowa, 1972.

Census of Agriculture, 1959.

Census of Agriculture, 1964.

Census of Agriculture, 1969, Vol. I, Area Reports, Part 13, Michigan, Section 1, Summary Data.

Family Farm Act: Hearing Before Antitrust Subcommittee (No. 5) of the Committee on Judiciary, House of Representatives, Ninety-Second Congress, Second Session on H.R. 11654 and Similar Bills, March 22–23, 1972, Serial No. 28, U.S. Government Printing Office.

Harris, M. "Shifts in Enterpreneurial Functions in Agriculture," *American Journal of Agricultural Economics,* 1969, Pt. 1, pp. 517–29., Vol. 51.

Kyle, L. *The State Journal,* Lansing, Michigan, April 15, 1973.

Moyer, D. O., Harris and Harmon, *Land Tenure in the United States: Development and Status,* USDA ERS Agr. Inf. Bul. No. 338, June, 1969.

Nikolitch, R., *Family-Size Farms in U.S. Agriculture,* USDA ERS 499, February, 1972.

Our 31,000 Largest Farms, R. Nikolitch, USDA ERS, Agr. Econ. Rep., No. 175, March 1970.

Ray, V. K., *The Corporate Invasion of American Agriculture,* National Farmers Union, 1968.

Rodefeld, R. D., "The Current Status of U.S. 'Corporate' Farm Research," *Farm Workers in Rural America,* 1971–1972,: Hearings before the Subcommittee on Migratory Labor of the Committee on Labor and Public Welfare, United States Senate, Ninety-Second Congress, First and Second Sessions, Ap-

pendix, Part 5A, U.S. Gov. Printing Office, Washington, D.C., 1972.

Rodefeld, R. D., "The 1968 USDA ERS Survey of Corporations with Farming Operations: A Critique of Its Accuracy, Conceptualization and Procedures," (MI), May 1972.

Wisconsin Agriculturalist, January 8, 1972.

SKYLAB

Mr. MOSS. Mr. President, on Saturday, March 26, the day after the astronauts were placed in orbit to rendezvous with Skylab, the Deseret News, one of the great daily newspapers in Salt Lake City, published an editorial concerning the experience of Skylab. I believe that in a very short tersely worded editorial the Deseret News stated accurately what the lessons are from the adversity of Skylab and the efforts being made to recover from that adversity. I ask unanimous consent that the editorial be printed in the RECORD.

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

SKYLAB'S TROUBLE: LESSON IN THE USES OF ADVERSITY

What began as a test of man's ability to endure physically in outer space has turned into a test of determination and ingenuity.

If the astronauts who vaulted into orbit Friday on an unprecedented mission succeed in repairing the crippled Skylab, their work could help shift the emphasis from space exploration to space exploitation intended to benefit mankind in many ways.

If they fail, it will provide ammunition to those who see the $2.6 billion project as a wasteful boondoggle and would like the U.S. to curtail sharply its space efforts.

But even failure will prove something more positive and constructive than that. It will prove that the proper choice for the U.S. should not be between a manned vs. an unmanned space effort. Instead, the right choice is to decide on what constitutes the proper mixture of the two.

If the Skylab flight had been an unmanned undertaking, as Dr. Wernher Von Braun observed the other day, "this would have been the end of it."

As it is, the world's first astro-repairmen have a chance to erect a sunshade to shadow the space station and cool down Skylab, which has been limping in earth-orbit for 12 days with overheating and power troubles. It will be a test of man's ability to work efficiently in space and recover from setbacks.

If Skylab is successfully cooled, its nine astronauts over the next eight months should be able to carry out most of the 87 medical, scientific engineering, and earth resources survey experiments planned. Only three relatively minor experiments would definitely be lost.

Among the experiments that can be completed, besides the major one to see how well man adapts to lack of gravity for long periods, are tests designed to pinpoint mineral deposits and agricultural areas infested by plant diseases.

With sufficient improvisation and and determination on the part of all those involved, Skylab's troubles could become a blessing in disguise. Such, in space as on earth, are the uses of adversity.

THE FUTURE OF NONMETROPOLITAN AMERICA

Mr. HUMPHREY. Mr. President, yesterday I had the privilege of discussing the problems facing nonmetropolitan America with rural development leaders from all over the Nation.

The conference on "The Future of Nonmetropolitan America," sponsored by the National Association of Development Organizations and the Coalition for Rural Development, being held in Washington this week, is grappling with one of the most serious problems facing this country today.

In my remarks to the Conference I made the following points:

First, rapid change in many important basic socio-economic factors makes it essential that we find a way to anticipate change and direct it and its consequences.

Second, at present no mechanism or process exists for long-range growth and development policy planning at the national level in the United States.

Third, we have a national commitment, by the Congress and the President, giving the "highest priority" to balanced rural-urban development, but haven't followed through on it.

Fourth, the Rural Development Act of 1972 was a modest step in carrying out this commitment. However, it is now being used by the administration as an excuse for terminating many of the ongoing programs that are vital to a healthy rural America. Both the President and Congress realized and intended that this program supplement and not supplant ongoing rural development programs, when it was signed into law last summer. It is only after the fact that the administration has decided to subvert this basic policy intent.

Fifth, to cope with the many interrelated long-run growth and development problems facing us, as a people, this country needs a process and mechanism for balanced national growth and development. HUD, HEW, and other Federal agencies are the first to require comprehensive long-term planning by local communities seeking Federal assistance. Yet, at the national level we are lucky if we have good plans for 6 months into the future for the program of a single agency. This is far from sufficient. It is time we put our Federal house in order.

Sixth, if we are to "design" and not "resign" ourselves to the future, we need to create the institutional system needed to develop and monitor a continually evolving balanced national growth and development policy. The Balanced National Growth and Development Act, which I will soon introduce, would go a long way toward establishing this capability.

I ask unanimous consent that the entire program of the conference on "The Future of Nonmetropolitan America" and the text of my remarks at the conference be printed in the RECORD.

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

THE FUTURE OF NONMETROPOLITAN AMERICA

(A conference sponsored by National Association of Development Organizations and Coalition for Rural Development, May 29–31, 1973, Washington, D.C.)

THE CONFERENCE

This is a most critical time in Washington, D.C., for the future of nonmetropolitan America. Within the next few months Congress must address its attention to the challenging task of determining priorities and shaping policies for nonmetropolitan America. Questions related to the expanded funding of the Rural Development Act, the implications of land use planning on a statewide basis, economic development and a compatible growth policy and programs in the area of health and housing are indicative of the many issues which need to be focused upon in order to restore the vitality of nonmetropolitan America.

The Conference will provide those in attendance the latest news from Washington affecting substate or district programs. The Conference also offers a forum in which Administration representatives, Congressional members, state and local officials and other nonmetropolitan leaders may exchange ideas and information on the important decisions to be made about rural America.

In the spirit of cooperation, NADO and the Coalition for Rural Development are enthusiastic about the opportunities of this joint conference, bringing together the energies and resources of many concerned and influential individuals, representing the broad spectrum of nonmetropolitan America.

Conference participants are urged to use this meeting as a base for further cooperation and coordination of efforts, to insure that the goal of a continuing vitality for nonmetropolitan America is reached.

THE SPONSORING ORGANIZATIONS

National Association of Development Organizations

NADO is an independent organization of economic development districts that is interested in the development of a structure whereby politically viable substate regions might be formed, in cooperation with the states and the federal government. It is the intent of NADO to provide a mechanism for local citizens and elected officials of nonmetropolitan America who can effect a partnership for communication, education and financing locally developed plans and priorities to effectively manage the land and water resources, formulate a balanced national growth policy and solve the problem of massive population maldistribution. Nick L. Salazar, President of the North Central New Mexico Economic Development District (P.O. Box 773, San Juan Pueblo, New Mexico) is currently President of NADO.

Coalition for Rural Development

The Coalition, originally organized as the Coalition for Rural America, is led by a board including 10 former governors and 34 representative national leaders from business, labor, agriculture, cooperatives, universities and conservation organizations. The Coalition supports "those policies, programs and laws which will improve the quality of life in rural America . . . encourage a better balance between rural and urban growth . . . and assure the continued opportunity for efficient family farms to survive." Edward T. Breathitt, currently Vice-President of the Southern Railway System, former Governor of Kentucky, and former Chairman of the President's Commission on Rural Poverty, is Chairman of the Coalition's Board of Directors. The Coalition is headquartered at 30 F Street, NW., Washington, D.C.

CONFERENCE PROGRAM

Tuesday, May 29

2:00–7:00—Registration (Lobby).

2:00—Special Organizational Meetings (North Room) [1]

Proposed Association of Legal Advisors to District Organizations.

4:00—NADO Board Meeting (North Room).

6:00—Open House:

Coalition for Rural Development Suite.

National Association of Development Organizations Suite (Suite number available at Registration Desk).

Wednesday, May 30

9:00–9:30—Opening Remarks (Chinese Room):

[1] All meeting rooms are in the Mayflower Hotel unless otherwise noted.

Chairman: Edward T. Breathitt, Chairman of the Board, Coalition for Rural Development.

Nick Salazar, President, National Association of Development Organizations, "Problems Facing Non-Metro America."

9:30–10:30—The Administration's Program for Non-Metropolitan America (Chinese Room):

Introductions: Jerry J. Jubie, Chairman, National Association of Development Organizations.

William W. Blunt, Jr., Acting Assistant Director for Economic Development, Economic Development Administration.

Will Erwin, Assistant Secretary for Rural Development, U.S. Department of Agriculture.

10:30—Coffee.

10:45–12:15—Concurrent Workshops:

I. *Rural Development Legislation and Appropriations* (East Room)

Chairman: William E. Murray, National Rural Electric Cooperative Association.

John A. Baker, Professional Staff Member, Senate Committee on Agriculture.

Hyde H. Murray, Associate Counsel, House Committee on Agriculture.

Donald A. Raney, Executive Director, Northwest Arkansas Economic Development District.

Darl E. Snyder, Director, Rural Development Center, Tifton, Georgia.

Reporter: Frank Hood, Georgia Power Co., Atlanta, Georgia.

II. *Economic Development Legislation* (Chinese Room)

Chairman: Rudy R. Esala, Immediate Past President, National Association of Development Organizations.

Joseph G. Hamrick, Deputy Assistant Secretary for Economic Development Planning, Economic Development Administration.

A. David Sandoval, Professional Staff Member, Senate Public Works Committee.

James Oberstar, Administrator, House Public Works Committee.

John D. Whisman, States' Regional Representative, Appalachian Regional Commission.

Reporter: James B. Coffey, Jr., Executive Director, Eastern Maine Development District.

12:30–2:00—Luncheon (Ballroom):

Introduction: W. Wilson King, Vice President, Coalition for Rural Development.

Senator Hubert H. Humphrey, Minnesota, "A National Growth Policy."

2:30—The Outlook in Congress (Room 2167, Rayburn Building):

Chairmen: Nick Salazar, President, National Association of Development Organizations.

Dick Hausler, Member, Board of Directors, Coalition for Rural Development.

Brief statements by key Congressional leaders and committee staff members. Visits to individual Congressmen and Senators.

5:30–7:00—Congressional Reception (Room B 369, Rayburn Building):

Thursday, May 31

8:30–9:45—Buffet Breakfast Meeting (Chinese Room):

Speaker: Calvin Beale, Demographer, Rural Development Service, U.S. Department of Agriculture "Where Do Americans Want to Live?"

Brainstorming Session: "Future Legislative Priorities."

10:00–11:45—Concurrent Workshops.

10:00–11:45—I. *Land Use Planning: Problems and Funding* (North Room):

Chairman: William S. Bonner, Board of Governors, American Institute of Planners.

Lance Marston, Director, Office of Environmental Review, Department of Interior.

Robert Knecht, Director, Coastal Zone Management, National Oceanic and Atmospheric Administration.

Steve Quarles, Professional Staff, Senate Committee on Interior and Insular Affairs.

R. Deane Conrad, Special Assistant, Council of State Governments.

Reporter: Richard L. McVay, Assistant Executive Director, Lower Rio Grande Valley Development District.

II. *Planning and the New Federalism* (New York Suite):

Chairman: John Joyner, Executive Director, American Institute of Planners.

Richard W. Lincoln, Special Assistant, Council of State Governments.

Clifford W. Graves, Assistant Secretary for Community Planning and Management, Department of Housing and Urban Development.

Jim Thornton, Professional Staff, Senate Committee on Agriculture.

Bill Brussat, Management Analyst, Office of Management and Budget.

Richard L. Sinnott, Deputy Assistant Secretary for Policy Coordination, Economic Development Administration.

Reporter: Fred Michaelis, Executive Director, Coordinating and Development Council of Northwest Louisiana.

III. *Coordination of Economic and Rural Development* (Pennsylvania Suite):

Chairman: Leslie Newcomb, National Association of Development Organizations President-Elect, Executive Director, Southern Mississippi Planning and Development District.

Gary Howland, Special Assistant for Community Planning and Management, Department of Housing and Urban Development.

Thomas S. Francis, Director, Economic Development District Program, Economic Development Administration.

Joseph C. Doherty, Special Assistant for Home Administration.

John D. Leslie, Executive Director, National Area Development Institute.

Forest W. Reece, Professional Staff, Senate Committee on Agriculture.

Ira Kaye, Acting Director, Community development, Office of Economic Opportunity.

Reporter: Lon Hardin, Executive Director, Western Arkansas Planning and Development District.

12:00–1:45—Luncheon (Chinese Room):

Introduction: Harold LeVander, Former Governor of Minnesota.

Senator Robert Dole, Kansas "Agriculture and Rural Development."

Reporter: Max C. McElmurry, Executive Director, White River Planning and Development District.

2:00–3:15—Wrap up (Chinese Room):

Chairman: Nick Salazar, President, National Association of Development Organizations.

Edward T. Breathitt, Chairman of the Board, Coalition for Rural Development "Where Do We Go From Here?".

3:30–5:00—NADO Annual Membership Meeting (East Room).

3:30–5:00—Coalition for Rural Development Board of Directors meeting (North Room).

NATIONAL ASSOCIATION OF DEVELOPMENT ORGANIZATIONS

President: Nick L. Salazar, P.O. Box 773, San Juan Pueblo, New Mexico.

Secretary-Treasurer: Max McElmurry, White River Planning & Development District, 1120 St. Louis Street, P.O. Box 1010, Batesville, Ark.

Chairman of the Board: Jerry Jubie, R. 3, Box 285, Floodwood, Minn.

Vice President Elect: Les Newcomb, South Mississippi EDD, P.O. Box 2057, 719 Scooba Street, Hattiesburg, Miss.

Board of directors

Southeast

Frank Hood, Georgia Power Co., P.O. Box 4545, Atlanta, Ga.

Joe Wilder, Lower Savannah Regional Planning & Devel. Comm., P.O. Box 850, Aiken, So. Car.

R. B. Patterson, Senior Vice President, Wachovia Bank & Trust Co., P.O. Box 669, Kinston, No. Car.

Don Wakefield, Upper Cumberland Development District, Tennessee Tech, Box 5076, Cookeville, Tenn.

Northeast

Tom Zappone, Exec. Vice President, Oneida County Industrial Development Corp., Airport Terminal Bldg., Oriskany, N.Y.

Sam Lauffer, Southern W. Va. Planning & Development Comm., P.O. Box 936, Bluefield, W. Va.

Fred Johnston, NE Michigan Regional Planning & Dev. Comm., 118 So. Third Street, Rogers City, Mich.

James Coffey, Eastern Maine Dev. Dist., 10 Franklin Street, Bangor, Maine.

Northwest

Nick L. Salazar, North Central New Mexico EDD, P.O. Box 773, San Juan Pueblo, New Mexico.

Fermin Martinez, Local Laborers 354, SECC Regional Planning & Development Council. 108 Broadway, Pueblo, Colorado.

Elizabeth (Betty) George, Sierra Ec. Dev. District 134 South Auburn Street, Grass Valley, Calif.

Jerry Jubie, Arrowhead Regional Devel. Commission, 900 Alworth Building, Duluth, Minn.

Southwest

H. L. Hembree, President Arkansas Best Corporation, 301 Eleventh Street, Fort Smith, Ark.

Brian Duke, Kisatchie Delta EDD, 1243 Dorchester Drive, Alexandria, La.

Judge Ed Gomez, Hidalgo Co. Court House, Edinburg, Texas.

Robert A. Chandler, Lower Rio Grande Valley Development Council, First National Bank Bldg., McAllen, Texas.

Past President

R. R. Esala, Arrowhead Regional Devel. Commission, 900 Alworth Building, Duluth, Minn.

Honorary Member

Robert Eaton, 700 First American National Bank Building, Duluth, Minn.

NADO COMMITTEES

Goals committee

Leslie Newcomb, Executive Director, Southern Mississippi EDD, Inc.

Rudy Esala, Executive Director, Arrowhead Regional Development Comm. (*Co-Chairmen*).

John Ladd, Executive Director, Mohawk Valley EDD, Inc.

Lon Hardin, Executive Director, Western Arkansas Plan. & Devel. Dist. Inc.

Tim Maund, Executive Director, Central Savannah River Area Planning and Development Comm.

Nominating committee

Nick L. Salazar, North Central New Mexico EDD.

Rudy Esala, Executive Director, Arrowhead Regional Development Comm.

John Ladd, Executive Director, Mohawk Valley EDD, Inc.

Donald Raney, Executive Director, NW Arkansas EDD, Inc.

James Coffey, Executive Director, Eastern Marine Dev. Dist.

Max McElmurry, Secy.-Treas., NADO, White River Planning & Development District.

Environmental committee

Elizabeth L. George, Chairman.

John Ladd, Executive Director, Mohawk Valley EDD, Inc.

Leo Murphy, Executive Director, North Central New Mexico EDD.

Richard W. Pearson, Executive Director, Mid-Columbia EDD.

Robert A. Chandler, Executive Director, Lower Rio Grande Valley Dev. Dist.

Leslie Newcomb, Vice-Pres.-Pres. Elect NADO, Executive Director, So. Mississippi EDD Inc.

Environmental committee advisors

F. Robert Edman, Consultant, NADO.

Robert F. Eaton, Parliamentarian, NADO.
Gerry Conroy.
Kenneth Deavers, Director, Office of Planning & Program, Support EDA.

COALITION FOR RURAL DEVELOPMENT

President: Hon. Norbert T. Tiemann (Former Governor of Nebraska).
Vice President: W. Wilson King, Kinglore Farms, Inc.
Vice President: Hon. Harold LeVander (Former Governor of Minnesota).
Chairman of the Board: Hon. Edward T. Breathitt (Former Governor of Kentucky), Box 24, Hopkinsville, Ky.
Secretary: Patrick B. Healy, Secretary, National Milk Producers Federation, 30 F Street N.W., Washington, D.C.

Board of Directors

Dr. George S. Abshier, Director, Community and Industry Programs, Oklahoma State University.
James H. Aldredge (former President of the National Association of Counties).
Robert O. Anderson, Chairman of the Board, Atlantic Richfield Company.
Orin E. Atkins, President and Chief Executive Officer, Ashland Oil, Inc.
Hon. Joseph W. Barr, Jr. (former Secretary, Pennsylvania Department of Community Affairs).
Dr. Charles E. Bishop, Chancellor, University of Maryland.
John Bloch, Director, Parent-Child Center, Barton, Vermont.
William S. Bonner, Board of Governors, American Institute of Planners.
Hon. Jack Campbell (former Governor of New Mexico).
Hon. Earle C. Clements, Tobacco Institute, Inc.
Donald C. Cook, Chairman of the Board & President, American Electric Power Company Incorporated.
Dr. Lawrence Davis, President, Arkansas A&M.
Dr. Clayton C. Denman, President and Co-Director, Small Towns Institute.
Dr. John O. Dunbar, President, Community Development Society, Associate Director, Cooperative Extension Services, Purdue University.
Hon. Frank Farrar (former Governor of South Dakota).
Hon. Orville L. Freeman (former U.S. Secretary of Agriculture).
Herman Gallegos, President, U.S. Human Resources Corp.
G. B. Gunlogson, Countryside Development Foundation, Inc.
Paul Hall, President, Seafarers International Union.
Richard M. Hausler, Fairfax, Virginia.
Hon. Philip H. Hoff (former Governor of Vermont).
Chet Huntley, Chairman of the Board, Big Sky of Montana, Incorporated.
Don F. Kirchner, President, Peoples Trust & Savings Bank.
Ernest T. Lindsey, President, Farmland Industries, Inc.
Hon. John McClaughry, Representative, Vermont General Assembly.
Hon. Robert E. McNair (former Governor of South Carolina).
Dr. E. W. Mueller, President, American Country Life Association.
Dr. Hollis A. Moore, President, Bowling Green State University.
Robert B. Pamplin, Chairman of the Board, Georgia-Pacific Corp.
R. B. Patteson, Senior Vice President, Wachovia Bank & Trust Company, N.A.
Charles O. Prejean, Executive Director, Federation of Southern Cooperatives.
Hon. Terry Sanford, President, Duke University (former Governor of North Carolina).
Miles C. Stanley, President, AFL–CIO Appalachian Council.
Louis Stulberg, President, International Ladies' Garment Workers' Union.
James L. Sundquist, Senior Fellow, The Brookings Institution.
Right Reverend Monsignor, John George Weber, Executive Secretary, National Catholic Rural Life Conference.
Paul S. Weller, National Council of Farmer Cooperatives.
Charles Young, President, E. F. Young, Jr., Manfacturing Company.
Gordon Zimmerman, Executive Secretary, National Association of Conservation Districts.

BALANCED NATIONAL GROWTH AND DEVELOPMENT

(Remarks by Senator HUBERT H. HUMPHREY at the conference on "Future of Nonmetropolitan America")

Any discussion of a "Policy of Balanced Urban-Rural Growth" must begin with the statement of a few facts. While the data is not new, it provides the essential backdrop for such a discussion.

In 1900 our population was 76 million. Today it is over 209 million, by the year 2000 it will be between 270 and 300 million.

Today two out of three Americans live in cities of 50,000 people or more and by the year 2000 this percentage will be up to 8 out of 10.

By the year 2000, 83% of our population will reside on one-sixth of the national land area composing ten urban regions.

In 1940, the Nation's farm population was 32 million. Today it is less than 10 million and farmers, farm workers, and their families represent only about 5% of our population.

American per capita income will double, possibly triple, by the year 2000.

With only 6% of this world's people, the United States consumes a full 40% of the world's resources.

In Future Shock, Toffler points out that, roughly speaking, half of all the energy consumed by man since the time of Christ has been consumed since 1870.

A wide variety of additional data could also be used to show the major changes in critical socio-economic trends that one can expect over the next several years and decades.

But my purpose today is not to document the fact of expected rapid change, but rather to discuss with you what might be done to anticipate it and direct it and its consequences.

To me, the statistics on the future are nowhere near as awesome as the fact that this nation does not have now a process or mechanism that will permit and encourage us to develop policies and plans required to shape our country's long-range future in the light of predicted developments.

Many European nations have instituted such policies of balanced national growth and development in the post-World War II period. These policies, incorporating population distribution goals, land use objectives, economic growth targets, etc., have met with some success in Europe.

During this same period in this country, of course, anything that even sounded like national planning was looked upon with suspicion by a large and vocal segment of our population.

But, in recent years, some important progress has been made in making significant component parts of a balanced national growth and development policy a reality.

In Title I of the Agriculture Act of 1970, Congress and the President committed themselves to a national policy of "sound balance between rural and urban America." Congress proclaimed that it "considers this balance so essential to the peace, prosperity, and welfare of all our citizens that the highest priority must be given to the revitalization and development of rural areas."

A similar commitment to the balanced growth and development of rural and urban America was echoed in Title VII of the Housing and Urban Development Act of 1970.

Well, last year we took the first steps in fulfilling this commitment. We passed the Rural Development Act of 1972. And it is a good piece of legislation. It was signed with all appropriate fanfare.

Now the question is, will it be properly funded? And, quite honestly, the funding of it is about half of what was authorized. And what's authorized is about a tenth of what's needed.

I'm a legislator. I've never believed in all or nothing. I believe in trying to make progress. Our Committee wrote that law. Senator Talmadge and I were two of the main movers behind it. However, every member of the Committee deserves credit for participating in the development of this legislation.

We held hearings all across this land. This law is based upon ascertainable facts. The result of profound and intensive hearings. But we understood when we passed that law that it was a token. We knew that we were only beginning and, therefore, the authorizations for funding in that law were minimal—not what we really needed—but enough to get us off the ground.

Ladies and gentlemen, that funding has already been cut in half, and certain sections of the bill are not funded at all. Now you ought to go up to Congress and ask that the full funding for that program be passed by the Congress. I think that's what's needed as the beginning, because every bit of that funding will add to the well-being of this country. It will not be wasted. It will help us.

Now, what else is there to rural development? The Rural Development Act of 1972 is not a substitute for all other policy. And I want to get this across here if nothing else is said today. It is not a substitute for rural electrification, for example. It is not a substitute for the rural telephone program. It is not a substitute for the rural housing program. It is not a substitute for the rural water and sewer program. It is not a substitute for the Economic Development Administration. It is a supplement. It's an add-on. It's additional.

But what do I see coming out of the counsels of government? Everytime a program is canceled out, whatever it may be, they say, look to the Rural Development Act. I know about the Rural Development Act. It's one thing for the Administration to come to you and say we're not going to give you the money. That's an honest fight. But I don't like them to come and tell me I didn't know what I was doing.

Now I'm here to remind the President of the United States of what he told the nation last summer when he signed the law—that it was not a substitute, it was a supplement. It was an add-on. And when I see the leaders of government coming before the Congress and before you and before other communities and saying, well, you can fund this out of rural development, I simply say that's as phony as a $3 bill, it does not wash and it's outright deception.

What we need is full funding for rural development. We need the funding for rural electrification. We need the full funding for EDA. We need manpower training programs, and God only knows we need housing programs in rural America, where the housing is worse than it is in our cities.

All our people want is a break. The monies that we expend and invest in rural America in jobs, in industrial growth, in housing, in water and sewer, in electricity and telephones, in schools and hospitals, all of those things add to the wealth and the strength of this nation.

The Rural Development Act of 1972 provides a large part of the financial investment, credit, research, technical, and institutional resources that will be required to implement the commitments to balanced growth mentioned above.

Under title I of the act, guaranteed, insured and direct loans and grants would be provided to help meet the credit, investment, and equity capital needs for essential rural

industrialization, job expansion and community facility improvements.

Under titles II and III, additional Federal cost-sharing for water quality improvement and provision of ample water for rural community and industrial development would be provided through further expansion of authorities under the small watershed and resource conservation and development programs.

Under title IV, a new Federal cost-sharing program would be established to aid small rural communities which are in need of help to establish or improve their local fire-fighting capability.

Under title V, a new nationwide research and extension information program would be established utilizing the resources of the State Land Grant colleges and other public and private institutions of higher education to strengthen and support rural community development and to help solve many of the problems faced by families in operating and managing our Nation's smaller farmers.

Under title VI, the basic statutory mission of the U.S. Department of Agriculture would be broadened to empower the Secretary of Agriculture to coordinate the rural development programs and activities of all departments and agencies of the Federal Government, including improved utilization of both personnel and offices. A new Assistant Secretary position also is provided to help provide the leadership necessary to carry out these new responsibilities.

Another element is a national rural growth and development policy is the need for a source of capital to revitalize rural areas of our country.

The United States has capitalized development financing institutions in Asia, Africa, and Latin America. While I am not adverse to providing such assistance to our foreign friends, I think it is time we did the same for our own people. For that reason I have introduced the "National Rural Development Bank Act of 1973."

Such a financial institution, channeling additional capital into rural areas of the United States for non-farm development purposes, is essential to the economic revival of rural America and the future balanced growth and development of our Nation.

The National Rural Development Bank Act I have proposed would, among other things:

create a National Rural Development Bank;

set up a 24-member Board to establish operating policies and procedures;

authorize the appropriation of up to $200 million annually for ten years to provide initial capitalization;

become 100% borrower owned, ultimately, and repay the entire Federal participation;

permit the bank to engage as a partner in equity investments for important rural development projects; and

create an independent source of capital for the use of small rural financial institutions to promote growth and development in rural America.

The above legislation is important, good and necessary for America. However, it is far from sufficient to help us cope with the long term balanced growth and development problems which we face.

Problems of:

population growth and distribution;

balanced economic growth;

protection of our air, water, and land;

fuel shortage and energy crises;

Balanced and efficient transportation for all parts of our nation;

Responsible use of increasingly scarce land;

Requirements for feed and fiber at reasonable prices; and many others.

The time has come for us to decide as a nation whether we will "design" or "resign" ourselves to our collective future.

That is the basic question underlying decisions we make today, regarding the kind of a nation we want to create or leave for our children.

What we do—or fail to do—today clearly commits and fixes future patterns of life in this country as well as on this planet.

In these days of the super specialist, with complexity of unknown dimensions advancing on us relentlessly at every turn in our daily lives;

In these times of amazing proximity between people and nations, resulting from revolutions in communication and transportation technology;

In this age of unbelievably rapid change in virtually every facet of man's existence, from the way he constructs his office buildings to the way his children perceive "right and wrong";

We need a way for all the "people" of this nation to participate in shaping their own future.

Only through an effective process of this kind can we as a nation anticipate and direct change and, consequently, minimize what Alvin Toffler has aptly named "future shock."

For more than two years I have been writing and rewriting my Balanced National Growth and Development proposal. I consider it to be the single most important piece of legislation of my 25 years of public service. I intend to spend a great deal of my time in the Senate working to see that its principles are adopted.

I believe this legislation goes a long way toward providing the institutional arrangements necessary to the development of a continually evolving balanced national growth and development policy.

This bill provides for the establishment of an Office of Balanced National Growth and Development within the Office of the President to—develop specific national policies relating to future population growth, settlement, and distribution patterns, economic growth, environmental protection, income distribution, energy and fuels, transportation, education, health care, food and fiber production, employment, housing, recreation and cultural opportunities, communications, land use, welfare, technology assessment and transfer, and monetary and fiscal policy.

This new office also will provide the means to develop these individual national policies in such a way as to reflect the appropriate inter-relationships that obviously exist between and among such policies.

This new office will tie together and coordinate the work of the Council of Economic Advisors, the Office of Management and Budget, and the Environmental Quality Council.

This new Office will be empowered to bring about more uniform and workable Federal assistance programs, to streamline the federal delivery system now involving hundreds of categorical programs that so bewilder and confuse many state and local officials.

The bill also establishes new uniform planning requirements for federal grants-in-aid and transfers to the new Office the comprehensive planning assistance Program authorized by Section 701 of the Housing Act and administered by HUD.

The bill creates a national system of multi-state regional planning and development commissions, involving both governors and state legislatures, to help link-up and facilitate proper coordination among federal, state, and local units of governments. This nationwide regional commission structure would be directly tied to the new office within the Office of the President, rather than to a Department, and administered by HUD.

In addition, this bill would create a joint congressional committee on balanced growth and development. This committee would be supported by a new congressional office of policy and planning, staffed by professionals and experts on national policy matters.

New requirements pertaining to the location impact of federal facilities, activities and procurement are specified in the bill. We are the only developed nation in the world that totally ignores this critical question in our private and public decision-making.

This bill creates a new national research institution to monitor, measure and forecast developments and happenings in all the major sciences—soft and hard—and to report its findings, with possible alternatives that might be pursued.

It also provides for more detailed and continuous analysis of population and demographic trends, within the U.S. Bureau of Census.

And, finally, it provides for the development of an annual report by the Executive Branch detailing "where we are," and "whither we are tending" in our pursuit of developing and implementing national policies. That report will be made available to and assessed by Congress and the people of this Nation.

It will become a national working document for the entire Nation to reflect its concerns and desires concerning national goals, priorities and policies.

I do not view this proposal, which I will introduce within the next week or two, as the perfect piece of legislation. This is a difficult and complex problem. I have asked many individuals and groups throughout the country for comments and recommendations. In due course, all of these suggestions will be carefully scrutinized and changes in my proposal will undoubtedly be made.

I welcome any and all ideas and comments you here today would care to make.

Finally, to close on an optimistic note, I believe that I have seen in the last two or three years a rather startling rise in concern for America's future. I don't know what to attribute it to, I'm sure there are a number of factors at work. However, the public concern is rapidly growing and with it the interest in "growth and development policy" on the part of their elected representatives. I am heartened by this development and more convinced than ever that Congress will act, and much sooner than many of the skeptics expect.

THE EFFECTS OF WEATHER MODIFICATION

Mr. ABOUREZK. Mr. President, there is a debate going on in this country about weather modification.

South Dakota has had some experience with both sides of this controversy.

On the one hand we have a rain-inducing, hail-abating weather modification program which obviously enjoys wide support in a predominantly agricultural State.

On the other hand, we had the tragic flood in Rapid City last June 9. The same day of the freak, torrential downpour which caused the flood, clouds were seeded in the Black Hills area.

I am not enough of an expert to judge whether there was a direct cause-effect relationship between the seeding and the flood. The experts dispute it, and the only thing they seem to agree upon is that measurement of the effectiveness of weather modification one way or the other is at best an inexact science.

In all fairness to both sides, I ask unanimous consent to have two articles printed in the RECORD.

The first is a description of the structure, benefits, and goals of the State's weather modification program by my good friend Merlin Williams, director of the State's weather control commission.

The second is an article which appeared in the May 12 issue of Environmental Action magazine which argues that there may have been cause-effect relationship the day of the flood

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

SOUTH DAKOTA WEATHER MODIFICATION PROGRAM

(By Merlin C. Williams [1])

I. INTRODUCTION

Activities by state planners, interested private groups and legislators in 1970 led to legislative action in March 1971 to establish a statewide program of weather modification in South Dakota. This program is intended to provide an economic benefit to the people of the state through application of existing knowledge to increase rainfall and decrease hail by cloud seeding. In addition, the legislative action recognized the need to enhance knowledge in the field to improve the capability.

The South Dakota Weather Control Commission (WCC) is charged by law with the responsibility for weather modification activities in this state including the development of the statewide program. The Commission was established in 1953 when the basic law, South Dakota Compiled Law (SDCL) 38–9, concerning weather modification was passed. The Commission is composed of ten representatives, seven of whom are appointed by the Governor and three ex officio members representing the Department of Agriculture, the Water Resources Commission and the College of Agriculture of South Dakota State University. Through periodic meetings, the Commission provides general policy and oversight for the functions set forth by the law.

The detailed work of the Commission is conducted by the office of the Director. This office was established as a result of the amendment to SDCL 38–9 by the 1971 legislature. In September 1971, the Director's office began the task of designing, organizing and initiating the statewide program. This activity represented one of the four functions assigned to the Commission by the Law. These functions also include interstate and federal cooperation, special studies and regulation of all weather modification activities in the state through both licensing and monitoring.

This paper describes the activities of the Weather Control Commission in the design, organization and initiation of the statewide program. Cloud seeding activities during the first season of operation will be summarized, and program effectiveness will be described. It must be recognized that insufficient data can be obtained from a single year's operation to supply statistical significance to the results; therefore, no attempt will be made to indicate the effects of seeding.

II. BACKGROUND

Private associations of farmers, ranchers and businessmen have been formed to sponsor weather modification in specific areas of the state since the early 1950's. Funding for these activities were provided by voluntary contributions. At one point in the mid 1950's, operations by a private contractor involved seeding with ground generators in an attempt to affect as much as 60% of the state. Relatively few areas of the state have not been the target of seeding attempts at one time or another.

Passage of enabling legislation in 1963 provided for more organized funding of weather modification through county tax structure. Various long term, county supported projects were developed in both the eastern and western part of the state. Examples of such programs are to be found in the western and northwestern grasslands areas and the northeastern crop area. Numerous shorter term projects were also developed on this basis in the south central and southeastern crop areas. Some measure of the degree to which such activities are supported can be obtained from the fact that county funding for weather modification throughout the state has averaged nearly $100,000 for the past ten years (1).

Results of these projects were not always documented. Funding limitations did not permit evaluation activities of a significant nature. In fact, funding limitations for projects sponsored by individual counties did not permit adequate operations in many cases. Routine evaluations of the activities based on comparisons of variations from long term normals for target and control areas were made by members of the WCC. Persistent indications of increases achieved by the cloud seeding were obtained from these evaluations. Those Commission efforts led to the support of a more formal evaluation of the locally sponsored efforts by the Institute of Atmospheric Sciences (IAS), South Dakota School of Mines and Technology, during the summer of 1971. This evaluation, which was funded under a contract with the WCC, provided strong indications that increases of 7% to 48% were being achieved in four different projects (3).

While it is recognized that these evaluations do not provide conclusive evidence for cloud seeding effects, they do represent a considerable body of qualitative evidence favorable to the seeding. This information together with research results was considered sufficient supporting evidence to warrant development of the applied, statewide program.

Results of research activities serve as a basis for portions of the program design. The most pertinent results are those obtained by projects in South Dakota. Specifically, concentrated experimentation has been underway by the IAS since 1963. This activity has been under the sponsorship of federal agencies such as the Bureau of Reclamation, National Science Foundation and National Oceanic and Atmospheric Administration. The research has involved both individual cloud experiments and areal testing. Through the use of scientific design and sophisticated technique, these efforts have led to results which provide a stepwise program development. In 1969 a pilot project was developed to test the research results over large areas in North Dakota. Subsequent results made it possible for the IAS staff to make the summary statement in November 1971: "However, the overall result of a project based on the present state of the art of cloud seeding and lasting for a season or more should be an increase in total rainfall at the ground" (6). This conclusion was reinforced by the results of the evaluation of commercial seeding activities during the summer of 1971 (3).

South Dakota results are reinforced by results from other parts of the country and the world. Hail suppression activities in four southwestern counties of North Dakota indicate 30% to 60% decrease in hail (4). A cumulus experiment in California conducted during the summer months of 1966, 1967 and 1968 provided results indicating significant increases in runoff resulting from cloud seeding (18). Research on summer systems in Arizona sponsored by the Bureau of Reclamation between 1965 and 1969 provided support for increases resulting from seeding (15). Experiments in Florida by National Oceanic and Atmospheric Administration researchers provides strong evidence for increased precipitation from seeded convective cells (19). Results of seeding experiments in Australia have led to application of the technology for many years (2). Carefully conducted experiments in Israel between 1961 and 1967 led to development of an operational program in 1971 (9). Activities in Kenya since 1967 provide evidence of significant reduction in hail (as much as 60%) with corresponding increases in crop production (tea) (10). Reports of hail suppression activities in Russia include statements of ability to stop 70% to 85% of the hail for clouds treated by firing sliver iodide bearing artillery shells into the cloud. (17).

III. BASIS

The physical conditions associated with weather in South Dakota are characterized by a continental climate with cold winters, warm to hot summers, light moisture in the winter and moderate moisture in the summers. The climate is generally limiting or marginal for most crops in terms of both precipitation and growing season. Winter weather patterns are associated with cold, northerly flow from large, high pressure systems moving into the state from the north or north-west. Warm or hot summer air results from southerly flow which is interspersed with humid conditions when this air originates over the Gulf of Mexico. The entire state is characterized by frequent changes caused by cold fronts and associated low pressure areas moving across the state (5).

The maximum precipitation occurs during the growing season months. This precipitation varies from 18 inches in the southeast to 10 inches in the northwest, and results predominantly from convective activity with no major orographic influences except in the Black Hills region. Some measure of the degree of convective activity can be obtained from the fact that thunderstorms occur on an average of 40 to 45 days at any one location in the state.

Average increases of 15% to 20% as deemed possible by the research efforts at IAS (14) would provide an additional one to two inches of precipitation during the growing season. Hail may be expected in most parts of the state an average of two to three times a year. Hail losses are estimated to average $30,000,000 per year (13).

The potential for benefits from weather modification is variable for the activity being conducted. Variations in effect are also noted for different crop types. Preliminary estimates of the benefits to be achieved by an average increase of growing season precipitation of one inch would provide a benefit cost ratio of between 10 and 30 to one (14) through increased crop production. The additional benefit achieved by a 30% to 50% reduction in hail would increase the benefit to cost ratio significantly. In addition, these preliminary estimates do not specifically include benefits to urban areas. Reduction of hail damage and increased water supplies for cities and towns provides an additional significant benefit that is difficult to estimate at this time.

Considerably more detailed studies of benefits are underway by a research team of the College of Agriculture at South Dakota State University. Preliminary estimates have been made of the benefits to be derived from an average increase of one inch of rainfall during the growing season. An example of their findings can be obtained from consideration of wheat production where results indicate increases of one to nine bushels per acre depending on type, location and distribution of rainfall (7). Continuing studies of a broad range of economic considerations are underway not only by SDSU, but by surrounding Northern Great Plains states as well (8) (11).

Additional studies (11) and consultation with farm groups have identified another source of potential benefits in the form of increased preseason moisture. The effect of preseason moisture varies with crop type, but appears to be most important to forage and small grains. Additional investigation may well lead to the development of programs to provide seeding for periods other than the growing season.

[1] Director, South Dakota Weather Control Commission, Pierre, South Dakota.

Social concerns in the state are associated with agricultural activities since the economy of South Dakota is largely dependent on this industry. Approximately 70% of the state's economy is derived from agiculture and agriculture related activities (16). The general trend in farming operations in the last 30 years has been toward increasing mechanization and larger farms. This action has resulted in part from relatively constant prices for farm products while production costs increased. The overall effect of these factors is a resulting out-migration of population in the state. This factor is particularly significant in younger age groups, and results in a general economic and social problem for the state. It is generally accepted that stabilization of the agricultural economy will serve to reduce the social problem, but probably not eliminate it.

An average increase in precipitation of one to two inches of precipitation is generally recognized as a means of improving crop production, and, thereby contributing to stabilization. Opinion surveys indicate that 60% to 80% of the people accept weather modifications as a tool to be used for this purpose, and feel that it can produce the beneficial effects proposed (12). A majority of the people are willing to spend their local and state tax money to support a weather modification program. Legislative approval of both the concept and funding of the program has been provided by the same margins.

The legal aspects of weather modification have been considered on an individual state basis. In this manner, consideration of local conditions and needs has been included in the legal policy of the states. South Dakota claims sovereign right to the use of all water over its boundaries for the benefit of its residents. The law (SDCL 38–9) also provides a general recognition of weather modification as a state function entered into to provide for the general welfare of the public. It further recognizes the state of the art as being capable of producing beneficial changes under certain defined conditions.

The financial support for the program is broadly based throughout various levels of government. State support for the statewide activities is derived from general fund appropriations. The initial state appropriation amounted to $100,000, and was provided by the 1971 legislature for FY 1972 to design, organize and initiate the program. This action was followed by an appropriation of $250,000 for operations in FY 1973. Administrative funds for the conduct of Commission activities were provided under a separate budget appropriation in each case.

Authority for county support of weather modification is provided by SDCL 10–12–18. This law provides that counties may levy a maximum of one mill tax on assessed property valuation for this purpose. The authority to levy and commit funds under this law rests solely with the county commissioners in each case; however, in actual practice it is normally done on the advice of groups in the county. On occasion, the county commissioners have requested that approval to proceed with a program will be obtained by a vote of the people or a poll be taken to determine the wishes of the people.

Funding of weather modification activities by federal agencies has been limited to research either by administrative policy or Congressional directive. Thus, funds for support of the operational aspects of the statewide effort are not available; however, cooperative programs for the support of related evaluation and research activities have been developed. The Bureau of Reclamation participation in the program takes the form of funding support in the amount of $52,000 for a 15 month period to conduct research and special evaluation studies. This organization also supplies special services for operational testing. The National Oceanic and Atmospheric Administration is also providing support in the form of services and related research.

IV. PROGRAM DESIGN AND ORGANIZATION

Initial investigation indicated that the technical design and organization would be inextricably bound together. Considerations of funding, equipment limitations, personnel availability and other technical featurcs would determine the most effective type of organizational structure. Conversely, existing governmental and private characteristics would effect the technical considerations from the standpoint of location, areas covered and decisionmaking.

Administratively there was a need to have local involvement in decisions regarding cloud seeding activities by those people most affected by the outcome. After consideration of a number of possibilities it became evident that a local-state cooperative effort was desirable. Examination of governmental structure indicated that county government was the most suitable for local representation. Reasons for this choice included such factors as, (1) county commissions represent an existing governmental structure, (2) they are familiar with local conditions and desires and, (3) they represent the smallest level of government that could provide effective decision-making.

The decision making proposed for the administrative aspect of the program was of two types. First, a decision to participate in a cooperative effort was required. Recognizing dissimilar local needs and desires, this decision was made voluntary. Secondly, decisions on the degree and type of activity needed to be made on the basis of local conditions. Thus, the local administrative structure was required to establish beginning and ending dates and provide recommendations for suspension or termination of activities when adverse effects (such as production of additional rainfall when above normal amounts affected farm operations) were prevalent.

A local-state cooperative feature was also desirable from the standpoint of funding. Such an arrangement would not only provide increased operational capability through a larger budget; but would provide a measure of the need and interest by local groups. Here again, county government was the most logical choice for local-state cooperative efforts. Their authority to tax to support weather modification provided the House the means for local level support.

After examination of various factors, a cost-share concept was developed wherein the counties provide 25% and the state 75% of the costs. Considerations involved in this concept included the relative role of agriculture in the overall state economy and the ability of counties to raise funds under the one mill limitation. The latter consideration is significant for large counties with major portions of their area represented by nontaxable federal, state or Indian land. This factor has resulted in an inability of several counties to participate despite the unequal cost-sharing ratio.

Physical characteristics were also considered in the program organization. Climatic and soil zones were investigated to prozones. Use of such zones to organize areas of activity would provide the ability to make uniform seeding decisions. This point was quite important in view of the variation in across the state.

In addition, consideration was given to the capabilities of the equipment currently available. Radar and aircraft capabilities provided the primary limitations on the size of the areas considered. Available radar could effectively cover a circle approximately 100 miles in diameter. Light aircraft of the type proposed could also be expected to cover an area approximately 100 miles in diameter without excessive loss in transport time. Minimum equipment required to meet the technical design could provide coverage for areas larger than single counties; therefore, multicounty operation would be more efficient than single county efforts.

All of the above considerations led to the adoption of multicounty districts operated on the basis of cost-sharing. Each of the districts is designed to consist of the counties that fit within a 100 mile circle within the limitations imposed by straight line county boundaries. Local level administration of each district is provided by a coordinating committee composed of one representative of each participating county commission. Districts and their associated counties participating during 1972 are shown in Figure 1.

V. OPERATIONS—1972

State funding for the summer field activities was provided by the 1972 legislature in the form of $250,000 appropriation. This amount was inadequate to meet the requests by counties representing three full districts and two partially formed districts. The decision was made to provide full scale funding to the two adjacent districts in the southeast portion of the state with supplemental support to on-going county programs in the western and northwestern part of the state rather than try to provide limited support over the entire area requesting. Representatives of the district in the north central part of the state agreed to develop the administrative organization, but forego field operations until 1973 when funds became available. District cost-share funds from participating counties resulted in a total budget of approximately $340,000 from both state and county sources.

Contracts with private operators for equipment and personnel were awarded in March in preparation for field activities during the period May 1 through August 31. Aircraft acquired under these contracts were of the turbocharged, light, twin-engine type, fully equipped for high altitude and instrument operations. Complete navigation equipment provided the capability for day or night, all weather flights to meet the proposed requirement for seeding operations at any time. Each of the three aircraft provided to each complete district was equipped with both acetone silver iodide type generators with a capability of dispensing silver iodide at a rate of 150 to 300 grams per hour and pyrotechnic devices capable of dispensing 200 grams per minute. Thus, a wide range of capabilities was provided for two types of seeding materials to permit either rainfall increase or hail suppression activities. Aircraft safety was stressed throughout the contract specifications.

Equipment contracts also provided for radar equipment with multiple capabilities. One radar system was located in each complete district with the capability for both storm monitoring and aircraft tracking. Radar storm surveillance provided the capability to detect storm characteristics, determine hail potential, provide seeding direction and coordination and provide continous recording of all radar information by time lapse photography. In addition, each radar system included standard observing instruments for measuring meteorological parameters.

The requirement for experienced personnel was stressed in both the radar and aircraft contracts. A fully qualified individual with an academic degree in meteorology and experience in radar and/or weather modification work was provided for each district. A radar operator was provided by separate contract to assist the meteorologists at each site, and an electronic technician was provided to maintain and calibrate all radar systems. Three instrument rated, commercial pilots were provided for each site.

All equipment and personnel were ready to begin operations on May 1; however, natural events in the form of above normal rainfall resulting in difficulties to farming operations just prior to the starting date necessitated a delay. This circumstance provided a major test of the effectiveness of the orga-

nization structure which utilized decision-making inputs from local coordinating committees. Normal operations required a full coordinating committee meeting once a month during operations with a telephone poll of each representative once a week to determine recommended operations. On May 1, all district representatives except one requested that nothing be done to aggravate a situation where excessive rainfall was hampering farm operations. (It should be noted that the representative from one county consistently requested full operation on the basis that the additional rainfall should be obtained whenever possible.) The suspension of rain enhancement activities extended throughout most of May and June, and periodic suspension of rain enhancement activities continued throughout most of the summer.

Crop development by mid-May had reached a stage where the occurrence of hail would cause damage. Accordingly, the Coordinating Committees were consulted regarding the advisability of initiating hail suppression at any time a clear cut indication of hail potential was identified. This action represented a departure from the original plan, and was made possible only by the flexibility provided by the local-state cooperative organization.

The results of this type of decision-making can be seen from a comparison of potential operations versus actual operations given in Figure 2. The potential operations represent estimates by the district meteorologist of the total number of aircraft seeding hours that could have been conducted for the weather systems that actually occurred. It should be noted that as the season progressed the potential opportunities decreased and the ratio of seeded to potential hours increased. Table 1 presents a summary of seeded days during the season.

TABLE 1.—*Seeding days and missions (1972 season)*

DISTRICT I	
Rain increase:	
Days [1] (8)	10
Missions	30
Hail suppression:	
Days (19)	23
Missions	75
Both (6)	8
DISTRICT II	
Rain increase:	
Days (10)	12
Missions	42
Hail suppression:	
Days (13)	16
Missions	75
Both (11)	13

[1] ( )— percent of total days.

Various methods of evaluation are currently underway both by the staff of the WCC and under private contract. Data available for these evaluations consist of the following:

1. Radar cloud intensity and height measurements
2. Raingage observations from National Weather Service networks
3. WCC supplemental raingage observations obtained by cooperative observers
4. WCC hail occurrence observations obtained by cooperative observers
5. American Hail Actuarial Insurance Institute records
6. National Weather Service radar observations
7. WCC seeding operations logs

Evaluation of rainfall is not expected to produce significant results due to the lack of seeded cases resulting from the frequent suspensions imposed on the effort. Some indications of effectiveness may be obtained in the two counties where seeding for rain enhancement was conducted for continuous periods in excess of one month. However, the overall conclusion must be that no valid evaluation on rainfall increases can be conducted for 1972.

Hail suppression evaluations are underway using hail insurance loss records. Historical hail loss records for the period 1928 to 1972 will be used to provide comparisons evaluation. In addition, comparisons will be made between seeded and unseeded areas and times.

Qualitative evaluations of radar observations, seeding pilot observations and local observers reports are also underway. While this type of evaluation will not provide definitive proof of effectiveness, it does provide valuable background information for modification and improvement of future operations.

A post-program evaluation of costs indicates that the most meaningful estimate for varying size districts is a per unit basis. Using this method provides an average per acre cost of 3.2c for 1972 operations. On the basis of a 75% state-25% county basis, the costs are divided 2.4c per acre from state funds and 0.8c per acre from county funds.

VI. FUTURE DEVELOPMENT

Operational structure will remain essentially the same for 1973 with the exception of addition of as many new districts as funding permits. The district coordinating committees will continue to provide input to decision-making from the local level while the design, coordination, oversight and budgeting will be provided by the WCC staff. Cost sharing is also proposed to continue on the same basis.

No major changes are proposed for the technical design. Equipment, personnel and operational requirements for individual districts will be modified slightly on the basis of experience gained during the first summer; however, no major changes are anticipated. The emphasis and goals of the program will remain the same.

The major change in the program will be the overall size. A total of 26 counties participated in the program during 1972. In order to provide for effective planning and organization, all counties in the state were notified that requests for participation in 1973 needed to be submitted by September 10, 1972. A total of 42 counties responded representing an increase of almost twice as much area. This increase includes District 3 which was formed during 1972. Plans are currently underway to revise district boundaries and establish new districts to accomodate the additional counties shown in Figure 3. The number of counties and districts will be finally determined by the amount of the budget provided by legislative appropriation, since county funds are already obligated for this purpose. Accomodation of varying size areas is achievable by virtue of the flexibility inherent in the multi-county district organizational concept.

VII. RELATED RESEARCH AND EVALUATION

Funding for the operational aspects of the program is derived solely from state and county sources. Limitations on funds provided to federal agencies restrict their use to research purposes which precludes federal participation in the operational phases of the program. However, conduct of certain research and evaluation in conjunction with the operations is not only desirable from the standpoint of enhancing knowledge and improving the operations, but required by the directive contained in SDLC 38-9. During the development of the program, cooperative relationships were developed with various federal agencies either directly or through other organizations to conduct special studies.

A contract with the Division of Atmospheric Water Resources Management of the Bureau of Reclamation provides for testing and development of certain models and concepts in an effort to effect a technology transfer from research to operations. Testing during the summer seeding program of the effectiveness for operational purposes of the computer time-share system developed by that organization represented one phase of this project. A subcontract arrangement with South Dakota State University provides for the development of sociological, economic and climatological models with which to evaluate the effectiveness of the seeding program. A second sub-contract with a private firm is designed to provide for development of conceptual models of cloud conditions with which to improve operational coordination and communication. Direct funding provides for establishment of a supplemental raingage network in seeded and unseeded areas in an effort to improve evaluation information. During the summer of 1972 a total of 175 such gages were operated by volunteer observers in the eastern half of the state.

Funding from the National Oceanic and Atmospheric Administration (NOAA) provides for both direct support and support to the IAS. Initiation of radiosonde operations at Huron, South Dakota on May 1, 1972 to coincide with initiation of the state program contributed significantly to the program. IAS efforts under NOAA funding consisted of efforts to develop techniques for evaluation of the field program through the use of the National Weather Service radar at Huron, South Dakota.

A third cooperative effort involves sociological studies conducted by the Institute of Behavorial Sciences, University of Colorado, under the sponsorship of the National Science Foundation. This program involves a study of attitudes of residents of the state toward the weather modification program. Testing is conducted before, during and after the seeding program takes place.

VIII. REGIONAL PROGRAMS

The possibility of cooperative efforts with adjacent states is being investigated. Planners in both North Dakota and Nebraska have indicated interest in cooperative programs. Organized activities on the part of these states, however, will require legislative action to provide both the structure and funding for such efforts. The primary need at this point is the development of an organizational structure with enough flexibility to recognize the needs and requirements of the individual states.

Current action involves a proposal for joint projects in border counties. Negotiations for such a project have been completed with four counties in North Dakota. It is anticipated that activities in this project will be initiated in 1973. There are needs for additional projects of this nature in other areas of the state where border counties are involved.

In addition to joint operational efforts, a necessity exists to develop an interstate compacts system for operations along state boundaries where no seeding is taking place in the adjacent county. A distinct requirement exists to begin treatment of storm systems before they reach the upwind boundary of the target counties. For example, clouds moving southward from North Dakota to South Dakota should be treated 10 to 20 miles north of the state boundary in order to have an effect on areas in South Dakota immediately adjacent to the boundary. Proper treatment should not cause an effect in areas of North Dakota. Establishment of a compact to permit such activities will require action by the Governors of the states involved, and must recognize differences in state laws regulating weather modification in each case.

Federal regional programs are under consideration in two areas of the Great Plains. The WCC will continue to cooperate in the development of these programs. In view of the fact that South Dakota has an operating program, the state may serve as a nucleus for such development. Steps are underway to provide information based on experience gained during the first year to other states establishing programs.

IX. REGULATION

South Dakota has had a law to regulate and monitor all weather modification activities since 1953. This law requires both licensing and reporting of activities. Steps are now underway to modify and expand the existing

law to keep pace with both the operational program and new developments in the field. The new law will provide for improvements in the structure and administration of the Commission. It will clarify and expand the functions of the Commission, and strengthen the regulatory authority of the State. To implement the new law a set of rules and regulations are being promulgated for administration of the provisions.

REFERENCES

1. Atmospheric Water Resources Program, Project Skywater Proceedings: Skywater Conference VII, Division of Atmospheric Water Resources Management, Bureau of Reclamation, Denver, Colorado, March 1972.

2. Bowen, E. F., "Review of Current Australian Cloud Seeding Activities", Proceedings of the First National Conference on Weather Modification, April 28–May 1, 1968, American Meteorological Society, Boston, Mass.

3. Boyd, E. I., "South Dakota Cloud Seeding Evaluation, 1965–1971", Institute of Atmospheric Sciences, South Dakota School of Mines and Technology, Rapid City, South Dakota, November 1971.

4. Butchbaker, A. F., "Hailstorm Characteristics in the Vicinity of a Hail Suppression Project in Southwestern North Dakota During 1966, 1967 and 1968", Agricultural Engineering Department, North Dakota State University, Fargo, North Dakota, June 1969.

5. "Climate of South Dakota", Bulletin 582, November 1971, Agricultural Experiment Station, South Dakota State University, Brookings, South Dakota.

6. Dennis, A. S., "Effects of Cloud Seeding Upon Rainfall in South Dakota", Institute of Atmospheric Sciences, South Dakota School of Mines and Technology, Rapid City, South Dakota, November 1971.

7. "Effects of Additional Precipitation on Agricultural Production, the Environment, the Economy and Human Society in South Dakota" Annual Report of of Special Study Team of the Agricultural Experiment Station, South Dakota State University, Brookings, South Dakota, September 1972.

8. "Evaluation of the Effects of Added Rainfall During the Growing Season in North Dakota" Annual Report of Special Study Team, North Dakota State University, Fargo, North Dakota, September 1972.

9. Gabriel, K. R., "The Israeli Rainmaking Experiment 1961–67", Hebrew University, Jerusalem, May 1970.

10. Henderson, Thomas J., "Results from a Two-year Operational Hail Suppression Program in Kenya, East Africa", Preprints, Second National Conference on Weather Modification, April 6–9, 1970, American Meteorological Society, Boston, Mass.

11. "Impacts of Induced Rainfall of the Great Plains of Montana—An Interim Report", Research Report 26, Montana Agricultural Experiment Station, Montana State University, Bozeman, Montana, July 1972.

12. Lanham, Orville, Jerome Rosonke and Karen Alickson, "A Sociological Analysis of Human Factors Related to Weather Modification", Department of Rural Sociology, South Dakota State University, Brookings, South Dakota (in preparation).

13. "A Precipitation Management Program for the Northern Plains", Report 71–12, Institute of Atmospheric Sciences, South Dakota School of Mines and Technology, Rapid City, South Dakota, August 1971.

14. Schleusener, R. A., and E. I. Boyd, "Physical and Economic Factors in the Preliminary Design of a Weather Modification Program for the State of South Dakota", Presented at Specialty Conference of American Society of Civil Engineering.

15. Smith, T. B. and A. I. Weinstein, "Arizona Weather Modification Research Program", Final Report prepared for Bureau of Reclamation, Denver, Colorado, by Meteorology Research, Inc., Altadena, California, 1971.

16. "South Dakota Business Review", Business Research Bureau, School of Business, South Dakota University, Vermillion, South Dakota, Volume 31, No. 2, November 1972.

17. Sulakvelidze, G. K., N. Sh. Bibilashvili and V. F. Lapcheva, "Formation of Precipitation and Modification of Hail Processes", Israel Program for Scientific Translations, Jerusalem, 1967.

18. Williams, Merlin C., and Lehrman, Donald E., "Sierra Cumulus", Fresno State College Foundation, Atmospheric Water Resources Research, April 1970.

19. Woodley, William L., Joanne Simpson, Alan H. Miller, J. J. Fernandez-Partaos, William Riebsame, "Florida Cumulus Seeding for Drought Mitigation, April-May 1971", NOAA Technical Memorandum ERL OD–9, Environmental Research Laboratories, Office of the Director, Boulder, Colorado, November 1971.

KEY WORDS

Design, *hail suppression*, meteorology, organization, operation, *rain increase*, water resources, *weather modification*

ABSTRACT

Design, organization and initiation of a statewide program of weather modification was undertaken by the South Dakota Weather Control Commission in September 1971. This program was designed to provide for increased rainfall and decreased hail by cloud seeding. The design of the program was based on research and operational results obtained in South Dakota and other parts of the country. The organizational structure of the program was based on a local-state cooperative effort for both decision-making and funding. These efforts led to the development of a limited scale field program during the summer of 1972.

[From the Environment Action magazine, May 12, 1973]

It Was an "Act of God"—With a Few Grains of Salt

(By David Howell)

Next month, Rapid City, S.D., will in some painful, quiet way take note of the first anniversary of the flash flood that early last summer heaped death, destruction and national attention on the thriving little city of 43,000. The community, second largest in the state, lies at the southeastern edge of the famous Black Hills, which draw hordes of tourists each year to view the great stone likenesses of four American presidents at Mt. Rushmore.

The hills also serve as the genesis of many streams and rivers, including busy little Rapid Creek, which has its headwaters 34 miles to the west of Rapid City and zigzags down the mountain until it reaches the flat lands of Rapid City's business district 4000 feet below.

The city took its name from the river and the two have co-existed belligerently now for decades; and periodically the river overflows its banks to again remind the city that it can never take too much for granted.

As it plunges down the mountain to Rapid City, Rapid Creek is controlled only by the dam which creates Pactola Reservoir at a level of 4300 feet about 13 miles to the west of the city. The rushing waters are—or were, until June 9, 1972—also momentarily delayed as they passed through Canyon Lake, a 40-year-old WPA dam at the western edge of the city.

On June 9 of last year the waters of Rapid Creek were racing faster than usual as rain began falling in torrents over the Hills. The runoff fed the quickly building stream. As the waters began inching upward along their banks in downtown Rapid City sometime after 6 p.m., residents took little serious note of it. There had been floods before that claimed perhaps a few lawn chairs or even an occasional tree or carport, but they had no reason to think that the churning waters might explode into a rampaging torrent that would bring a horrifying death to nearly 250 of their neighbors and destroy $100 million worth of property before the sun would rise again.

As late afternoon turned to evening, some ominous warnings began appearing across television screens, and national guards and state police began cautioning people to prepare for a serious flood, but still the residents of the area hesitated. No reason to panic, they told themselves. But as the night wore on, the rains kept coming—and coming. Up to 15 inches fell in some areas; 12 inches fell in the Pactola Reservoir area to feed the now seething flood that was Rapid Creek.

Near midnight, the surging, angry river swept away its last obstacle, the flimsy, inadequate Canyon Lake dam, and lurched madly into the downtown area, sucking up cars, trees, houses, mobile homes—and people. It ripped up 80 blocks of paving, covered one-fifth of the city with mud, rendered drinking water unsafe, snapped telephone and electric power lines, and forced the city to shut off the gas supply.

Whole families were lost. One couple survived because they were able to cling for hours to the cross bars of a telephone pole. Some managed to scramble to roofs of houses, or to work their way out of the waters to higher ground. Others were less strong, less able, and less lucky.

Insurance adjusters and city, county and state officials shook their heads gravely. It was a sad, a tragic thing indeed. But what is to be done? It was, after all, an act of God.

Or was it? Available information now suggests it may not have been an act of God. Or more accurately, that an act of God may have gotten a big push from a growing and increasingly controversial science referred to in broad terms as weather modification.

In this instance, if involved an attempt to modify the weather by injecting salt crystals into clouds to make them rain earlier and longer.

And now an uncomfortable argument rages between those who designed, carried out and supported the experiment, and their critics. It is, however, a strange argument, because those who set out to prove they could increase the amount of rainfall from a cloud deny vehemently that that's what they did on June 9.

Just a few hours before Rapid Creek started climbing its banks, while the clouds were building up over the Black Hills, the foothills and the plains, two cloud seeding exercises were conducted as part of "Project Cloud Catcher," an ongoing weather modification experiment being conducted by the Institute of Atmospheric Sciences (IAS) at the South Dakota School of Mines and Technology. It was being carried out as part of a $675,000 contract awarded by the Interior Department's Bureau of Reclamation.

Available information indicates that the cloud seeding set the clouds raining at an unusually heavy pace, after which the winds carried them—still raining—over the watersheds that fed the flood, where opposing weather forces halted them. And there they sat over the next six hours to pour out four times as much water as could be expected to fall during a six-hour period once every 100 years!

Immediately after the flood, Institute of Atmospheric Sciences Director Dr. Richard Schleusener issued a report to South Dakota Governor Richard Kneip. In it he declared, "I can assure you that the cloud seeding did not contribute to this disaster." Governor Kneip in turn called in reporters who had speculated that there might be some connection, and passed along Dr. Schleusener's reassurance and the two-page report that he said documented "Cloud Catcher's" vindication. Newsmen who had written that any

such link could exist should now report this documentation fully to their readers, the Governor stressed, "so that they might be accurately informed on this matter. The last thing that is needed in an emergency such as Rapid City is going through," he went on, "is for unfounded fear or sensationalism concerning a scientific operation that scientists had reported had nothing whatsoever to do with the flood." And with that, the matter was pretty well laid to rest.

With passing time, however, and the emergence of a report of a board of inquiry which Kneip subsequently appointed as a formality, it appears that the initial report which Schleusener issued and which the governor passed on to the public contained crucial loopholes and misleading statements, if not outright falsehoods.

Just two months before the Rapid City flood, Dr. Arnett Dennis, project director for Project Cloud Catcher, and Alex Kocielski, the project meteorologist and field director of operations, explained to fellow meteorologists in the *Journal of Weather Modification* that both radar data and rain gauge measurements "suggest that salt seeding produces substantial increases in rainfall." In one set of experiments, for instance, they found that the rain which fell over a period of eight days when clouds were seeded with salt was nearly twice that which fell over a period of nine days when similar clouds were not seeded at all. What's more, they noted, once the salt coaxes the rain to begin falling from the base of a cloud, "the cloud may remain efficient as a rain producer for the remainder of its life."

Curiously enough, with all these acknowledged effects of their cloud seeding experiments, the Institute of Atmospheric Sciences has never filed an environmental impact statement on its activities. James Kerr, the Bureau of Reclamation's weather modification expert in Washington, explained that Project Cloud Catcher was not considered to have a significant environment impact; therefore, an environmental impact statement was not necessary, he said.

The conclusion that a link may have existed between the cloud seeding and the Rapid City flood is derived partially because of, and partially in spite of, the report of Governor Kneip's Board of Inquiry. The board found that the IAS cloud seeding activities that day were marked by a series of incredible blunders and myopic decision making. Despite all their mistakes, however, concluded the panel, the Rapid City cloud seeders could not possibly have contributed to the disaster.

The Board of Inquiry was chaired by Dr. Pierre St. Amand, who is not a meteorologist, but who has worked closely with the meteorology community while employed by the U.S. Navy at China Lake, Calif., to try to develop weather modification as a weapon of war.

Another member of the Rapid City Board of Inquiry was Robert Elliott, president of North American Weather Consultants in Santa Barbara, Calif., a commercial rainmaking enterprise which also does cloud seeding research for various federal agencies, including the Bureau of Reclamation, which funded the Rapid City experiments.

Elliott was once the target of a major law suit over rainmaking. His company was sued for $13 million back in the mid-'50s when it was accused of causing flooding in connection with cloud seeding efforts to augment rainfall so that the Pacific Gas & Electric Co. could get greater flow through its hydroelectric power plants. While Elliott won the suit, the bad publicity had a sharply depressing effect on the rainmaking business, he told 1966 Senate Interior Subcommittee hearings. By the mid-'60s, however, Elliott testified, "we think it is coming back." In conducting his investigation of the Rapid City experience, it must have been very difficult for Elliott not to be conscious of the fact that, if the Rapid City flood were somehow linked to cloud seeding, the rainmaking business might again drop off.

The third member of Kneip's panel was Ray Davis, an Arizona law professor who has earned a considerable reputation defending weather modifiers in damage suits brought by angered individuals who suspect they may have been harmed by weather modification activities. Among the rainmakers Davis has defended is his fellow member of the Rapid City Board of Inquiry, Robert Elliott.

Davis also authored a book under a Bureau of Reclamation contract entitled *The Legal Implications of Atmospheric Water Resources Development and Management*, in which he noted that regardless of other factors involved in damage for which cloud seeding had been blamed—negligence, undue risk, inappropriate procedure, etc.—courts have held that cloud seeders cannot be held responsible for alleged damage if the damage would have occurred anyway.

This is the thrust of the Board of Inquiry's conclusions. The members agreed that the seeding should not have been carried out under the threatening weather conditions, but the fact that it was was irrelevant to the outcome. This is true, they contended, for several reasons. First, the salt seeding would have been relatively ineffective, they insisted, and wouldn't have significantly altered rainfall from the massive Black Hills clouds. Second, they concluded that the real culprit was the unique weather pattern which held the natural storm firmly in place. At the lower level, the wind from the east, they contended, kept blowing the clouds up into the Black Hills where they condensed and/or froze, and precipitated as rain. An upper level weak wind from the west then held the storm system in place but blew unprecipitated ice crystals back to the east, where they fell into feeder clouds and were again carried by the easterly lower winds back into the Black Hills to repeat their moisture-dumping cycle—salt seeding or no salt seeding.

"It is inescapable," they noted, "that such clouds have in the past formed and rained without human intervention, and that the meteorological conditions were indeed such that a natural catastrophic rainfall on June 9 was inevitable."

This handwashing ceremony has afforded immense relief to those involved in the cloud seeding activities. But the irony of this comforting reassurance is that the one thing all meteorologists seem to agree on is that they simply don't know enough about the enormous complexities of the weather system to make such a claim. A book, *Cumulus Clouds and Their Modification*, co-authored by IAS's Dennis himself, notes that "lives of cumulus clouds are a precarious seesaw between growth and destructive forces" and the most confounding obstacle to more knowledge about the effects of weather modification "is the enormous natural variability in atmospheric phenomena."

Dr. Charles Hosler, dean of the College of Earth and Mineral Sciences, Pennsylvania State University, likewise stresses that an unstable atmosphere can be such a delicately balanced thing that simply making raindrops fall earlier can have far-reaching effects on a cloud system.

Thus, to declare flatly and without equivocation—as the Rapid City rainmakers have done—that causing clouds to rain earlier on that day and under those circumstances could have had no significant effect on the outcome of the weather system seems to reflect a knowledge that they simultaneously acknowledge simply does not exist.

Significantly, there was no previous experience to draw from in salt seeding a cloud system just like this one, according to the Board of Inquiry report, with its wind patterns geared to keeping the storm stationary, its heavy moisture content, and its awesome potential for merging with other large clouds that were developing in the area.

Addressing the December, 1972 convention of the American Association for the Advancement of Science (AAAS) in Washington, Penn State's Hosler said "small perturbations" in temperature, moisture, raindrop size, etc., could make major differences in what a cloud or a storm system might do.

If such minor "perturbations" can induce such major changes, as Hosler contends, how can the Board of Inquiry (or anybody else) rule out the possibility that the "perturbations" introduced by the cloud seeding—condensation of haze into drops of rain which in turn releases heat and causes other raindrops to form, which in turn affects cloud weight, altitude, velocity, etc.—might have had a significant effect on the outcome of the Rapid City storm?

"I can't get any responsible answer to the same question," declared Dr. James Crutchfield, a University of Washington economist who has studied extensively the costs versus benefits of weather modification.

"When it gets to the point where there is a possibility of really catastrophic side effects," he added, "and when these catastrophic side effects are occurring close enough to weather modification as to raise the possibility of a cause-and-effect relationship, there is serious questions in my mind as to whether we ought to be fooling around with it at all."

There was no such doubt in the mind of IAS Director Schleusener, whose haunting memories of the rainless Nebraska dust bowl of his youth steered him toward the science of rainmaking as the great hope for the prairies.

"It is ridiculous to think that with a few hundred pounds of finely ground table salt disbursed from a single airplane we could cause 12 inches of rain in a few hours," he declared.

The reason this was impossible, he contended, was because "both of the seeded storms were physically separate" from the storm over the Pactola dam area. Unfortunately, subsequent evidence indicates this is just not true.

The Board of Inquiry concluded that the seeders could not have caused more than one-billionth of the recorded rainfall, based on slide rule calculations of the amount of water vapor in the air which the salt could have converted to raindrops.

Project meteorologist Kocielski made substantially the same claim, but used a slightly different argument to bolster it. Only two clouds were seeded, he declared. Of those two clouds, "the first cloud . . . showed less rain than should have been for that tall a cloud, and the second one showed slightly more," based on the IAS's own radar measurements.

This relatively miniscule amount of water from the seeded clouds should set the matter at rest once and for all. It should, perhaps, until it is pointed out that the IAS observation of a seeded cloud only continues for one hour. At the end of the hour, regardless of what the cloud is doing at that point, the measuring is stopped and the amount registered at that time is recorded as the total amount of rain which fell from the cloud. As a result, IAS scientists have no idea what the seeded clouds actually did over their entire lifetime.

The reason they stop measuring cloud output at the end of an hour is that a cloud undergoes an entire transformation over a period of 20 to 30 minutes. In other words, by the end of half an hour or so, there's no longer moisture or any other particles left in the cloud that were there when the rain began. (In Project Cloud Catcher the

measurement period is extended to a full hour just to be sure.)

"It's not the same entity after half an hour," Kocielski contended. This rather simplistic position is a totally inadequate approach in terms of measuring the actual output of the seeded clouds.

Dr. Wallace Howell, a Bureau of Reclamation meteorologist and former rainmaker who also pooh-poohed any effect of cloud seeding on the flood, nevertheless noted that "the cloud is more a process than an object." One should think of the cloud as "a kind of factory, with stuff coming in the receiving door and going out the delivery door," he added.

Kocielski's arguments that it was a different cloud at the end of the hour, so that it was no longer necessary to observe it since its part in the Rapid City disaster was over, emerges, then, as a self-serving, factious and misleading assertion. The "stuff" coming in and going out of the "factory" may be a different set of "stuff" from what it was an hour earlier, but the important point is that, having been set in motion, the factory—as a dynamic process—was still there, operating at the same—and perhaps intensified—efficiency. And the Rapid City cloud seeding seems to have set the assembly line moving at a record pace. Kocielski acknowledged that one seeded cloud dropped three inches of rain in the one hour that it was measured, and it was still going strong at the end of the hour.

Both Kocielski's "one-hour cloud" contentions and the Board of Inquiry's slide rule calculation theory ignore this basic fact—that a raining cloud is not a thing, but a process. They also ignore the fact that it was not the amount of rain, so much as it was the places where that amount of rain fell, that caused the Rapid City tragedy.

A national Oceanic and Atmospheric Administration (NOAA) report noted that "15 inches of rain fell in Nemo on Box Elder Creek and 14.5 inches in about five hours near Sheridan Lake, located on the divide between Spring Creek and Rapid Creek, southwest of Rapid City. This set the stage for the great flood on Rapid Creek and the utter destruction of two-thirds of the City of Keystone on Battle Creek."

A few hours before this, at 2:30 that afternoon, the IAS's leased plane took off for the first seeding exercise a few miles to the north and northwest of Rapid City.

By the time this first seeding exercise ended at 3.43, the radar station at Huron, S.D., was reporting "nearly stationary" radar echoes indicating thunderstorms to the west and northwest of Rapid City, approximately where the 30 mph winds would have carried the seeded clouds.

Satellite pictures of the clouds over South Dakota at 3:40 p.m. also indicate, according to Vincent Oliver, chief of the NOAA National Environmental Satellite Service's Applications Group, that the thunderstorms had just begun as the seeding drew to a close. Dennis agreed that "the storm cells moved northwestward and several of them intensified to give local heavy showers."

What seems to have happened, then, is that the salt seeding was suceessful, rain was induced, and the clouds moved over the Nemo-Sturgis area where they halted to reflect the "nearly stationary" radar echoes reported by the Huron equipment.

They seem to have remained there, turning the incoming moisture into rain until they merged with other clouds about 5 p.m., at which time the rain intensified into a torrential cloudburst which eventually dumped 15 inches of rain on the town of Nemo, and 12 inches near Sturgis.

The increasing thunderstorm activity north and northwest of Rapid City after the seeding there precluded further seeding in that area. So the scheduled second seeding exercises was shifted to the south of Rapid City.

The first seeding in this second exercise took place between 4:39 and 4:45 p.m., south of Rapid City near Hermosa. The rain quickly intensified, but the 30 mph southeast wind probably carried it, not over Buffalo Gap, as had been anticipated by the cloud seeders, but further to the northwest.

The second seeding pass in this second seeding flight was from 5:00 to 5:11 p.m. between Buffalo Gap and Fairburn. Once more, the storm almost immediately intensified. Pushed by the 30 mph wind from the southeast as it was, this cloud would have been over Sheridan Lake, between Keystone and Pactola Dam, by 6 p.m.

The third seeding pass was from 5:17 to 5:22, between Sheridan Lake and Hermosa. This cloud by 6 p.m. would also have been between Sheridan Lake and Pactola, possibly merging with its seeded sister clouds.

The fourth seeding pass was from 5:23 to 5:30 just east of Fairburn. By 6 p.m., this cloud would have been centered over Keystone, just to the southeast of Sheridan Lake.

The fifth seeding pass was from 5:32 to 5:37 south of Hermosa again. Pushed by a 30 mph wind to the northwest, this cloud would also have been located over Keystone at 6 p.m., merging with the other clouds into a major storm center.

It is not surprising, then, that at 6 p.m., IAS personnel noted an intense radar cell over the Keystone/Sheridan Lake/Pactola area. The seeding seems to have turned the clouds into four heavy rain generators that came together over the Keystone/Sheridan Lake/Pactola Dam area where unique wind and weather conditions would keep them sitting for hours, pumping out the torrent that would roar down the mountains with death and horror riding at its crest.

Such a series of events "is certainly possible," agreed Dr. Lewis Grant, meteorologist at Colorado State University in Boulder, an opinion diametrically opposite from the flat denials by the Board of Inquiry, the IAS staff, and the Bureau of Reclamation that the seeding could have in any significant way contributed to the disaster.

Interestingly enough, one of the reasons the Board cited for inability of the salt seeding to have played a role was that there was already "an abundance of natural condensation nuclei as evidenced by the presence of dense haze . . ."

Grant terms this assertion nonsense. The presence of the haze in itself, he noted, indicates that the condensation nuclei—minute specks of moisture not big enough to fall as rain—were not going to coalesce into raindrops on their own any time soon. "This is the ideal condition under which you *could* promote [rainfall] artificially," Dr. Grant contended.

"Because you couldn't get a coalescence process going naturally, artificial seeding is the only way you *could* get the process going."

The defenders of the Rapid City cloud seeding are probably correct when they say it was a massive storm that would have brought heavy rains throughout the area no matter what the cloud seeders did.

But without the cloud seeding it might have remained only a generalized storm, dropping two to six inches over the entire Rapid City and Black Hills area, causing some flooding and destruction. The pockets of 10 to 14 inches of rain in the crucial locations which caused the real devastation might not have occurred without the booster shot from the cloud seeders.

The Board of Inquiry report attempted to head off any such assertion by carefully noting that the flood of June 9 was merely "one in a long series of similar events." Rapid City, it noted, has had "at least 32 flooding situations in the last 94 years. . . . Of these, 13 have been serious and five have been comparable to this year's in area flooded, if not perhaps in total discharge. Maps of the flooded zones show that the 1907 flood inundated an area about the same size as did the flood of June 9, 1972. . . ."

However, the NOAA disaster report, which was compiled by a group with a somewhat less eager interest in the cloud seeding business than the three-man Board of Inquiry, took awesome note of the fact that the heavy sustained rainfall to the west and northwest of Rapid City "averaged about *four times the six-hour amounts that are to be expected once every 100 years in that area.*"

What's more, they noted, U.S. Geological Survey calculations "indicate that Rapid Creek had a peak flow of about 31,200 cubic feet per second (cfs) three miles above Canyon Lake Dam at 10:45 p.m. and 50,600 cfs, *more than 10 times the flow of any previous flood on record, in downtown Rapid City at 12:15 a.m.*"

That flow, the NOAA report reiterated, came from the water from the clouds over the Pactola Dam/Sheridan Lake/Keystone area.

Another indication that the clouds released an unnatural amount of water that day is that NOAA photo interpreters, whose daily job is to determine, on the basis of cloud photographs, the amount of precipitation that might be expected, were "surprised" several days later, when they saw the satellite pictures of the clouds over Rapid City, "that they had had as much rain as they did."

While the weather modification community has steadily maintained that the Rapid City cloud seeding did not affect the outcome of the flood, they nonetheless readily acknowledge that it should not have been conducted.

Penn State's Hosler said they should have known "not to touch that one with a 10-foot pole." The fact that they did "was a real goof."

Another prominent weather modifier, who asked not to be identified, called it "stupidity" to seed such a dangerous weather system with a potential for flooding for which they might be blamed. But, based on the report of the Board of Inquiry and statements from the staff themselves, the IAS meteorologists simply had no concept at that point of the nature of the clouds they were fooling with.

Kocielski, in a telephone interview in late December during which he gave several misleading statements aimed at absolving anyone but God of any responsibility for the Rapid City disaster, reiterated that it was important to publicly vindicate cloud seeding of any role in the June 9 flood. Otherwise, "first thing you know somebody will say, 'gee, better have an injunction,' and you get an injunction and nobody's doing anything," he said.

"And you look at the farmer's point of view: If you can get a 10 to 15 percent increase out of clouds in the summertime and get more rain, that means quite a bit of money to him, to the economy."

Perhaps the ultimate irony is that this economic benefit argument—the rationale rainmakers advance for toying with the weather—may be groundless.

Economist Crutchfield told an AAAS audience that in areas like the Great Plains, where 20 to 30 percent more rain from a given set of cloud formations "might be conceivable," the actual benefits are highly uncertain because the natural topography is not designed to store and distribute these sudden increases of water. "Application of water in excessive quantities or at the wrong time may be useless or detrimental even to a crop normally deficient in moisture supply over the whole growing season," Crutchfield said.

"Under such conditions," he continued, "cloud seeding is likely to yield much smaller benefits than the estimates now widely quoted. There is real doubt as to how much change can actually be achieved in rainfall of this type and degree."

In fact, he concluded, the benefits may be "very close to zero."

Because of the almost infinite variables that go into the making of weather, there is no way it can be proved that the hypotheses put forward in this analysis actually account for the horror of Rapid City on June 9, 1972. What has been demonstrated is that they in fact could have. The steadfast denials on the part of those connected with the project and their self-serving twisting of facts and conclusions smacks of nothing less than a meteorological Watergate.

It is understandable. For the IAS, the Interior Department and commercial weather modifiers to acknowledge the possibility of this chain of events could perhaps prove fatally counterproductive to their dogged determination to convert our skies into their own experimental laboratories, come hell or high water—or as in the case of Rapid City, both.

The real potential danger of tinkering with the weather was hinted at—perhaps unwittingly—by one of rainmaking's biggest boosters, Dr. Pierre St. Amand, chairman of the three-man Board of Inquiry. "There's not much danger, now that we know how [clouds] behave," he declared in a telephone interview. "You can go ahead and work on them all the time and not really have any great cause of concern, but you still have to adopt the normal precautions that you'd use when you're playing with a rattlesnake."

THE RELATION OF POWER NEEDS TO POPULATION GROWTH, ECONOMIC, AND SOCIAL COSTS

Mr. ABOUREZK. Mr. President, for years this body has been blessed to have the lucid pen of Vic Reinemer writing in defense of the public interest.

Mr. Reinemer's sharp and acid wit surely must pain those who would exploit us. He is a beacon of direct truth who slices through the smokescreen laid down by corpocracy's public relations image-makers.

Mr. Reinemer's latest essay should be required reading for anyone truly concerned with the public interest in our present so-called energy crisis. It cannot fail to enlighten.

Mr. President, I ask unanimous consent that Mr. Reinemer's latest essay, "The Relation of Power Needs to Population Growth, Economic and Social Costs," which was prepared for an April 30 Congress on Environmental Health of the American Medical Association be printed in the RECORD.

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

THE RELATION OF POWER NEEDS TO POPULATION GROWTH, ECONOMIC, AND SOCIAL COSTS—ABSTRACT

In important respects public policy regarding energy is made by bank and energy company officials rather than public officials.

This corporate government—corpocracy—exercises its control through three branches:

1. The legislative branch, through which the banks vote other people's stock;

2. The money branch, through which the banks extend credit and hold the mortgage;

3. The interlock branch, consisting of bank officials on energy company boards, company officials serving as advisors to government bureaus, company officials who become government officials, and former government officials who become industry lobbyists.

This corpocracy wants development of the energy sources which they control—fossil fuels and uranium—and energy sources subject to monopoly control—oil shale and geothermal steam.

The public needs development of alternative power sources that are not subject to monopoly control by corporate or foreign governments, which offer low operating costs, and which do not present the environmental hazards endemic to coal, oil and uranium. These alternate sources are sun, wind and water, with solar power offering the best prospect for significant energy increments soon. Other attractive alternate sources are solid waste conversion and MHD—magnetohydrodynamics—the direct conversion process for getting approximately twice the energy now obtainable from coal, with material reduction in pollution.

A rational energy system would include limitations on corpocracy's induced growth in energy demand, an integrated national electrical transmission system, public development of energy resources on public lands, application of the common carrier concept to all energy transmission systems, and restructuring of the regulatory process to require energy companies to divulge information which they now hide from regulators and the public, and to provide the public with expertise, before regulatory bodies, comparable to that which the companies marshal at the public's expense.

The President, in his recent energy message, advocated industry desires rather than public needs.

In the energy business, the structure is the policy. Changing that structure involves heavy social and economic costs to thousands of individual public citizens, working within the corporate and governmental systems, to make them responsive to public needs. Otherwise, given corpocracy's entrenchment and the public's lassitude, we are in for years of higher prices, less fuel, more inconvenience, greater pollution, an increasingly restive urban population and growing alienation of American citizens who dimly but surely perceive the paralysis that grips the public government.

THE RELATION OF POWER NEEDS TO POPULATION GROWTH, ECONOMIC, AND SOCIAL COSTS

At the outset, I should discuss briefly the control and decision-making process in the energy sector. Then we can better evaluate the costs involved in meeting needs.

In important respects, public policy regarding energy is not decided by public officials, at either Federal or State levels.

In all but one of the states utilities have one of the most powerful rights of government, eminent domain.

A few oil companies—not your government—deal with Middle East nations regarding availability and cost of oil and gas.

A few pipeline companies—not your government—deal with the Soviet Union for Siberian natural gas.

A few oil companies—not your government—decided that the oil from Alaska's North Slope should go, rather than to the oil-short Midwest, to an Alaskan port, whence it can easily be shipped to Japan, whose Premier happily reported last year that Japan would be buying some of it. The pipes to Valdez were quickly laid down along the right-of-way. The push is on now to change the legal right-of-way width and thus legalize the venture.

We have all heard the litany that energy companies are regulated by literally dozens of government bureaus. Let us remember that the "regulation" of utilities was invented here in Chicago, by Samuel Insull. He devised the scheme so as to appear controlled by government, and thus stop the growth of municipal power systems. Then he sent his lawyers to Springfield to set up the Illinois Commerce Commission.

All the government energy regulatory bureaus collectively can be likened to the wizened mountaineer who had seven huge strapping sons. The mountaineer boasted that they did not disobey him. "Of course," he added, "I'm right careful what I ask them to do."

Energy companies are, in reality, governments. Primary control of the energy industry rests, as it does in other major sectors, with a few large banks. This corporate government—"Corpocracy" if you prefer—exercises its control through the three branches of corporate government.

One is the legislative branch, through which the bankers vote other people's stock.

The second is the money branch, through which the banks extend credit and hold the mortgage.

The third—and certainly the most fascinating—is the interlock branch. The big banks maintain large stables of vice presidents—Chase Manhattan has 298—for service on the boards of companies in which they have financial interests, and on the boards of the funds, universities and foundations which have money to invest.

A second tier of interlocks functions through government bureaus such as the Federal Power Commission, which last year created thirty new advisory committees. You could hide all of the FPC auditors and accountants among its official industry advisers. Their corporate reports become government writ regarding, for example, the natural gas shortage, a subject about which neither the FPC nor any other government bureau has independent knowledge.

The third tier of interlocks is comprised of the men who come into government from energy companies and their law firms for the full tour, four or five years. After their tour they are pastured out to the big remuda of energy company lobbyists, who constitute the fourth tier of interlocks. This recycling of commissioners is especially characteristic of the FPC and the Interstate Commerce Commission.

I mention the ICC because it is supposed to regulate conglomerates such as the Burlington Northern and the Union Pacific which, although often thought of as railroads, have the most fabulous coal reserves of all corporations.

And so it goes.

It is important to distinguish between the power *needs* of this country and what the energy corpocracy *wants*.

The companies want development of the energy sources which they control. Those are the fossil fuels—oil, gas and coal—and uranium for their nuclear reactors. They are also anxious for development of other energy sources subject to monopoly control—oil shale and geothermal steam. These companies raised the national fuel bill by about $6 billion and contributed significantly to the energy crisis by persuading a President, fourteen years ago, to turn down the spigot of cheap Middle East oil, through the import quota system. The same companies also use their vast influence among elected officials to channel your tax dollars into programs which will facilitate development and depletion of the energy sources they control. In support of their goals, the energy companies have generated a corporate advertising program which is continuous, costly and pervasive.

The wants of the energy industry contrast with the public's need for development of alternative power sources that are not subject to monopoly control.

These alternate sources have low operating costs. They do not present the environmental hazards endemic to coal, oil and uranium.

The alternate sources are elemental: the sun, the wind, water. And in a related category is the fastest-growing energy source of all—solid waste—the utilization of which will enhance the environment.

Energy companies generally downgrade these alternate sources. Solar power and wind power raise the specter of competition, of customer independence. So does hydropower, insofar as it is developed at Federal projects subject to the preference clause, under which public and cooperative power systems have first call on the power.

Additional hydropower potential is limited. But hydro could constitute an important increment in areas such as the Missouri Basin through installation of additional generators at existing main stem dams. Unfortunately, for four years now the White House Office of Management and Budget has stymied the Corps of Engineers' work on this environmentally ideal power development.

Wind power and solid waste conversion still suffer from disregard by too many scientists and engineers. But solar power is at a stage where substantial research funding would make it significant within five years.

The energy companies' rush to strip and burn coal, at plants with only thirty to forty per cent efficiency, severely impedes development of MHD—magnetohydrodynamics—the direct conversion process for getting approximately twice as many BTUs per ton of coal while reducing its pollution materially. We are far behind the Russians, the Germans and the Japanese in MHD technology. But industry, and consequently the Federal Government, have not assigned a high priority to MHD.

The big problem in developing alternative, economical, environmentally attractive and unmonopolized energy sources is to obtain recognition for them in the Federal budget, which reflects the short term interests of the energy corpocracy. The needed research would be marvelously assisted by the equivalent of the cost of one Trident submarine, which is about $1.2 billion.

A rational energy system would include an integrated electrical transmission system, which would reduce by an estimated 20 or 25 per cent the new construction of plants needed to meet electric energy needs. Our present transmission system can be compared with an interstate highway interspersed with one-lane gravel roads. An integrated private and public transmission system would permit rapid transfer of power where needed, depending on peak loads that vary according to season, time zone and time of day.

A rational energy system would provide for public development of energy resources on public lands, and thus reduce monopoly control and its adverse effects on both price and supply.

A rational energy system would reinstitute rail passenger service and copy or even improve upon the Japanese regarding pollution emission control systems.

A rational energy system would apply the common carrier concept to all energy transmission systems.

And a rational energy system would provide the public with as much talent and information, before regulatory commissions and courts, as the companies buy and bill us for.

But these proposals are strongly opposed by the energy companies, which means that they will not be permitted in the near future.

Given corpocracy's entrenchment, and public lassitude, we are in for years of higher prices, less fuel, more inconvenience, greater pollution and growing alienation of American citizens who dimly but surely perceive the paralysis that grips the public government. Economic power in the energy sector is now becoming even more concentrated as the independent gasoline and oil distributors, unable to obtain supplies, close their stations. A growing population, concentrated in urban areas, become increasingly restive as the costs of essential energy-related services increase while service deteriorates. The market for night lights and night sticks will increase—the President's budget for them has already been augmented. And the Middle East will become even more explosive as we arm and advise Iran in exchange for its oil.

What the energy corpocracy needs is The Pill. As recently as last month the presidents of the American Gas Association, American Petroleum Institute, Atomic Industrial Forum, Edison Electric Institute and National Coal Association jointly declared *against* restricting the growth rate of energy use, which as they project will almost triple energy consumption by the year 2000. The industry leaders foresee a doubling of rates and prices in 10 years. Their program rests wholly on exploitation of the fuels which their corporate governments have monopolized. *I say that we have to stop these market-mad men from selling such a disastrous policy.*

They plead for deregulation of natural gas, in order to increase supplies. Yet theirs are the same companies whose *unregulated* oil enterprises have run us short of fuel. Furthermore, Texaco has admitted, in a current FPC proceeding, that it would oppose any attempt by the commission to force producers to plow back into exploration and production any part of new higher gas prices they are seeking. And the hand of the regulator is already so light that the FPC does not even publicize the handsome return on equity of the gas pipeline companies.

The President at last delivered his energy message on April 18, just as Congress was recessing for Easter. The timing was no surprise to seasoned Washington observers. Pronouncements contrary to public interest are usually made when Congress and the press are diverted. Over holiday, corporate government is as busy as the highway patrol.

Christmas Eve before last the railroads tried to slip through an "emergency" rate increase. And the Federal Communications Commission tried to quit altogether the job it has never done of regulating AT&T. That was too much for the public to forgive even at Christmas. So the FCC simply waited until last Thanksgiving to give Ma Bell what she wanted.

The most recent Christmas-New Year's holidays featured regal pronouncements of executive privilege, and unskilled surgery on the statutes, the budget, and perhaps the Constitution itself. As momentous issues rise to a divided Supreme Court, some of us are more grateful than you know for the medical technology that implanted a Pacemaker in the heart of a great Justice.

The heavy hand of the energy industry is imprinted on every page of the President's energy message. Raise prices. Cut taxes. Stretch out compliance with environmental standards. Strip that prairie. Burn that coal. Pipe that oil to the coast. Ease regulation. Lease out *all* energy resources on public lands. Triple the leases on the Outer Continental Shelf. Energy prices should reflect their true costs, he said. Yet he asked for more tax relief for energy companies, and did not mention rate structure.

He again advocated, and deserves credit for urging, that local officials be allowed to use money from the highway trust fund for mass transit purposes. But all in all, it's a "burn, baby burn" message, with only mild pleas for "voluntary" conservation. Turn out the lights. Tune up the car.

One of the most crucially important problems involved in developing energy policy is obtaining independent data, including information which companies would rather not share but should be required to divulge because of the public service nature of their business and its overriding importance to the Nation. Neither the executive nor legislative branch, neither the Democrats nor the Republicans, have dedicated themselves to this fundamental proposition of obtaining the facts upon which intelligent policy can be based. The President's approach, in his energy message, is to say that the Department of Interior "is to develop capacity for gathering and analysis of energy data."

Well, the director of Interior's Office of Oil and Gas recently transferred to the Lone Star Gas Company. He was succeeded by a Conoco man. My hunch is that Interior will gather and analyze energy data by asking the National Petroleum Council, its most prestigious, all-industry advisory committee, to put out another report.

The President barely recognized development of alternative energy sources. The budget for solar energy research and development is a mere $12 million. His approach to developing magnetohydrodynamics—MHD—is to make it a joint project with the Russians. They have a pilot MHD plant in operation and we haven't even begun to design one. We're not even going to work with the Russians or Chinese on solid waste conversion, hydro or wind power.

Perhaps I am old-fashioned. Maybe there are ways to develop alternate, economical and environmentally attractive energy sources in this era.

We could lease Litton Industries exclusive rights to the sun.

We could organize a wind division of ITT.

We could send another team to the moon, to evaluate its tug on the tides of Passamaquoddy, where a hydro facility should have been built long ago.

And a public relations firm could be hired to propose that the environment and the image be enhanced by transforming the Watergate into a solid waste conversion plant.

There are ways in which individuals who wish to can help limit the growth sought by the energy hucksters.

I don't mean riding the bike or the bus, or insulating the house, and turning down the heat, although such practices are to be commended.

I refer to participation in the small but growing groups, active in most states which, working within the system, seek to make it responsive to the needs of people. One of the most effective groups is in St. Louis, thanks in good measure to the remarkable Dr. and Mrs. Slavin. Their interests include revision of retail rate structure, a matter handled by State commissions, and sponsorship of consumer counter-ads on TV and radio.

In a typical retail rate structure, electricity used to produce aluminum for bombers over Cambodia costs one third as much as the electricity which a doctor uses for providing health care. The industrial customers are similarly subsidized by the low-income family who lives in a densely-settled area where cost of electric service is low, but rates are high. State commissions are concerned about this inequity. But they need testimony from persons who will counter the arguments of the batteries of company lawyers, experts and kept professors, whose retainers and salaries you pay as part of your utility bill.

State commissions also need to hear from those who object to free advertising by utilities. Many state commissions permit advertising and sales promotion to be written off as operating costs of the cost-plus utilities. Those companies, on the average, spend three and a half times as much on advertising and sales promotion as they spend on research and development. (Commonwealth Edison, I am pleased to report, spends slightly more on R&D than on advertising and sales promotion.)

Utility R&D is an allowed operating cost. In fact, sometimes utilities make money off R&D by getting it included in the rate base.

They are trying to obtain tax incentives for R&D expenditures as well. Yet the annual R&D effort of the Nation's largest industry, the investor-owned electric utilities, is less than the amount Exxon spent to put up and merchandise its new name.

Then there is the lighting project, which could use the services of pro bono oculists.

Some years ago a group of electrical equipment and utility salesmen formed the Illuminating Engineering Society. They have by now jacked up the lighting standards in many states to the extent that schools, libraries, government offices and other buildings use much more electricity for lighting than is necessary.

A Georgia Power official bragged to his colleagues that the lighting standards have become so high that the air conditioner had to run year round to keep down the heat from the lights.

If you want to help replace market-madness with common sense on that one, write Senator Lee Metcalf or Ralph Nader.

Finally, corpocracy itself needs attention from stockholders. They are more likely than is government to make constructive changes in corporate affairs during the next few years.

The job of affecting corporate policy is indeed awesome. The agenda and candidates considered at an annual stockholders' meeting are determined well in advance, by corporate management. Great effort and considerable expense, months prior to the meeting, are required to obtain consideration of the most modest proposals that have not been offered by management. If the attempt to get on the ballot is successful, identification of the voting stockholders and timely communication with them is difficult or impossible. The big voters, usually the banks and other institutional investors, often hide their identity behind multiple "street names" or "nominees."

You, as I, have probably received proxies from companies which will not even permit you to cast a negative vote against management's single slate. You vote "da" or withhold your vote. The corporate election process in America today is as rigged as elections are in the Soviet Union, the outcome as predictable, and the accompanying propaganda as self-serving.

But that is the structure with which we must deal, in attempting, to ameliorate the undesirable social and economic consequences of explosive energy growth. In the energy business the structure is the policy.

Changing that structure involves an extraordinary investment of time and energy by thousands of individuals who decide to become active public citizens. Your participation in this Congress suggests that you have assumed or may now be ready to assume more individual responsibility in this area. It is that kind of an investment, costly in both social and economic terms to each public citizen, which is required to relate energy policy to public needs, rather than profligate goals of corpocracy.

THE EDITORIAL SUPPORT FOR A NUCLEAR POWER MORATORIUM

Mr. GRAVEL. Mr. President, while the editor of a professional society's journal does not speak for the society's membership, he or she is seldom out in left field relative to the membership.

Therefore, I would like to call my colleagues' attention to an editorial in the May issue of Chemical Technology. This is a publication of the American Chemical Society, which has a membership of 110,000 chemists. The editor is Dr. B. J. Luberoff of New Jersey.

The editorial strongly urges its readers to give their attention to the Nuclear Power Moratorium Act of 1973, S. 1217; this brief bill and my introductory remarks appear in the RECORD on March 14, pages 7741–7742.

Mr. President, I ask unanimous consent that the editorial entitled "Please Read This" be printed in the RECORD.

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

[From Chemtech, "The Industrial Chymist," May 1973]

READ THIS, . . . PLEASE

(By B. J. Luberoff)

This is the shortest Chymist ever because it's painful to write and will be painful to read. Its thesis is simple. It goes like this:

For years I've accepted nuclear energy as a splendid example of what we technologists can do. Now, quite suddenly, it scares the hell out of me!

Several weeks ago, an outfit called KEEP—Keys to Education in Environmental Protection—sponsored a debate in my neighborhood. I went. I expected to find a bunch of little old ladies in tennis shoes—democracy in action. Instead, I found two informed advocates addressing well over a hundred concerned citizens. (This, in a town of 25,000.) The speaker from the Edison Electric Institute was most assuring in a polished, fatherly way. The other speaker was Larry Bogart, who's made a "career" of this sort of thing since retiring from the CPI (2). He proved to be a fantastic storehouse of knowledge not only about the technology of nuclear power, but also its politics, economics, and sociology. A lot of the concerns he expressed we can handle:

(1) We can shield against as much steady-state radioactive leakage as we want.

(2) We can keep steady-state thermal pollution as low as we want.

(3) We can build as much redundancy into safety as we want.

These are all normal cost/benefit continua. We can plot them, optimize them, put in sound safety factors, and all the rest.

What he told me that I didn't know—or never had the guts to face—is that superimposed on these quite normal mathematical functions are two that are anything but normal:

First, any event that could disperse a nuclear reactor core has a damage potential beyond any other event that I can imagine.

Second, the hazard of fission products persists for a time that is longer than any I can conceive.

These two concepts take nuclear power right out of the hands of technologists and put them in the sociopolitical sphere. The sad thing is that members of that sphere don't fully appreciate the responsibility technology has presented to them. Will you—people who appreciate technology—but also *people*—please help them.

Now, lest you think that your editor has become a garden variety eco-nut, let me document briefly.

Speaking on CBS–TV on August 10, 1970, Dr. Edward Teller said in part: "You can put it in this, perhaps inappropriate, mathematical form. The probability that something will go seriously wrong is real. But the damage that would be caused if it went wrong is infinite. So you have the peculiar problem of multiplying zero by infinity"(1)

Nuclear waste that must be stored consists among other things of Sr^{90}, whose half-life is 28 years; Cs^{137}, whose half-life is 30 years; and Pu^{239}, half of which will still be around 24,360 years from now. To put that last number in perspective, recall that this is only 1973 A.D. . . . That's some legacy.(2)

By nature we're not political people, but here, I think we *must* be. Senator Mike Gravel has introduced a bill to place a federal moratorium on construction of nuclear plants (S1217). It deserves your attention. Wisconsin and Minnesota have similar bills pending in their State Houses; Calif., Conn., Ill., Ind., Mich., Ore., and Vt. are about to see such bills, and Friends of the Earth is targeting most other states. Where do you live? More important: Where will your children live? And their children on whom will be visited ". . . the iniquities of the fathers . . . unto the third and fourth generation . . .".(3)

Lest you think that we have no alternate to nuclear roulette, turn to page 275 where you'll meet the concept of the energy forest. It, like so many other good concepts, is having difficulty finding support. Since WW II nuclear power has received something like 200 times the funding of all other energy sources combined. Should that continue?

Sure, we have a crisis, but John Kennedy long ago pointed out that China's venerable ideograph for "Crisis" is made up of two symbols: One is "Danger"; the other "Opportunity."

REFERENCES

(1) If a numerical approximation of Dr. Teller's "infinite" is more comforting, one can find it in U.S. AEC document 740, Wash., March 1957. One "case" it calculates includes:

General Restrictions, 3,800,000 persons.

Agricultural Restrictions, 150,000 sq. mi.

Evacuation, 460,000 persons, 760 sq. mi., $2,300,000.

Injury Likely, 43,000 persons.

Lethal Exposure, 3,400 persons.

This case has a tiny probability of occurrence—But it is not zero.

(2) *New York Sunday Times*, 3/31/73.

(3) Exodus, Chapter 20, Verse 5.

NEW PRESIDENT OF U.S. CHAMBER OF COMMERCE: A MAN WITH DIRECTION

Mr. PERCY. Mr. President, I wish to commend the U.S. Chamber of Commerce for its recent selection of Edward B. Rust as its 46th president. Mr. Rust is the chairman and chief executive officer of the State Farm Insurance Co. in Bloomington, Ill. He has served as director of the chamber for 6 years, and was treasurer for the past year.

More important than his credentials, is his expressed intention to improve the credibility of business and the image of business. In a recent statement, he has said:

I want business to earn the confidence of consumers, and the way to do that is to provide consumers with a product they are satisfied with. Surveys indicate every institution in the country—political, labor, business, the church—is in a downtrend in public confidence. Business isn't alone in this. I will work to improve the image of business and to close that credibility gap.

I commend the chamber for its outstanding choice, and express the hope that under Mr. Rust's leadership we will find a reaffirmation of the importance to businessmen and consumers alike of quality in goods and services, integrity in advertising, packaging, and promotion, and honesty in the marketplace.

I look forward to cooperating with Mr. Rust and the chamber in working for these modest, albeit, ever so important ends. For if we encourage and promote—

Free and informed consumer choice in a competitive market,

The prevention of unfair or deceptive trade practices,

Fair advertising promotion and sales practices,

Adequate product information and warnings,

The protection of consumer legal rights,

The preservation of consumer health and safety, and

The open advocacy of responsible consumer positions in the context of governmental and corporate deliberations.

If we can do that, then we will have laid the groundwork for separating out those very few firms which act arrogantly and without regard for their customers, from the overwhelming majority whose actions are responsible and worthy but whose good names are indelibly tarnished by the callous behavior of the few.

THE COMEBACK OF WYOMING'S VANISHING BIGHORNS

Mr. McGEE. Mr. President, in last Sunday's May 27 edition of the Denver Post, there appeared an article on efforts by my State to prevent the extinction of Rocky Mountain bighorn sheep in Wyoming.

The article, written by Zeke Scher, is a fitting tribute to the farsighted commitment on the part of William Crump, a game supervisor for the Wyoming Game and Fish Department, and the State department, to not only the preservation of a species of wildlife, but also the enhancement of its numbers.

As was pointed out in the article, only some 300 bighorns were barely scratching out an existence on their ancestral range in 1954 when Bill Crump decided something had to be done. Today, there are more than 1,000 bighorn sheep in Wyoming, entirely due to the efforts of Bill Crump, the Wyoming Game and Fish Department, and the Bureau of Land Management.

I ask unanimous consent that the article be printed in the RECORD.

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

THE COMEBACK OF WYOMING'S VANISHING BIGHORNS

(By Zeke Scher)

In the Whiskey Mountain area of northwestern Wyoming, the late spring sun is drawing grass from the sandy soil, luring down Rocky Mountain bighorn sheep that have spent the long winter on windswept ridges.

Ewes and lambs lead the march from the rims to the fresh mountain bunch grasses. The boys—those majestic, massively horned rams—remain together at the higher elevations. At this time of the year all these wild sheep look downright scruffy as they shed their long, coarse bleached-white coats.

The bighorns are shy, wild and relatively rare in the West. Or are they? I wondered about that on this visit to the Wind River Mountains south of Dubois. As I drove down a single-lane dirt road, there were bighorns to the left of me, to the right of me and right there in front of me.

No less than two dozen bighorn ewes and lambs calmly foraged, moving away ever so slowly upon my approach. The rarest sight of all was a yearling with a magpie perched on its rump—in the middle of the road.

How could this be? This was no zoo. This was in Wyoming's remote high country just east of the Continental Divide.

Bill Crump, termed this fascinating scene "proof of the success of a 15-year program." The bighorns around me were only an advance contingent of nearly 1,000 thriving upon the 4-by-15-mile Whiskey Basin Big Game Winter Range. They are the biggest herd of bighorns in America and a primary source of seed stock for restocking ancestral ranges in Wyoming.

It certainly wasn't always like this. William I. (Bill) Crump of Lander, Wyo., can vouch for that. At 48 he's District 6 game division supervisor for the Wyoming Game & Fish Department. When he came to the area in 1954 as an associate biologist, five years after graduation from Colorado State University, Crump found some 300 bighorns literally scratching out an existence on the ancestral range.

(No one knows how long bighorns had occupied the area, but Indian pictographs identified them and archaeologists discovered Indian trap sites and tools made from their horns.)

Whiskey Mountain traces its name to more recent history. In the summer of 1931 a major forest fire swept the slopes. It was started, so the story goes, when a bootlegger's mountaintop distillery blew up. The fire was hard on the booze merchants but in the long run it was great for the wildlife.

A heavy timber stand was cleared out and eventually replaced by forage and space for wildlife. Estimates at that time put no more than 150 bighorns in the Whiskey Mountain area. They occupy three principal sites—Sheep Ridge, along Jakeys Fork Creek; BLM Ridge on Whiskey Mountain, and Torrey Rim above Torrey Creek.

In 1956 Crump began a detailed study of the bighorns. He found a low survival rate for lambs and there were only 10 lambs per 100 ewes. What was the problem?

Most of the bighorns were using one rim of Jakeys Canyon where the forage was extremely limited. Other wildlife, horses and domestic livestock were getting the grass.

During the winter of 1955–56, several bighorns were captured and taken to a 60-acre pasture in the Sybille Game & Fish Experimental Unit in southeastern Wyoming's Albany County. The elevation was 6,500 feet compared to the mountain range of from 7,500 to more than 11,000 feet.

With excellent feed conditions for the transplanted animals, the results were predictable. Ewes showed a high birth rate and their lambs thrived, averaging 79 pounds at one year compared to 53 for yearlings from Dubois. Another striking difference was horn development of ram lambs: Two at Sybille had lengths of 6.5 inches and 8 inches; three at Dubois averaged 2.5 inches.

Since the Whiskey Mountain area had plentiful summer forage, the bighorn herd obviously was being restricted in numbers by insufficient winter range.

Crump's conclusion was that this ancient home of the bighorns should be managed for their benefit by restricting the number of competitive game species—principally elk—and fencing out domestic livestock. He suggested increasing the food supply by purchasing private land adjoining the critical winter range.

Crump also warned that the heavy concentration of bighorns in the Jakeys Fork and Torrey Creek drainages posed a serious danger to the animals. Similar situations in Colorado during the early 1950s resulted in rapid transmission of diseases and a die-off of up to 95 per cent of an entire herd.

Game Department officials reacted favorably to Crump's report. In 1954 a 1,668-acre tract in Whiskey Basin had been purchased primarily for elk from rancher Max Miller. In 1957 the Department added 1,166 acres know as Trail Lake Ranch along Torrey Creek from Charles Beck, another Dubois landowner. This doubled the size of state-owned land set aside as bighorn habitat adjacent to Bureau of Land Management (BLM) and U.S. Forest Service holdings.

Both purchases were made with funds from hunter license sales and taxes on hunters' purchases of arms and ammunition. This program, known as Federal Aid in Wildlife Restoration, continues to contribute maintenance and management for the area. Larry Sabatka is the Department unit manager for Whiskey Basin.

Following that, a series of trades was completed in which land in lower areas of lesser wildlife value was exchanged with Les Shoemaker, a dude ranch operator, for other lands next to the rim areas preferred by the bighorns. Fred Fish Sr., a retired Dubois businessman and rancher, voluntarily relinquished a horse-use permit on Forest Service land to enhance sheep forage.

Many hours of persuasion were spent in convincing people about bighorn needs. Progress at times seemed painfully slow. Despite this, the bighorn population by the mid-'60s rose to 600 and a ratio of 25 to 35 lambs per 100 ewes was recorded. Then in 1969, in the face of growing concern over conservation, the Forest Service and BLM drew up a "cooperative agreement" with the Wyoming Game & Fish Department:

Improve the habitat and forage conditions so the area may support "an optimum population of bighorn sheep."

Maintain the area in public ownership "so that the public may fully enjoy this outstanding herd of bighorn sheep."

The BLM agreed to prohibit public sale, mineral entry or agricultural use of lands occupied by the bighorns. Grazing by domestic livestock would be limited and, if necessary, eliminated.

Wyoming Game Department officials would continue to control wildlife numbers on the newly entitled Whiskey Mountain Bighorn Sheep Habitat—8,674 acres including 5,300 under federal ownership—by livetrapping and hunting.

Crump feels that the success of Wyoming's efforts to save and increase the bighorn—some 1,000 are expected to roam the area after lambing ends next month—could be duplicated by other states. He encourages similar programs. Things look rosy now. However, Crump says, "Of course we're sitting on a powder keg at all times.

"We must maintain the proper balance between range and herd numbers," Crump says. "If we do, they'll thrive and properly distribute themselves. If we don't, Mother Nature will do it for us with a disastrous die-off."

At one time biologists thought lungworm was a major cause of bighorn deaths. Crump says almost all Wyoming bighorns have lung worm "but we don't worry about it." He explains that every sheep has parasites but they don't normally bother animals with sufficient range.

The Whiskey Mountain herd is being kept at a proper size by an annual hunting season for rams with at least a three-quarter-curl horn, which is about 5 or older, and a live-trapping program.

A record 136 bighorns were trapped this past winter. They were trucked to such places as the Big Horn Mountains near Lovell (39 of them), Laramie Peak north of Wheatland, Little Popo Agie Canyon near Lander and Bear Creek north of Dubois. In recent years some of the bighorns have been traded for other game to Utah, New Mexico and South Dakota.

Jim Oudin, game warden at Dubois, and Bill Helms, big game biologist at Lander, are in charge of the trapping. They set up large nylon-net traps on Sheep Ridge and Torrey Rim from December to March, enticing the bighorns in with alfalfa hay and salt.

They select the transplants by hand, wrestling their choice into their four-wheel-drive pickups or horse trailers. Wildlife men can be intimidated, too. They release the big

older rams. Who wants to tangle with an angry, hardheaded 300-pound roughhouser?

In a typical transplant group of 20, there will be three or four young rams, with the rest being ewes and lambs. Each animal is given shots to combat infection and then fitted with a bright yellow plastic neckband to identify it as a Whiskey Mountain graduate.

During the next few weeks lambing will begin and Crump expects between 175 and 200 youngsters to be frolicking about the area. (Mating season—when the rams butt heads—is late fall.)

Statistics spell out the program's success since 1956. A total of 687 bighorns have been removed and transplanted by live-trapping. During the same period 638 have been taken by hunters.

Despite the abundance of bighorns, hunters find them more than a match. During the past 17 seasons, Wyoming has issued 1,592 permits in this area with a hunter-success of about 40 per cent. Last year the 116 permitees came up with 54 bighorns.

While visiting with Crump I learned that horrendous Wyoming wind isn't all bad. It makes the bighorn habitat possible by keeping parts of the range swept clear of snow and open for winter foraging. Sort of an ill wind that blows good.

If other groups of people, land managers and landowners, can get together like they have here maybe bighorn herds will multiply and create additional Whiskey Mountain success stories.

HELP FOR HANDICAPPED CITIZENS

Mr. PERCY. Mr. President, I join Senator HART in introducing a package of bills designed to afford our handicapped citizens an equal opportunity to the high quality of life that this country holds as a promise for everyone. The three bills deal with the accessibility, transportation, and employment problems that have so persistently restricted and impoverished the lifestyles of our handicapped citizens.

The problems of accessibility that confront the handicapped have been of particular concern to me. I find it shocking that in this 30th century the handicapped of this country are still a largely hidden population, cut off from normal opportunities of education, work, recreation, and the most basic social services because of man-made architectural and transportation barriers. In the 92d Congress, the Rehabilitation Act of 1972 incorporated several of my amendments which made the removal of architectural and transportation barriers an integral part of the act. In this Congress I have introduced S. 1105, a bill that would provide tax incentives to stimulate public and private action for eliminating architectural and transportation barriers from our society.

The accessibility bill which Senator HART and I are introducing would further combat architectural and transportation barriers by insuring that buildings and facilities financed with revenue sharing funds are so designed and constructed as to be accessible to the handicapped. Cause of action would be given to the appropriate Secretary or to a handicapped individual to enforce compliance with this law in the Federal Courts.

Very much related to the problem of accessibility is the question of the excessive transportation expenses that mobility-limited individuals, including both the handicapped and the elderly, must incur as they strive to live a normal life. Because this country's public transportation systems, as a rule, are inaccessible to mobility-limited individuals, the handicapped and the elderly are forced either to use more expensive modes of transportation—taxis, limousiness, special arrangements—or stay virtually incarcerated in their homes. A 1969 study on the transportation needs of the handicapped found that 33 percent of the mobility-limited are frustrated in their primary activities and 40 percent in their social activities because of their inability to use low-cost means of transportation. Also, the mobility-limited individual makes 50 percent fewer trips per day than the average citizen. When he does venture out to see the doctor, go to work, shop, or visit a friend, he takes a taxi 14 percent of the time when the average citizen makes fewer than 2 percent of his trips by taxi.

Mobility for the handicapped and the elderly could improve with increased accessibility or lower cost for transportation. Increasing accessibility is realistic only as a long-range alternative, for the elimination of transportation barriers would require extensive renovation of existing facilities. Such a remodeling program would be limited both by physical constraints and by financial considerations. Until such a time when the public transportation systems in this country are made accessible, the handicapped and the elderly deserve and have a right to enjoy mobility on the same terms as any other American citizen.

Senator HART and I, therefore, are introducing a tax deduction proposal to alleviate the excessive transportation costs that the handicapped and elderly must incur through no fault of their own. Unlike a number of bills already before this Congress, our bill would provide justified relief to the mobility limited for all excessive transportation costs rather than just work-related transportation expenses. The lack of appropriate transportation frustrates the attempts of the handicapped and elderly to meet their needs not just in going to and from work, but in all areas of life.

Although accessibility and mobility are keys to getting the handicapped into the mainstream of living, even more important is employment. Unfortunately unemployment is the rule rather than the exception for handicapped individuals. At present, only 36 percent of the national handicapped population aged 17 to 64 are members of the labor force. This means that 64 percent are unemployed, compared with 29 percent of the nonhandicapped population of the same age group.

It is obvious that a handicapped person is not able to perform all types of jobs, just as the average person is not able to perform all types of jobs. However, almost all handicapped persons can be trained in some area, and, if hired, their efficiency attendance record and performance of duty can be better than their nonhandicapped counterparts. Unfortunately, the handicapped face more than architectural and transportation barriers, they also face the more insidious man-made barrier—prejudice.

More often than not, the handicapped job applicant never gets a chance to show that he can do the job, because the employer is persuaded automatically by a number of mental blocks to reject hiring a handicapped person. According to Robert Wurster, assistant director of the Illinois Governor's committee on Employment of the Handicapped, some of those mental blocks, none of them legitimate, include: disbelief that a handicapped worker can measure up in a competitive office or shop; fear that a handicapped worker would boost insurance rates; prejudice that physical handicaps are related to slower mental abilities; psychological predisposition to avoid the handicapped so as not to be reminded that such frailties can occur to everyone; and suspicion that a handicapped worker would disrupt staff morale and make coworkers uncomfortable.

Compounding the problems of prejudice is another factor which is very seldom mentioned, and that is that it sometimes costs more to arrange a job situation so that a handicapped person can be fully productive. Machinery, bathrooms, stairs, furniture, entrances, exits, and so forth must sometimes be modified to accommodate a handicapped employee.

Recognizing these overwhelming barriers to employment for the handicapped, Senator HART and I are introducing a tax incentive plan to give businesses and industries a tax credit for 50 percent of qualified wages paid the first year and 25 percent the second year to handicapped workers. One bill would also insure that a handicapped worker who suffers a subsequent injury on the job would receive full compensation to cover the resultant injury, with the employer paying only the benefits for the subsequent injury. Our bill is designed to take the handicapped applicant over initial employment hurdles and give him the opportunity, as any other worker, to be judged solely according to his ability to do the job at hand.

Through the years I have consistently supported all congressional efforts to provide more equitable opportunities for the handicapped. However, I have somehow felt that this country has never faced squarely the problems of the handicapped. For too long we have dealt with handicapped people as afterthoughts, outcasts of society, and charity cases deserving of public pity or dole but not of equal treatment or consideration. I quite agreed when Jack Anderson in his May 5, Washington Post column urged all of us to call attention to our national hypocrisy and to advocate a more forthright policy for the handicapped. It is time we recognized that the handicapped suffer many disadvantages in our society, the least of which often are their handicapcaps.

There is no reason on earth why this Nation cannot fulfill its promise to the handicapped with the same success as it has to the nonhandicapped. I hope that the package of bills which Senator HART and I are introducing today will help to

effect a change in public attitude and foster a policy toward the handicapped that is both fair and honest.

CONSUMER CREDIT

Mr. BROCK. Mr. President, I would like to bring to the attention of my colleagues some very significant testimony given recently before the Subcommittee on Consumer Credit of the Committee on Banking, Housing, and Urban Affairs by Prof. E. Ray McAlister of North Texas State University.

For the past 10 years, Professor McAlister has been engaged in extensive research projects dealing with the economic and legal aspects of consumer credit in addition to teaching courses in consumer and commercial credit management. At the request of the subcommittee, Professor McAlister testified about some of the results of a research project in which he has been engaged for the past 18 months with regard to the types of billing methods used by retailers and banks in assessing finance charges on open-end credit plans.

The results of Professor McAlister's study are important because they relate directly to the most controversial issues involved in the legislation which is presently before the Subcommittee on Consumer Credit, namely the Fair Credit Billing Acts—S. 914, sponsored by Senator PROXMIRE and S. 1630, sponsored by Senator SPARKMAN and me. Those issues deal with the prohibition of certain types of billing methods in section 167 of S. 914 and the prohibition of minimum finance charges in section 168 of S. 914. No comparable sections are found in S. 1630.

Until Professor McAlisters' study was undertaken, all discussions about the costs and use patterns of the various billing methods were based on hypothetical examples, theory, and pure conjecture. On the basis that empirical data on this subject was needed. Professor McAlister decided to thoroughly examine actual account histories over an extended period of time. He then got the approval of a major retailer to analyze a random sample of its accounts in Texas over a 12-month period.

The summary statistics from Professor McAlister's study made during 1972 seem to indicate a pattern of credit account usage in revolving credit which is substantially different from any other types of consumer indebtedness. For example, the average outstanding monthly balance on the retail accounts included in this study was $91.90; for one-half of the customers their average balance amounted to $37.27—the median figure—or less. Professor McAlister pointed out that this is considerably smaller than is frequently imagined as being typical of revolving account indebtedness. The customers in this study incurred an average monthly finance charge of $1.24 or $14.88 for the year. The average annual percentage rate paid by these customers amounted to 11.64 percent. This figure is based on all accounts, including those which incurred no charge at all. If the calculations are confined to only those customers who paid a finance charge, the average rate paid was 15.65 percent.

As to account usage the study showed that approximately 26 percent of the customers never paid a finance charge during the 12-month period. About 25 percent always paid a finance charge and about 50 percent incurred a finance charge part of the time and in other months either did not purchase, or if they did, paid their accounts in full and thus avoided a finance charge. Those customers who never paid a finance charge and thus received the so-called free ride—226 out of the 865—owed on the average a monthly balance of only $14.78. In total, these customers accounted for only about 4 percent of the total balance activity on all of the accounts studied. Thus the study seems to indicate that by far the majoriy of the revenue in finance charges comes from those customers who use their accounts the most. As noted by Professor McAlister, the impact of the "free ride" is substantially less than generally imagined.

The study goes into great detail about the differences in dollar amounts of finance charges among the six types of billing methods. The statistics disproved the commonly held assumption that the choice of billing method produces a substantial difference in finance charges to the customers. For example, the previous balance method on the average cost $0.15 a month—$1.80 a year—more than the adjusted balance method. For one-half the customers, the previous balance method differed in cost from the adjusted balance by $0.06 a month or less. Comparison of the costs of the other billing methods showed similar differences of a de minimus nature.

Professor McAlister pointed out in his testimony that whereas differences in dollar costs to customers resulting from usage of varying billing methods are generally rather minimal, the differences in total annual finance charge yield for a retailer can be significant. His study revealed a difference in revenue, for example, between the previous balance method and the adjusted balance method of some 12 percent. For the legislator faced with the task of setting rate ceilings and regulating other aspects of credit operations which affect rates, the difference in yield produced by various billing methods is a substantive issue.

Professor McAlister's conclusions about billing methods based on his study of empirical data is that the impact of billing method on cost to the customer is minimal, and that the consumer's best interest is served by allowing companies to choose whatever method is most appropriate for them—considering their costs of operation, customer needs and desires, and so forth. Competition should be promoted and assured and consumers should be adequately informed as to the type of billing method in use by the retailer.

The Truth in Lending Act now requires retailers to disclose the method of determining a balance for finance charge computation purposes on each monthly or periodic billing statement. Even if all retailers and banks used the same billing method, as some people advocate, it still would not be possible to predict in advance what the actual cost of credit—in dollars or as a rate—would be on revolving accounts. This is because of the fact that repayment terms differ from store to store and because the actual rate of charge paid by the customer is largely a result of his individual purchase and payment patterns.

As to the use of a minimum finance charge on accounts, the study's result showed that the impact on cost to the individual customer from use of the 50 cent minimum is in most instances practically nothing. Under most billing methods use of the minimum charge amounts to a difference of only 1 or 2 cents a month. Professor McAlister believes that the possibility of incurring a $0.50 charge tends to encourage customers to pay in full their balances when they are very small thereby saving them some finance charges they might otherwise incur.

I ask unanimous consent to have printed in the RECORD, Professor McAlister's entire prepared testimony given to the Subcommittee on Consumer Credit on May 24, 1973.

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

TESTIMONY BY E. RAY MCALISTER, PH. D.

Mr. Chairman and members of the Subcommittee. I am Ray McAlister, Professor of Business Administration at North Texas State University in Denton, Texas. I appear here today at the request of the Subcommittee. I have been asked to share with the Subcommittee some of the results of a study on which I have been working off and on for about eighteen months. The results of this study may be of interest in regard to S. 914. specifically Sections 167 and 168.

In my duties as Professor oi Business Administration, I regularly teach upper-level courses in consumer and commercial credit management. As a result, I have been more or less continuously interested in updating my expertise in economic and legal matters pertaining to consumer credit.

My interest in consumer credit in particular dates back to the early 1960's at which time I was working on a doctoral dissertation at The Ohio State University pertaining to state and federal credit legislation. I received my degree in 1963 and since that time have been on the staff of the College of Business at North Texas.

During the past ten years or so I have engaged in a number of different research projects and have written numerous articles on the economic and legal aspects of consumer credit. I have enjoyed the opportunity of sharing the results of my studies with legislative committees in various states. As you may recall, I also had the pleasure of appearing before a committee on which some of you were members in 1967 when the Truth in Lending legislation was under consideration.

ORIGIN AND DESIGN OF THE STUDY

As a part of my efforts to keep up-to-date in the field of consumer credit, naturally I was aware of some of the legal developments concerning the particular area of revolving credit. As you know, one of the more discussed subjects in this area recently has been with regard to the type of billing method employed by stores and banks in assessing finance charges on open-end credit plans.

It occurred to me that in all of the debate in this area, the discussions centered entirely around hypothetical examples of how one billing method compared in cost to another.

I was unaware of any substantial published materials based on empirical data. It seemed to me that much of the legislation that had been proposed and in some instances enacted into law, while no doubt well-meaning in its purpose, was based on a total absence of any objective findings; and, instead, was designed purely on the basis of theoretical possibilities.

Therefore, it appeared to me that a thorough examination of actual account histories over an extended period of time would provide very meaningful data from which to evaluate legislative proposals and enactments.

Accordingly, in December, 1971, I made a proposal to Sears, Roebuck & Company in Chicago that a random sample of their accounts in Texas be selected for analysis over a twelve-month period. Recognizing the value of such a study, the project was approved and undertaken that same month.

SELECTION OF THE SAMPLE

It was decided that use of a single billing cycle would be appropriate since customers were assigned to cycles in a completely random manner and since preparation of the computer program for analysis of the data would be greatly simplified. Thus, the sixth billing cycle, closing on the 12th of each month and containing some 75,000 individual accounts throughout the state, was chosen by random selection.

From a list of active accounts as of December 12, 1971, having previously determined the first unit of the sample to be chosen by use of a table of random numbers, every fortieth account was selected, provided that the account met the necessary parameters. Those accounts excluded from the sample studies included any with the following characteristics:

(1) Accounts with less than a full year's activity. It was not necessary that the account have actual activity (that is, purchase or payment) during each of the twelve months studied, but it had to be open and subject to usage by a resident of Texas.

(2) Accounts of customers who were not residents of Texas.

(3) Accounts which, at any time during the twelve-month period of study, were more than one month delinquent in payment. The decision to exclude "extreme past due" accounts was based on the desire to know what costs and rates were involved when accounts were paid according to the agreement signed by the customer. Otherwise, it would not have been possible to evaluate the significance of the terms on the original agreement as they affect the buyer.

(4) Employee accounts were not included because of a difference in the area of finance charge assessment.

This procedure produced account histories for a twelve-month period for a total of 865 accounts. These records came from all parts of the state—every town in which Sears had a "retail" store (although some towns with "mail-order" outlets only were not included).

Data used in the study were copied by hand from original records on a month-to-month basis. All transactions on the account during the twelve months were recorded, including the dates involved. A computer program for analysis of the data was prepared by Mr. Edward DeSpain of Southern Methodist University in Dallas, Texas.

MAJOR OBJECTIVES OF THE ANALYSIS

As indicated earlier, the primary purpose of this study was to obtain actual account history data for use in evaluating revolving account usage rather than to rely entirely on hypothetical examples. Of primary concern were the following questions:

(1) What amount of finance charges in dollars and cents was actually incurred by the customers over the twelve-month period?

(2) What annual percentage rate of finance charge was actually paid over this time?

(3) What was the actual yield to the store over the 12 months?

(4) How often were finance charges incurred?

(5) How many customers did not incur finance charges at all?

(6) What was the typical activity on the account—that is, size of balance, number of transactions per month, average amount of each purchase, number of days between purchase date and billing date, number of days between billing date and payment date, etc.

(7) What effect on the cost of the account over the 12 months did the use of a 50¢ minimum monthly charge have?

(8) What would have been the effect on dollar cost and annual percentage rate paid if the monthly rate had been 1% instead of 1½%?

(9) What would have been the dollar finance charges incurred under five other billing methods? (Other methods simulated were: Adjusted Balance, Ending Balance, Average Daily Balance Including Debits, Average Daily Balance Excluding Debits, and True Actuarial Average Daily Balance.)

(10) What would have been the annual percentage rate paid under these other billing methods?

(11) What would have been the impact on the revenue or yield of the store from the use of other billing methods?

TERMS OF THE REVOLVING ACCOUNT AGREEMENT STUDIED

Before analyzing the results of account usage, it is necessary to have an understanding of the terms of the agreement under which the accounts were actually used. Pertinent terms in effect on the accounts studied were as follows:

(1) Finance charges were assessed at a monthly percentage rate of 1½% on the part of the unpaid balance between $33.33 and $500; 1% on that part of the unpaid balance in excess of $500; on unpaid balances of $1 to $33.33, a minimum charge of $0.50 was assessed.

(2) Finance charges actually were assessed in accordance with the "Previous Balance" method. That is, the finance charge was based on the balance owed on last month's billing statement (current month's beginning balance) *without* deducting payments or credits made on that balance subsequent to receipt of the statement and *before* adding current month's purchases.

(3) No finance charge was assessed if the customer paid his previous month's balance within 25 days of his billing date.

(4) The account agreement called for monthly payments of at least $10 to be made within 25 days of billing date.

A copy of the Sears Revolving Charge Agreement used in the state of Texas at the time of the study is illustrated below.

SEARS REVOLVING CHARGE ACCOUNT AND SECURITY AGREEMENT

Sears, Roebuck and Co.

In consideration of your selling merchandise and services for personal, family or household purposes to me on my Sears Revolving Charge Account I agree to the following regarding all purchases made by me or on my Sears Revolving Charge Account identification.

1. I have the privilege of a Charge Account, in which case I will pay the full amount of all purchases within 30 days from the date of each billing statement.

2. If I do not pay the full amount for all purchases within 30 days from the date of each billing statement, the following terms shall be in effect:

(A) I will pay the Deferred Payment Price for each item purchased consisting of:

(1) The cash sale price, and

(2) A finance charge, which will be the greater of a minimum charge of 50c (applied to previous balances of $1.00 through $33.00); or an amount determined by applying a periodic rate of 1.5% per month (annual percentage rate of 18%) to the first $500.00 of "previous balance" and a periodic rate of 1% per month (annual percentage rate of 12%) to any part of the "previous balance" in excess of $500.00. Finance charge is based upon account activity during the billing period preceding the current billing period, and is computed upon the "previous balance" ("new balance" outstanding at the end of the preceding billing period) before deducting payments and credits or adding purchases made during the current billing period.

(B) I will pay for all purchases in monthly installments which will be computed according to the following schedule.

If the new balance is:

	The scheduled monthly payment
$.01 to $10.00	Balance
$10.01 to $200.00	$10
$200.01 to $250.00	15
$250.01 to $300.00	20
$300.01 to $350.00	25
$350.01 to $400.00	30
$400.01 to $450.00	35
$450.01 to $500.00	40
Over $500.00	1/10 of new balance

I will pay each monthly installment computed according to the schedule as stated above upon receipt of each statement. If I fail to pay any installment in full when due, you may, at your option, take back the merchandise or affirm the sale and hold me liable for the full balance on my account which shall be immediately due. Ownership of the merchandise purchased on this account shall remain in Sears until I have paid the purchase price in full. My installment payments shall be applied as follows: in the case of items purchased on different dates, the first purchased shall be deemed first paid for; in the case of items purchased on the same date, the lowest priced shall be deemed first paid for. I have risk of loss or damage to merchandise.

(C) You are to send me a statement each month which will show my previous balance (last month's new balance), new balance, scheduled payment, Finance Charge, purchases, payments and credits, and the amount of my monthly installment coming due.

(D) I have the right to pay all or any portion of my account in advance.

3. You are authorized to investigate my credit record and report to proper persons and bureaus my performance of this agreement.

I understand that my Finance Charge and other credit terms will be based on my State of Residence. If I change my State of Residence, I will notify you, and you will provide me with a new agreement containing the Finance Charge and other credit terms applicable to my new State of Residence.

Notice to buyer: (1) Do not sign this contract before you read it or if it contains blanks. (2) You are entitled to a copy of this contract. Keep it to protect your legal rights. (3) You have the right to pay in advance the full amount due.

DEFINITION OF TERMS

There are numerous types of billing methods used for calculating finance charges on revolving credit accounts. Because the terminology used in describing the various methods is often not uniform, it is necessary to define precisely the meanings of the billing methods as used in this study. They are as follows:

(1) *Previous Balance.* Also known as the "beginning balance" method, finance charges are calculated on the basis of the unpaid balance shown on the previous month's billing statement *before* deducting payments or credits made subsequent to receipt of state-

ment and *before* adding current month's purchases. Payments made on the account are applied first to any unpaid finance charges and then to principal.

(2) *Adjusted Balance.* Finance charges are determined on the basis of the unpaid balance shown on the previous month's billing statement less payments and credits made during the current billing period, but *before* adding current month's purchases. Date of payment or credit has no bearing on the amount of the finance charge assessed. Payments are applied first to any unpaid finance charges and then to principal.

(3) *Ending Balance.* Finance charges are based on the balance owed at the end of the current billing period, including all purchases and payments or credits occurring during the current month. Finance charges are applied first to any unpaid finance charges and then to principal.

(4) *Average Daily Balance Including Debits.* Finance charges are based on the "average" unpaid balance during the billing cycle, taking into account all purchases, payments, and credits on the account during the period. It is calculated by taking the sum of each day's unpaid balance and dividing by the number of days in the billing period. No finance charge is imposed, however, if the beginning balance of the account was zero, or if the total of payments and credits on the account during the current billing period is equal to or greater than the beginning balance. Payments are applied first to any unpaid finance charges and then to principal.

(5) *Average Daily Balance Excluding Debits.* Sometimes referred to as a "modified" average daily balance, this method provides for calculation of finance charges on the basis of an "average" daily balance which is computed by taking the sum of the daily unpaid balances—excluding current month's purchases from the unpaid balances—and dividing by the number of days in the billing cycle. Thus, the timing of the payment will affect the amount of finance charge—that is, the earlier payments are made on the account the lower will be the finance charge. Payments are applied first to any unpaid finance charges and then to principal.

(6) True Actuarial Average Daily Balance. Under this method, customers will incur finance charges in any month in which there is purchase activity on the account, regardless of whether or not the account balance is zero at the beginning of the period or whether payments and credits equal or exceed the beginning balance. Finance charges are based on the "average" unpaid balance during the billing period, including all purchases, payments, and credits on the account during that period. It is determined by taking the sum of each day's unpaid balances and dividing by the number of days in the billing cycle. Payments are applied first to any unpaid finance charges and then to principal.

Under all billing methods used in this study it was assumed that finance charges were imposed at the following rates: (1) on that part of the unpaid balance between $33.33 and $500, 1½% per month; (2) on that part of the unpaid balance in excess of $500, 1% per month; (3) on balances between $1 and $33.33, a minimum charge of $0.50 was imposed.

CHARACTERISTICS OF ACCOUNT USAGE

Much misunderstanding often exists with regard to what is typical of consumer use of revolving credit accounts. Sometimes there is a tendency to think of revolving credit in much the way that one visualizes bank loan credit or other types of consumer credit plans.

Table 1 provides some summary statistics from actual account usage which would seem to indicate a pattern in use of revolving credit which is substantially different from many other types of consumer indebtedness.

Size of balances

The average outstanding monthly balance on accounts included in this study was $91.90; for one-half of the customers their average balance amounted to $37.27 (the median figure) or less. This is considerably smaller than is frequently imagined as being typical of revolving account indebtedness; and is much less than what is typically owed on bank charge plans, for example. The latter is said to be around $235 according to the Federal Reserve Board.

The largest balance maintained by any customer in this study was $741.26; only 10% of the accounts had average balances larger than $267.

Finance charges paid

For some reason not entirely evident, consumers often seem to feel that revolving credit costs them more than other types of credit. Perhaps this feeling is a result of the fact that under revolving credit plans they receive statements every month, often with a finance charge thereon; whereas on other types of credit plans, often they are not made aware of finance charges except at the time of signing the contract initially.

As can be observed from Table 1, these customers incurred an average monthly finance charge of $1.24 or $14.88 for the year. One-half of the accounts incurred finance charges of $0.31 a month or less ($3.72 a year).

TABLE 1.—EMPIRICAL DATA CONCERNING SEARS REVOLVING CHARGE ACCOUNT USAGE IN TEXAS, SELECTED SUMMARY STATISTICS, 865 ACCOUNTS

Item	Mean [1]	Median [2]
Average outstanding monthly balance	$91.90	$37.27
Average monthly dollar finance charge, all accounts [3]	$1.24	$0.31
Average monthly dollar finance charge, based only on those accounts actually paying charges	$1.68	
Average number of months finance charge incurred	5.16	3.0
Average annual percentage rate paid, all accounts	11.64	14.40
Average annual percentage rate paid by those accounts who paid a finance charge	15.65	
Average number of sales per month, per account	.95	.67
Average dollar volume of sales per month, per account	$19.85	$13.89
Average number of days between purchase date and billing date	15.90	16.0
Average number of days between billing date and payment date	14.77	15.09
	Number	Percent
Accounts who always paid a finance charge	213	24.6
Accounts who never paid a finance charge	226	26.1
Accounts who paid a finance charge part of the time	426	49.2

[1] An arithmetic average of monthly averages for all individual accounts.

[2] The mid-point in a series of data, indicating that ½ of the accounts had a value of this much or more and ½ had values of this much or less.

[3] Billing method actually used on the accounts sampled in this study was the previous balance. Finance charges were on the following basis: On that part of the previous balance between $33.33 and $500, the monthly rate of charge was 1½ percent, on that part of the previous balance in excess of $500, the monthly rate was 1 percent on balances from $1 to $33.33, a finance charge of $0.50 was assessed.

Source: Data taken from a 12-month history of account records chosen at random. Sample data included accounts from all parts of Texas.

In terms of an Annual Percentage Rage, the average rate paid by these customers amounted to 11.64%. This figure is based on all accounts, including those which incurred no charge at all. If the calculations are confined to only those customers who paid a finance charge, the average rate paid was 15.65%.

It should also be noted that generally these accounts did not incur finance charges every month. On the average, a charge was incurred a little over 5 months out of the year.

Payment and purchase patterns

As shown in Table 1, the average account experienced about a 31 day period of credit—with slightly more days (15.90) between purchase date and billing date than between billing date and payment date (14.77). On the average, there was approximately one purchase per billing period and total volume averaged around $20 per month.

MAJOR USAGE PATTERNS

Generally, it is possible to recognize three principal patterns of account usage. First, there are those customers who never paid a finance charge during the twelve-month period covered by the study. Approximately 26% of the accounts were of this type. Second, are those accounts which always paid a finance charge—about 25% of the total. Third, accounting for about 50% of the total, are those customers who incurred a finance charge part of the time; but in other months either did not purchase, or if they did, paid their account in full and thus avoided a finance charge (see Table 1).

An issue frequently arises concerning the impact of the so-called "free ride" which allegedly is obtained by those customers who pay in full thereby avoiding finance charges entirely. Analysis of the data provided by this study would seem to indicate that by far the majority of the revenue in finance charges comes from those customers who use their accounts the most.

For example, those customers who never paid a finance charge (226 out of the 865) owed on the average a monthly balance of only $14.78. In total, these customers accounted for only about 4% of the total balance activity on all of the accounts studied. Of course, these customers did not contribute any to the finance charge revenue of the store; and to that extent, they did enjoy a "free ride."

On the other hand, those customers who always paid a finance charge (213 out of the 865) owed an average monthly balance of around $240; and, in total, accounted for almost two-thirds of the total balance activity of all the accounts. This group incurred an average monthly finance charge of about $3.56 (as compared to $1.24 average for all accounts) and accounted for about 71% of the total finance charge revenue generated by the store.

Those customers who paid a finance charge only part of the time (426 out of the 865) accounted for approximately 31% of the total balance activity with an average unpaid balance of slightly under $59. They incurred an average monthly finance charge of about $0.75 and accounted for approximately 29% of the total finance charge revenue of the store.

Thus, there is, indeed, a "free ride" enjoyed by some customers; but those same customers actually account for an extremely small portion of the total business activity done by the store. A majority of the finance charge revenue is paid by those customers who account for the vast majority of the total purchase activity. Therefore, it would seem that the impact of the so-called "free ride" is substantially less than generally imagined.

IMPACT OF BILLING METHOD ON DOLLAR COST TO CUSTOMER

It has been generally assumed that choice billing method produces a substantial difference in dollar amounts of finance charges. As indicated earlier, however, almost all evidence offered as to such differences has been based on theoretical conjecture of various possibilities rather than on empirical data. Part of the problem, of course, centers around what one might consider to be "substantial."

Accordingly, one of the main objectives of this study was to study actual account histories over a period of time in order to measure empirically the impact of various billing methods on the dollar cost of credit to the customer.

Analysis of actual data produced the following monthly average dollar finance charges for the various methods:

	Mean	Median
Previous balance	$1.24	$0.31
Adjusted balance	1.09	.25
Ending balance	1.41	.62
Average daily balance including debits	1.24	.30
Average daily balance, excluding debits	1.18	.28
True actuarial average daily balance	1.47	.66

Tables 2 and 3 and illustrate the magnitude of the differences in dollar finance charges resulting from use of various billing methods. For example, the Previous Balance method on the average cost $0.15 a month ($1.80 a year) more than the Adjusted Balance. For one-half the customers, the Previous Balance method differed in cost from the Adjusted Balance by $0.06 a month or less (see median, Table 3).

TABLE 2.—DIFFERENCES IN AVERAGE MONTHLY DOLLAR FINANCE CHARGES, 6 BILLING METHODS, 865 ACCOUNTS

[Based on mean figures]

Billing method	Previous balance	Adjusted balance	Ending balance	Average daily balance including debits	Average daily balance excluding debits	True actuarial average daily balance
Previous balance		$0.15	($0.17)	$0.00	$0.06	($0.23)
Adjusted balance	($0.15)		(.32)	(.15)	(.09)	(.38)
Ending balance	.17	.32		.17	.23	(.06)
Average daily balance, including debits	.00	.15	(.17)		.06	(.23)
Average daily balance, excluding debits	(.06)	.09	(.23)	(.06)		(.29)
True actuarial average daily balance	.23	.38	.06	.23	.29	

Source: Data taken from a 12-month account history of records from 865 accounts.

TABLE 3.—DIFFERENCES IN AVERAGE MONTHLY DOLLAR FINANCE CHARGES, 6 BILLING METHODS, 865 ACCOUNTS

[Based on mean figures]

Billing method	Previous balance	Adjusted balance	Ending balance	Average daily balance including debits	Average daily balance excluding debits	True actuarial average daily balance
Previous balance		$0.06	($0.31)	($0.01)	$0.03	($0.35)
Adjusted balance	($0.06)		(.37)	(.05)	(.03)	(.41)
Ending balance	.31	.37		.32	.34	(.04)
Average daily balance, including debits	(.01)	.05	(.32)		.02	(.36)
Average daily balance, excluding debits	(.03)	.03	(.34)	(.02)		(.38)
True actuarial average daily balance	.35	.41	.04	.36	.38	

Source: Data taken from the 12-month account history of records from 865 accounts.

Further analysis of the data in Tables 2 and 3 indicate that the Previous Balance method on the average cost no more than one form of Average Daily Balance (Including Debits) and actually was *less* expensive than a True Actuarial Average Daily Balance to the extent of $0.23 a month. Likewise, use of the Ending Balance method produced a greater cost ($0.17 a month average) to the customer than did use of the Previous Balance method.

One other method—Average Daily Balance Excluding Debits—produced a smaller finance charge than Previous Balance by an amount equal to $0.06 a month on the average.

DETAILED ANALYSIS OF MONTHLY DIFFERENCES IN DOLLAR FINANCE CHARGES

Tables 4 through 7 provide a more detailed analysis of the monthly dollar differences in finance charges between Previous Balance and other billing methods.

TABLE 4.—DIFFERENCES IN AVERAGE MONTHLY DOLLAR FINANCE CHARGES, PREVIOUS BALANCE AS COMPARED TO ADJUSTED BALANCE

Amount of difference [1]	Number of accounts	Percent of accounts
0	342	39.5
+$0.01 to $0.10	181	20.9
+$0.11 to $0.15	41	4.7
+$0.16 to $0.25	112	12.9
+$0.26 to $0.50	125	14.5
+$0.51 to $0.75	46	5.3
+$0.76 to $1.00	14	1.6
+$1.01 to $1.86	4	.5
Total	865	99.9

[1] When the amount of the difference is a positive value, this indicates that the previous balance method is the greater of the 2.

Note: Mean (average) difference, $0.15; median difference, $0.04; range of differences, 0 to $1.86.

Source: Data taken from a 12-month history of account records on 865 accounts chosen at random.

TABLE 5.—DIFFERENCES IN AVERAGE MONTHLY DOLLAR FINANCE CHARGES, PREVIOUS BALANCE AS COMPARED TO AVERAGE DAILY BALANCE INCLUDING DEBITS

Amount of difference [1]	Number of accounts	Percent of accounts
−$0.51 to $0.59	2	0.231
−$0.26 to $0.50	16	1.850
−$0.16 to $0.25	21	2.428
−$0.11 to $0.15	25	2.890
−$0.01 to $0.10	163	18.844
0	369	42.659
+$0.01 to $0.10	222	25.665
+$0.11 to $0.15	25	2.890
+$0.16 to $0.25	12	1.387
+$0.26 to $0.45	9	1.040
Total	865	100.000

[1] Where the amount of the difference is a negative value, previous balance is less than ADB including debits. Where the difference is a positive value, previous balance is more than ADB including debits.

NOTES

Mean (average) difference, all accounts, 0; median difference, all accounts, 0.

Mean difference, positive values only, $0.06; median difference, positive values only, $0.04; total positive values, 268 o 30.98 percent of all accounts.

Mean difference, negative values only, −$0.09; media difference, negative values only, −$0.06; total negative values 228 or 26.36 percent of all accounts.

Item: When there is a difference other than 0, positive values account for 54 percent of the differences; negative values account for 46 percent of the differences.

Source: Data taken from a 12-month history of account records on 865 accounts chosen at random.

TABLE 6.—DIFFERENCES IN AVERAGE MONTHLY DOLLAR FINANCE CHARGES, PREVIOUS BALANCE AS COMPARED TO AVERAGE DAILY BALANCE, EXCLUDING DEBITS

Amount of difference [1]	Number of accounts	Percent of accounts
0	358	41.387
+$0.01 to $0.10	326	37.688
+$0.11 to $0.15	68	7.861
+$0.16 to $0.25	68	7.861
+$0.26 to $0.50	38	4.393
+$0.51 to $0.73	7	.809
Total	865	99.999

[1] When the amount of the difference is a positive value, this indicates that the previous balance method is the greater of the two.

Note: Mean (average) difference, $0.06; median difference, $0.02; range of differences, 0 to $0.73.

Source: Data taken from a 12-month history of account records on 865 accounts chosen at random.

TABLE 7.—DIFFERENCES IN AVERAGE MONTHLY DOLLAR FINANCE CHARGES, PREVIOUS BALANCE AS COMPARED TO TRUE ACTUARIAL AVERAGE DAILY BALANCE

Amount of difference [1]	Number of accounts	Percent of accounts
−$1.51 to $3.27	2	0.231
−$1.01 to $1.50	13	1.503
−$0.76 to $1.00	26	3.006
−$0.51 to $0.75	56	6.474
−$0.26 to $0.50	204	23.584
−$0.16 to $0.25	151	17.457
−$0.11 to $0.15	83	9.595
−$0.01 to $0.10	226	26.127
0	11	1.272
+$0.01 to $0.05	42	4.855
+$0.06 to $0.10	33	3.815
+$0.11 to $0.15	9	1.040
+$0.16 to $0.25	6	.694
+$0.26 to $0.36	3	.347
Total	865	100.000

[1] Where the amount of the difference is a negative value, previous balance is less than true ADB. Where the difference is a positive value, previous balance is greater than true ADB.

NOTES

Mean (average) difference, all accounts, −$0.23; median difference, all accounts, −$0.17.

Mean difference, negative values only, −$0.26; median difference, negative values only, −$0.19; total negative values, 761 or 87.977 percent of all accounts.

Mean difference, positive values only, +$0.07; median difference, positive values only, +$0.06; total positive values, 93 or 10.751 percent of all accounts.

Source: Data taken from a 12-month history of account records on 865 accounts chosen at random.

Previous balance versus adjusted balance

As indicated earlier, the average difference in cost between Previous Balance and Adjusted Balance amounted to a relatively modest $0.15 a month or less than $2 a year. For some customers, of course, the difference would be either more or less than that average difference.

As indicated by the data shown in Table 4, differences between these two billing methods actually ranged from zero to $1.86 a month. For almost 40% of the accounts there was absolutely no difference in cost. For one-half of the customers the difference amounted to $0.04 a month or less. The difference in cost amounted to a maximum of $0.50 a month or $6 a year or less in over 93% of the instances.

Thus, it would appear that although the Adjusted Balance does, in most instances, cost less than Previous Balance, the savings

to the individual customer is actually quite minimal—much less than generally imagined. Of course, most of the hypothetical examples illustrating these two methods vastly overstate the differences involved and usually bear no resemblance whatsoever to what actually occurs.

One point that should be noted at this juncture is that whereas the impact on the individual customer is rather minimal generally, impact on the store in terms of differences in total revenue received from finance charges can be substantial. This point will be mentioned and discussed in greater detail at a later section, but loss of revenue to a store from use of Adjusted Balance rather than Previous Balance amounts to about 12% annually.

Previous balance versus average daily balance including debits

Although the Previous Balance and Adjusted Balance methods until very recently have been the most widely used, several types of Average Daily Balance systems have been appearing with increasing frequency.

Table 5 shows the differences in monthly dollar finance charges between an ADB Including Debits and the Previous Balance. As indicated, based on both the mean and median, the average difference between these two methods was zero.

Further analysis of the data reveals, however, that the Previous Balance method was more expensive for 268 accounts (31% of all accounts) and less expensive for 228 accounts (26% of all accounts). For approximately 369 (43%) of the customers, there was no difference in the cost under the two billing methods.

For the vast majority of the customers (87%) there was either no difference or *no more* than $0.10 a month difference more or less.

If one confines the analysis to the positive values shown in Table 5, which indicate that the Previous Balance method was the *more* expensive of the two, the average difference amounted to $0.06 a month.

Again, in looking only at the negative values in Table 5, which mean that the Previous Balance method was the *less* expensive of the two, the average difference amounted to $0.09 a month.

Thus, it would appear that when the ADB Including Debits costs more than Previous Balance, the impact on the customer is greater, on the average, than when Previous Balance costs more than ADB Including Debits.

Previous balance versus average daily balance excluding debits

A relatively new form of Average Daily Balance system which has appeared in use is one where current month's purchases are excluded from the unpaid balances used in determining the average monthly balance on which the charge is based. This is the method recently adopted by Sears in a majority of the states.

This method, like the Adjusted Balance method, will never cost more than the Previous Balance and is likely to cost less. Some critics of this method have claimed that since customers do not pay their accounts early in the billing period that the possibility of saving charges under this method resulting from having paid early is not a meaningful option. If this were true, of course, the revenue received by the store would be roughly the same as that produced by the Previous Balance method.

Analysis of the data shown in Table 6 indicates clearly, however, that a majority of customers (59%) actually pay *less* under this form of Average Daily Balance by an amount equaling on the average $0.06 a month. The range of differences between these two billing methods is from zero to $0.73 a month. One reason for the savings may be, as indicated in Table 1, that customers generally do not wait until the last possible time in which to make their payments; but rather tend to pay about 15 days from billing date.

It is true that the difference between these two billing methods as applied to any one individual account is not very striking; but the same observation would seem to be appropriate when comparing the Previous Balance to almost *any* other billing method, with the exception, perhaps, of a True Actuarial Average Daily Balance. In the latter instance, differences are much larger.

Previous balance versus true actuarial average daily balance

Generally, the most costly of all billing methods partly because of complete absence of an ability to avoid finance charges by paying balances in full and partly because current month's purchases are included in the unpaid balances on which the charges are based, is the True Actuarial Average Daily Balance.

As can be observed from data in Table 7, the mean difference between these two methods amounted to −$0.23 a month—with the Previous Balance being the less expensive of the two on the average.

The Previous Balance method was *less* expensive for 761 accounts (88% of all accounts) by amounts ranging upwards to $3.27 a month. For those accounts where Previous Balance was less expensive, the savings averaged $0.26 a month.

In a very small number of instances—11 accounts or 1.3% of all accounts—the difference between these two methods was zero.

It is possible, of course, for the Previous Balance method to be more costly to some customers than the True Actuarial Average Daily Balance. This occurs primarily when customers make an initial purchase and then begin to pay back the amount in regular monthly payments without making any additional purchases in the meantime.

Even this situation would not result in higher costs than the Previous Balance method, however, if the customer would always take the full amount of time allotted to him for making his payment. But, as indicated in Table 1, customers on the average make their payments approximately 15 days past billing date, rather than taking the full thirty days offered them.

As shown in Table 7, in this study some 93 accounts (10.8%) paid a higher finance charge under the Previous Balance method than they would have incurred under the True Actuarial ADB. In 75 of these cases, the difference amounted to $0.10 a month or less. The largest difference amounted to $0.36 a month. Where the Previous Balance was the more expensive of the two, the average difference amounted to $0.07 a month.

IMPACT OF BILLING METHOD ON YIELD TO THE STORE

As had been indicated to this point, whereas differences in dollar costs to customers resulting from usage of varying billing methods are generally rather minimal, the same conclusion does not necessarily hold with regard to the impact on total finance charge revenue of the store.

Table 8 provides data relative to the total revenue from finance charges and the annual yield achieved under each of the six billing methods studied. As can be seen, the largest yield could be obtained through use of a True Actuarial ADB—approximately 21% (see Index in Table 8) more than that obtained from use of the Previous Balance method.

On the other hand, use of the Adjusted Balance method produced a yield of 14% compared to 15.9% for Previous Balance—a difference in revenue received of some 12% (see Index, Table 8). Thus, use of the Adjusted Balance method will produce significantly less revenue for a store although, as indicated earlier, to an average customer the savings amounts on the average to only $0.15 a month.

Further insight into the degree of impact on the store from use of Adjusted Balance is gained by comparing total revenue at 1½% (1% on amounts above $500) under Adjusted Balance with a 1% monthly rate under the True Actuarial ADB. As shown in Table 8, total revenue in this study under Adjusted Balance amounted to $11,325.17. This figure is only 5% more than what would have been the total revenue ($10,739.07) had the monthly rate been 1% and the billing method used been the True Actuarial ADB.

Again, as shown in Table 8, the yield provided by an ADB Including Debits is slightly greater (0.44%) at 15.997% than that received under Previous Balance.

TABLE 8.—TOTAL DOLLAR FINANCE CHARGE REVENUE AND ANNUAL YIELD UNDER SIX DIFFERENT BILLING METHODS

Billing method	Total revenue[1]	Revenue per account per month	Annual yield[2] (percent)	Index[3]
Previous balance	$12,843.13	$1.24	15.928	100.00
Adjusted balance	11,325.17	1.09	14.045	88.18
Ending balance	14,648.77	1.41	18.167	114.06
Average daily balance, including debits	12,899.16	1.24	15.997	100.44
Average daily balance, excluding debits	12,204.10	1.18	15.135	96.02
True actuarial average daily balance	15,228.06	1.47	18.886	121.32

[1] All billing methods were based on a monthly rate of finance charge of 1½ percent on balances from $33.33 to $500; 1 percent per month on that part of the unpaid balance in excess of $500; on balances below $33.33, a $0.50 minimum monthly charge was assessed.

[2] Annual yield determined by dividing the total revenue for each billing method by the sum of the true actuarial daily balances ($967,593) and multiplying by 12.

[3] Total revenue for each billing method divided by the total revenue produced by the previous balance method.

Source: Data taken from 12-month account histories of records on 865 accounts chosen at random.

As mentioned previously, some critics of the ADB Excluding Debits had doubted whether or not customers would actually pay any less or whether or not yields to the store would be any different. As illustrated in Table 8, the yield under this method amounted to 15.1%—some 5% (see Index in Table 8) less than the yield realized under the Previous Balance method.

To summarize concerning yields produced by the Previous Balance as compared to other billing methods, the Adjusted Balance produces substantially smaller yields; the ADB Excluding Debits results in definitely less yield but not to the extent that Adjusted Balance does; an ADB Including Debits produces only very slightly more yield; and both the Ending Balance and True Actuarial ADB produce substantially greater rates of return.

SIGNIFICANCE OF VARYING YIELDS

Granted that substantial variation does exist in yields to stores from use of different billing methods, the question arises as to what is the significance of this fact.

For the legislator faced with the task of setting rate ceilings and regulating other aspects of credit operations which affect rates, the difference in yield produced by various methods is a substantive issue.

In general, legislators have wisely followed the approach to rate ceilings which has been to allow competition to determine to the extent possible what is an appropriate rate. It has been realized that to set rates that are too low to allow firms to recover their costs of operations results in a shrinking availability of credit to those who most need it.

My feeling based on the data produced in this study of empirical data is that the impact of billing method on cost to the customer is *minimal*; and that the consumer's best interest is served by allowing companies to choose whatever method is most appropriate for them—considering their costs of operation, customer needs, and desires, etc.

The object of legislation should be, in my opinion, to promote and assure competition

and to assure that consumers are adequately informed as to the type of billing method in use by the store. The existing Truth in Lending Law has provisions which can, if enforced, accomplish this end.

It has been noted by some that if all companies were to use the same billing method, comparison of costs between different firms would be possible. Even if the billing method were the same, however, it still would *not* be possible to predict in advance what the actual cost (in dollars or as a rate) of credit would be on revolving accounts. This is true because of the fact that repayment terms differ from store to store and because the actual rate of charge paid by the customer is largely a result of his individual purchase and payment patterns.

IMPACT OF 50-CENT MINIMUM ON DOLLAR COST

Another area of interest in undertaking this study was the question concerning the impact of a fifty-cent minimum charge on the cost of credit to customers. Various critics have often condemned this practice and have given examples of this practice producing rates of 60% or more. Again, the examples provided have been largely conjectures.

In an attempt to measure the actual cost differences to customers, a simulation of a program whereby finance charges were assessed at the same rates except without the imposition of a $0.50 charge on balances of less than $33.33 was conducted on the sample data in this study.

Table 9 contains the result of this simulation. Under most billing methods use of the minimum charge amounts to a difference of only $0.01 or $0.02 a month. The impact of the minimum is greatest under use of the True Actuarial Average Daily Balance.

TABLE 9.—EFFECT OF 50-CENT MINIMUM CHARGE ON AVERAGE MONTHLY DOLLAR FINANCE CHARGES. 6 DIFFERENT BILLING METHODS

[1½ percent per month on 1st $500; 1 percent on excess]

Billing method	Mean charges [1] (minimum)		Median charges [2] (minimum)	
	With	Without	With	Without
Previous balance	$1.24	$1.23	$0.31	$0.30
Adjusted balance	1.09	1.08	.25	.21
Ending balance	1.41	1.38	.62	.56
Average daily balance, including debits	1.24	1.23	.30	.29
Average daily balance, excluding debits	1.18	1.16	.28	.25
True actuarial average daily balance	1.47	1.39	.66	.55

[1] Arithmetic average of monthly averages for all individual accounts.
[2] The mid-point value in a series.

Source: Data taken from 12-month histories of account records on 865 accounts chosen at random.

For whatever the reason, the impact on cost to the individual customer from use of the minimum is in most instances practically nothing. It may be that the possibility of incurring a $0.50 charge actually encourages customers to pay in full their balances when they are very small thereby saving them some finance charges they might otherwise incur. In any event, this does not seem to be a significant factor from a consumer point of view.

FINAL THOUGHTS

Finally, I would like to urge the Subcommittee to concentrate on other areas covered by S. 914 such as correction of billing errors and assuring prompt crediting of payments where a more urgent need may be said to exist.

It would seem to me that it is not at all certain that Sections 167 and 168 will actually provide any real benefit for consumers; and may actually on balance prove to be harmful to the extent that competition is lessened and credit revenues reduced to the point that cash buyers are forced to bear an increased share of credit costs or if a lessening in the availability of credit should occur.

Basically, my position is similar to that recommended by the National Commission on Consumer Finance. In their report, they recommend treatment of purchases and payments alike within a given billing period and that credit be given for merchandise returned before determining the balance on which finance charges are to be based. With those exceptions, the Commission recommended leaving open as many options on billing methods as possible.

One final observation made by the Commission which I have not mentioned to this point, but with which I agree, is that many small retailers might find mandatory use of some type of Average Daily Balance system prohibitive either financially or mechanistically. The result could be a shift to bank charge plans, thus lessening competition and providing both the customer and the merchant with a restricted choice—clearly not a desirable occurrence.

PRIVATE PENSION PLAN REFORM

Mr. NELSON. Mr. President, the Subcommittee on Private Pension Plans of the Senate Finance Committee has been conducting hearings and panel discussions on proposed pension legislation. In preparation for these hearings, the staff of the Joint Committee on Internal Revenue Taxation prepared an excellent summary of the various proposals for private pension legislation. The members of the subcommittee have found this summary to be a helpful guide in their consideration of pension legislation. Because in the near future the Senate will also be considering such legislation, I believe that the Joint Committee's study might be of interest to other Senators and interested people. Therefore I ask unanimous consent to have a substantial excerpt from that study printed in the RECORD.

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

SUMMARY OF PROPOSALS FOR PRIVATE PENSION PLAN REFORM

I. GENERAL STATEMENT

Over the past 30 years, the private pension system has grown rapidly. About 30 million employees were covered by these plans in 1970 compared to 4 million in 1940 and 9.8 million in 1950.[1] (See Table 1.) By 1980, these pension plans are expected to cover 42 million employees.[2] The growth which has occurred is also evidenced in other ways. Between 1950 and 1970, total annual contributions made to pension plans by employees and employers rose from about $2.1 billion to about $14 billion. In 1950, 450,000 beneficiaries received $370 million from pension plans; in 1970, 4.7 million beneficiaries received $7.4 billion in pension payments. Moreover, pension plan assets soared from $12.1 billion in 1940 to $150 billion in 1972 (book value) and are expected to reach $225 billion by 1980.[3]

This rapid increase in pension plans over the past few decades has consisted overwhelmingly of plans which meet Internal Revenue requirements designed to insure that the plans will benefit the rank and file employees and not merely a few highly paid employees. Since 1942, the Internal Revenue Code has contained provisions which prohibit qualified pension plans from discriminating as to coverage or benefits in favor of highly paid employees. The Internal Revenue Code seeks to induce compliance with these nondiscriminatory requirements by giving favorable tax treatment where plans comply.

Footnotes at end of article.

TABLE 1.—PRIVATE PENSION AND DEFERRED PROFIT-SHARING PLANS: [1] ESTIMATED COVERAGE, CONTRIBUTIONS, BENEFICIARIES, BENEFIT PAYMENTS, AND RESERVES, 1950, 1955, 1960–70

Year	Coverage [1] end of year (in thousands)			Employer contributions (in millions)			Employee contributions (in millions)			Number of beneficiaries, end of year (in thousands)			Amount of benefit payments (in millions)			Reserves, end of year (in millions)		
	Total	Insured	Noninsured	Total	Insured	Noninsured	Total	Insured	Noninsured	Total	Insured	Noninsured	Total [3]	Insured	Noninsured [2]	Total	Insured	Noninsured
1950	9,800	2,600	7,200	$1,750	$720	$1,030	$330	$200	$130	450	150	300	$370	$80	$290	$12.1	$6.6	$6.5
1955	15,400	3,800	11,600	3,280	1,100	2,180	560	280	280	980	290	690	850	180	670	27.5	11.3	16.1
1960	21,200	4,900	16,300	4,710	1,190	3,520	780	300	480	1,780	540	1,240	1,720	390	1,330	52.0	18.8	33.1
1961	22,200	5,100	17,100	4,830	1,180	3,650	780	290	490	1,910	570	1,340	1,970	450	1,520	57.8	20.2	37.5
1962	23,100	5,200	17,900	5,200	1,240	3,960	830	310	520	2,100	680	1,470	2,330	510	18,20	63.5	21.6	41.9
1963	23,800	5,400	18,400	5,560	1,390	4,170	860	300	560	2,280	690	1,590	2,590	570	2,020	69.9	23.3	46.6
1964	24,600	6,000	18,600	6,370	1,520	4,850	910	310	600	2,490	740	1,750	2,990	640	2,350	77.7	25.2	52.4
1965	25,300	6,200	19,100	7,370	1,770	6,600	990	320	670	2,750	790	1,960	3,520	720	2,800	86.5	27.3	59.2
1966	26,300	6,900	19,400	8,210	1,850	6,360	1,040	330	710	3,110	870	2,240	4,190	810	3,380	95.5	29.3	66.2
1967	27,500	7,700	19,800	9,050	2,010	7,040	1,130	340	790	3,410	980	2,480	4,790	910	3,880	106.2	31.9	74.2
1968	28,000	7,900	20,100	9,940	2,240	7,700	1,230	340	890	3,770	1,010	2,760	5,530	1,030	4,500	117.8	34.8	83.1
1969	29,000	8,700	20,300	11,420	3,030	8,490	1,360	350	1,010	4,180	1,070	3,110	6,450	1,160	5,290	127.8	37.2	90.6
1969	29,000	8,700	20,300	11,420	3,030	8,490	1,360	350	1,010	4,180	1,070	3,110	6,450	1,160	5,290	127.8	37.2	90.6
1970	29,700	9,300	20,400	12,580	2,860	9,720	1,420	350	1,070	4,720	1,220	3,500	7,360	1,330	6,030	137.1	40.1	97.0

[1] Includes pay-as-you-go multiemployer and union-administered plans those of nonprofit organizations and railroad plans supplementing the Federal railroad retirement program. Excludes pension plans for Federal State and local government employees as well as pension p ans for the self-employed. Insured plans are underwritten by insurance companies; noninsured plans are in general funded through trustees.
[2] Excludes annuitants; employees under both insured and noninsured plans are included only once—under the insured plans.
[3] Includes refunds to employees and their survivors and lump sums paid under deferred profit-sharing plans.
Source: Compiled by the Office of the Actuary, Social Security Administration from data furnished primarily by the Institute of Life Insurance and the Securities and Exchange Commission.

More specifically, where the pension plan qualifies under the Internal Revenue Code, employers, within certain limits, are permitted to deduct contributions made on behalf of covered employees; earnings on the plan's assets are exempt from tax; and covered employees defer payment of tax on employer contributions made on their behalf until they actually receive the benefits, generally after retirement when their incomes and hence applicable tax rates tend to be lower.

In order to qualify under the Internal Revenue Code, a pension plan must cover a specified percentage of employees [4] or cover employees under a classification found by the Internal Revenue Service not to discriminate in favor of employees who are officers, shareholders, supervisory employees, or highly compensated employees. Similarly, the contributions to the plan or benefits paid out by the plan cannot constitute a larger percentage of pay for higher-paid employees than for lower-paid employees.[5]

With the growth in private pension plans there has been increasing criticism of the pension plan system. The principal problem areas are discussed below. These are followed by a brief general discussion of the remedies which have been proposed. Part II of this pamphlet compares specific aspects of present law with proposals contained in the following bills that are the subject of the Subcommittee's hearings: S. 4 (as reported by the Senate Committee on Labor and Public Welfare), S. 1179, (introduced by Senator Bentsen), and S. 1631 (the administration's tax bill, introduced by Senator Curtis and others). A companion administration bill, S. 1557, is also discussed where its provisions deal with matters involved in present law or one of the other bills mentioned above. Part III of this pamphlet consists of a table briefly highlighting the major elements of present law and those bills.

A. Problem areas

Inadequate coverage.—Despite the rapid growth in pension coverage in recent years to its 1970 level of about 30 million employees, one-half of all employees in private, nonagricultural employment are still not covered by pension plans. Pension plans are still relatively rare among small business firms and in agriculture. Moreover, it is claimed that even where employees work for a firm with a pension plan, the age and service requirements for participation and coverage in the plan may be overly restrictive.

Alleged discrimination against the self-employed and employees not covered by pension plans.—Another problem area is that present law discriminates against employees not covered by pension plans and against the self-employed. This is primarily because the personal retirement savings of individuals not covered by pension plans must be made out of after tax income, while those covered by pension plans are permitted to defer tax on their employer's pension contributions.

Self-employed people also frequently maintain that they are discriminated against as compared with corporate executives and owner-managers of corporations in regard to the tax treatment of retirement savings. At present, there is no comprehensive limit on the amounts the employer can contribute on behalf of corporate executives and owner-managers of corporations; similarly, there is no limit on the amount of pension benefits that the latter can receive—so long as those contributions or benefits do not discriminate in favor of employees who are shareholders, officers, supervisors, or highly paid and do not constitute unreasonable compensation. As a result of legislation enacted in 1962 and amended in subsequent years, self-employed people can now be covered by pension plans but their deductible contributions to such plans on their own behalf are limited to 10 percent of earned income up to $2,500 a year.

Some self-employed people, including professional people, have been successful in securing the tax advantages associated with corporate pension plans by forming professional corporations. Although the Service for a long time refused to recognize the validity of such corporations for Federal tax purposes, the courts sided with the taxpayers and the Internal Revenue Service has agreed to generally recognize such corporations for pension purposes.[6]

Inadequate vesting.—Present law generally does not require a pension plan to give a covered employee vested rights to benefits—that is, the right to receive benefits even if he leaves or loses his job before retirement age.[7] Over two-thirds of the private pension plans provide vested rights to pension benefits before retirement. However, as a general rule, employees do not acquire vested rights until they have accumulated a fairly long period of service with the firm and/or are relatively mature. 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.[8] 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 charged with interfering with the mobility of labor, to the detriment of the economy.

Inadequate funding.—Another problem area is the significant portion of present pension plans which are not adequately funded—that is, they are not accumulating sufficient assets to pay benefits in the future to covered employees. As a result, there is concern that many employees now covered by pension plans may not actually receive pensions when they retire because the funds will not be available to pay for those pensions.

In general, pension plans that are qualified under the Internal Revenue Code must meet certain minimum funding requirements by irrevocably setting aside funds in a trust or through the purchase of insurance contracts. Contributions to such plans must be at least large enough to pay the normal pension costs (the pension liabilities created in the current year) plus the interest on unfunded accrued liabilities which generally are attributable to the past service of the covered employees. However, it is urged that this minimum funding requirement is not adequate because it is designed only to prevent the unfunded liabilities from growing larger and does not require any payment to reduce the amount of the outstanding unfunded liabilities, which may be substantial.

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 25 percent or less. (See Table 2.)

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 such an assets-liabilities ratio.

TABLE 2.—FUNDING OF PRIVATE PENSION PLANS: ASSETS AT MARKET VALUE, AS PERCENT OF PRESENT VALUE[1] OF TOTAL ACCRUED RETIREMENT BENEFITS, BY PLAN AND BY PARTICIPANT AS OF 1970

	By plan		By participant	
	Number[2]	Percent	Number	Percent
Assets as percent of accrued benefits:				
25 percent or less	33	7	541,801	8
26 through 50	118	25	1,798,945	25
51 through 75	104	22	2,134,601	30
76 through 100	117	25	1,211,298	17
101 through 125	55	12	949,975	13
126 through 150	20	4	134,252	2
151 through 175	8	2	52,498	1
Over 175	14	3	276,835	4
Total	469	100	7,100,205	100

[1] Present value of accrued benefits is actuarially determined.
[2] Sample consists of 469 trustee-administered plans. Comparable data were not available for insured plans.

Note: The sum of individual items may not equal totals because of rounding.

Source: Senate Committee on Labor and Public Welfare Report on S. 3598, The Retirement Income Security for Employees Act of 1972, 92d Cong., 2d Sess., p. 97.

TABLE 3.—FUNDING OF PRIVATE PENSION PLANS: ASSETS AT MARKET VALUE AS PERCENT OF PRESENT VALUE[1] OF TOTAL ACCRUED RETIREMENT BENEFITS, BY AGE OF PLAN AS OF 1970

	Age of plans[2]													
	6 years or less		7 to 11 years		12 to 16 years		17 to 21 years		22 to 26 years		27 to 31 years		Over 31 years	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Assets as percent of accrued benefits:														
25 percent or less	9	21	7	9	10	8	2	2	4	8			1	5
26 through 50	13	31	24	30	36	29	34	33	4	8	6	13	1	5
51 through 75	9	21	18	22	31	25	24	23	8	15	9	20	5	24
76 percent and over	11	26	32	39	48	38	43	42	36	69	30	66	14	68
Total	42	100	81	100	25	100	103	100	52	100	45	100	21	100

[1] Present value of accrued benefits is actuarially determined.
[2] Sample consists of 469 trustee-administered plans.

Note: The sum of individual items may not equal totals because of rounding.

Source: Senate Committee on Labor and Public Welfare report on S. 3598, the Retirement Income Security for Employees Act of 1972, 92d Cong., 2d. sess., p. 98.

Footnotes at end of article.

Loss of pension benefits due to plan terminations.—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, Indiana, 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.[9] 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. Participants losing benefits represented about four one-hundredths of one percent of workers covered by pension plans. The data, of course, cover terminations occurring over a relatively short period of time.

Misuse of pension funds and disclosure of pension operations.—There also has been concern about the administration of pension plans. It has been charged that all too frequently pension funds have not been used in the best interest of covered employees. There have been cases of extreme misuse of pension funds.

Also, questions have been raised as to whether a pension plan should be permitted to invest heavily in the employer's securities instead of diversifying investments. Present law permits such investments in the employer's securities.

The Welfare and Pension Plans Disclosure Act, which is administered by the Labor Department, was adopted in 1958 to protect the interests of welfare and pension plan participants and beneficiaries by requiring disclosure of information regarding such plans. This Act requires the plan administrators to file with the Secretary of Labor and to send to participants upon written request a description and annual report of the plan. The Act was amended in 1962 to make theft, embezzlement, bribery and kickbacks Federal crimes where they occur in connection with welfare and pension plans. The 1962 amendment also conferred limited investigatory and regulatory powers upon the Secretary of Labor. However, it is maintained that further revision of the Welfare and Pension Plans Disclosure Act is required—for example, to require more detailed and more effective disclosure and to spell out the degree of responsibility of fiduciaries of pension funds, the types of persons who should be allowed to act as fiduciaries, and the standards of accountability that should be required of fiduciaries.

The Internal Revenue Code (sec. 503 (b)) seeks to prevent abuses in the use of qualified pension funds by prohibiting qualified pension plans from engaging in certain specified prohibited transactions such as lending funds without adequate security and a reasonable rate of interest to the creator of the plan, his family, or corporations controlled by him. Other prohibited transactions include payment of excessive salaries, purchase of property for more than an adequate consideration, sale of property for less than an adequate consideration, or any other transactions which result in a substantial diversion of funds to such individuals. Special additional rules apply to trusts benefiting owner-employees. However, it has been charged that this prohibited transaction provision is not effective because the penalty for noncompliance is the disqualification of the pension plan from tax benefits for a period of time, which is unfavorable to the covered employees who have had no part in any wrongdoing.

B. Proposed remedies

A number of legislative proposals have been made to remedy the deficiencies of pension plans. This includes S. 4 (which has been reported favorably by the Senate Committee on Labor and Public Welfare), S. 1179 (introduced by Senator Bentsen), and the administration's proposal, "The Retirement Benefits Tax Act" (S. 1631 introduced by Senator Curtis and others).

In general, these legislative proposals would retain the present tax treatment of pension plans which is designed to encourage the growth and development and nondiscriminatory pension plans. Moreover, the proposals would make no change in the present voluntary nature of pension plans in that employers would retain the right either to have or not to have a pension plan for their employees. However, the proposals would require the pension plans that are established to comply with certain specified requirements which are designed to insure that they will operate in the best interest of covered employees. While the specific requirements vary from proposal to proposal, S. 4, S. 1179, and S. 1631 all contain provisions to:

Age and service coverage requirements.—Prohibit plans from imposing overly restrictive age and service requirements for participation. S. 4, for example, generally provides that no pension plan is to require as a condition for eligibility to participate a period of service longer than one year or an age older than 25 whichever occurs later. The comparable maximum limits for participation are set at one year of service and age 30 under S. 1179 and at three years of service and age 30 under S. 1631.

Vested rights.—Require plans to grant covered employees vested rights to benefits either not later than a specified period of service or not later than a specific combination of years of service and attained age. The minimum required vesting would be gradual—that is, a portion of the benefits would be vested after the fulfillment of the specified initial requirement and the remaining benefits would be vested gradually over a specified period of time. Specifically, S. 1631 would require 50 percent of the employee's benefits derived from employer contributions to be vested by the time the sum of his age and years of participation in the plan total 50; the remaining 50 percent would have to be vested at least as fast as on a pro rata basis over the next five years of participation. S. 4 would require at least 30 percent of the benefits to be vested after eight years of participation and the remaining 70 percent over not more than the next seven years. S. 1179 would require at least 25 percent of benefits to be vested after five years of participation and the remaining 75 percent over not more than the next 15 years.

Under S. 4, the new vesting requirements would apply to benefits regardless of whether such benefits were acquired before or after the effective date of the provision (3 years after enactment). For example, if an employee had 15 years of covered service prior to the effective date of the provision, he would have to be given 100 percent vested rights to the benefits earned up to that date. Under S. 1179, the new vesting requirements would apply only to benefits accrued after the effective date of the provision (3 years after enactment) except for covered employees 45 years of age and older. Vesting for the latter employees would apply to all benefits accrued, including benefits accrued before the effective date of the provision. Under S. 1631, the new vesting requirements generally would apply only to benefits accrued after the effective date (generally January 1, 1975, in the case of a plan in existence on December 31, 1972). However, years of participation in the plan prior to the effective date would be taken into consideration in determining if the employee was entitled to vesting. For example, an employee 40 years of age who had 10 years of participation in the plan prior to the effective date would not have to be given vested rights to the benefits accrued prior to the effective date; however, he would have to be given a vested right for benefits accrued after the effective date since his age and total years of participation (including participation before the effective date) entitle him to 50 percent vesting after the effective date.

Under S. 4 and S. 1179, the regulatory authority (the Secretary of Labor under S. 4 and the Secretary of the Treasury under S. 1179) would be given the authority to postpone the vesting requirements for a period of up to 5 years from the effective date of the vesting provision where compliance with the vesting requirements would cause substantial economic injury to the employer and participants or beneficiaries.

The relative additional costs of financing pension plans under the vesting requirements imposed by the different plans are shown in table 4.

TABLE 4.—RANGE OF INCREASE IN PENSION PLAN COSTS FOR MANDATORY VESTING PROVISIONS

[Percent]

	Present vesting: None	Present vesting: Moderate	Present vesting: Liberal	All plans
Percentage of pension plan members covered under such plans	23	56	21	100
Range of present plan cost as a percent of payroll	1.8–10.4	2.2–11.8	2.2–11.9	1.8–11.9
Range of increase in cost as a percent of payroll:				
S. 4—30 percent at 8 years, graded, all past service vested	.2–1.4	.1–.3	0–0	0–1.4
S. 1631—Rule of 50, no past service vested	.2–.7	0–.3	0–.2	0–.7
Range of increase in cost as a percent of present plan cost:				
S. 4—30 percent at 8 years, graded, all past service vested	5–53	1–8	0–1	0–53
S. 1631—Rule of 50, no past service vested	3–28	0–12	0–5	0–28

Note: Cost estimates for S. 1179 are not yet available, but it is believed that this bill will have slightly lower cost effects than S. 4.

Source: "Summary of Report, Study of the Cost of Mandatory Vesting Provisions Prepared for the Senate Subcommittee on Labor," by Donald S. Grubbs, Jr., as reprinted in S. Rept. 93–127, the report of the Committee on Labor and Public Welfare on S. 4., p. 79.

Funding.—Require pension plan funding to meet certain specified standards. This would generally require contributions to be sufficient to cover the current costs attributable to pension coverage in the pertinent year plus the funding of all unfunded past service liabilities over some specified period of time. Specifically, S. 4 and S. 1179 would require all unfunded past service liabilities to be funded over not more than 30 years, while S. 1631 would require the portion of unfunded past service liabilities that is vested to be funded at a rate not less than 5 percent per year.

In general, S. 4 and S. 1179 would require faster funding than S. 1631 of plans which have not provided substantial vested rights to benefits prior to the effective dates of the

legislation. This is because S. 1631 bases the funding requirement as to past service liabilities on the amounts that have been vested but requires only benefits accrued after the effective date of the provision to be vested even in the case of employees who have had long periods of service prior to the effective date. In contrast, S. 4 and S. 1179, because they base the funding requirements on accrued liabilities, would require the funding of substantial benefits accrued prior to the effective date by long-service employees. However, because it would require vested unfunded liabilities to be funded at the rate of 5 percent per year, S. 1631 could initially require relatively faster funding than S. 4 and S. 1179 for plans which are characterized by relatively full vesting (perhaps because the plan previously granted generous vesting on a voluntary basis).

Experience deficiencies in funding (i.e., instances in which the funding is deficient because experience proves that the actuarial assumptions on which the funding is based are deficient) would generally have to be funded over a 5-year period under S. 4. Under S. 1179, such experience deficiencies would have to be made up at least ratably over the average remaining working life of the covered employees. Under S. 1631, experience deficiencies in funding vested liabilities would have to be made up at a 5-percent-per-year rate.

Where it is determined that the employer is not able to contribute enough to the pension plan to meet the funding requirements, S. 4 and S. 1179 arrange for the employer to be given an additional 5-year period to make this contribution. Such deferments cannot be given more than five consecutive times.

Under S. 4 and S. 1179, the generally applicable minimum funding requirements would not apply to multi-employer plans. Instead, the regulatory authority (the Secretary of Labor under S. 4 and the Treasury Department under S. 1179) would be given the authority to promulgate regulations regarding the minimum funding requirements of such plans. The funding period for the multi-employer plans would reflect an adequate basis for funding the plans' benefit commitments and would take into account the particular situation pertaining to the plan industry and circumstances. S. 4 further indicates that in no event could the regulatory authority prescribe a funding period for such multi-employer plans which is less than 30 years.

In addition to the above revisions, which would be made by all three bills (S. 4, S. 1179, and S. 1631), some of these bills propose other changes in the pension area.

Insurance for plan terminations.—An insurance program to protect employees against loss of vested pension benefits in the event that their pension plans terminate would be established by S. 4 (the Senate Labor and Public Welfare Committee's bill) and S. 1179 (Senator Bentsen's bill). The insurance protection would apply to 50 percent of the highest average monthly pay over a five-year period with a dollar ceiling of $500 a month under S. 4 and $1,000 a month under S. 1179. The insurance programs would be financed by premiums paid by those financing the pension plans, ranging from 0.2 percent to 0.4 percent of their unfunded vested liabilities.

Portability.—A voluntary portability program would be established by S. 4. Under this program, employees who change jobs would have the option of transferring amounts equal to the current values of their vested pension rights from their old pension fund to a central fund which would then transfer those amounts to the plans of their new employers or, at the options of the employees, would make payments to the employees when they retire and which would also keep records of employees' pension rights accumulated under different plans. This program would cover only employees in employer plans which elect to participate as members in the portability system. Although they would not establish a similar central portability fund, S. 1179, and S. 1631 seek the portability objective by providing that covered employees who transfer vested pension rights from one plan to another can do so free of tax when the employees change jobs.

Tax benefits of self-employed.—The tax benefits associated with the establishment of pension plans by self-employed people would be increased by the administration bill which would raise the maximum tax deductions permitted for contributions for self-employed persons under owner-employee plans from the present level of 10 percent of earned income up to $2,500 a year to 15 percent of earned income up to $7,500 a year. The Treasury Department has estimated that the revenue cost of this change will be $110 million a year.

Tax benefits for individual retirement plans.—Individuals would be permitted by S. 1631, the administration bill, to establish their own individual retirement plans and to deduct amounts contributed to such plans up to 20 percent of earned income or $1,500 a year whichever is less. This tax deduction would also be extended to employee contributions to pension plans. The maximum allowable deduction would be reduced by the employer contributions made on behalf of the employee. Similar provision for individual retirement savings and employee contributions to pension plans is made in S. 1179, but in this case, the tax allowance for individual retirement savings would be granted in the form of a tax credit equal to 25 percent of the contribution or $375 a year, whichever is less. The Treasury estimates that the initial cost of its proposals on this point would be $300 million a year and would increase to $350 million in the second year, to $410 million in the third year, and to $480 million in the fourth year. The Treasury estimates that the initial cost of the tax credit proposal in S. 1179 would be $400 million a year, and that the cost would increase to $600 million in the fourth year.

Fiduciary and reporting requirements.—The Welfare and Pension Plans Disclosure Act is strengthened under S. 4. Plans are required to disclose information regarding their activities in greater detail than previously, more severe penalties are placed on malfeasance and abuse of pension funds, the obligations of trustees are spelled out in greater detail and pension plans (but not profit-sharing plans) are prohibited from investing more than a specified percentage of their assets in the securities of the employer. Broadly similar measures are proposed by the administration in S. 1557, the Employee Benefits Protection Act. In addition, the administration bill, S. 1631 (the Retirement Benefits Tax Act) would make acts prohibited by the Employee Benefits Protection Act prohibited transactions and would require trustees, employers, and officers of the firm who are responsible for such prohibited transactions to pay an excise tax of 5 percent of the amounts involved in the transactions. An additional tax of 200 percent of the amount involved in the prohibited transaction would be imposed if the violation were not corrected by 90 days after notice.

C. Administration of new requirements

The legislative proposals also differ substantially in the provision made for administering the new pension requirements that they would impose. Under S. 1179 and S. 1631, the new pension requirements would be administered by the Internal Revenue Service, which now administers the substantive pension provisions dealing with the qualification of plans under the Internal Revenue Code. S. 4, however, departs from this traditional practice and provides that the Department of Labor would administer the new provisions. This would involve a dual system of administration in which the present rules regarding qualification which include such aspects as coverage, vesting, funding, and prohibited transactions would be administered by the Internal Revenue Service while the new additional requirements regarding these items as well as plan termination insurance would be administered by the Department of Labor.

Historically, the substantive requirements regarding non-discrimination, which are designed to insure that pension plans will benefit the rank and file of employees have been enforced through the tax laws which are administered by the Internal Revenue Service. As a result, the Internal Revenue Service is already required to examine the coverage of pension plans and pension contributions and benefits as well as funding and vesting practices in order to determine that plans operate so as to conform to the nondiscrimination requirements. Also, the Service has administered the fiduciary standards embodied in the prohibited transactions provisions since 1954.

Senator Bentsen's bill, S. 1179, and Senator Curtis' bill, S. 1631, which embodies the administration proposals, would continue this precedent by having the Internal Revenue Service administer the new coverage, vesting, and funding requirements.[10] Similarly, the Labor Department which has been administering the Welfare and Pension Plans Disclosure Act would continue to administer a strengthened Act.

In contrast, under S. 4, the Labor Department would administer the new substantive requirements regarding coverage, vesting, funding, fiduciary standards, and plan termination insurance as well as the disclosure provisions which up to now have been its area of jurisdiction under the Welfare and Pension Plans Disclosure Act. In effect, this means that the substantive provisions regarding coverage, vesting, fiduciary standards, and funding under pension plans would be administered by both the Internal Revenue Service and the Labor Department.

Accordingly, S. 4, in effect, would require two government agencies to administer the same broad areas of pension operation. While there undoubtedly would be attempts to coordinate the work of the two agencies, the dual administration approach involves inherent problems. These are discussed below.

Dual staffs.—Two staffs of two different governmental agencies would be employed in the work of regulating the vital areas of vesting, funding, fiduciary standards, and coverage. This, in turn, would involve duplication in regulation since, as a practical matter, the Internal Revenue Service would be required to examine the overall operation of plans in order to determine compliance with the nondiscrimination and prohibited transactions provisions of the Internal Revenue Code.

Dual reports.—Employers and plan administrators would be required to file two sets of reports dealing with the same broad areas of pension operation with the two different governmental agencies. To some extent the duplication in reporting might be reduced by coordination procedures but since the reports deal with different legal provisions which have somewhat different objectives, much dual reporting would still be required. For example, employers requesting determination letters from the Internal Revenue Service indicating that their plans qualify under the Internal Revenue Code would have to file information regarding such plans with the Internal Revenue Service. Annual reports regarding plan operations would also continue to be filed with the Internal Revenue Service to substantiate the deductions and the exemption of earnings of the pension fund. At the same time, administrators of plans would be required to submit broadly similar

---

Footnotes at end of article.

information to the Department of Labor in order to receive certification for their plans and to continue such certification.

Differences in coverage.—Although S. 4 would require the Department of Labor and the Internal Revenue Service to engage in considerable duplication in regulatory efforts, there would be gaps in the regulation by the Department of Labor. For example, S. 4 would generally not cover plans which cover not more than 25 participants plans of firms which are not in industry or in an activity affecting commerce, plans covering self-employed people even though such plans also cover employees, plans of exempt organizations, and governmental plans (including the United States Civil Service system). Many of these plans, however, seek qualification under the Internal Revenue Code so that the Internal Revenue Service would continue to administer the pension rules for them.

Conflicting requirements.—Because of differing requirements, plans which meet the requirements of one agency might not meet the tests of the other. For example, the application to a particular plan of the Labor Department requirements regarding vesting might conflict with the Internal Revenue Service requirements because they could, in a particular plan, result in discrimination in favor of executives and highly paid employees. Similarly, while the new age and service coverage requirement in S. 4 is generally stricter than the present age and service coverage provisions, it is only one part of the entire coverage rules which have to be met and the Internal Revenue Service would, therefore, still have to concern itself with all the coverage aspects of the plan including the new coverage requirement. Moreover, considerable differences in evaluating the extent of funding in particular plans could arise as a result of different evaluations of the actuarial assumptions by the Labor Department and the Internal Revenue Service.

Qualifications under one set of requirements and not the other.—Since the Internal Revenue Service is continually engaged in auditing plans and tax returns, it is highly likely that particular pension plans might be examined by investigatory agents of both the Internal Revenue Service and the Labor Department in a short period of time. The results of these duplicatory investigations could be quite inconsistent. In view of the different rules enforced by the two agencies, the Internal Revenue Service might give the plan, its trust, and fiduciary a clean bill of health while the Department of Labor might find violations. On the other hand, the Labor Department might find the situation satisfactory and the Internal Revenue Service might find violations with regard to the particular rules that it enforces.

Change in enforcement procedures.—S. 4 would also adopt a fundamental change in the approach toward enforcing the pension provisions. For over three decades, withdrawal of the tax advantages associated with qualification has been the basic method of enforcing the nondiscrimination rules of the Internal Revenue Code, which are designed to insure that pension plans are actually for the benefit of the rank and file of employees. In general, this has been an effective tool since the withdrawal of qualification can result in the denial of deductions for employer contributions to the plan and the loss of the exemption of the plan's earnings. The fact that such drastic penalties may be imposed for noncompliance provides a substantial inducement to meet the required tests for qualification. In contrast, under S. 4 the Labor Department would have to get a court order to enforce compliance where plans are not living up to these requirements. It is not clear how large an investigation staff would be required for this. In part this is because it is not clear whether employers would make changes voluntarily (as they do to avoid loss of tax deduction) or whether in the case of many of the requirements they would wait until an investigation is made by the Labor Department personnel.

II. ANALYSIS OF PENDING LEGISLATION

A. Plan participation—Age and service requirements

Present law.—In general, in the case of an employer pension and profit-sharing plan, the Internal Revenue Code does not require the plan to comply with any specific eligibility conditions relating to age or service in order to qualify. Existing administrative practice allows plans to be limited to employees who have (1) attained a designated age, or (2) have been employed for a designated number of years, so long as the effect is not discriminatory in favor of officers, shareholders, supervisory, or highly-compensated employees (sec. 401(a)(3)(B) of the Internal Revenue Code). Also, under administrative practice, a plan may exclude employees who are within a certain number of years of retirement (for example, five or less) when they would otherwise become eligible, if the effect is not discriminatory. On the other hand, in the case of a plan for owner-employees,[11] the plan must provide that no employee with three or more years of service may be excluded (sec. 401(d)(3) of the code).

S. 4.—A plan would not be permitted to require, as a condition of participation, more than one year of service or attainment of an age greater than 25, whichever occurs later. However, any plan which provides full immediate vesting would be permitted to require as much as three years of service or attainment of age 30, whichever occurs later (sec. 201 of the bill). The bill would not change the Internal Revenue Code provisions described above. As a result: (1) the bill would provide more stringent Labor Department standards than those of the tax law in the case of corporate plans and H.R. 10 plans without owner-employees (i.e., where no one has more than a 10-percent interest in the partnership)—but only as to plans with more than 25 participants; (2) the bill would provide essentially the same standards as the tax law in the case of owner-employee plans with more than 25 participants; and (3) the bill would not provide new standards for plans with fewer than 26 participants.

The effect of the bill, therefore, is to require each plan to determine which set of standards is the more stringent as to it, and then to obey that set of standards.

S. 1179.—A plan would not be permitted to require, as a condition of participation, more than one year of service, or an age greater than 30 (sec. 321 of the bill); however, no change would be made in the three-year rule for owner-employee plans, described above.

S. 1631.—A plan would not be permitted to require, as a condition of participation, more than three years of continuous service or attainment of an age greater than 30, but the plan could exclude an employee who was within five years of normal retirement age at the time he would otherwise become eligible for participation (sec. 2(a)(2) of the bill).

An owner-employee plan would be required to cover every employee with three years or more of continuous service, every employee with two years of continuous service who was at least 30 years old, and every employee with one year of continuous service who was at least 35 (sec. 2(b)(2) of the bill).

B. Vesting

Present law.—A qualified pension or profit-sharing plan must now provide that an employee's rights are to become nonforfeitable (i.e., "vested") if the plan terminates or the employer discontinues his contributions. The employee's rights also must become fully vested when he attains the normal or stated retirement age. With these exceptions, there is no requirement that an employee be given nonforfeitable rights to his accrued benefits before retirement, although the absence of such pre-retirement vesting is taken into account in determining whether the plan meets the nondiscrimination tests of the Internal Revenue Code (sec. 401(a)(4) of the code).

Under an owner-employee plan, the rights of employees must vest immediately (sec. 401(d)(2)(A) of the code).

S. 4.—A plan would generally be required to give each employee vested rights to at least 30 percent of his deferred pension benefits (or 30 percent of his interest, in the case of a profit-sharing retirement plan) after 8 years of participation in the plan. Thereafter, each year the minimum vesting percentage would be increased by an additional 10 percentage points, so that no later than the end of 15 years of participation, the employee would be entitled to 100-percent vested rights in his benefits (or interest, in the case of a profit-sharing retirement plan) (sec. 202(a)(1) of the bill).

The vesting standards that would be established by the bill would allow later vesting than under existing tax law governing H.R. 10 plans which include owner-employees. Since the bill would not amend the tax law, the more stringent of the two requirements presumably would apply and owner-employee plans would continue to have to meet current requirements.

The plan could require 3 of the 8 years minimum service under the plan to be continuous and generally could ignore service prior to age 25 (sec. 202(b) of the bill). A plan could provide a different vesting formula from the minimum formula set forth in the bill if the Secretary of Labor determines, upon application by a plan, that its vesting provisions are "as equitable" as that minimum formula (sec. 202(e) of the bill). In the case of a class year plan, it would be required that a participant be fully vested in employer contributions on his behalf not later than the end of the fifth year following the year for which those contributions were made (sec. 202(a)(3) of the bill).

The vesting requirements would apply to accrued benefits for service rendered before and after the effective date of the vesting provisions (sec. 202(a) of the bill), which would be 3 years after the date of enactment (sec. 701(b) of the bill). However, in the case of a plan established or amended after the effective date of the bill, only service rendered after that establishment or amendment need be considered in applying the vesting requirements to the new benefits or interests. Also, the Secretary of Labor would be given the authority to postpone application of the vesting requirements to a plan for up to 5 years from the effective date of those requirements (i.e. 8 years from date of enactment) where there is a showing that the vesting requirements would increase the employer's costs or contributions under the plan to an extent that "substantial economic injury" would result to the employer and to the interests of the participants (sec. 216 of the bill).

S. 1179.—A plan would be required to give each employee vested rights to at least 25 percent of his accrued benefits after 5 years of participation in the plan. Thereafter, each year the minimum vesting percentage would be increased by an additional 5 percentage points, so that no later than the end of 20 years of participation, the employee would be entitled to 100-percent vested rights in his benefits (sec. 322 of the bill).

The plan could require 2 of the 5 years minimum service under the plan to be continuous and generally could ignore service prior to age 30. In the case of a class year plan, it would be required that a participant be fully vested in employer contributions on his behalf not later than the end of the fifth

Footnotes at end of article.

year following the year for which those contributions were made.

The vesting requirements would not have to apply to service rendered before the effective date of the vesting provisions, which would be 3 years after the date of enactment (sec. 328 of the bill). However, any participant who has attained age 45 on the effective date would have to receive credit for service rendered before that date. Also, the Secretary of the Treasury or his delegate would be given authority to postpone application of the vesting requirements to a plan for up to 5 years from the effective date of those requirements (i.e., 8 years from the date of enactment) where there is a showing that "substantial economic injury" would result if earlier compliance were to be required.

No change would be made in the present law's full immediate vesting requirement for owner-employee plans.

S. 1631.—A plan would be required to satisfy the "rule of 50." That is, a participant's right in at least 50 percent of his accrued benefits derived from employer contributions (as defined in the bill) must vest no later than the end of the year in which the sum of his age and his years of participation in the plan total 50, except that a minimum of 3 years of continuous service with the employer could be required before vesting. The remaining 50 percent of accrued benefits would have to vest not less rapidly than ratably over the next 5 years (sec. 2(a)(2) of the bill).

In the case of an owner-employee plan, a similar "rule of 35" would apply (sec. 2(b)(1) of the bill).

In general, vesting would not be required for an existing plan which is "winding down," that is, if the benefits paid to retirees for a given year exceed the benefit accruals for active participants and if the present value of accrued plan liabilities exceeds the fair market value of plan assets. This exception is not to apply for the fifth plan year before any plan amendment providing additional or increased benefits, and is not to apply for all plan years thereafter.

Generally, service prior to 1975 is to be considered for determining whether the employee is entitled to a level of vesting, but not for determining the amount of the benefits to be vested. In the case of plans in effect on December 31, 1972, vesting would apply to benefits accrued for plan years beginning on or after January 1, 1975, or after the expiration of any collective bargaining agreement in effect on December 31, 1972, whichever occurs later. In the case of plans initiated after December 31, 1972, the vesting requirements are to begin immediately.

C. Funding

Present law.—Contributions to a qualified pension [12] plan must be made in amounts at least equal to the current pension liabilities ("normal pension costs") plus the interest due on unfunded accrued pension liabilities ("past service costs") (regs. § 1.401–6(c)(2)(ii)).

There is no present requirement that contributions be made to amortize the principal amount of unfunded accrued pension liabilities.

If an employer does not make the minimum required contributions to a qualified pension plan, under administrative practice the deficiency may be added to unfunded past service costs. However, the plan also may be considered terminated, and immediate vesting of the employee's rights may be required (sec. 401(a)(7) of the code).

The amount to be contributed to a qualified pension plan generally is determined by the cost of benefits to be paid,[13] less the value of plan assets.[14] Plan costs are estimated by actuarial calculations, and all actuarial methods, factors, and assumptions used must together be reasonable and appropriate in the individual employer's situation (regs. § 1.404(a)–3(b)). When applying for a determination that a plan is qualified, the actuarial methods, factors, and assumptions which are used generally must be reported to the Internal Revenue Service, along with other information to permit verification of the reasonableness of the actuarial methods used; changes in actuarial assumptions and methods must be reported annually to the Service; and in some cases actuarial certifications must be submitted to the Service every five years (regs. § 1.404(a)–4(b)).

Experience may show that actual costs are more or less than the estimates. Where actual costs are greater than estimates, there are "experience deficiences"; where they are less, there are "experience gains." Under administrative practice, if there is an experience deficiency, then depending on its cause, additional contributions necessary to fund the deficiency may be deducted currently, or the deficiency may be added to past service costs and deducted on an amortized basis. Experience gains may reduce the plan cost currently, or reduce costs under one of the spreading methods used to determine the amounts deductible (described below in limitations on contributions).

S. 4.—In addition to requiring the funding of normal pension costs annually, the bill (generally, sec. 210) would require funding of initial past service costs not less rapidly than ratably over 30 years from the date the plan is established [15]; in the case of a past service cost liability existing on the effective date of these provisions—3 years after enactment—over 30 years from the effective date. Experience deficiencies generally would have to be funded over not more than five years; a longer period would be permitted if the five-year period requires contributions greater than the allowable tax deductions. These requirements would apply to all plan liabilities, not just vested liabilities. It is intended that assets would be valued at fair market value to determine whether plan assets are sufficient to cover accrued liabilities.

The initial unfunded accrued pension liabilities of a plan would be determined by an actuary certified by the Secretary of Labor. These liabilities would be reported to the Secretary, with a report of the actuarial assumptions used, the basis for using these assumptions, and other pertinent actuarial information required by the Secretary. Additionally, a plan would have to be reviewed every five years by a certified actuary, and his report would be submitted to the Secretary. The Secretary would be authorized to establish reasonable limits on actuarial assumptions and to certify actuaries who are permitted to perform services regarding registered plans (sec. 101(b) of the bill).

Separate funding rules would be established by the Secretary for multi-employer plans; the funding period for such plans would be not less than 30 years (sec. 217(d) of the bill).

If an employer demonstrates that he could not make a required annual contribution, under certain conditions the Secretary of Labor could allow the annual contribution to be amortized not less rapidly than ratably over no more than five years; the Secretary could grant five consecutive waivers of this type (sec. 217 of the bill).

If an employer failed to contribute to the plan in accordance with the minimum requirements, the Secretary of Labor could petition the appropriate United States district court for an order requiring compliance with the funding requirement (sec. 601 of the bill).

The bill also would specify the order of priority of classes of beneficiaries for payment of plan assets upon termination of the plan (sec. 214 of the bill). The order of priority would be subject to the provisions of the Internal Revenue Code and regulations relating to limitations applicable to the 25 highest paid employees of the employer. However, apparently the order of priorities of the bill would not be subject to the further requirement of the Internal Revenue Code that allocation upon termination not otherwise discriminate in favor of officers, shareholders, supervisors or highly compensated employees. Consequently, the requirements of the bill and the Internal Revenue Code could conflict in some cases.

S. 1179.—New minimum funding requirements and actuarial reporting requirements would be established as a condition for qualifying a retirement trust under the Internal Revenue Code. The funding and actuarial requirements generally would be similar to those under S. 4. However, with respect to experience deficiencies, funding would be not less rapidly than ratably over a period that is no longer than the average remaining working life of the employees covered by the plan on the date the deficiency was determined (sec. 323 of the bill).

If the minimum funding requirements were not met, the plan could be terminated if necessary to protect the interests of participants, and the employer could be required to include in income deductions attributable to maintaining and operating the plan for up to five years preceding termination (sec. 324 of the bill).

The bill would specify the order of priority of payment of plan assets upon termination, but the order of priority would be subject to the nondiscrimination rules of the Internal Revenue Code.

The funding requirements would go into effect 3 years after enactment (sec. 328 of the bill).

S. 1631.—New minimum funding requirements would be established under the Internal Revenue Code for qualified defined benefit pension plans. In general, the minimum contribution requirement would be an amount equal to the sum of normal pension costs, interest on past service costs, and 5 percent of unfunded, vested past service costs. The fair market value of plan assets would be used in computing unfunded plan liabilities. In effect, then, experience deficiencies as to vested liabilities would be funded at the same rate as vested past service costs. In lieu of this minimum funding requirement the Secretary of the Treasury could authorize the use of another minimum funding standard that results in a satisfactory rate of funding (sec. 2(a) of the bill).

Additionally, the 5-percent-of-compensation limit on deductions for pension plans (sec. 404(a)(1)(A) of the code) would be eliminated and the other limitations would not apply to the extent that the contributions do not exceed the minimum funding requirement (sec. 7(g) of the bill).

D. Portability

Present law.—Under administrative practice, when an employee changes jobs, his interest in his former employer's qualified retirement plan may be transferred to the retirement plan of his new employer without the employee being taxed on the transfer. This can be done if both his former and new employers agree to the transfer, if the transfer may be made under the terms of both plans and trusts involved, and if the administrative requirements governing the method of transfer are met.[16] However, transfers of employee interests between qualified plans upon changes in employment do not appear to be usual.

S. 4.—A program would be established to facilitate the transfer of employees' vested pension credits between retirement plans of employers who choose to participate in the program. Under the program, when an employee leaves a participating employer (be-

Footnotes at end of article.

fore the time that payments would be made to the employee under the plan), the employee could direct that an amount equal to the current discounted value of his vested rights under the plan of this employer be paid into a central portability fund (the Voluntary Portability Program Fund) administered by the Secretary of Labor. Upon receipt of payment, a separate account would be established for the employee in this central fund. He then could choose to maintain an account in the central fund, or could direct that amounts credited to his account be used to purchase actuarially equivalent pension credits in a new plan in which he participates. If amounts were left in the central fund, at age 65 the employee could direct the purchase of a single premium annuity contract. Alternatively, the amounts could be paid to a designated beneficiary upon the employee's death (sec. 301 *et seq.* of the bill).

Amounts maintained in the central portability fund could be deposited in financial institutions insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, but not more than 10 percent of the total could be deposited in any one financial institution (sec. 303 of the bill).

The portability provisions would go in effect one year after enactment of the bill (sec. 701(b) of the bill).

S. 1179.—An employee who changes employment would not be taxable on the transfer of his interest in the retirement plan trust of his former employer (or from his individual retirement account [17]) to a retirement trust of his new employer (or to his individual retirement account) (sec. 326 of the bill).

S. 1631—An employee, on leaving employment, would not be taxed on the receipt of a lump-sum distribution from a qualified retirement plan if he reinvests the funds in another qualified retirement plan (or a qualified individual retirement account) within 60 days after the close of the taxable year in which he receives payment (sec. 5 of the bill).

E. Plan termination insurance

Present Law.—Present law does not require pension plans to insure their liabilities.

S. 4.—A "Pension Benefit Insurance Fund" would be created, to be administered by the Secretary of Labor (sec. 401 *et seq.* of the bill). All pension plans subject to the bill's provisions would be required to purchase plan termination insurance from the Fund. A plan not subject to the bill (e.g., a plan covering no more than 25 participants) could also be permitted to purchase insurance, at the discretion of the Secretary of Labor, if it meets the standards, rules, and regulations that would be required by the bill.

The insurance would cover unfunded vested liabilities incurred before or after the bill's enactment. Participants and beneficiaries of a plan would be protected against loss of vested benefits from termination of the plan, within specified dollars or percentage-of-salary limits; but benefits are not to be available to any participant who owns as much as 10 percent of the voting stock of the employer contributing to the plan or a like interest in a partnership contributing to the plan.

In general, the benefits of the insurance would not be available unless the plan (or the plan amendment creating or increasing the participant's rights) has been in effect at least three years before the insured loss.

For the first three years after the effective date of these provisions (one year after the bill's enactment) premiums need not exceed 0.2 percent of a plan's unfunded vested liabilities incurred before enactment if the median ratio of plan assets to those liabilities was 75 percent during the five years preceding enactment, or, for a plan established during those five years, if the plan reduced those liabilities at the rate of at least five percent yearly since the plan's establishment. If unfunded vested liabilities incurred before enactment do not meet these standards, the annual premium for the first three years may not exceed 0.4 percent of those liabilities and may not be less than 0.2 percent of those liabilities.

The bill also provides a 0.2-percent limitation for the first three years on premiums based on unfunded vested liabilities incurred after enactment. It sets a 0.2-percent premium limitation on unfunded vested liabilities incurred by multi-employer pension plans. In addition, the bill permits special assessments made to cover administrative costs.

After the three-year period, the insurance rates may be changed by the Secretary based upon experience and other relevant factors, after giving appropriate notice to the Congress and the public.

The moneys of the Fund would be invested only in obligations of the United States, or in obligations guaranteed as to both principal and interest by the United States.

Upon termination of a pension plan, the Secretary of Labor would determine how plan assets should be liquidated and the proceeds applied to the payment of vested benefits. The Secretary would be given specific authority to transfer the funds of the plan to the common fund of the insurance program, to purchase single-premium life annuities with the funds of the terminated plan, or to take other appropriate action to provide for the payment of vested benefits. Notice would be required to be given prior to the termination of every covered plan. The person or persons responsible for any failure to give that notice would be personally responsible for any losses incurred by the Pension Benefit Insurance Fund in connection with the termination. Personal liability for losses of the Fund also would be imposed on anyone who terminates a plan with intention to avoid or circumvent the purposes of the bill or in violation of the requirements of the bill or of the Welfare and Pension Plan Disclosure Act. The Fund would be authorized to recover from solvent employers or their successors for all benefits paid by the Fund on account of the termination; the employer's liability, however, is not to exceed 50 percent of his net worth.

S. 1179.—In many respects, the insurance system created by the bill bears a close resemblance to that created by S. 4.

The bill provides for a "Pension Guarantee Corporation" that would be a nongovernmental, nonprofit membership corporation composed of the pension plans purchasing insurance and would be administered by a 7-member Board of Directors. The directors would be the Secretaries of Treasury and Labor and five persons chosen by the President—two who are associated with employee organizations, two who are associated with employers, and one from the general public.

All pension, profit-sharing, stock bonus, and bond purchase plans which qualify for tax benefits under the Internal Revenue Code would be required to purchase plan termination insurance.

Participants and beneficiaries of a plan would be protected against loss of vested benefits from termination of the plan, within specified dollar or percentage-of-salary limits; but benefits are not to be available to any participant who owns as much as 10 percent of the voting stock of the employer (or a like interest in the employer that is unincorporated).

In general, the benefits of the insurance would not be available unless the plan has been in effect at least five years before the insured loss. If the loss arises out of benefits created or increased by plan amendment, the amendment must have been in effect at least three years before the loss.

Premium limitations are provided that are essentially the same as those for S. 4, described above.

The bill creates two funds, one for multiemployer plans and one for other plans. The premiums are to be paid into the appropriate fund and each fund's liabilities are to be borne by it and not the other fund. Differences in experience would be expected to lead to differences in rates of premiums.

Upon termination of a pension plan, the bill would allow the insurance program administrators to determine how plan assets should be liquidated and the proceeds applied to the payment of vested benefits. The administrators would be given specific authority to transfer funds to the appropriate common fund of the insurance program (i.e., the fund for multiemployer plans or the fund for other plans), to purchase single-premium life annuities with the funds of the terminated plan, or to take other appropriate action to provide for the payment of vested benefits.

The moneys of the funds may be invested in obligations of the United States or in obligations guaranteed as to both principal and interest by the United States.

Finally, the bill would allow the Secretary of the Treasury to make interest-bearing loans to the Pension Guarantee Corporation if those loans should be needed for the protection of participants in member plans and the maintenance of confidence in the private retirement system.

S. 1631.—No provision is made for plan termination insurance.

F. Fiduciary standards

Present Law.—A retirement plan trust may be qualified under the Internal Revenue Code only if it is impossible under the trust instrument for trust funds to be used for any purpose other than the exclusive benefit of the employees or their beneficiaries (sec. 401(a)(2) of the code). In addition, a retirement plan trust will not be exempt from taxation if it engages in any specifically defined "prohibited transactions" (sec. 503(a)(1)(B) of the code).

Under administrative rulings, an investment generally meets the "exclusive benefit" requirement if it meets the following standards: the cost of the investment does not exceed fair market value, a fair return commensurate with the prevailing rate is provided, sufficient liquidity is maintained to permit distributions, and the safeguards and diversity that a prudent investor would adhere to are present. On purchasing stock or securities of the employer, or lending funds to the employer, the trust must notify the Internal Revenue Service so that it may determine whether the exclusive benefit requirement is met.

"Prohibited transactions" include the lending of funds without adequate security and a reasonable rate of interest to the creator of the plan, his family, or corporations controlled by him. Other prohibited transactions include payment of excessive salaries to interested persons, providing trust services on a preferential basis to interested persons, substantial purchases or sales of property from interested persons for other than adequate consideration, and engaging in any other transaction which results in a substantial diversion of trust assets to an interested person (sec. 503(b) of the code). If the trust engages in any prohibited transaction, it will lose its tax-exempt status for at least one year; upon meeting certain requirements the trust may reacquire tax-exempt status.

Special rules govern trusts benefiting owner-employees who control the business with respect to which the plan is established. In this case, generally the trust cannot make any loan, pay compensation for services, or make services available on a preferential basis to an owner-employee or certain related

parties. The same prohibition applies to trust purchases from or sales to these interested persons (see 503(g) of the code).

In many cases, pension plan trustees also will be subject to local laws governing the actions of fiduciaries.

S. 4.—The Welfare and Pension Plans Disclosure Act would be amended to provide standards of conduct for fiduciaries[18] of employee benefit plans covered under the bill (sec. 510 of the bill). These standards would generally supersede State law governing fiduciaries' conduct (sec. 609 of the bill).

Generally, a fiduciary would be required to act in the same way that a prudent man in a similar situation and under other like conditions would act (sec. 510 of the bill). In addition, a fiduciary would be prohibited from engaging in certain transactions with interested parties.[19] He could not rent or sell property to, or rent or purchase property from, an interested party; could not lend trust assets to an interested party; could not furnish trust goods, services, or facilities to an interested party; and could not permit the transfer of any trust property to or its use by or for the benefit of an interested party. Furthermore, a fiduciary could not deal with the trust in his own interest or for his own account, could not represent another party with regard to the trust nor act on behalf of a party adverse to the trust or to the interests of its participants or beneficiaries, and could not receive any consideration from any party dealing with the trust in connection with a transaction involving the trust.

Specific exemptions would be provided from this list of prohibited activities, in recognition of established business practices. Thus, a fiduciary could receive his normal benefits as a participant under the plan, could receive reasonable compensation for services and for reimbursement of actually incurred expenses, and could be an officer, agent or employee of an interested party. Furthermore, a pension trust generally could invest 10 percent of the value of its assets in securities issued by the employer, and certain profit-sharing trusts could invest in these securities without limit. Additionally, under certain conditions, securities could be purchased from or sold to interested parties, loans could be made to participants or beneficiaries of the plan, and an interested party could be paid for office space and other services. In addition, the Secretary of Labor could provide for exemption of any fiduciary from certain specifically prohibited transactions if the exemption were in the interest of the trust fund, the participants and the beneficiaries.

The fiduciary standards that would be established by the bill would in some cases allow fiduciaries of certain owner-employee plans to engage in transactions now prohibited under the tax laws (sec. 503(g) of the code). Additionally, investments in securities of the employer may be allowed under the bill when forbidden by the tax laws. Also, the Secretary of Labor could exempt fiduciaries from certain transactions otherwise prohibited under the bill, but this exemption would not affect the prohibitions of the tax laws. Since the bill would not change the Internal Revenue Code, the tax laws presumably would continue to apply where they exercise more restraint on fiduciary actions than the bill would.

A fiduciary who breached any of these duties would be personally liable to the trust for losses sustained by it on account of the breach, and would have to pay to the trust any profits which he received from use of trust assets. Exculpatory clauses would be prohibited. Co-fiduciaries could, in certain cases, be held liable for breaches of another co-fiduciary.

The bill also would prohibit persons convicted of certain listed crimes from serving in a responsible position in connection with an employee benefit plan for a period of five years after conviction or the end of imprisonment.

S. 1179.—S. 1179 includes no provisions dealing with fiduciary responsibility.

S. 1631.—The prohibited transactions provisions, described above under *Present Law*, would be repealed (sec. 6(a) of the bill). In lieu of these rules, excise taxes would be imposed on the amount involved in a prohibited transaction, and the current list of prohibited transactions would be expanded. The taxes would be payable by participating interested parties, and would be 5 percent of the amount involved in the prohibited transaction. An additional tax of 200 percent of the amount involved would be owed if the transaction were not corrected within the period allowed (generally 90 days from notice) (sec. 6(b) of the bill).

A taxable transaction would be any prohibited transaction specifically listed in the proposed Employee Benefits Protection Act, S. 1557 (sec. 6(b) of the bill). The transactions specifically prohibited in S. 1557 are substantially the same as the transactions specifically prohibited by S. 4, with generally the same exceptions. Additionally, in most other respects regarding fiduciary conduct, S. 1557 is substantially the same as the provisions of S. 4.

G. Reporting and disclosure

Present law: reporting to government agencies.—Every employer who maintains a funded retirement plan must annually file a return with the Internal Revenue Service, regardless of whether the plan is qualified or whether a deduction is claimed for the current year (regs. § 1.404(a)-2A). This return generally includes information on the nature and coverage of the plan and certain actions and changes that affected the plan. Information regarding contributions and computations for deductions must also be included. Every employer (or trust fiduciary) also must annually file with the Service a financial statement of the retirement plan fund, including a statement of assets and liabilities and a statement of receipts and disbursements.

The trustee of a qualified retirement trust must file an annual return with the Internal Revenue Service that discloses whether the trust engaged in transactions which may have been "prohibited transactions," and a statement describing the transactions also must be filed. (Prohibited transactions include certain dealings between the trust and interested parties, and are discussed in section F, Fiduciary Standards).

The Welfare and Pension Plans Disclosure Act also provides for disclosure and reporting of retirement fund transactions. Under this Act, most private employers (except certain tax-exempt organizations) engaged in interstate commerce or in an industry or activity affecting such commerce who have retirement plans covering more than 25 participants must file a description of the plan with the Secretary of Labor when the plan is established or amended (29 U.S.C. §§ 303, 305). Further, if a covered plan includes at least 100 participants, an annual report must be filed providing information about contributions, benefits paid, number of employees covered, assets, and liabilities of the plan (29 U.S.C. § 306). The annual report also is to include statements regarding certain transactions between the trust and interested parties, and is to include certain actuarial information. The Internal Revenue Service will accept the annual report filed with the Labor Department as satisfying some of the requirements for filing with the Service.

Present law: disclosure to employees.—Under Treasury regulations, employees must be informed of the establishment of a qualified retirement plan and its basic provisions (regs. § 1.401-1(a)(2)). This may be done by furnishing each employee with a copy of the plan, but where this is not feasible substitute methods may be used. Satisfactory substitutes must describe the essential features of the plan, and may be in the form of a booklet given to the employees or a notice posted on the company's bulletin board. Substitutes must state that the complete plan may be inspected at a designated place and times on the company's premises.

Under the Welfare and Pension Plans Disclosure Act, the plan description and annual reports filed with the Labor Department must be available for examination by participants and beneficiaries in the principal office of the plan. Additionally, upon written request, a copy of the plan description and summaries of the annual reports must be mailed to participants and beneficiaries (29 U.S.C. § 307).

S. 4.—The Welfare and Pension Plans Disclosure Act would be amended to require that additional information be provided in the plan descriptions and annual reports filed with the Labor Department (secs. 505 and 506 of the bill). Furthermore, annual reports generally would be required for any private funded employee benefit plan which covers more than 25 (rather than 100) participants, and coverage would be extended to most tax-exempt organizations (secs. 503 and 507 of the bill). Annual reports also would include the opinion of an independent auditor based on an annual audit (sec. 506(c) of the bill).

Annual reports would include additional information on all investments, and include separate detailed schedules for transactions involving securities, other investment assets, loans, and certain leases (sec. 506 of the bill). Additionally, annual reporting would be required for all transactions involving interested parties. Detailed actuarial information also would be required, in order to allow evaluation of the funding of the plan.

In addition to current requirements on disclosure to employees, each new participant would receive a summary of the plan's important provisions, including an explanation of plan benefits and the circumstances which would disqualify a person from receiving benefits (sec. 507 of the bill). Every three years a revised summary of the plan's provisions would be provided to participants. (Plan summaries would be required to be written in a manner calculated to be understood by the average participant.) Participants also would be entitled to obtain copies of all the underlying plan documents. When a participant terminates service with a vested pension right, he would be given a certificate setting forth the benefits to which he is entitled (sec. 108 of the bill).

S. 1179.—S. 1179 includes no provisions regarding disclosure or reporting.

S. 1557.—S. 1557 is a companion measure to S. 1631; it would amend the provisions of the Welfare and Pension Plans Disclosure Act regarding disclosure and reporting. The disclosure and reporting provisions of S. 1557 are substantially the same as in S. 4. Additionally, S. 1557 would require that a statement of accrued benefits be given to participants or beneficiaries upon request (sec. 8(c) of the bill).

H. Enforcement

Present law.—Plans which meet the requirements of the Internal Revenue Code (e.g., exclusively for benefit of employees, nondiscriminatory in regard to coverage and benefits, limits on contributions for owner-employees under H.R. 10 plans) receive special tax treatment to foster their growth. It is not necessary, in order to receive this special tax treatment, that a prior determination be obtained from the Internal Revenue Service. However, to assist employers in their development of plans or plan amendments, the Internal Revenue Service is willing to issue determination letters that proposed plans or amendments qualify for the special tax

Footnotes at end of article.

treatment. As a practical matter, since taxpayers generally wish to be assured in advance that their plans or amendments will qualify, they obtain prior determinations from the Internal Revenue Service. Such a determination is with respect to the qualification of the plan (sec. 401 of the code) and tax-exempt status of the related trust (sec. 501 of the code).

Under the Internal Revenue's published procedures, this determination generally takes the form of a determination letter from a district director. The district director may request technical advice from the national office on issues arising from a request for a determination letter. Also, the applicant may request national office consideration of the matter if the district director does not act within 30 days from notice of intent to make such a request, or acts adversely.

Standards are set forth under which the national office is to determine whether it will entertain a request for consideration of a case. One situation where a request will be entertained is where the contemplated district office action is in conflict with a determination made in a similar case in the same or another district. The procedure provides for a conference in the national office, if it is requested by the applicant. In addition, determination letters issued by the district director are subject to post review procedure in the national office.

The Internal Revenue Service, besides granting prior determinations, also administers the tax provisions of the Internal Revenue Code relating to the continued qualification of pension and profit-sharing plans.[20] If a plan does not comply with the requirements of the Internal Revenue Code, these special tax benefits are lost. Thus, to a considerable extent, the provisions of the Code in this area are self-enforcing (i.e., those in charge of a plan have an interest in seeing to it that the plan continues to comply with the antidiscrimination requirements, that the plan does not engage in prohibited self-dealing transactions, and that it otherwise acts in such a manner to preserve the complex of tax benefits to both the employer and the participants and their beneficiaries).

In addition, the Department of Labor administers the Welfare and Pension Plan Disclosure Act of 1958 (P.L. 85–832, as amended by P.L. 87–420), discussed above, under Reporting and Disclosure.

S. 4.—An Office of Pension and Welfare Plan Administration would be established within the Department of Labor to implement the specified standards of vesting, funding, and reinsurance, as well as disclosure and fiduciary standards (sec. 101 *et seq.* and sec. 601 *et seq.* of the bill). Plans covered by the bill would have to be registered with the Secretary of Labor, who would issue certificates of registration to plans which qualify under the bill.

The Secretary of Labor would be empowered to enforce the provisions of the bill by petitioning the Federal courts to compel a pension or profit-sharing retirement plan to comply with the provisions of the bill. He would be given the right to seek relief in the Federal courts to compel the return of assets to the fund, to require payments to be made, to require the removal of a fiduciary, and to obtain other appropriate relief.

In addition, civil actions may be brought by plan participants to seek relief against violations committed by a fiduciary.

A plan administrator in discharging his duties with respect to the assets of the fund would be subject to the standards of care under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use. The failure of an administrator to comply with these standards would result in the administrator being personally liable to the fund for any losses to the fund resulting from the administrator's breach of his fiduciary responsibilities and by the administrator paying to the fund any profits which have inured to him through use of fund assets.

The Secretary of Labor would be empowered to examine the books and records of any plan or fund in order to determine compliance with the provisions of the Act.

S. 1179.—The Internal Revenue Service would administer the provisions of the bill using the same enforcement procedures that are available to it under existing law; that is, by determining as to any plan whether it is, or continues to be, qualified for the special tax benefits available under the Internal Revenue Code. In order to upgrade the administration of the pension plan provisions of the code, the bill would establish within the Internal Revenue Service an Office of Pension Plan Administration, headed by an Assistant Commissioner of the Internal Revenue Service (secs. 201 and 202 of the bill).

In addition, the bill provides for additional enforcement measures where there is a failure to make the required contributions. The Secretary of the Treasury, or his delegate, may order that a plan be terminated if, after notice and opportunity for a hearing, termination is considered necessary to protect the interests of the participants. Also, if a plan is terminated, any tax deductions attributable to contributions to the plan for the five taxable years immediately preceding the year of termination may be disallowed by including them in the employer's income in the year the plan is terminated (sec. 324 of the bill).

S. 1631.—The Internal Revenue Service would administer the provisions of the bill using the same enforcement procedures that are available to it under existing law; that is, by determining as to any plan whether it is, or continues to be, qualified for the special tax benefits available under the Internal Revenue Code. In addition, the bill would impose an excise tax on the amount involved in a prohibited transaction. The tax would be imposed on any party in interest who is a participant in the prohibited transaction (see discussion under Fiduciary Standards, above).

I. Limitation on contributions

Present law.—Under present law, different rules are provided for employer and employee contributions in the case of plans for self-employed individuals (H.R. 10 plans), "regular" corporations and electing small business corporations (subchapter S).[21] These are described below.

H.R. 10 plans.—The amount of deductible contributions to an H.R. 10 plan on behalf of a self-employed person cannot exceed the lesser of 10 percent of his earned income or $2,500 (sec. 404(e) of the code). In addition, limited nondeductible contributions may be made in certain cases. Contributions for employees of self-employed individuals must be at least proportionate to contributions for self-employed (sec. 404(e) of the code).

"Regular" corporate plans.—In the case of a "regular" corporate plan there are no limitations on how much may be contributed by the employer. There are, however, limitations on the amount of the contribution that is deductible. Different limitations apply to profit-sharing and stock bonus plans and to pension plans.

In the case of profit-sharing or stock bonus plans, the amount of the contribution that is allowable as a deduction is not to exceed 15 percent of compensation to employees covered under the plan. Contributions in excess of the 15-percent limitation may be carried over to future years. In addition, within certain limits, to the extent that an employer does not make the full 15-percent contribution in one year he may increase the amount of his deductible contribution in a future year.

In the case of pension plans, the amount of the contribution that is deductible is not to exceed 5 percent of the compensation to employees covered under the plan, plus the amount of the contribution in excess of 5 percent of compensation to the extent necessary to fund normal pension costs and remaining past service costs of all employees under the plan. In the alternative, the taxpayer may compute the limit on his deductible contributions by limiting his deduction to his normal cost for the plan plus 10 percent of the past service cost of the plan (sec. 404(a) of the code).

Where an employer contributes to two or more retirement plans which are governed by different limits on deductions (pension, profit sharing or stock bonus, or employee annuities), the total amount annually deductible under all the plans cannot be more than 25 percent of compensation otherwise earned by the plan beneficiaries. If any excess is contributed, it may be deducted in the following year; the maximum deduction in the following year (for carryover and current contributions together) is 30 percent of compensation. An unlimited carryover is available for additional excess amounts.

Subchapter S plans.—The limitations on the deductibility of contributions to a subchapter S corporation plan are the same as those in "regular" corporate plants. However, a shareholder-employee (an employee who owns more than 5 percent of the outstanding stock of such a corporation) must include in his gross income the amount by which the deductible contributions paid on his behalf exceeds the lesser of 10 percent of his compensation or $2,500 (sec. 1379 of the code).

Professional corporations.—Generally, lawyers, doctors, accountants and certain other professional groups in the past have been unable to carry on their professions through the form of corporations because of the personal nature of their responsibility or liability for the work performed for a client or patient. Consequently, their contributions to retirement plans were limited by the rules governing self-employed persons. In recent years, however, most States have adopted special incorporation laws which provide for what are generally known as "professional corporations." These have been used increasingly by groups of professional persons, primarily to obtain the more favorable tax treatment for pensions generally available to corporate employees. The Treasury Department in the so-called Kintner regulations held that professional corporations were not taxable as corporations. A number of court cases, however, have overturned the regulations and the Service has now acquiesced and generally recognizes these professional corporations as corporations for income tax purposes. The formation of professional corporations, while maintaining the personal relationship between the shareholder-employee and the patient or client, has had the effect of indirectly overcoming the limitations Congress intended to impose with respect to deductible amounts which may be set aside for pensions in these cases. In 1969, the Finance Committee felt it was inappropriate to permit what are essentially, in most respects, self-employed persons to avoid the pension limitations prescribed by Congress.

The committee amendments to the Tax Reform Act of 1969 provided that shareholder-employees of a professional service organization were to include in their gross income the amounts of contributions paid on their behalf which are deductible under qualified pension, profit-sharing, and stock bonus plans under the Internal Revenue Code to the extent that these amounts exceeded 10 percent of the compensation received by the shareholder-employee from the organiza-

Footnotes at end of article.

tion, or $2,500, whichever is less. However, the Treasury opposed these amendments on the ground that there should be equality of treatment between corporate employees and self-employed persons. Treasury officials stated at that time that this objective may involve the imposition of some form of limitation on contributions or benefits for high-paid corporate employees, at least for shareholder-employees. Further, Treasury felt it was preferable to wait until the following year to deal with this issue, when it expected to have comprehensive recommendations on professional service corporations, along with other employee benefit plan recommendations. On this basis, the Senate voted to delete from the Tax Reform Act of 1969 the committee's recommendation on professional corporations.

S. 4.—The bill would not change the rules in the Internal Revenue Code on the limitations on contributions.

S. 1179.—The bill would not change the rules in the Internal Revenue Code on the limitations on deductible contributions.

S. 1631.—The bill would increase the limitation on deductible contributions on behalf of a self-employed individual (H.R. 10 plans) or a shareholder-employee (subchapter S plans) to the lesser of $7,500 or 15 percent of his earned income (sec. 4 of the bill).

The bill would also require an employee to include in his gross income the amount of the employer's contributions made on the employee's behalf under a money purchase pension plan to the extent that the contributions are in excess of 20 percent of the employee's compensation during the taxable year. Amounts included in gross income under this provision would be treated as part of the employee's investment in the contract for purposes of computing the taxable income of the employee upon a distribution to the employee (sec. 7(h) of the bill).

In the case of pension plans, the 5-percent of compensation limitation on deductible contributions would be eliminated and the other limitations would not apply to the extent that the contributions with respect to a pension plan do not exceed the minimum funding standards (sec. 7(g) of the bill).

J. Deduction for personal savings retirement plans

Present law.—There is no deduction for amounts contributed by an employee to a qualified pension plan (except to the extent that tax-excludable contributions made in connection with salary-reduction plans, described below, may be viewed as employee contributions), although the income earned on such amounts is not taxed until it is distributed.[22] There is also no deduction for amounts paid by an individual for his own retirement savings outside the scope of a qualified plan.

S. 4.—The bill would not change the rules in the Internal Revenue Code on the treatment of personal savings retirement plans.

S. 1179.—A credit would be allowed against tax for contributions by an employee to an employer retirement plan, or to his own qualified retirement account, equal to the lesser of 25 percent of such contributions or $375. This credit would be reduced by an amount equal to 25 percent of any employer contributions to a qualified pension plan which were made on behalf of the employee (which contributions could, at the employee's option, be deemed to be 7 percent of his earned income) and 25 percent of the FICA tax which would have been imposed on any earned income not subject to social security or the railroad retirement system had this income been subject to this tax. Also, in the case of contributions to a personal retirement savings account (but not in the case of employee contributions to an employer plan) the contribution base, with reference to which the credit would be determined, could not exceed the lesser of 20 percent of earned income or $1,500. In the case of a married couple, each spouse would be entitled to claim the credit.

In general, contributions to such a retirement account would not be permitted to exceed the 20-percent-$1,500 limit noted above, and then could be made only by the employee and the employee's spouse. A qualified retirement account would be treated as a qualified owner-employee plan, for purposes of the Code's provisions on exempt organizations (such as the prohibited transactions and unrelated business income provisions) and procedure and administration (such as the requirement for fiduciary returns).

Penalties would be imposed on premature distributions (generally, distributions before the employee or spouse reaches age 59½) and distributions would be required to begin from a personal retirement savings account by the time the individual attains the age of 70½ (sec. 341 *et seq.* of the bill).

S. 1631.—A deduction would be allowed for contributions made by an employee to an employer retirement plan, or to his own qualified retirement account; generally, the deduction could not exceed the lesser of 20 percent of the employee's earned income, or $1,500. The maximum deductible amount for an employee would be reduced by any payments made on his behalf by an employer to a qualified pension plan (which contributions could, at the employee's option, be deemed to be 7 percent of his earned income). In the case of an employee who had earned income which was not subject to social security or the railroad retirement system, the maximum deductible amount would also be reduced by the tax which would have been imposed on such income had it been subject to this tax. In the case of a married couple, each spouse would be entitled to claim the deduction and the limit would be applied separately to each spouse.

In most other respects, S. 1631 is similar to S. 1179, except that S. 1631 imposes an annual 10-percent excise tax on amounts retained in the individual retirement account in excess of those amounts necessary so that the amount may be distributed ratably over the life expectancy of the employer or the employee and spouse, after they reach the age of 70½ (sec. 3 of the bill).

K. Salary reduction plans—Tax-sheltered annuities

Present law.—As a general rule, employees may not deduct contributions to pension plans which are made out of their own funds ("employee contributions"). However, employees of tax-exempt charitable, educational, religious, etc., organizations, and teachers and other employees of public educational institutions may exclude from income amounts paid by their employers to purchase nonforfeitable annuity contracts (in many cases, the source of those amounts is the employees' agreement to take salary reductions or forego increases). The amount of salary reduction which can be used in this way is determined in accordance with a statutory formula;, generally, salary reductions may be up to 20 percent of compensation, times years of service, reduced by amounts previously contributed by the employer for annuity contracts on a tax excluded basis to the employee (sec. 403(b) of the Code).

Antidiscrimination provisions that apply generally to qualified plans do not apply to tax-sheltered annuities.

Legislative history.—Section 403(b) was added to the Code by the Technical Amendments Act of 1958 (Public Law 85-866). Prior to enactment, in certain cases tax-exempt organizations were paying all, or almost all, the compensation of certain employees in the form of "tax-free" premiums for annuities. Usually these were part-time employees who derived their principal income from other employment and wanted to defer taxes on income, which they intended to save, from these exempt organizations. The Internal Revenue Service had attempted by regulation to limit this tax deferred compensation to amounts which were supplemental to the employee's normal compensation, but there was some uncertainty about the validity of these regulations. Therefore, Congress adopted the statutory exclusion formula in section 403(b) in order to resolve the matter. This provision was amended in 1961 (Public Law 87-370) to make it clear that the provision applied to employees of public educational institutions.

L. Salary reduction plans—6-percent plans

Present law.—Under administrative rulings, until recently, employees of organizations not covered by section 403(b) were permitted to participate in salary reduction plans. If the plan met certain non-discrimination requirements, the Internal Revenue Service had taken the position in rulings that, under certain circumstances, the amount of the salary reduction would be treated as an employer contribution to a qualified pension plan, not taxable to the employees (until benefits were received from the plan). The maximum amount that could be so treated was 6 percent of compensation.

On December 6, 1972, the Service issued a proposed regulation which would change this result by providing that an amount contributed to a retirement plan will be considered to have been contributed by the employee "if at his individual option such amount was so contributed in return for a reduction in his basic or regular compensation or in lieu of an increase in such compensation." Under the proposed regulations, which would operate prospectively, amounts contributed under a salary reduction agreement, not covered by section 4403(b), which affects basic or regular compensation would not be excludable from income by the employee. The Service has invited written comments or suggestions on the proposed regulations and will provide an opportunity for persons to comment orally at a public hearing.

M. Lump-sum distributions

Present law.—Retirement benefits generally are taxed as ordinary income under the annuity rules (sec. 72 of the code) when the amounts are distributed, to the extent they do not represent a recovery of the amounts contributed by the employee. However, an exception to this general rule under prior law provided that if an employee's total accrued benefits were distributed or paid in a lump-sum distribution from a qualified plan within one taxable year on account of separation from employment or death (or death after separation from service), the taxable portion of the payment was treated as a long-term capital gain, rather than ordinary income.

The capital gains treatment accorded these lump-sum distributions allowed employees to receive substantial amounts of deferred compensation at more favorable tax rates than other compensation received currently. The more significant benefits under this treatment apparently accrued to taxpayers with adjusted gross incomes in excess of $50,000, particularly in view of the fact that a number of lump-sum distributions of over $800,000 have been made.

To correct this problem, the Tax Reform Act of 1969 provided that part of a lump-sum distribution received from a qualified employee's trust within one taxable year on account of separation from service or death (or death after separation from service) is to be given ordinary income treatment, instead of the capital gains treatment it had been given under prior law. The ordinary income treatment applies to the taxable portion of the distribution (i.e., the total distribution less the employee's contri-

Footnotes at end of article.

bution) which exceeds the sum of the benefits accrued during plan years beginning before 1970, and the portion of the benefits accrued thereafter which does not consist of employer contributions (sec. 402(a)(5) of the code).

The 1969 Act provides a special limitation in the form of a 7-year "forward" averaging formula which applies to the portion of the lump-sum distribution treated as ordinary income. An employee (or beneficiary) is eligible for the special 7-year forward averaging provision if the distribution is made on account of separation from service or death (or death after separation from service)[23] and if he has been a participant in the plan for 5 or more taxable years before the taxable year in which the distribution is made.

In 1971 the Treasury issued proposed regulations under the 1969 Act describing the computation of tax on total distributions from qualified plans. These proposed regulations were criticized as requiring payment of more tax than the statute required. On May 4, 1973, the Treasury withdrew the regulations proposed in 1971 and issued a new set of proposed regulations describing the computation of tax on total distributions. Generally, these new proposed regulations appear to meet the criticisms of the old proposed regulations. However, it appears that under the newly proposed regulations there are some circumstances in which a taxpayer would pay less tax under the rules of the 1969 Act than under previous rules, and it is not clear that this was the goal Congress intended to reach. Treasury has invited written comments on the newly proposed regulations, and also has stated that persons who wish to comment orally will be given an opportunity to do so.

S. 4.—See D. Portability, above, for proposals affecting lump-sum distributions under certain circumstances.

S. 1179.—No part of any distribution from a qualified individual retirement account (see J. Deduction for Personal Savings Retirement Plans, above) would be eligible for long-term capital gain treatment (sec. 342 of the bill).

(See D. Portability, above, for proposals affecting lump-sum distributions under certain circumstances.)

S. 1631.—No part of any distribution from a qualified individual retirement account (see J. Deduction for Personal Savings Retirement Plans, above) would be eligible for long-term capital gain treatment.

(See D. Portability, above, for proposals affecting lump-sum distributions under certain circumstances.)

FOOTNOTES

[1] This includes employees covered by profit-sharing and stock bonus plans used for retirement purposes.

[2] See Public Policy and Private Pension Programs. A Report to the President on Private Employee Retirement Plans by the President's Committee on Corporate Pension Funds and Other Private Retirement and Welfare Programs, January 1965, p. vi.

[3] Ibid. and Securities and Exchange Commission, Private Noninsured Pension Funds, 1972 (Preliminary).

[4] To qualify on this basis, the plan must cover 70 percent or more of all the employees, or 80 percent or more of all the employees who are eligible to benefit under the plan if 70 percent or more of all the employees are so eligible, excluding in each case employees who have been employed not more than a minimum period prescribed by the plan, not exceeding 5 years, employees whose customary employment is for not more than 20 hours in any 1 week, and employees whose customary employment is for not more than 5 months in any calendar year (sec. 401(a)(3)(A) of the Internal Revenue Code).

[5] Under special "integration" rules, the pension benefits may be considered to be augmented by a specified percentage of social security benefits for purposes of determining the ratio of benefits to pay at any given income level and the employer is treated as having contributed a portion of the cost of those benefits.

[6] However, the 1969 Tax Reform Act made exclusive contributions on behalf of shareholder-employees who own more than 5 percent of an electing small business (subchapter S) corporation's stock subject to the same 10 percent-$2,500 limitations as apply to pension contributions on behalf of self-employed people.

[7] However, as noted below, vesting is required for employees under so-called H.R. 10 plans for owner-employees and may also be required in other cases to prevent the plan from having a discriminatory effect.

[8] U.S. Treasury Department—Fact Sheet, Pension Reform Program, as reprinted in Material Relating to Administration Proposal Entitled the "Retirement Benefits Tax Act" Committee on Ways and Means, 93d Cong., 1st sess., p. 37, Table B.

[9] Department of the Treasury and the Department of Labor Study of Pension Plan Terminations, 1972—Interim Report, February 1973.

[10] In addition, S. 1179 would set up a private nonprofit corporation chartered by the Federal Government to administer the termination plan insurance that it would institute.

[11] An owner-employee is a sole proprietor or a partner with a greater than 10-percent interest in capital or profits (sec. 401(c)(3) of the Code).

[12] The minimum funding requirement of present law applies only to pension and not to profit-sharing or stock bonus plans. The proposed minimum funding provisions of S. 4 and S. 1631 apply only to pension plans. However, the funding provisions of S. 1179 apply to all qualified plans. This section on present law will be addressed solely to pension plans.

[13] In determining costs, an employer must take into account factors such as expected mortality, interest, employee turnover, and changes in compensation levels.

[14] Under administrative rulings, the value of plan assets may be determined by using any valuation basis, if it is consistently followed and results in costs that are reasonable. Consequently, a number of methods of asset valuation may be used, including cost and fair market value.

[15] A plan amendment which results in a substantial increase in unfunded liabilities would be funded as it were a new plan.

[16] Generally, for the participant to avoid tax, the transfers of funds must be directly from one qualified trust to another qualified trust. However, if the funds are first paid to the participant, he may be able to avoid tax if he pays them to the new qualified trust under a legally enforceable agreement entered into before he received the funds from the first trust. See Rev. Rul. 55-368, 1955-1 C.B. 40.

[17] Individual retirement accounts are discussed below, at J. Deduction for Personal Savings Retirement Plans.

[18] A fiduciary is defined as any person who exercises any power of control, management, or disposition with respect to any property of any employee benefit fund or has authority or responsibility to do so (sec. 502(a) of the bill).

[19] The bill defines "party in interest" generally as fiduciaries and employees of the employee benefit plan, employers or their controlling or controlled parties, employee organizations with members covered by the plan, officers or employees of employers or of employee organizations, and relatives or partners of these persons (sec. 502(f) of the bill).

[20] It should be noted that qualified pension, etc., plans are taxable on unrelated business income, as are other exempt organizations (sec. 511 *et seq.* of the code).

[21] All the types of plans must, in addition to the rules described below, meet the general reasonable compensation tests (sec. 162 of the code).

[22] At one time the Congress took the position that a contribution to an H.R. 10 plan on behalf of a self-employed person was made half by the employer and half by the self-employed person; no deduction was allowed for half the contribution (presumably, the half "contributed by" the self-employed person. This limitation (sec. 404(a)(10) of the Code) was repealed for taxable years beginning after December 31, 1967.

[23] Self-employed taxpayers, on the other hand, continue to be eligible for their special 5-year forward averaging only on lump sum distributions received on account of death, disability as defined in sec. 72(m)(7) of the code or if received after the age of 59½.

III.—COMPARISON OF MAJOR PROVISIONS OF PRESENT LAW, S. 4, S. 1179, AND S. 1631

Item	Present law	S. 4 (Williams-Javits)	S. 1179 (Bentsen)	S. 1631 (The administration bill)
Short title		Retirement Income Security for Employees Act.	Comprehensive Private Pension Security Act of 1973.	Retirement Benefits Tax Act.
Principal Administering Agency	Internal Revenue Service	Labor Department	Internal Revenue Service	Internal Revenue Service.
General coverage of bill	All qualified pension and profit-sharing plans.	All pension and profit-sharing plans, except those of Government, religious organizations, those with 25 or fewer participants, those benefiting the self-employed; also certain other exceptions.	All qualified pension and profit-sharing plans.	All qualified pension and profit-sharing plans.
Plan participation	Employer plans—Plans may be limited to employees who have (1) attained a designated age, or (2) been employed for a designated number of years, so long as effect is not discriminatory in favor of officers, shareholders and highly compensated employees. Plans may also exclude employees who are near retirement age when they would otherwise become eligible.	Generally, plans could not require more than 1 year of service or an age greater than 25; plans which provide full immediate vesting for all participants could require 3 years of service and an age of 30.	Employer plans—1 year of service and age of 30.	Employer plans—3 years of continuous service and an age of 30; plans could exclude employees who are within 5 years of retirement age when they would otherwise become eligible.

III.—COMPARISON OF MAJOR PROVISIONS OF PRESENT LAW, S. 4 S. 1179 AND S. 1631—Continued

Item	Present law	S. 4 (Williams-Javits)	S. 1179 (Bentsen)	S. 1631 (The administration bill)
	Self-employed plans—Plan must cover all employees with 3 or more years of service.		Self-employed plans—Same as present law.	Self-employed plans—Must cover all employees with 3 years of continuous service; all those age 30 with 2 years of service, and all those age 35 or older with 1 year or more of service.
Vesting	Employer plans—Employees must receive vested rights when they retire or upon plan termination; also vesting provisions may be considered in determining if plan discriminates.	30-percent vesting after 8 years of participation; thereafter vesting increases at a rate of 10 percent per year; in lieu of this schedule Secretary of Labor could approve other equally "equitable" vesting formulas. Vesting would apply to benefits accrued before and after effective date of provision (3 years after enactment). Secretary of Labor could postpone required vesting for 5 years to prevent "substantial economic injury." Contributions under a class-year plan must vest in full within 5 years.	Employer plans—25 percent vesting after 5 years of participation with additional vesting at a rate of 5 percent per year. Vesting would apply to benefits accrued before the effective date of the provision (3 years after enactment) in the case of employees 45 and older. The Internal Revenue Service could postpone required vesting for 5 years to prevent "substantial economic injury." Contributions under a class-year plan must vest in full within 5 years.	Employer plans—"Rule of 50" would apply under which there would be 50 percent vesting when an employee's age and years of participation in the plan totaled 50, if the employee also had 3 years of continuous service. Remaining benefits would vest, at least ratably, over the next 5 years. Generally, vesting requirements would not apply with respect to benefits accrued before enactment (but preenactment years of participation would be considered in determining if the employee was entitled to vesting).
	Self-employed plans—Rights of all plan participants must vest immedately.		Self-employed plans—Same as present law.	Self-employed plans—A "rule of 35" would apply.
Funding	Must fund at least normal pension costs and interest on unfunded accrued liabilities. No amortization of principal amount of unfunded accrued liabilities is required. Actuarial methods, factors and assumptions must together be reasonable and must be reported.	Normal pension costs would be funded annually and accrued unfunded liabilities (whether or not vested) would have to be funded at least ratably over a 30-year period. Substantial increased liabilities resulting from a plan amendment would be funded over 30 years. Experience deficiencies would generally have to be funded over a 5-year period. Actuarial assumptions would be set by Secretary of Labor. Secretary of Labor could waive the requirement for a particular year upon a showing of hardship, and allow the year's deferred contribution to be made up ratably over a 5-year period.	Generally similar to S. 4, but would be condition for qualifying under the Internal Revenue Code. Experience deficiencies would have to be made up at least ratably over a period no longer than the average remaining working life of covered employees. Secretary of Treasury could grant waivers of the requirements.	Minimum contributions would equal normal costs, interest on past service costs, and 5 percent of vested unfunded liabilities. Secretary of Treasury could permit alternative funding schedule which results in a satisfactory rate of funding.
Portability	Under administrative practice, and employee's pension rights may be transferred from one plan to another both old and new employers consent and the terms of both plans and trusts permit such transfers. To avoid tax, however, the transfer of funds must generally be made directly between qualified trusts.	Would create a Federal clearinghouse to facilitate portability of vested pension credits. Program would be voluntary both for employers and employees. At his option, an employee would leave amounts transferred on his behalf under the portability program on deposit with the Federal portability fund.	Would amend the law to specifically permit tax-free transfer of employee pension rights between plans.	Would amend the tax law to permit tax-free lump-sum distributions from a qualified retirement plan if the proceeds are reinvested in another qualified plan within 60 days after the close of the taxable year in which such a distribution was received.
Plan termination insurance	None	Federal insurance program would be established protecting an employee's rights to accrued vested benefits equal to the lesser of 50 percent of his highest average monthly wage earned over a 5-year period, or $500 a month. Generally, employers would pay a premium for this coverage equal to 0.2 percent of unfunded vested liabilities in the case of multiemployer plans or 75-percent funded plans and up to 0.4 percent in the case of other plans. In addition, the employer would be liable to reimburse the insurance fund upon plan termination in an amount not in excess of 50 percent of net worth.	Federal insurance program would protect employee's rights to a pension equal to the lesser of 50 percent of his highest average monthly wage over a 5-year period, or $1,000 a month. Premiums would initially be up to 0.2 percent of vested unfunded liabilities in the case of multiemployer plans or 75 percent funded plans, and up to 0.4 percent in the case of other plans.	None.
Reporting and disclosure	Reporting—Internal Revenue Service: All employers with funded plans must file annual returns on plan financial status, contributions and deductions, and changes; trustees of qualified plans must report prohibited transactions. Labor Department: Plans covered under the Welfare and Pension Plans Disclosure Act must file plan description when plan is established. Covered plans with over 100 participants must file an annual report on contributions, benefits, employees covered, assets and liabilities, interested party transactions and certain other matters.	Reporting—Labor Department: Annual reports would be required from plans covering more than 25 participants and would include independent auditor's statement. Annual reports would include more detailed information concerning investments, transactions involving interested parties and actuarial information.	None	Reporting—A companion bill, S. 1557, contains requirements substantially similar to those in S. 4.
	Disclosure—Under the tax law, employees must be informed of the establishment of a qualified plan and its basic provisions; a copy of the plan must be available for inspection. Under the WPPDA, the material filed with the Secretary of Labor must be available for inspection and upon request, copies or summaries of this material must be mailed to plan participants and beneficiaries.	Disclosure—New participants would receive summary of important plan provisions, especially those concerning plan benefits and circumstances which would disqualify the individual from receiving benefits. Revised summary would be provided every 3 years. Summaries would have to be written in a manner calculated to be understood by the average participant. When a participant with vested benefits terminates service, he would receive a certificate concerning his rights.		Disclosure—S. 1557 is substantially similar to S. 4. Also would require a statement of accrued benefits be given to participants or beneficiaries upon request.
Fiduciary standards	The assets of a qualified plan must be used exclusively for the benefit of employees and their beneficiaries. Additionally pension trusts engaging in specified "prohibited transactions" with certain interested persons may lose their qualified status. Generally, these include loans, payment of compensation, providing trust services, or purchases or sales of property between the trust and an interested person, other than on arms-length basis.	Would amend the WPPDA to impose a "prudent man" standard on pension trust fiduciaries. Additionally, fiduciaries could not engage in specified transactions. These include rentals, sales or purchases of property, loans, providing trust goods, services or facilities, or otherwise permitting the transfer of trust property to interested parties. Exceptions are made for certain established business practices.	None	Prohibited transaction rules (presently resulting in loss of exemption where violated) would be repealed. However, excise taxes of 5 and 200 percent would be imposed on persons engaging in self-dealing type transactions similar to those specifically prohibited under S. 4.

Item	Present law	S. 4 (Williams-Javits)	S. 1179 (Bentsen)	S. 1631 (The administration bill)
Personal retirement savings plan	Generally, there is no tax deduction for amounts paid by an individual toward his own personal retirement savings, or for employee contributions to an employer pension plan.	None	Would allow a credit against tax for employee contributions to an employer retirement plan or to a personal retirement savings account. Credit could not exceed lesser of (1) 25 percent of such contributions or (2) $375. The maximum allowable credit would be reduced by 25 percent of any employer contributions to a qualified retirement plan and would be further reduced by 25 percent of any FICA tax savings if the individual had earned income not subject to this tax. In the case of a married couple, both husband and wife could claim the credit. The personal retirement savings account would be managed by a bank or other trustee. Generally, no benefits could be paid before age 59½ (except in the event of death or disability) and benefit payments would have to begin by age 70½.	Similar to S. 1179 except that a deduction (rather than a credit) would be allowed for such contributions equal to the lesser of (1) 20 percent of earned income or (2) $1,500. These limits would be scaled down dollar for dollar to reflect employer contributions to a qualified retirement plan, or any FICA or railroad retirement tax savings of the employee.
Contribution limits	Employer Plans—Deductible contributions to pension plans generally may not exceed (1) 5 percent of pay of covered employees plus any sum necessary to fund current and past service costs on an actuarial basis, or (2) normal service costs plus 10 percent of past service costs. Profit-sharing contributions may be deducted up to 15 percent of payroll of covered employees. Credit and contribution carryovers are permitted.	Would not amend the Internal Revenue Code. Certain funding requirements would be reduced if necessary to enable the employer to receive his tax deduction.	None	Employer plans—Would repeal the 5 percent limitation. Deductions would be permitted for any amount necessary to meet minimum funding requirements. Money Purchase Plans—Contributions to such plans in excess of 20 percent of annual compensation would have to be included in gross income by the employee.
	Self-Employed Plans—Deductible contributions on behalf of self-employed persons (and shareholder-employees of subchapter S corporations) may not exceed the lesser of 10 percent of earned income, or $2,500. In plans where covered employees may make voluntary contributions, the owner-employees may make proportionate contributions, on a nondeductible basis, up to the lesser of 10 percent of earned income or $2,500.			Self-employed plans—The limits on deductible contributions would be increased to the lesser of 15 percent of earned income or $7,500. Excludible contributions on behalf of shareholder-employees of subchapter S corporations would be increased to similar levels. Limits on nondeductible contributions would be correspondingly increased for owner-employees.
Enforcement	Largely self-policing since plans not meeting the requirements for qualification under present law are not tax exempt; therefore, employer contributions to such plans are generally not tax deductible unless rights under the plan are nonforfeitable and the amounts contributed are includible in income by the employee.	The provisions of the bill would be enforced in the Federal Courts as the result of legal actions brought by the Secretary of Labor, or concerned employees. A special office would be created in the Department of Labor to administer the provisions of S. 4.	Generally, the same as under present law. However, a special Office of Pension Plan Administration would be created in the Service. For funding violations, the pension plan could be terminated by the Service, and the deduction for contributions made to the plan for the 5 preceding years may then be disallowed.	Generally, the same as under present law. However, penalty taxes could be imposed on interested persons engaging in self-dealing transactions with the fund, whereas, under present law, the only sanction is loss of tax exemption.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business? If not, morning business is closed.

SUPPLEMENTAL APPROPRIATIONS FOR FISCAL YEAR ENDING JUNE 30, 1973

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 p.m. having arrived, the Senate will resume consideration of the unfinished business, H.R. 7447, which the clerk will read by title.

The assistant legislative clerk read the bill (H.R. 7447) by title, as follows:

A bill making supplemental appropriations for the fiscal year ending June 30, 1973, and for other purposes.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum, and I ask unanimous consent that the time be charged equally against both sides on the bill.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 153

Mr. TAFT. Mr. President, I call up my amendment No. 153.

The PRESIDING OFFICER. The amendment would not be in order until the time had expired on the committee amendment or until the time had been yielded back.

Mr. TAFT. Mr. President, the amendment is an amendment to the committee amendment.

The PRESIDING OFFICER. One hour of debate is permitted on it.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senator may be allowed to offer his amendment notwithstanding the fact that the time on the committee amendment has not run out.

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

The clerk will read the amendment.

The assistant legislative clerk read the amendment (No. 153) as follows:

On page 58, line 10, after "SEC. 305" insert the following: "Except as to combat activities by air operations against the forces of the Democratic Republic of Vietnam which by their presence in Laos and Cambodia are in violation of article 20 of the Agreement of Ending the War and Restoring Peace in Vietnam, dated January 27, 1973,".

The PRESIDING OFFICER. Who yields time?

Mr. TAFT. Mr. President, I yield myself 10 minutes.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. TAFT. Mr. President, I have today offered an amendment to H.R. 7447, numbered 153, which would modify the amendment of the Senator from Missouri, which is a committee amendment contained in section 305 of the bill.

The effect of my proposal would be to exempt from the Eagleton prohibition U.S. air combat activities in Cambodia and Laos directed solely against North Vietnamese forces.

I might comment at this point that, I am aware, and I am sure the Senate is aware, that there is, for all practical purposes, a cease-fire in effect in Laos. That cease-fire, incidentally, seems to have come about, at least in part, because of the fact that the violations of the cease-fire that were occurring were responded to by U.S. air support. In any

event, the Laos point, so far as this amendment today is concerned, is moot except for the fact that if the Eagleton amendment is adopted without the exception I have presented in my amendment, it seems to me it might be an incentive to the Communist forces and the North Vietnamese forces in Laos to resume their military activities there.

Therefore, I feel that, so far as the situation in Laos is concerned, there is danger that if we adopt the Eagleton amendment without amendment No. 153, the cease-fire in Laos may be jeopardized.

My concern today, is Cambodia.

The United States is currently conducting air operations in Cambodia on three basic levels: First, tactical air support operations for Cambodian Government troops involved in fighting against Khmer Communist forces, which, incidentally, are largely North Vietnam directed. I do believe that those forces, which are basically Khmer or Communist forces should not be the target of U.S. bombing.

The second category of air operations which the United States has been conducting in Cambodia relates to air support through B–52's for the same objective.

In other words, support operations for Cambodian troops involved in fighting against other Cambodians. I would not exempt this type of bombing from the prohibitions of the Eagleton amendment.

The third, and the key aspect of air operations which we have been carrying on, is tactical air operations and B–52 bombings directed against North Vietnamese troops and supplies. The intention of my amendment would be to permit discretion—not mandate, of course, but discretion—for the President and those under him in the Armed Forces at his command to use, and threaten to use B–52 bombers, targeted against North Vietnamese troops and supplies in Cambodia.

The Eagleton amendment, as I understand it, would absolutely prohibit all three levels of air operations. It would be 100-percent effective. I support this approach with respect to prohibiting the first two levels of air operations, but not the third.

Incidentally, I hope the Senate will not make the mistake of believing that the Eagleton amendment, if passed and if it became law, would not be effective. Inquiries I have made of those responsible would seem to indicate that there is no doubt whatsoever, and the Senate, I think, must act on the presumption, that there is absolutely no doubt whatsoever, the Eagleton amendment would be 100-percent effective insofar as banning any activity, or even threat of activity, by the United States in the Cambodian theater.

Incidentally, with regard to that point, I suppose the remarks of the former Secretary of Defense with regard to the House committee action—and I refer to Elliot Richardson, now Attorney General—when he said the bombing would continue even if a prohibition amendment were passed, seems unoperative today.

It was directed, as I understand it, at a statement or at a position taken by the House which related solely to language then under consideration. It did not contain the language which is contained presently in the bill in section 305. Section 305, in that regard states that—

None of the funds herein appropriated under this Act or heretofore appropriated under any other Act . . .

And thereby covers the entire gamut of possible authorization of funds which would be involved.

I think, therefore, the Richardson statement should not be considered by the Senate in any way to be related to what the effect of the Eagleton amendment would be if it is adopted in its present form without the exception.

The United States must not become involved in another "Vietnam"—the internal affairs of Cambodians must be solved by Cambodians. But the peace agreement must be supported.

Mr. President, there are 35,000 North Vietnamese troops still in Cambodia contrary to the provisions of article 20. And the only effective sanction which the United States has in the negotiations is the threat of air operations in Cambodia and Laos.

There are territorial considerations the Senate should consider.

The first is that the entire northeast section, the so-called freedom deal area of Cambodia, is for all practical purposes an area different from the rest of Cambodia insofar as military operations are concerned.

It is the area immediately adjacent to South Vietnam. In that area the strikes have been almost entirely B–52 strikes. It is not a tactical operation, as I understand it. There are practically none of the government forces of Cambodia in that area. The entire forces in the area are North Vietnamese forces. These areas are used to stage military action against South Vietnam.

As to the area of the actual control of the bombing, the report of the staff of the Subcommittee on U.S. Security Agreements and Commitments Abroad, a subcommittee of the Foreign Relations Committee of the Senate, under date of April 27, state that it is almost entirely in the hands of the United States. It does have the ultimate approval of the Khmer Republic officials. But it does not start with them.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. TAFT. Mr. President, I yield myself an additional 5 minutes.

The PRESIDING OFFICER. The Senator from Ohio is recognized for an additional 5 minutes.

Mr. TAFT. Mr. President, there are very few civilians actually living in these areas. It is an extremely remote and mountainous area. The Ho Chi Minh Trail comes through this area. The bombing has been quite useful in interdicting the flow of men and supplies.

I think it is important to say how I arrived at this amendment and the administration's position with regard to my amendment.

I arrived at my amendment after a comprehensive study of the documents available to me, not classified documents. The basic documents involve the peace agreement. The basic information I was able to get came from a large part from the newspapers.

I then drafted the amendment with no consultation with the administration, the State Department, the Defense Department, or representatives of the White House. I have used no documents other than those gathered on my own part. I have attempted to obtain from the administration information which would be valuable to me in ascertaining whether the position I have taken is sound. However, they have taken no position in favor of this amendment. I think if it is accepted, it would be a far more acceptable solution, than would the Eagleton amendment which offers no compromise or latitude whatsoever.

It is a congressional initiative. It is not the administrative initiative. I would like to make that absolutely clear.

The administration's views are such that if the U.S. military involvement in internal problems in Cambodia and Laos are necessary, they would come to the Congress and ask for the power to do this. This would be entirely consistent with the War Powers Resolution which I have supported.

At this point, I think this would be a tremendous mistake to pass the Eagleton amendment. If Cambodia and Laos could become a sanctuary for the North Vietnamese troops to attack South Vietnam, the United States would be powerless to act. It would be an invitation to those forces from North Vietnam to come into Cambodia.

I am concerned with the activities of the North Vietnamese troops in violation of Article 20. I do not believe that we should be restricted if at some point in the future the North Vietnamese should launch a full-scale attack on South Vietnam through Cambodia. Moreover, there is danger that a sanctuary buildup will bring about a North Vietnamese attack on South Vietnam through Cambodia would trigger an outbreak of fighting between the North Vietnamese and the South Vietnamese forces of wide proportions in Cambodia and in South Vietnam.

Mr. President, article 20 of the peace agreement in part states:

CHAPTER VII: REGARDING CAMBODIA AND LAOS

ARTICLE 20

(a) The parties participating in the Paris Conference on Vietnam shall strictly respect the 1954 Geneva Agreements on Cambodia and the 1962 Geneva Agreements on Laos, which recognized the Cambodian and the Lao peoples' fundamental national rights, i.e., the independence, sovereignty, unity, and territorial integrity of these countries. The parties shall respect the neutrality of Cambodia and Laos.

Article 20 continues:

The parties participating in the Paris Conference on Vietnam undertake to refrain from using the territory of Cambodia and the territory of Laos to encroach on the sovereignty and security of one another and of other countries.

(b) Foreign countries shall put an end to all military activities in Camobdia and Laos, totally withdraw from and refrain from reintroducing into these two countries troops, military advisers and military personnel, armaments, munitions and war material.

(c) The internal affairs of Cambodia and Laos shall be settled by the people of each of these countries without foreign interference.

(d) The problems existing between the Indochinese countries shall be settled by the Indochinese parties on the basis of respect for each other's independence, sovereignty, and territorial integrity, and noninterference in each other's internal affairs.

These conditions and contracts have been violated and are being violated continually by the North Vietnamese forces. For us to tie our hands unilaterally is to say we accept de facto what the North Vietnamese have been doing in violation of the agreement.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. TAFT. Mr. President, I yield myself an additional 5 minutes.

The PRESIDING OFFICER. The Senator from Ohio is recognized for an additional 5 minutes.

Mr. TAFT. Mr. President, I interpret this article as stating that both the United States and North Vietnam should stay out of Cambodia and Laos militarily and also not become involved in the internal affairs of either country. I believe the Eagleton language as limited by my amendment would be helpful. In fact needed in light of some of the current U.S. military activities in Cambodia. I deeply fear what will happen, however, if the United States should unilaterally say we will take no action whatsoever in Cambodia, no matter what North Vietnam does. If massive military action is taken by North Vietnamese troops in Cambodia, do we do nothing? We would be prohibited from acting, as I read section 305. I believe to be honest with ourselves we must answer this question and also consider what effect passage of section 305, unamended, might have on Dr. Kissinger's recent and forthcoming efforts. These negotiations show many signs of reaching new understandings with the North Vietnamese and should strengthen the Vietnam cease-fire agreement. The Congress should at least consider the results of these negotiations before any unilateral action is taken.

Secretary Rogers, in his statement to the foreign relations committee on April 30, stated as follows:

At the time the Vietnam Agreement was concluded, the United States made clear to the North Vietnamese that the armed forces of the Khmer Government would suspend all offensive operations and that the United States aircraft supporting them would do likewise. We stated that, if the the other side reciprocated, a "de facto" cease-fire would thereby be brought into force in Cambodia. However, we also stated that, if the communist forces carried out attacks, government forces and United States air forces would have to take necessary counter measures and that, in that event, we would continue to carry out air strikes in Cambodia as necessary until such a time as a cease-fire could be brought into effect. These statements were based on our conviction that it was essential for Hanoi to understand that continuance of the hostilities in Cambodia and Laos would not be in its interests or in our interest and that compliance with Article 20 of the Agreement would have to be reciprocal.

That ends the statement I wish to quote of Secretary Rogers before the Foreign Relations Committee.

Pursuant to that policy, we did suspend all bombing for a period of 10 days after the January 27 agreement.

However, the North Vietnamese did not respond by commencing to withdraw their troops. In fact, quite the contrary, they almost seem to have speeded up and brought in more troops and more supplies during that period.

If compliance is not reciprocal, it seems clear that our sanctions, insofar as the North Vietnamese are concerned, are clearly restricted.

It is not my intent in offering this amendment to permit an "out" for air operations to be conducted in all parts of Cambodia by the mere assertion by the administration that North Vietnamese troops may be involved. Intelligence reports and proof would have to be furnished. Practically, Cambodian forces are only actively fighting in limited geographic regions of the country—roughly the southern Mekong and Phnom Penh area. U.S. air support operations would be prohibited in these areas unless North Vietnamese troops were directly involved in the fighting. This does not appear to be the case at present. I am concerned most basically about supply corridors and staging areas along the Cambodian-South Vietnam border and the upper Mekong. I believe our intelligence apparatus should be sophisticated enough to determine where North Vietnamese troops are and to contain any U.S. air operations to these sectors.

I realize of course there is strong public pressure for a total cessation of U.S. involvement in Southeast Asia—this approach is simplistic and easily understood. The fact remains, however, that a peace agreement was negotiated with the North Vietnamese and this country cannot merely turn its back on the facts due to impatience.

The tedious and complex task of implementing peace agreements throughout history has not been very popular politically. This is especially true with regard to Vietnam, but if the efforts of our men in Southeast Asia are to have meant anything, the peace agreement should be conscientiously maintained.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. SYMINGTON. Mr. President, will the able junior Senator from Missouri yield me 5 minutes?

Mr. EAGLETON. I yield 5 minutes to my colleague from Missouri.

The PRESIDING OFFICER. Is the Senator from Missouri acting for the Senator from Arkansas?

Mr. MANSFIELD. Yes.

BOMBING OF CAMBODIA

Mr. SYMINGTON. Mr. President, there are many compelling reasons of national interest why our country should not be conducting bombing operations in Cambodia today. I would talk about one of those; namely, the authority.

Section 8 of article I of the U.S. Constitution gives to the Congress the sole right to declare war. We are clearly engaged in conducting a war in Cambodia today, no matter how it is variously described by those apologists who favor our present policy. The fact is that hundreds of our planes are engaged in daily operations over Cambodia and thousands of tons of bombs have been dropped. President Nixon has ordered this bombing in Cambodia, although he cannot but be aware that he does so without any authority from the Congress.

Throughout our lengthy and tragic involvement in Indochina, different theories have been advanced from time to time to justify our conduct of military operations in that part of the world.

It has been suggested that the SEATO Treaty authorizes such military activity.

It appears to me that this is clearly incorrect. Cambodia is not a signatory of the SEATO Treaty but is a protocol state for purposes of article IV. That article provides that where such state is a subject of "aggression by means of armed attack," each Party "will in that event act to meet the common danger in accordance with its constitutional processes." Obviously, the appropriate constitutional process under these circumstances would be to submit the matter to Congress so that it might determine if it was proper for war to be declared.

At one time, it was contended that our military activities in Indochina were sanctioned by the Senate Gulf of Tonkin Resolution. This authority cannot be utilized at the present time, however, because the Gulf of Tonkin Resolution was repealed months before the present military activity was ordered by the President.

On many occasions these past years, President Nixon has justified military activity in Southeast Asia on the basis that it was necessary to protect the lives of the members of our military forces in the area. This justification was dramatized by the statement of President Nixon on June 3, 1970, when he said:

The only remaining American activity in Cambodia after July 1st will be air missions to interdict the movement of enemy troops and material where I find that it is necessary to protect the lives and security of our men in South Vietnam.

The obvious interpretation of this language is that there would be no justification for the bombing in Cambodia after we have withdrawn our military forces from South Vietnam.

The constitutional authority of the President as Commander in Chief provides no justification for the present exercise of pre-emptory authority where Congress has sanctioned no military involvement and where no emergency exists which threatens our national security. Indeed, by categorical legislative enactment, the Congress has declared that our military forces should not be recommitted in that country. The latest theory advanced to sanction the bombing is that it is necessary in order to encourage compliance of article 20 of the Executive agreement, the purpose of which was to end the hostilities in Indochina. Careful reading of that agreement fails to disclose any authority for the United States to bomb in Cambodia. In addition to that, the agreement was never submitted to the Congress for approval and it does not have the dignity of a treaty. No "bootstraps" doctrine can

be condoned whereby unilateral executive fiat is sought to be utilized to support Presidential usurpation of congressional constitutional authority to wage war.

To recapitulate, it is clear that none of the reasons advanced through the years and down to today are operable at this time in bestowing the right upon the President to engage in this activity. It appears clear that no authority exists, in either our Constitution or our statutes, for the conduct of bombing operations in Cambodia.

Mr. President, it is for these reasons that I support without reservation the amendment of my distinguished colleague (Mr. EAGLETON), who has done so much to present this problem and this situation in detail to the people of the United States as well as the Members of the Senate.

I thank my colleague for yielding.

Mr. EAGLETON. I thank the distinguished senior Senator from Missouri. I yield 4 minutes to the Senator from Utah.

Mr. MOSS. Mr. President, I thank the Senator for permitting me to speak briefly at this point.

I, too, support the Eagleton amendment, and wish to be recorded as for it. But the matter that is directly before the Senate is the amendment of the Senator from Ohio (Mr. TAFT), and in his amendment he seeks to limit the bombing, as I understand the amendment, to where the North Vietnamese forces are engaged.

In the first place, I do not know what kind of intelligence we have, by which we could be sure that we were bombing where the North Vietnamese were engaged. It seems to me his amendment is simply a derogation of the Eagleton provision, which the Senate apparently very strongly supports, as indicated by the vote on the point of order.

I think it would be a grave mistake to try to place on the President or on the military a selective sort of bit as to when they could bomb and when they could not bomb, when what we want to do is terminate all of the bombing in Southeast Asia, and particularly now over the country of Cambodia.

Mr. President, yesterday we debated on this floor the authorization bill for the U.S. Information Agency, and we had a very spirited debate and cut it some $12 million below what they were given by appropriation last year. It was felt that we ought to do that because of the great expenditure overseas.

The USIA is engaged in an educational mission of libraries, filmstrips, exhibits, and cultural exchanges with other countries, trying to communicate with the peoples of the world, yet we have felt constrained to take away some of that money. Now we are participating in a civil war where perhaps one bombing raid would cost as much as the amount we cut out of the annual authorization bill of the USIA. We are still wasting vast amounts of money over there, devastating the land of a people with whom we are not at war, a people not a part of the issue which brought us to Southeast Asia in the first place. We are doing it simply on the pretext that, some way or other, the North Vietnamese influence is coming into Cambodia.

Maybe it is. Maybe the Cambodians are engaged in a civil war. I think that they are. I think that the Khmer Rouge, as they are called, are a great element of the population of Cambodia and that the Government of Cambodia is a makeshift affair, in which we seem to have had a hand in choosing who would be its leader. However, it certainly is not self-determination that is being made in Cambodia today.

The decision has been made long since by this country that we are to get out of Indochina and, therefore, I cannot understand why the President holds on and on and on to continue warfare, to continue destruction in that country, with no objective in the end that is in the self-interest of the United States.

What are we going to accomplish? Suppose we did prop up the present Government of Cambodia for a period of another 6 months? What effect would that have on the United States? What will it mean to us? I believe that the effect will be negative because our sole accomplishment is one of destruction and death in an area where we have long since decided it was a mistake for us to have been in in the first place.

Therefore, I strongly support the basic amendment that we are discussing in the bill, and I oppose the amendment of the Senator from Ohio (Mr. TAFT). I believe that Congress must use every weapon at its command to say to the President, "We want no more of this insane war in Southeast Asia."

Mr. President, I yield the floor.

Mr. EAGLETON. Mr. President, may I be recognized?

The PRESIDING OFFICER (Mr. NUNN). The Senator from Missouri is recognized.

Mr. EAGLETON. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. 20 minutes.

Mr. EAGLETON. Mr. President, I yield myself 8 minutes.

Mr. President, the Senator from Ohio has proposed an amendment which would require the most accurate and sophisticated intelligence estimates available to carry it out. He states that Congress should authorize bombing only of North Vietnamese forces in Cambodia. I suggest that even in a tactical military sense, this approach is impractical considering our current posture in Cambodia.

According to official administration estimates, there are 30,000–35,000 North Vietnamese forces in Cambodia. Again, according to the administration, all but 5,000 of these forces are support troops. Approximately 30,000 support forces are located in the border sanctuary areas supplying Vietcong and North Vietnamese battalions in South Vietnam—3,000 of the combatants are also in the sanctuary areas. That leaves 2,000 combatants who are fighting with Cambodian Communist forces.

It is my understanding that these 2,000 troops are now in three areas of Cambodia. There is what is known as a "Zapper" training camp in Phnon Penh area—this is a camp which trains commando forces. There is an infantry unit in the northern part of Cambodia and there are small artillery units along the Mekong River assisting the Cambodian Communists in attacks against ships attempting to supply Phnon Penh.

It should be emphasized that all of the 2,000 combatants directly assisting Cambodian forces are highly mobile. In other words, what may be hard intelligence on their location, on a given day, could be false information on the next day. It should also be stressed that the figures I have used are figures supplied by the administration, figures which have been criticized by many as being grossly inflated.

In considering the amendment of the Senator from Ohio, we should understand the difficulty we have in assuring the effectiveness and the accuracy of our bombing raids. Especially in an agrarian country such as Cambodia, where landmarks are not easily found, it is imperative that we have accurate ground control direction for our bombers. We have no ground forces in Cambodia, so we must depend solely upon Cambodian forces for this direction. This is the element which makes our bombing extremely inaccurate.

First, the Cambodians have no ability to send coded messages. Approximately 90 percent of the messages to our B–52's are intercepted and when the B–52's arrive from Thailand or Guam, the coordinates that they have been given many hours before are normally occupied only by the innocent few who have no access to the intercepted radio message.

The only form of bombing that may be effective, therefore, is on-the-scene tactical bombing when our Cambodian allies are directly engaged with insurgent units. But then the problem becomes one of language. Having no Americans on the ground, we are then forced to attempt communications between Cambodians who cannot speak English and American pilots who cannot speak Cambodian.

If there is any kind of effective bombing in Cambodia—and I doubt whether there is—it is the so-called carpet bombing along the Mekong River in support of supply ships. But even with this heavy-handed type of bombing, insurgent artillery is still capable of rendering great damage to the supply ships.

Furthermore, the incredible expense in protecting a convoy of ships on the Mekong River cannot continue to be supported by the United States over any extended period of time—we simply cannot afford it.

Mr. President, in essence, what the Taft amendment would do—and I believe that the Senator from Ohio was highly motivated in the presentation of his amendment—would be to sanctify by legislation article 20 of the Paris agreement. The Paris agreement was signed by the North Vietnamese, the South Vietnamese, and ourselves; it was not signed by the Cambodians. They have no standard insofar as trying to legalize a war in Cambodia is concerned. It was my emphasis, and the point stressed so well by my distinguished colleague, Mr. SYMINGTON, that there is not one whit of legal authority for what we are doing in Cambodia today.

By no stretch of the imagination, or any constitutional precept, is there any

authority for doing what the President is doing there today.

What the Taft amendment would do, if agreed to, would be to make article 20 of the agreement in Paris the codified law of the United States. It would, perhaps, unwittingly, be another Gulf of Tonkin Resolution insofar as the Cambodian war is concerned. It would authorize indefinite American participation in air raids over Cambodia for the purpose of seeking out North Vietnamese troops wherever our military commanders think they might be. Under this open-ended authority, the President would then have the unilateral authority, to bomb, bomb, and bomb ad infinitum.

Rather than being a step forward in favor of peace and in favor of ending American involvement in Southeast Asia—which is the intent of all of us, I take it—this would be a new authorization in a new cloak, to renew American activities in Southeast Asia.

Therefore, Mr. President, I must oppose the Taft amendment.

Mr. TOWER. Mr. President, any failure on our part to adopt the Eagleton amendment without the Taft amendment or something comparable to it would be to treat the peace accord as a scrap of paper; because they mean to violate it any time they can get away with it, and if we shackle the President, they will get away with it.

Not only have they been in noncompliance with article 20—and I thank the distinguished Senator from Ohio for his very closely reasoned and impeccable argument—but also, they are in violation of article 7, which reads:

> From the enforcement of the cease-fire to the formation of the government provided for in Articles 9(b) and 14 of this Agreement, the two South Vietnamese parties shall not accept the introduction of troops, military advisers, and military personnel including technical military personnel, armaments, munitions, and war material into South Vietnam.
>
> The two South Vietnamese parties shall be permitted to make periodic replacement of armaments, munitions and war material which have been destroyed, damaged, worn out or used up after the cease-fire, on the basis of piece-for-piece, of the same characteristics and properties, under the supervision of the Joint Military Commission of the two South Vietnamese parties and of the International Commission of Control and Supervision.

That provision has not been complied with by North Vietnam. They are resupplying their forces in South Vietnam and are doing it in large measure through Laos. If we hamstring the President, they are going to continue to operate these supply routes through Laos, and they are going to reopen their old supply routes through Cambodia, because there will be absolutely nothing to stop them. We can see that then the whole peace agreement will be meaningless, because then North Vietnam, at such time they feel logistically capable, will resume the war against South Vietnam, and we will have lost the peace in Southeast Asia.

The way the Eagleton amendment now reads, we could not even go in and evacuate American civilians from Cambodia and Laos. We would be prohibited from doing so.

The Senator from Ohio has correctly pointed out that the only reason we have a cease-fire in Laos is because of air strikes against the Pathet Lao; and for "Pathet Lao" we should read "North Vietnamese," because the Pathet Lao could not fight their way out of a wet paper bag without the North Vietnamese.

Let us realize the realities of the situation and for goodness sake allow the President some flexibility in his efforts to establish a real and meaningful cease-fire in Southeast Asia and in Mr. Kissinger's efforts to negotiate the same in Paris.

The PRESIDING OFFICER. Who yields time?

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

Mr. EAGLETON. I yield.

Mr. MANSFIELD. Mr. President, I have appreciated the arguments by the sponsor of the amendment, the distinguished Senator from Ohio (Mr. TAFT), but I have appreciated more the rebuttal by the distinguished Senator from Missouri (Mr. EAGLETON).

Senator EAGLETON has pointed out that if you approve an amendment of this kind, you are in effect creating another Gulf of Tonkin Resolution. You are giving your acquiescence, your approval, to what the President is now doing on an illegal and unconstitutional basis.

He has no justification, legal, constitutional or otherwise. Article 20 of the Paris agreements is not justification. There is no justification under SEATO. He has no justification as Commander in Chief. He has no justification because there are U.S. troops in South Vietnam or U.S. prisoners of war in South and North Vietnam—perhaps Cambodia and Laos—because they all have been brought home. But, there may be new prisoners of war in Cambodia on the basis of the bombings which are now taking place.

What we are doing, regardless of any agreement reached in Paris or any article in that agreement, is involving ourselves in a civil war. There is no question about that. The solution will not be through military means.

I happened to see a cartoon in a paper the other day, and it shows bombs dropping on people all over in Cambodia. The caption is, "Unless they keep bombing us, the cease-fire might fall apart."

As I say, a military solution is not the answer, unless you want to keep on killing civilians primarily, unless you want to craterize Cambodia, unless you want to further devastate that beautiful, that peaceful, that hapless land.

I think we might as well face the fact that if there is going to be a solution, it is going to be diplomatic. What we do here in this Chamber now will make little or no difference, because what the House has done, what the Senate Appropriations Committee has done, and what the Senate did on Tuesday last are all indications of how the people in this country feel, how their representatives vote, and how we react to the present situation. Bombers, airlifts, and river convoys are not the answer.

The distinguished Senator from Ohio indicated—and I think I quote him correctly—that this amendment would continue to "give discretion to the President and those under him." Those under him doing what? Another General Lavalle, who can take into his own hands what he thinks a decision should be and have it carried out contrary to the direct orders of the Commander in Chief? I think not.

The distinguished Senator from Ohio also said that "the Eagleton amendment would be 100-percent effective."

The Senator from Ohio is absolutely correct, because that is the intent and the purpose of the Eagleton amendment—to do away with bombing completely and to get out of Cambodia and Southeast Asia.

How do you differentiate between a North Vietnamese and a Cambodian, from the air, as the Taft amendment purports to do? Do you just go to the northeast part of Cambodia, where supposedly the North Vietnamese are most highly concentrated? Are no Cambodian civilians there? This is a hard one to figure out, because even with the best kind of pinpoint bombing, it is most difficult to differentiate between a North Vietnamese and a Cambodian.

The distinguished Senator from Texas said that if we pass the Eagleton amendment we will "hamstring the President." I do not think so. I think we will be facing up to our responsibility as Members of a branch coequal with the executive branch, and I would point out that this body, the Senate, and the Congress, have something to say in the making of war, and that is what this is in Cambodia; we have a responsibility which I think we should not shirk at this time.

We have all read in the newspapers this morning something to the effect that among U.S. pilots and crews, both at Utapao Air Base in Thailand and at Anderson Field in Guam, there is a morale problem. We have been reading that some of these people look upon themselves as being treated as "mercenaries" and some of us have received letters using those same words.

So I would hope that this back door approach to a Gulf of Tonkin resolution which would give acquiescence and approval to an illegal and unconstitutional act by the President of the United States at this time would not be agreed to, because if we are ever going to face up to this issue and do something about it, the time is now.

The PRESIDING OFFICER. Who yields time,

Mr. TAFT. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator is recognized for 5 minutes.

Mr. TAFT. Mr. President, a number of statements have been made that I think should be commented upon with regard to this question.

The thing that I think most crucial and that all of us must understand in voting on this difficult measure today is presented very ably by the distinguished majority leader. He said the solution of the war in Southeast Asia will not be one brought by arms—it will be a negotiated one. I agree with him and I agree with him completely that it must be negotiated one, but the chances of carry-

ing out and implementing a successful negotiated settlement in Southeast Asia today will be nil if we tie the hands of the President of the United States.

Time after time Communist forces and Communist nations in Southeast Asia have shown they understand very well that war and negotiation are one as far as they are concerned. They do not hesitate to the use of military force to accomplish their goal.

The only reason we have a peace agreement, which was referred to as a piece of paper without dignity earlier today, was by maintaining the option for use of air operations in Southeast Asia. This so-called paper was responsible for bringing back over 500 of our POW's from Southeast Asia and was responsible for getting off the ground a peace agreement. It was related to bombing by B–52's, and no one can deny it in North Vietnam. The achievement of the cease-fire in Laos was related to the fact that we were using the Air Force against the North Vietnamese in Laos. In Cambodia the same thing is true.

If we tie the hands of the President the chance of a negotiated settlement, with the North Vietnamese in control of Communist forces, is not probable; it is perfectly obvious they will not arrive at any negotiated settlement. They have no reason to do so. They can continue to build up sanctuaries across the border. Encouraging the South Vietnamese to protect themselves, will be more difficult.

It has been suggested that there cannot be any identification of North Vietnamese forces. Admittedly, this is not easy. But I feel confident to a great degree that there can be identification. As I pointed out, those who are familiar with the Khmer Rouge forces of the Cambodian force know that they are all dispersed in the central area, around Phnom Penh and the southern Mekong area. There may be some North Vietnamese forces there, too.

The distinguished junior Senator from Missouri (Mr. EAGLETON) really made my point for me, so far as identification is concerned, in talking about artillery units. The only artillery units there today are artillery units being used by the North Vietnamese. The only additional units that are being used in shelling are units that come up the Mekong—the North Vietnamese units.

If we prevent our Air Force units from making an attack upon them, we hurt efforts for peace in Southeast Asia.

I should like to have the Senator from Missouri comment, when he takes the floor, on whether he would take exception to his amendment covering just one of these areas of Cambodia, because I think that would be of great assistance. I would be willing to amend my amendment—I have not asked for the yeas and nays yet—to make that possible. I do not believe the Senator or those who will vote with him are willing to go that far. They want to make it an issue between the President and the Congress. They should not do that. This is a matter of general public and human interest involved here.

Mr. EAGLETON. Mr. President, I would not be willing to accept that proposal. It is my intention to stay with my amendment until we withdraw all our forces from Southeast Asia, and not to try to delineate a small part of a country in northwest or southwest Cambodia or Phnom Penh. We do not want to authorize a new war or to prolong the old one in any way, shape, or form. That is the great danger of the Taft amendment.

Read article XX of the Paris agreement, to which Cambodia is not a part, and in which they did not participate. They want to build on that a new authority, to codify it into the law of our Nation. That would make this amendment a new Gulf of Tonkin resolution.

So far as I am concerned, I am not for declaring a new war, even a mini-war, in any sector of Cambodia or Southeast Asia.

Mr. President, how much time is remaining on my side?

The PRESIDING OFFICER. The Senator from Missouri has 3 minutes remaining.

Mr. EAGLETON. I yield 1 minute to the Senator from Massachusetts.

Mr. KENNEDY. Mr. President, from listening to the debate, I think the amendment fails to realize the true impact of the bombing of Cambodia in recent times. If our policy was only to engage the military element in Cambodia, North Vietnam, and Khmer Rouge that have been threatening the government, the fact remains that it has also helped to create some 3 million refugees and some 200,000 orphans in Cambodia.

If our bombing policy is only to engage the military element, we are doing a pretty shabby job, because the statistics show that we are killing civilians and creating large numbers of refugees as well. A great human tragedy has been experienced by the innocent of Cambodia. It is a tragedy that is being created by American bombers. The Taft amendment fails to address itself to the enormous tragedy that has taken place among the civilians in Indochina.

The Defense Department has said time and time again that our bombing policy is directed only to military targets, but all we have to do is look at the various refugee reports, the GAO reports, the U.S. official reports, the AID reports, to see how our bombing policy has resulted in more refugees, civilian casualties, and orphans in Cambodia, as well as in North Vietnam and Laos, as a result of so-called military bombing.

The Taft amendment fails to address this whole problem. That, along with the reasons outlined by the majority leader and the Senator from Missouri is sufficient to defeat the amendment.

The PRESIDING OFFICER. Who yields time?

Mr. TAFT. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Missouri has 1 minute left.

Mr. EAGLETON. Mr. President, I yield that 1 minute to the distinguished majority leader.

Mr. MANSFIELD. Mr. President, I think the answer to Cambodia is not a bombing continuation, not even the confining of the bombing to a particular corner of Cambodia. I think the best way to bring the Cambodian situation to a successful conclusion is to invite Prince Norodom Sihanouk to meet with Cambodian officials, if he will, and if not, then to meet with U.S. officials, because I think he is the one man who can restore stability, peace, and neutrality to that country.

If we are interested in bringing about an end of the war in Cambodia, we can do it, I think, through using our good offices in relation to this man, and not by a continuation of the bombing.

Mr. PERCY. Mr. President, I fully appreciate the good intentions of the Senator from Ohio in offering this amendment. I share his desire to bring Hanoi into compliance with the terms of the cease-fire agreement. However, I cannot believe that U.S. air operations over Cambodia will compel Hanoi to alter its policies. Cambodia cannot be saved by air operations so long as its government in Phnom Penh cannot inspire countrywide support. And the North Vietnamese forces in Cambodia are only a fraction of the total forces aligned against the Phnom Penh Government.

I have long counseled that U.S. combat activities in Indochina should be brought to a halt so there will be no further Americans taken prisoner or lost in action or killed, and so there will be no further American responsibility for widespread death and injury among the civilian population. Let us end the bombing.

The PRESIDING OFFICER. All time on the amendment has expired.

The question is on agreeing to the amendment to the committee amendment on page 58. The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. FANNIN (after having voted in the affirmative). On this vote, I have a pair with the Senator from Connecticut (Mr. WEICKER). If he were present and voting, he would vote "nay." If I were at liberty to vote, I would vote "yea." I withdraw my vote.

Mr. ROBERT C. BYRD. I announce that the Senator from Nevada (Mr. BIBLE), the Senator from Nevada (Mr. CANNON), the Senator from Idaho (Mr. CHURCH), the Senator from North Carolina (Mr. ERVIN), the Senator from Wyoming (Mr. MCGEE), the Senator from New Mexico (Mr. MONTOYA), the Senator from Connecticut (Mr. RIBICOFF), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

I further announce that the Senator from Alabama (Mr. ALLEN) and the Senator from Colorado (Mr. HASKELL) are absent on official business.

I also announce that the Senator from Mississippi (Mr. STENNIS) is absent because of illness.

I further announce that the Senator from Maine (Mr. MUSKIE) is absent because of a death in the family.

I further announce that, if present and voting, the Senator from Idaho (Mr. CHURCH), the Senator from Colorado (Mr. HASKELL), the Senator from New Mexico (Mr. MONTOYA), the Senator from Connecticut (Mr. RIBICOFF), the Senator from Nevada (Mr. CANNON),

and the Senator from Nevada (Mr. BIBLE) would each vote "nay."

Mr. GRIFFIN. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Utah (Mr. BENNETT), the Senator from Colorado (Mr. DOMINICK), the Senator from Hawaii (Mr. FONG), and the Senator from Connecticut (Mr. WEICKER) are necessarily absent.

The Senator from Arizona (Mr. GOLDWATER) is absent by leave of the Senate on official business.

The Senator from New Hampshire (Mr. COTTON) is absent because of illness in his family.

The pair of the Senator from Connecticut (Mr. WEICKER) has been previously announced.

The result was announced—yeas 17, nays 63, as follows:

[No. 160 Leg.]

YEAS—17

Brock	Hansen	Scott, Pa.
Buckley	Helms	Scott, Va.
Curtis	Hruska	Taft
Dole	Jackson	Thurmond
Eastland	Long	Tower
Griffin	Roth	

NAYS—63

Abourezk	Gurney	Moss
Aiken	Hart	Nelson
Bartlett	Hartke	Nunn
Bayh	Hatfield	Packwood
Beall	Hathaway	Pastore
Bellmon	Hollings	Pearson
Bentsen	Huddleston	Pell
Biden	Hughes	Percy
Brooke	Humphrey	Proxmire
Burdick	Inouye	Randolph
Byrd, Harry F., Jr.	Javits	Saxbe
Byrd, Robert C.	Johnston	Schweiker
Case	Kennedy	Sparkman
Chiles	Magnuson	Stafford
Clark	Mansfield	Stevens
Cook	Mathias	Stevenson
Cranston	McClellan	Symington
Domenici	McClure	Tunney
Eagleton	McGovern	Williams
Fulbright	McIntyre	Young
Gravel	Metcalf	
	Mondale	

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Fannin, for.

NOT VOTING—19

Allen	Dominick	Muskie
Baker	Ervin	Ribicoff
Bennett	Fong	Stennis
Bible	Goldwater	Talmadge
Cannon	Haskell	Weicker
Church	McGee	
Cotton	Montoya	

So the Taft amendment to the committee amendment was rejected.

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Berry, one of its reading clerks, announced that the House had disagreed to the amendments of the Senate to the bill (H.R. 5293) authorizing additional appropriations for the Peace Corps; agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. MORGAN, Mr. ZABLOCKI, Mr. HAYS, Mr. FASCELL, Mr. MAILLIARD, Mr. FRELINGHUYSEN, and Mr. BROOMFIELD were appointed managers on the part of the House at the conference.

The message also announced that the House had disagreed to the amendments of the Senate to the bill (H.R. 5610) to amend the Foreign Service Buildings Act, 1926, to authorize additional appropriations, and for other purposes; agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. HAYS, Mr. MORGAN, Mr. ZABLOCKI, Mr. MAILLIARD, and Mr. THOMSON of Wisconsin were appointed managers on the part of the House at the conference.

The message further announced that the House had disagreed to the amendment of the Senate to the bill (H.R. 6912) to amend the Par Value Modification Act, and for other purposes; agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. PATMAN, Mr. GONZALEZ, Mr. REUSS, Mr. MOORHEAD of Pennsylvania, Mr. REES, Mr. HANNA, Mr. YOUNG of Georgia, Mr. STARK, Mr. STEPHENS, Mr. WIDNALL, Mr. JOHNSON of Pennsylvania, Mr. J. WILLIAM STANTON, Mr. CRANE, Mr. FRENZEL, and Mr. CONLAN were appointed managers on the part of the House at the conference.

ENROLLED BILL SIGNED

The message also announced that the Speaker had affixed his signature to the enrolled bill (S. 1235) to amend Public Law 90–553 authorizing an additional appropriation for an International Center for Foreign Chanceries.

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

NATIONAL CEMETERIES ACT OF 1973

Mr. HARTKE. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 49.

The PRESIDING OFFICER (Mr. NUNN) laid before the Senate the amendment of the House of Representatives to the bill (S. 49) to amend title 38 of the United States Code in order to establish a National Cemetery System within the Veterans' Administration, and for other purposes which was to strike out all after the enacting clause, and insert:

That this Act may be cited as the "National Cemeteries Act of 1973".

SEC. 2. (a) Part II of title 38, United States Code, is amended by adding at the end thereof the following new chapter:

"CHAPTER 24—NATIONAL CEMETERIES AND MEMORIALS

"Sec.

"1000. Establishment of National Cemetery System; composition of such system; appointment of director.
"1001. Advisory committee on cemeteries and memorials.
"1002. Persons eligible for interment in national cemeteries.
"1003. Memorial areas.
"1004. Administration.
"1005. Disposition of inactive cemeteries.
"1006. Acquisition of lands.
"1007. Authority to accept and maintain suitable memorials.

"§ 1000. Establishment of National Cemetery System composition of such system; appointment of director

"(a) There shall be within the Veterans' Administration a National Cemetery System for the interment of deceased servicemen and veterans. To assist him in carrying out his responsibilities in administering the cemeteries within the System, the Administrator may appoint a Director, National Cemetery System, who shall perform such functions as may be assigned by the Administrator.

"(b) The National Cemetery System shall consist of—

"(1) national cemeteries transferred from the Department of the Army to the Veterans' Administration by the National Cemeteries Act of 1973;

"(2) cemeteries under the jurisdiction of the Veterans' Administration on the date of enactment of this chapter; and

"(3) any other cemetery, memorial, or monument transferred to the Veterans' Administration by the National Cemeteries Act of 1973, or later acquired or developed by the Administrator.

"§ 1001. Advisory Committee on Cemeteries and Memorials

"There shall be appointed by the Administrator an Advisory Committee on Cemeteries and Memorials. The Administrator shall advise and consult with the Committee from time to time with respect to the administration of the cemeteries for which he is responsible, and with respect to the selection of cemetery sites, the erection of appropriate memorials, and the adequacy of Federal burial benefits. The Committee shall make periodic reports and recommendations to the Administrator and to Congress.

"§ 1002. Persons eligible for interment in national cemeteries

"Under such regulations as the Administrator may prescribe and subject to the provisions of section 3505 of this title, the remains of the following persons may be buried in any open national cemetery in the National Cemetery System:

"(1) Any veteran (which for the purposes of this chapter includes a person who died in the active military, naval, or air service).

"(2) Any member of a Reserve component of the Armed Forces, and any member of the Army National Guard or the Air National Guard, whose death occurs under honorable conditions while he is hospitalized or undergoing treatment, at the expense of the United States, for injury or disease contracted or incurred under honorable conditions while he is performing active duty for training, inactive duty training, or undergoing that hospitalization or treatment at the expense of the United States.

"(3) Any member of the Reserve Officers' Training Corps of the Army, Navy, or Air Force whose death occurs under honorable conditions while he is—

"(A) attending an authorized training camp or on an authorized practice cruise;

"(B) performing authorized travel to or from that camp or cruise; or

"(C) hospitalized or undergoing treatment, at the expense of the United States, for injury or disease contracted or incurred under honorable conditions while he is—

"(i) attending that camp or on that cruise;

"(ii) performing that travel; or

"(iii) undergoing that hospitalization or treatment at the expense of the United States.

"(4) Any citizen of the United States who, during any war in which the United States is or has been engaged, served in the armed forces of any government allied with the United States during that war, and whose last such service terminated honorably.

"(5) The wife, husband, surviving spouse, minor child, and, in the discretion of the Administrator, unmarried adult child of any of the persons listed in paragraphs (1) through (4).

"(6) Such other persons or classes of persons as may be designated by the Administrator.

"§ 1003. Memorial areas

"(a) The Administrator shall set aside, when available, suitable areas in national cemeteries to honor the memory of members of the Armed Forces missing in action, or who died or were killed while serving in such forces and whose remains have not been

identified, have been buried at sea or have been determined to be nonrecoverable.

"(b) Under regulations prescribed by the Administrator, appropriate memorials or markers shall be erected to honor the memory of those individuals, or group of individuals, referred to in subsection (a) of this section.

"(c) All national and other veterans' cemeteries in the national cemetery system created by this Act shall be considered national shrines as a tribute to our gallant dead and, notwithstanding the provisions of any other law, the Administrator is hereby authorized to permit appropriate officials to fly the flag of the United States of America at such cemeteries twenty-four hours each day.

"§ 1004. Administration

"(a) The Administrator is authorized to make all rules and regulations which are necessary or appropriate to carry out the provisions of this chapter, and may designate those cemeteries which are considered to be national cemeteries.

"(b) In conjunction with the development and administration of cemeteries for which he is responsible, the Administrator shall provide all necessary facilities including, as necessary, superintendents' lodges, chapels, crypts, mausoleums, and columbaria.

"(c) Each grave in a national cemetery shall be marked with an appropriate marker. Such marker shall bear the name of the person buried, the number of the grave, and such other information as the Administrator shall by regulation prescribe.

"(d) There shall be kept in each national cemetery, and at the main office of the Veterans' Administration, a register of burials in each cemetery setting forth the name of each person buried in the cemetery, the number of the grave in which he is buried, and such other information as the Administrator by regulation may prescribe.

"(e) In carrying out his responsibilities under this chapter, the Administrator may contract with responsible persons, firms, or corporations for the care and maintenance of such cemeteries under his jurisdiction as he shall choose, under such terms and conditions as he may prescribe.

"(f) The Administrator is authorized to convey to any State, or political subdivision thereof, in which any national cemetery is located, all right, title, and interest of the United States in and to any Government owned or controlled approach road to such cemetery if, prior to the delivery of any instrument of conveyance, the State or political subdivision to which such conveyance is to be made notifies the Administrator in writing of its willingness to accept and maintain the road included in such conveyance. Upon the execution and delivery of such a conveyance, the jurisdiction of the United States over the road conveyed shall cease and thereafter vest in the State or political subdivision concerned.

"(g) Notwithstanding any other provision of law, the Administrator may at such time as he deems desirable, relinquish to the State in which any cemetery, monument, or memorial under his jurisdiction is located, such portion of legislative jurisdiction over the lands involved as is necessary to establish concurrent jurisdiction between the Federal Government and the State concerned. Such partial relinquishment of jurisdiction under the authority of this subsection may be made by filing with the Governor of the State involved a notice of such relinquishment and shall take effect upon acceptance thereof by the State in such manner as its laws may prescribe.

"§ 1005. Disposition of inactive cemeteries

"(a) The Administrator may transfer, with the consent of the agency concerned, any inactive cemetery, burial plot, memorial, or movement within his control to the Department of the Interior for maintenance as a national monument or park, or to any other agency of the Government. Any cemetery transferred to the Department of the Interior shall be administered by the Secretary of the Interior as a part of the National Park System and funds appropriated to the Secretary for such system shall be available for the management and operation of such cemetery.

"(b) The Administrator may also transfer and convey all right, title, and interest of the United States in or to any inactive cemetery or burial plot, or portion thereon, to any State, county, municipality, or proper agency thereof, in which or in the vicinity of which such cemetery or burial plot is located, but in the event the grantee shall cease or fail to care for and maintain the cemetery or burial plot or the graves and monuments contained therein in a manner satisfactory to the Administrator, all such right, title, and interest transferred or conveyed by the United States, shall revert to the United States.

"(c) If a cemetery not within the National Cemetery System has been or is to be discontinued, the Administrator may provide for the removal of remains from that cemetery to any cemetery within such System. He may also provide for the removal of the remains of any veteran from a place of temporary interment, or from an abandoned grave or cemetery, to a national cemetery.

"§ 1006. Acquisition of lands

"As additional lands are needed for national cemeteries, they may be acquired by the Administrator by purchase, gift (including donations from States or political subdivisions thereof), condemnation, transfer from other Federal agencies, or otherwise, as he determines to be in the best interest of the United States.

"§ 1007. Authority to accept and maintain suitable memorials

"Subject to such restrictions as he may prescribe, the Administrator may accept gifts, devises, or bequests from legitimate societies and organizations or reputable individuals, made in any manner, which are made for the purpose of beautifying national cemeteries, or are determined to be beneficial to such cemetery. He may make land available for this purpose, and may furnish such care and maintenance as he deems necessary."

(b) The table of chapters of part II and the table of parts and chapters of title 38, United States Code, are each amended by inserting immediately below

"23. Burial benefits ..... 901"

the following:

"24. National cemeteries and memorials ..... 1000".

(c) Section 5316 of title 5, United States Code, is amended by striking out:

"(131) General Counsel of the Equal Employment Oportunity Commission."

and inserting in lieu thereof the following:

"(132) General Counsel of the Equal Employment Opportunity Commission.

"(133) Director, National Cemetery System, Veterans' Administration."

SEC. 3. (a) The Administrator shall conduct a comprehensive study and submit his recommendations to Congress within six months after the convening of the first session of the Ninety-third Congress concerning:

(1) criteria which govern the development and operation of the National Cemetery System, including the concept of regional cemeteries;

(2) the relationship of the National Cemetery System to other burial benefits provided by Federal and State Governments to Servicemen and veterans;

(3) steps to be taken to conform the existing System to the recommended criteria;

(4) the private burial and funeral costs in the United States;

(5) current headstone and marker programs; and

(6) the marketing and sales practices of non-Federal cemeteries and interment facilities, or any person either acting on their behalf or selling or attempting to sell any rights, interests, or service therein, which is directed specifically toward veterans and their dependents.

(b) The Administrator shall also, in conjunction with the Secretary of Defense, conduct a comprehensive study of and submit their joint recommendations to Congress within six months after the convening of the first session of the Ninety-third Congress concerning:

(1) whether it would be advisable in carrying out the purposes of this Act to include the Arlington National Cemetery within the National Cemetery System established by this Act;

(2) the appropriateness of maintaining the present eligibility requirements for burial at Arlington National Cemetery; and

(3) the advisability of establishing another national cemetery in or near the District of Columbia.

SEC. 4. (a) Subchapter II of chapter 3 of title 38, United States Code, is amended by adding at the end thereof the following new section:

"§ 218. Standards of conduct and arrests for crimes at hospitals, domiciliaries, cemeteries, and other Veterans' Administration reservations

"(a) For the purpose of maintaining law and order and of protecting persons and property on lands (including cemeteries) and in buildings under the jurisdiction of the Veterans' Administration (and not under the control of the Administrator of General Services), the Administrator or any officer or employee of the Veterans' Administration duly authorized by him may—

"(1) make all needful rules and regulations for the governing of the property under his charge and control, and annex to such rules and regulations such reasonable penalties within the limits prescribed in subsection (b) of this section as will insure their enforcement. Such rules and regulations shall be posted in a conspicuous place on such property;

"(2) designate officers and employees of the Veterans' Administration to act as special policemen on such property and, if the Administartor deems it economical and in the public interest, with the concurrence of the head of the agency concerned, utilize the facilities and services of existing Federal law-enforcement agencies, and, with the consent of any State or local agency, utilize the facilities and services of such State or local law-enforcement agencies; and

"(3) employer officers or employees of the Veterans' Administration who have been duly authorized to perform investigative functions to act as special investigators and to carry firearms, whether on Federal property or in travel status. Such special investigators shall have, while on real property under the charge and control of the Veterans' Administration, the power to enforce Federal laws for the protection of persons and property and the power to enforce rules and regulations issued under subsection (a) (1) of this section. Any such special investigator may make an arrest with or without a warrant for any offense committed upon such property in his presence or if he has reasonable ground to believe (A) the offense constitutes a felony under the laws of the United States, and (B) that the person to be arrested is guilty of that offense.

"(b) Whoever shall violate any rule or regulation issued pursuant to subsection (a) (1) of this section shall be fined not more than $50 or imprisoned not more than thirty days, or both."

(b) Section 625 of title 38, United States Code, is hereby repealed.

(c) (1) The table of sections at the begin-

ning of chapter 3 of title 38, United States Code, is amended by inserting immediately after—

"217. Studies of rehabilitation of disabled persons."

the following:

"218. Standards of conduct and arrests for crimes at hospitals, domiciliaries, cemeteries, and other Veterans' Administration reservations.".

(2) The table of sections at the beginning of chapter 17 of title 38, United States Code, is amended by striking out—

"625. Arrests for crimes in hospitals and domiciliary reservations.".

SEC. 5. (a) Chapter 23 of title 38, United States Code, is amended by—

(1) amending section 903 to read as follows:

"§ 903. Death in Veterans' Administration facility; plot allowance

"(a) Where death occurs in a Veterans' Administration facility to which the deceased was properly admitted for hospital or domiciliary care under section 610 or 611 of this title, the Administrator—

"(1) shall pay the actual cost (not to exceed $250) of the burial and funeral or, within such limits, may make contracts for such services without regard to the laws requiring advertisement for proposals for supplies and services for the Veterans' Administration; and

"(2) shall, when such a death occurs in a State, transport the body to the place of burial in the same or any other State.

"(b) In addition to the foregoing, if such a veteran, or a veteran eligible for a burial allowance under section 902 of this title, is not buried in a national cemetery or other cemetery under the jurisdiction of the United States, the Administrator, in his discretion, having due regard for the circumstances in each case, may pay a sum not exceeding $150, as a plot or interment allowance to such person as he prescribes. In any case where any part of the plot or interment expenses have been paid or assumed by a State, any agency or political subdivision of a State, or the employer of the deceased veteran, no claim for such allowance shall be allowed for more than the difference between the entire amount of the expenses incurred and the amount paid or assumed by any or all of the foregoing entities."; and

(2) adding at the end of such chapter the following new sections:

"§ 906. Headstones and markers

"(a) The Administrator shall furnish, when requested, appropriate Government headstones or markers at the expense of the United States for the unmarked graves of the following:

"(1) Any individual buried in a national cemetery or in a post cemetery.

"(2) Any individual eligible for burial in a national cemetery (but not buried there), except for those persons or classes of persons enumerated in section 1002(a)(4), (5), and (6) of this title.

"(3) Soldiers of the Union and Confederate Armies of the Civil War.

"(b) The Administrator shall furnish, when requested, an appropriate memorial headstone or marker to commemorate any veteran dying in the service, and whose remains have not been recovered or identified or were buried at sea, for placement by the applicant in a national cemetery area reserved for such purposes under the provisions of section 1003 of this title, or in any private or local cemetery.

"§ 907. Death from service-connected disability

"In any case in which a veteran dies as the result of a service-connected disability or disabilities, the Administrator, upon the request of the survivors of such veteran, shall pay the burial and funeral expenses incurred in connection with the death of the veteran in an amount not exceeding the amount authorized to be paid under section 8134(a) of title 5 in the case of a Federal employee whose death occurs as the result of an injury sustained in the performance of duty. Funeral and burial benefits provided under this section shall be in lieu of any benefits authorized under sections 902 and 903(a)(1) and (b) of this title."

(b) The table of sections at the beginning of chapter 23 of title 38, United States Code, is amended—

(1) by striking out

"903. Death in Veterans' Administration facility."

and inserting in lieu thereof

"903. Death in Veterans' Administration facility; plot allowance.";

and

(2) by adding at the end thereof the following items:

"906. Headstones and markers.

"907. Death from service-connected disdisability.".

SEC. 6. (a)(1) There are hereby transferred from the Secretary of the Army to the Administrator of Veterans' Affairs all jurisdiction over, and responsibility for, (A) all national cemeteries (except the cemetery at the United States Soldier's and Airmen's Home and Arlington National Cemetery), and (B) any other cemetery (including burial plots), memorial, or monument under the jurisdiction of the Secretary of the Army immediately preceding the effective date of this section (except the cemetery located at the United States Military Academy at West Point) which the President determines would be appropriate in carrying out the purposes of this Act.

(2) There are hereby transferred from the Secretary of the Navy and the Secretary of the Air Force to the Administrator of Veterans' Affairs all jurisdiction over, and responsibility for, any cemetery (including burial plots), memorial, or monument under the jurisdiction of either Secretary immediately preceding the effective date of this section (except those cemeteries located at the United States Naval Academy at Annapolis, the United States Naval Home Cemetery at Philadelphia, and the United States Air Force Academy at Colorado Springs) which the President determines would be appropriate in carrying out the purposes of this Act.

(b) So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds available to, or under the juristiction of, the Secretary of the Army, the Secretary of the Navy, and the Secretary of the Air Force, in connection with functions transferred by this Act, as determined by the Director of the Office of Management and Budget, are transferred to the Administrator of Veterans' Affairs.

(c) All offenses committed and all penalties and forfeitures incurred under any of the provisions of law amended or repealed by this Act may be prosecuted and punished in the same manner and with the same effect as if such amendments or repeals had not been made.

(d) All rules, regulations, orders, permits, and other privileges issued or granted by the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force with respect to the cemeteries, memorials, and monuments transferred to the Veterans' Administration by this Act, unless contrary to the provisions of such Act, shall remain in full force and effect until modified, suspended, overruled, or otherwise changed by the Administrator of Veterans' Affairs, by any court of competent jurisdiction, or by operation of law.

(e) No suit, action, or other proceeding commenced by or against any officer in his official capacity as an official of the Department of the Army, the Department of the Navy, or the Department of the Air Force with respect to functions transferred under subsection (a) or (c) of this section shall abate by reason of the enactment of this section. No cause of action by or against any such department with respect to functions transferred under such subsection (a) or by or against any officer thereof in his official capacity, shall abate by reason of the enactment of this section. Causes of actions, suits, or other proceedings may be asserted by or against the United States or such officer of the Veterans' Administration as may be appropriate and, in any litigation pending when this section takes effect, the court may at any time, upon its own motion or that of any party, enter an order which will give effect to the provisions of this subsection. If before the date this section takes effect, any such department, or officer thereof in his official capacity, is a party to a suit with respect to any function so transferred, such suit shall be continued by the Administrator of Veterans' Affairs.

SEC. 7. (a) The following provisions of law are repealed, except with respect to rights and duties that matured, penalties, liabilities, and forfeitures that were incurred, and proceedings that were begun, before the effective date of this section:

(1) Sections 4870, 4871, 4872, 4873, 4875, 4877, 4881, and 4882 of the Revised Statutes (24 U.S.C. 271, 272, 273, 274, 276, 279, 286, and 287).

(2) The Act entitled "An Act to provide for a national cemetery in every State", approved June 29, 1938 (24 U.S.C. 271a).

(3) The Act entitled "An Act to provide for selection of superintendents of national cemeteries from meritorious and trustworthy members of the Armed Forces who have been disabled in line of duty for active field service", approved March 24, 1948, as amended (24 U.S.C. 275).

(4) The proviso to the second paragraph preceding the center heading "MEDICAL DEPARTMENT" in the Act entitled "An Act making appropriations for the support of the Army for the fiscal year ending June thirtieth, eighteen hundred and seventy-seven, and for other purposes", approved July 24, 1876, as amended (24 U.S.C. 278).

(5) The Act entitled "An Act to provide for the procurement and supply of Government headstones or markers for unmarked graves of members of the Armed Forces dying in the service on or after honorable discharge therefrom, and other persons, and for other purposes", approved July 1, 1948, as amended (24 U.S.C. 279a–279c).

(6) The Act entitled "An Act to establish eligibility for burial in national cemeteries, and for other purposes", approved May 14, 1948, as amended (24 U.S.C. 281).

(7) The Act entitled "An Act to provide for the erection of appropriate markers in national cemeteries to honor the memory of members of the Armed Forces missing in action", approved August 27, 1954, as amended (24 U.S.C. 279d).

(8) The Act entitled "An Act to provide for the utilization of surplus War Department owned military real property as national cemeteries, when feasible", approved August 4, 1947 (24 U.S.C. 281a–281c).

(9) The Act entitled "An Act to preserve historic graveyards in abandoned military posts", approved July 1, 1947 (24 U.S.C. 296).

(10) The Act entitled "An Act to provide for the utilization as a national cemetery of surplus Army Department owned military real property at Fort Logan, Colorado", approved March 10, 1950 (24 U.S.C. 281d–f).

(11) The Act entitled "An Act to provide for the expansion and disposition of certain national cemeteries", approved August 10, 1950 (24 U.S.C. 281g).

(12) The ninth paragraph following the side heading "National Cemeteries" in the Act entitled "An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred and thirteen, and for other purposes", approved August 24, 1912 (24 U.S.C. 282).

(13) The fourth paragraph after the center heading "NATIONAL CEMETERIES" in title II of the Act entitled "An Act making appropriations for the military and nonmilitary activities of the War Department for the fiscal year ending June 30, 1926, and for other purposes", approved Febuarry 12, 1925 (24 U.S.C. 288).

(14) The second paragraph following the center heading "CEMETERIAL EXPENSES" in the Act entitled "An Act making appropriations for the fiscal year ending June 30, 1942, for civil functions administered by the War Department, and for other purposes", approved May 23, 1941 (24 U.S.C. 289).

(15) The first proviso to the second paragraph and all of the third paragraph following the center heading "NATIONAL CEMETERIES" in title II of the Act entitled "An Act making appropriations for the military and nonmilitary activities of the War Department for the fiscal year ending June 30, 1927, and for other purposes", approved April 15, 1926 (44 Stat. 287).

(16) The first proviso to the second paragraph and all of the third paragraph following the center heading "NATIONAL CEMETERIES" in title II of the Act entitled "An Act making appropriations for the military and nonmilitary activities of the War Department for the fiscal year ending June 30, 1928, and for other purposes", approved February 23, 1927 (44 Stat. 1138).

(17) The first proviso of the fourth paragraph and all of the fifth paragraph following the center heading "NATIONAL CEMETERIES" in title II of the Act entitled "An Act making appropriations for the military and nonmilitary activities of the War Department for the fiscal year ending June 30, 1929, and for other purposes", approved March 23, 1928 (45 Stat. 354).

(18) The first proviso to the second paragraph and all of the third paragraph following the center heading "NATIONAL CEMETERIES" in title II of the Act entitled "An Act making appropriations for the military and nonmilitary activities of the War Department for the fiscal year ending June 30, 1930, and for other purposes", approved February 28, 1929 (45 Stat. 1375).

(19) The first proviso to the paragraph immediately following the center heading "CEMETERIAL EXPENSES" in title II of the Act entitled "An Act making appropriations for the military and nonmilitary activities of the War Department for the fiscal year ending June 30, 1931, and for other purposes", approved May 2), 1930 (46 Stat. 458).

(20) The first proviso to the paragraph immediately following the center heading "CEMETERIAL EXPENSES" in title II of the Act entitled "An Act making appropriations for the military and nonmilitary activities of the War Department for the fiscal year ending June 30, 1932, and for other purposes", approved February 23, 1931 (46 Stat. 1302).

(21) The first proviso to the paragraph immediately following the center heading "CEMETERIAL EXPENSES" in title II of the Act entitled "An Act making appropriations for the military and nonmilitary activities of the War Department for the fiscal year ending June 30, 1933, and for other purposes'", approved July 14, 1932 (47 Stat. 689).

(22) The first proviso to the paragraph immediately following the center heading "CEMETERIAL EXPENSES" in title II of the Act entitled "An Act making appropriations for the military and nonmilitary activities of the War Department for the fiscal year ending June 30, 1934, and for other purposes", approved March 4, 1933 (47 Stat. 1595).

(23) The first proviso to the paragraph immediately following the center heading "CEMETERIAL EXPENSES" in title II of the Act entitled "An Act making appropriations for the military and nonmilitary activities of the War Department for the fiscal year ending June 30, 1935, and for other purposes", approved April 26, 1934 (48 Stat. 639).

(24) The first proviso to the paragraph immediately following the center heading "CEMETERIAL EXPENSES" in title II of the Act entitled "An Act making appropriations for the military and nonmilitary activities of the War Department for the fiscal year ending June 30, 1936, and for other purposes", approved April 9, 1935 (49 Stat. 145).

(25) The first proviso to the paragraph immediately following the center heading "CEMETERIAL EXPENSES" in title II of the Act entitled "An Act making appropriations for the military and nonmilitary activities of the War Department for the fiscal year ending June 30, 1937, and for other purposes", approved May 15, 1936 (49 Stat. 1305).

(26) The first proviso to the paragraph following the center heading "CEMETERIAL EXPENSES" in the Act entitled "An Act making appropriations for the fiscal year ending June 30, 1938, for civil functions administered by the War Department, and for other purposes", approved July 19, 1937 (50 Stat. 515).

(27) The first proviso to the first paragraph and all of the second paragraph following the center heading "CEMETERIAL EXPENSES" in the Act entitled "An Act making appropriations for the fiscal year ending June 30, 1939, for civil functions administered by the War Department and for other purposes", approved, June 11, 1938 (52 Stat. 668).

(28) The first proviso to the first paragraph and all of the second paragraph following the center heading "CEMETERIAL EXPENSES" in the Act entitled "An Act making appropriations for the fiscal year ending June 30, 1940, for civil functions administered by the War Department, and for other purposes", approved June 28, 1939 (53 Stat. 857).

(29) The first proviso to the first paragraph and all of the second paragraph immediately following the center heading "CEMETERIAL EXPENSES" in the Act entitled "An Act making appropriations for the fiscal year ending June 30, 1941, for civil functions administered by the War Department, and for other purposes", approved June 24, 1940 (54 Stat. 505).

(30) The first proviso to the paragraph immediately following the center heading "CEMETERIAL EXPENSES" in the Act entitled "An Act making appropriations for the fiscal year ending June 30, 1942, for civil functions administered by the War Department, and for other purposes", approved May 23, 1941 (55 Stat. 191).

(31) The first proviso to the paragraph immediately following the center heading "CEMETERIAL EXPENSES" in the Act entitled "An Act making appropriations for the fiscal year ending June 30, 1943, for civil functions administered by the War Department, and for other purposes", approved April 28, 1942 (56 Stat. 220).

(32) The first proviso to the paragraph immediately following the center heading "CEMETERIAL EXPENSES" in the Act entitled "An Act making appropriations for the fiscal year ending June 30, 1944, for civil functions administered by the War Department, and for other purposes", approved June 2, 1943 (57 Stat. 94).

(33) The first proviso to the paragraph immediately following the center heading *"Cemetery Expenses"* in the Act entitled "An Act making appropriations for the fiscal year ending June 30, 1945, for civil functions administered by the War Department, and for other purposes", approved June 26, 1944 (58 Stat. 327–328).

(34) The first proviso to the paragraph immediately following the center heading "CEMETERIAL EXPENSES" in the Act entitled "An Act making appropriations for the fiscal year ending June 30, 1946, for civil functions administered by the War Department, and for other purposes", approved March 31, 1945 (59 Stat. 39).

(35) The first proviso to the paragraph immediately following the center heading "CEMETERIAL EXPENSES" in the Act entitled "An Act making appropriations for the fiscal year ending June 30, 1947, for civil functions administered by the War Department, and for other purposes", approved May 2, 1946 (60 Stat. 161).

(36) The first proviso to the paragraph immediately following the center heading "CEMETERIAL EXPENSES" in the Act entitled "An Act making appropriations for civil functions administered by the War Department for the fiscal year ending June 30, 1948, and for other purposes", approved July 31, 1947 (61 Stat. 687).

(37) the first proviso to the paragraph immediately following the center heading "CEMETERIAL EXPENSES" in the Act entitled "An Act making appropriations for civil functions administered by the Department of the Army for the fiscal year ending June 30, 1949, and for other purposes", approved June 25, 1948 (62 Stat. 1019).

(38) The first proviso to the paragraph immediately following the center heading "CEMETERIAL EXPENSES" in the Act entitled "An Act making appropriations for civil functions administered by the Department of the Army for the fiscal year ending June 30, 1950, and for other purposes", approved October 13, 1949 (63 Stat. 846).

(39) The first proviso to the paragraph following the center heading "CEMETERIAL EXPENSES" in chapter IX of the Act entitled "An Act making appropriations for the support of the Government for the fiscal year ending June 30, 1951, and for other purposes", approved September 6, 1950 (64 Stat. 725).

(40) The first proviso to the paragraph immediately following the center heading "CEMETERIAL EXPENSES" in the Act entitled "An Act making appropriations for civil functions administered by the Department of the Army for the fiscal year ending June 30, 1952, and for other purposes", approved October 24, 1951 (65 Stat. 617).

(41) The first proviso to the paragraph immediately following the center heading "CEMETERIAL EXPENSES" in the Act entitled "An Act making appropriations for civil functions administered by the Department of the Army for the fiscal year ending June 30, 1953, and for other purposes", approved July 11, 1952 (66 Stat. 579).

(42) The first proviso to the paragraph immediately following the center heading "CEMETERIAL EXPENSES" in the Act entitled "An Act making appropriations for civil functions administered by the Department of the Army for the fiscal year ending June 30, 1954, and for other purposes", approved July 27, 1953 (24 U.S.C. 290).

(43) The first proviso to the third paragraph following the center heading "NATIONAL CEMETERIES" in title II of the Act entitled "An Act making appropriations for the military and nonmilitary activities of the War Department for the fiscal year ending June 30, 1926, and for other purposes", approved February 12, 1925 (43 Stat. 926).

(44) The first and second provisos to the paragraph immediately following the center heading "CEMETERIAL EXPENSES" in the Act entitled "An Act making appropriations for civil functions administered by the Department of the Army for the fiscal year ending June 30, 1955, and for other purposes", approved June 30, 1954 (68 Stat. 331).

(45) The first and second provisos to the paragraph immediately following the center heading "CEMETERIAL EXPENSES" in the Act entitled "An Act making appropriations for the Atomic Energy Commission, the Tennessee Valley Authority, certain agencies of the Department of the Interior, and civil functions administered by the Department of the Army, for the fiscal year ending June 30, 1956, and for other purposes", approved July 15, 1955 (69 Stat. 360).

(46) The first and second provisos to the paragraph immediately following the center heading "CEMETERIAL EXPENSES" in the Act entitled "An Act making appropriations for the Tennessee Valley Authority, certain agencies of the Department of the Interior, and civil functions administered by the Depart-

ment of the Army, for the fiscal year ending June 30, 1957, and for other purposes", approved July 2, 1956 (70 Stat. 474).

(47) The third proviso to the paragraph immediately following the center heading "CEMETERIAL EXPENSES" in the Act entitled "An Act making appropriations for civil functions administered by the Department of the Army and certain agencies of the Department of the Interior, for the fiscal year ending June 30, 1958, and for other purposes", approved August 26, 1957 (71 Stat. 416).

(48) The third proviso to the paragraph immediately following the center heading "CEMETERIAL EXPENSES" in the Act entitled "An Act making appropriations for civil functions administered by the Department of the Army, certain agencies of the Department of the Interior, and the Tennessee Valley Authority, for the fiscal year ending June 30, 1959, and for other purposes", approved September 2, 1958 (72 Stat. 1572).

(49) The third proviso to the paragraph immediately following the center heading "CEMETERIAL EXPENSES" in the Act entitled "An Act making appropriations for civil functions administered by the Department of the Army, certain agencies of the Department of the Interior, and the Tennessee Valley Authority, for the fiscal year ending June 30, 1960, and for other purposes", approved September 10, 1959 (73 Stat. 492).

(50) The third proviso to the paragraph immediately following the center heading "CEMETERIAL EXPENSES" in the Act entitled "An Act making appropriations for certain civil functions administered by the Department of Defense, certain agencies of the Department of the Interior, the Atomic Energy Commission, the Saint Lawrence Seaway Development Corporation, the Tennessee Valley Authority, and certain river basin commissions for the fiscal year ending June 30, 1963, and for other purposes", approved October 24, 1962 (76 Stat. 1216).

(51) The third proviso to the paragraph immediately following the center heading "CEMETERIAL EXPENSES" in the Act entitled "An Act making appropriations for certain civil functions administered by the Department of Defense, certain agencies of the Department of the Interior, the Atomic Energy Commission, the Saint Lawrence Seaway Development Corporation, the Tennessee Valley Authority, and certain river basin commissions for the fiscal year ending June 30, 1964, and for other purposes", approved December 31, 1963 (77 Stat. 844).

(52) The third proviso to the paragraph immediately following the center heading "CEMETERIAL EXPENSES" in the Act entitled "An Act making appropriations for certain civil functions administered by the Department of Defense, the Panama Canal, certain agencies of the Department of the Interior, the Atomic Energy Commission, the Saint Lawrence Seaway Development Corporation, the Tennessee Valley Authority and the Delaware River Basin Commission, for the fiscal year ending June 30, 1965, and for other purposes", approved August 30, 1964 (78 Stat. 682).

(53) The third proviso to the paragraph immediately following the center heading "CEMETERIAL EXPENSE" in the Act entitled "An Act making appropriations for certain civil functions administered by the Department of Defense, the Panama Canal, certain agencies of the Department of the Interior, the Atomic Energy Commission, the Saint Lawrence Seaway Development Corporation, the Tennessee Valley Authority and the Delaware River Basin Commission, and the Interoceanic Canal Commission, for the fiscal year ending June 30, 1966, and for other purposes", approved October 28, 1965 (79 Stat. 1096).

(54) The third proviso to the paragraph immediately following the center heading "CEMETERIAL EXPENSES" in the Act entitled "An Act making appropriations for certain civil functions administered by the Department of Defense, the Panama Canal, certain agencies of the Department of the Interior, the Atomic Energy Commission, the Atlantic-Pacific Interoceanic Canal Study Commission, the Delaware River Basin Commission, the Saint Lawrence Seaway Development Corporation, the Tennessee Valley Authority, and the Water Resources Council, for the fiscal year ending June 30, 1967, and for other purposes", approved October 15, 1966 (80 Stat. 1002).

(55) The third proviso to the paragraph immediately following the center heading "CEMETERIAL EXPENSES" in the Act entitled "An Act making appropriations for certain civil functions administered by the Department of Defense, the Panama Canal, certain agencies of the Department of the Interior, the Atomic Energy Commission, the Atlantic-Pacific Interoceanic Canal Study Commission, the Delaware River Basin Commission, Interstate Commission on the Potomac River Basin, the Tennessee Valley Autority, and the Water Resources Council, for the fiscal year ending June 30, 1968, and for other purposes", approved November 20, 1967 (81 Stat. 471).

(56) The third proviso to the paragraph immediately following the center heading "CEMETERIAL EXPENSES" in the Act entitled "An Act making appropriations for certain civil functions administered by the Department of Defense, the Panama Canal, certain agencies of the Department of the Interior, the Atlantic-Pacific Interoceanic Canal Study Commission, the Delaware River Basin Commission, Interstate Commission on the Potomac River Basin, the Tennessee Valley Authority, the Water Resources Council, and the Atomic Energy Commission, for the fiscal year ending June 30, 1969, and for other purposes", approved August 12, 1968 (82 Stat. 705).

(57) The third proviso to the paragraph immediately following the center heading "CEMETERIAL EXPENSES" in the Act entitled "An Act making appropriations for public works for water, pollution control, and power development, including the Corps of Engineers—Civil, the Panama Canal, the Federal Water Pollution Control Administration, the Bureau of Reclamation, power agencies of the Department of the Interior, the Tennessee Valley Authority, the Atomic Energy Commission, and related independent agencies and commissions for the fiscal year ending June 30, 1970, and for other purposes", approved December 11, 1969 (83 Stat. 327).

(58) The first proviso to the paragraph following the center heading "CEMETERIAL EXPENSES" in the Act entitled "An Act making appropriations for public works for water, pollution control, and power development, including the Corps of Engineers—Civil, the Panama Canal, the Federal Water Quality Administration, the Bureau of Reclamation, power agencies of the Department of the Interior, the Tennessee Valley Authority, the Atomic Energy Commission, and related independent agencies and commissions for the fiscal year ending June 30, 1971, and for other purposes", approved October 7, 1970 (84 Stat. 893).

(59) The first proviso to the paragraph following the center heading "CEMETERIAL EXPENSES" in the Act entitled "An Act making appropriations for public works for water and power development, including the Corps of Engineers—Civil, the Bureau of Reclamation, the Bonneville Power Administration and other power agencies of the Department of the Interior, the Appalachian Regional Commission, the Federal Power Commission, the Tennessee Valley Authority, the Atomic Energy Commission, and related independent agencies and commissions for the fiscal year ending June 30, 1972, and for other purposes", approved October 5, 1971 (85 Stat. 368).

(60) The Act entitled "An Act to revise eligibility requirements for burial in national cemeteries, and for other purposes", approved September 14, 1959 (73 Stat. 547).

(61) The Act entitled "An Act to amend the Act of March 24, 1948, which establishes special requirements governing the selection of superintendents of national cemeteries", approved August 30, 1961 (75 Stat. 411).

(b) Nothing in this section shall be deemed to affect in any manner the functions, powers, and duties of—

(1) the Secretary of the Interior with respect to those cemeteries, memorials, or monuments under his jurisdiction on the effective date of this section, or

(2) the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force with respect to those cemeteries, memorials, or monuments under his jurisdiction to which the transfer provisions of section 6(a) of this Act do not apply.

SEC. 8. The first sentence of section 3505(a) of title 38, United States Code, is amended by inserting immediately after the words "gratuitous benefits" where first appearing therein, the following: "(including the right to burial in a national cemetery)."

SEC. 9. (a) The Secretary of Defense is authorized and directed to cause to be brought to the United States the remains of an American, who was a member of the Armed Forces of the United States, who served in Southeast Asia, who lost his life during the Vietnam era, and whose identity has not been established, for burial in the Memorial Amphitheater of the National Cemetery at Arlington, Virginia.

(b) The implementation of this section shall take place after the United States has concluded its participation in hostilities in Southeast Asia, as determined by the President or the Congress of the United States.

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

SEC. 10. (a) The first section and sections 2, 3, 4, and 8 of this Act shall take effect on the date of enactment of this Act.

(b) Clause (1) of section 5(a) shall take effect on the first day of the second calendar month following the date of enactment of this Act.

(c) Clause (2) of section 5(a) and sections 6 and 7 of this Act shall take effect July 1, 1973, or on such earlier date as the President may prescribe and publish in the Federal Register.

Mr. HARTKE. Mr. President, I move that the Senate concur in the amendment of the House of Representatives with amendments, which I send to the desk.

The PRESIDING OFFICER. The amendments will be stated.

The legislative clerk proceeded to read the amendments.

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

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

The amendments are as follows:

On page 10, line 12, strike out "six months" and insert in lieu thereof "twelve months".

On page 11, line 7, strike out "six months" and insert in lieu thereof "twelve months".

On page 15, line 20, strike out "(a)".

On page 38, line 2, strike out "July 1, 1973" and insert in lieu thereof "September 1, 1973".

Mr. HARTKE. Mr. President, my colleagues will recall that on March 6 of this year, the Senate by a vote of 85 to 4 passed S. 49, the National Cemeteries Act of 1973 as reported by the Committee on Veterans' Affairs which I am privileged to chair. The House of Representatives on

May 17, 1973, by a vote of 342 to 1 returned S. 49 to the Senate with an amendment in the form of a substitute. S. 49, as returned to the Senate, is virtually identical to the bill originally passed by the Senate with a few minor technical changes and one substantive amendment. That amendment would add a subsection (c) to the new section 1003 of title 38 created by this act. Under the subsection added by the House, all cemeteries within the National Cemetery System are to be considered national shrines and the Administrator of Veterans' Affairs is authorized to permit the flying of the flag of the United States of America at such cemeteries 24 hours a day. It is the committee's understanding that this section is permissive rather than mandatory and that the Veterans' Administration is not opposed to the amendment. Accordingly, I would urge my colleagues to accept the House amendment.

Following passage by the House of Representatives the Senate committee staff has been in contact with representatives of the Veterans' Administration who have pointed out a number of technical problems in complying with first, the transfer of cemeteries and functions by the Department of Army to the Veterans' Administration; and second, the comprehensive study provisions of section 3. S. 49 currently provides for the transfer to be accomplished and the study to be submitted on or before July 1, 1973. Given the present time frame, the committee is sympathetic to requests for extending the effective date. The Senate amendments which I propose today would defer for a 2-month period the transfer of cemeteries and functions from the Department of Army to the Veterans' Administration to September 1, 1973.

With respect to the comprehensive study directed by section 3, the committee notes that the Veterans' Administration submitted a study of veterans' burial benefits on April 2, 1973 in connection with a draft bill which would have, among other things, significantly reduced the amount of burial benefits and sharply narrowed the number of veterans eligible for any allowance at all. That study is of limited value to Congress for two reasons, however. First, to the extent the study was structured to support new highly restrictive burial policy proposals embodied in the administration's draft bill, it is at best irrelevant in light of the bill we adopt today. The study previously submitted will have to be reexamined in light of the policy decisions inherent in the National Cemeteries Act of 1973. Second, the study submitted by the Veterans' Administration does not address itself to a large number of areas which are required to be studied by section 3. Additional time will thus be needed to more thoroughly examine those areas not covered in section 3, particularly subsection (a)(4) and (a)(6) as well as all of subsection (b).

Finally, it should be obvious to the Veterans' Administration that a substantial portion of Congress and the Nation's veteran population are concerned about the right to a burial in a national cemetery and the current lack of existing accessible space. The development of new Federal cemeteries on a regional basis is an important question to them which simply will not be adequately answered by either a plot allowance or financial assistance to State cemeteries. The committee, by directing a study, is providing the Veterans' Administration with an opportunity to develop a sensible, cohesive, regional plan for new national cemeteries. If they decline to do so, they should be fully prepared to accept the parochial proliferation and fragmentation of the system that many believe will inevitably follow.

To allow the Veterans' Administration adequate time within which to complete its study and make its recommendations the amendment which I propose today would allow an extension of 6 months to January 3, 1974, for the submission to Congress. Based on informal staff discussions between committees I believe the Senate amendments which I propose today will be acceptable to the House.

Mr. President, I move that the Senate concur in the House amendment with the Senate amendments which I offer today.

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

The motion was agreed to.

SUPPLEMENTAL APPROPRIATIONS FOR FISCAL YEAR ENDING JUNE 30, 1973

The Senate continued with the consideration of the bill (H.R. 7447) making supplemental appropriations for the fiscal year ending June 30, 1973, and for other purposes.

The PRESIDING OFFICER. The question recurs on the last committee amendment. Who yields time?

Mr. MANSFIELD. Mr. President, I think the Senator from Kansas is seeking recognition.

The PRESIDING OFFICER. The Senator from Kansas is recognized.

Mr. DOLE. Mr. President, I ask unanimous consent that I might offer my amendment to the committee amendment.

The PRESIDING OFFICER. Is there objection?

Mr. MANSFIELD. Mr. President, the Senator is aware of the fact that amendments to the committee amendment are considered in the first degree and that the hour limitation applies.

Mr. DOLE. I am.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered. There are 30 minutes to the side on the amendment.

The clerk will report the amendment.

The legislative clerk read as follows:

On page 58, line 14, insert the following: "*Provided, however,* That these restrictions shall be of no force or effect if the President finds and forthwith so reports to the Congress that the Government of North Vietnam is not making an accounting, to the best of its ability, of all missing in action personnel of the United States in Southeast Asia, or is otherwise not complying with the provisions of article 8 of the agreement signed in Paris on January 27, 1973, and article 10 of the protocol to the agreement 'Concerning the Return of Captured Military Personnel and Foreign Civilians and Captured and Detained Vietnamese Civilian Personnel'."

Mr. DOLE. Mr. President, I ask unanimous consent that the names of the following Senators be added as cosponsors of the amendment proposed by myself and the Senator from North Carolina (Mr. HELMS): Mr. BARTLETT, Mr. BELLMON, Mr. BROCK, Mr. BUCKLEY, Mr. CURTIS, Mr. CANNON, Mr. GRIFFIN, Mr. HANSEN, Mr. MCCLURE, Mr. SCOTT of Pennsylvania, Mr. SPARKMAN, Mr. TAFT, Mr. THURMOND, and Mr. TOWER.

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

Mr. DOLE. Mr. President, at this time, I ask for the yeas and nays on the amendment.

The yeas and nays were ordered.

Mr. DOLE. Mr. President, I think the basis for the amendment I have offered, stated in its simplest terms, is whether we provide the President any leverage with which to make certain the North Vietnamese are making a responsible effort to account for the Americans missing in action in Cambodia and Laos.

There are still some 1,300 Americans carried as missing in action. Another 1,100 are listed as dead, but their remains have not been recovered.

I do not look upon this vote as simply a money vote, and any assertion that this matter is simply a money matter, going no farther than considerations of the budget, is to my mind a complete fiction.

Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order.

REAL QUESTION

Mr. DOLE. Mr. President, the real question before the Senate today is whether the Congress—after many years of unavailing efforts by a minority of its membership—is finally going to throw in the sponge and turn Southeast Asia over to the forces of aggression.

The question is whether—after years of combat, thousands of American and Asian deaths, and billions of dollars—the Congress is going to default on the achievements made possible by these sacrifices.

The question is whether—after years of detailed, intensive and exhaustive negotiations—the Congress is going to allow the solemn obligations which resulted from these negotiations to be openly violated without fear of punishment or sanction.

I, for one, have always been proud that in times of considerable doubt, uncertainty and pessimism throughout the history of the Vietnam conflict, the Congress stood firm and refused to enact measures which would have tied the President's hands, militarily, or would have undercut his position at the negotiating table.

I have been proud that a majority in Congress always resisted the temptation to take the expedient course—to grasp for peace at any price. And as a result of this firmness the President was able to achieve our policy objectives and successfully pursue the negotiations.

GREAT ACCOMPLISHMENTS

Now we have an agreement for peace—an imperfect and fragile agreement, perhaps—but an honorable agreement none-

theless. All American combat forces have been withdrawn from Vietnam. Our prisoners of war are home.

Everything the critics cried so loudly for and which they would have given anything to achieve has been realized—but with America's honor maintained and our credibility intact.

CANNOT TURN BACK

But with all these accomplishments, much still remains. And now is not the time to throw away these achievements by relaxing our determination or weakening our commitment to our principles. With so much accomplished, with so much behind us, we must not turn away now when ahead lies the real and realistic opportunity of securing full compliance with the Paris agreements of January 27 and the bright hope of a just and lasting peace in this troubled area.

ANOTHER END-THE-WAR AMENDMENT

The Congress has contemplated action similar to this amendment many times before. So-called "End-the-war Amendments" are not new to the Congress. Each time before, in times of peril and doubt the amendments have failed. Now, since January 27, since the signing of the agreement to end the war and restore the peace in South Vietnam, we are told that the situation in southeast Asia has changed in its essentials. The change, we are told, now justifies action by the Congress to cut off funds for military operations.

CLEAR OBLIGATIONS

The situation in Cambodia, particularly, remains essentially unchanged. And as long as it does, the full implementation of the January 27 agreement remains out of reach. Article 20 of that agreement states clearly that foreign countries shall totally withdraw from and refrain from reintroducing into Cambodia, troops, and military personnel. There is no question that North Vietnam and Cambodia are separate countries. But North Vietnamese troops are being maintained in Cambodia, and they are engaging in hostilities against the government of that country and against the governments of neighboring countries including South Vietnam.

Mr. President, let me stress the real purpose of this amendment. I think it is very simple and very clear. Aside from all the emotion, all the arguments, and all the emotional pleas we have heard yesterday and today, there is one factor, in and of itself, that provides all the argument necessary against full implementation of the Eagleton amendment.

We are all aware of the fact that the United States entered into the January 27 agreement in good faith. This agreement, in all of its terms—including article 20—was drafted jointly by the parties to the conflict. It was mutually agreed to and signed. And it was universally hailed as a just and equitable prescription for peace in an area that all agreed had been, for far too long embroiled in war.

The principle agreed to and embodied in article 20 was that there could be no peace in any part of Southeast Asia unless there was peace in all of Southeast Asia. Specifically, article 20 referred to Laos and Cambodia.

In Laos, we have a cease-fire. Like the cease-fire in Vietnam, though, it is endangered by the continuing conflict in Cambodia, and until the Cambodian conflict ends the war and the threat of war to all of Southeast Asia will not end.

ACCOUNTING FOR THE MISSING IN ACTION

But aside from these elements, another factor in and of itself provides all the argument necessary against the Eagleton amendment. The January 27 agreement clearly calls for certain positive actions by both sides with respect to the return of those held prisoner and an accounting for the missing in action.

Now, as a result in no small way of the Congress' earler refusals to pass such legislation, we have been blessed with the return of more than 500 of our prisoners. We are all grateful for their return. As a Nation we rejoiced with the men and with their families at their homecoming.

But in the midst of our rejoicing we cannot ignore the fact that we still lack a full and satisfactory accounting of our missing in action.

Mr. President, at this point I ask unanimous consent to have printed in the RECORD at the conclusion of my remarks the latest published list of those U.S. military personnel missing in action in Southeast Asia.

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

U.S. MILITARY PERSONNEL UNACCOUNTED FOR IN SOUTHEAST ASIA, AS OF 5 MAY 1973

PREFACE

This is a listing of U.S. military personnel who are unaccounted for in Southeast Asia in connection with the conflict in Vietnam and have not returned to military control.

The listing, totaling 1,321 names, was prepared from casualty reports received as of 5 May 1973.

The grade shown in many instances reflects promotions that have been made while the military members were in missing or captured status. Likewise, the originally assigned service or file number, in many cases, has been replaced in consonance with the program for using social security account numbers for military personnel.

NAME, RANK, AND SERVICE OR SOCIAL SECURITY NUMBER

Abbott, John, CAPT., xxx-xx-....
Abrams, Lewis Herbert, LTC., xxx-xx-...
Acalotto, Robert Joseph, SGT. xxx-xx-xxxx.
Acosta-Rosario Humberto, SSGT., xxx-xx-x...xx...
Adachi, Thomas Yuji, TSGT. xxx-xx-xxxx.
Adair, Samuel Young, Jr., CAPT., xxx-xx-xxxx.
Adam, John Quincy, TSGT. xxx-xx-xxxx.
Adams, John Robert, SSGT. xxx-xx-xxxx.
Adams, Samuel, SMS., xxx-xx-xxxx.
Adams, Steven Harold, MSGT. xxx-xx-xxxx.
Adkins, Charles L., SSGT., xxx-xx-xxxx.
Alberton, Bobby Joe, SMS., xxx-xx-xxxx.
Albright, John Scott, II, CAPT. xxx-xx-xxxx.
Aldern, Donald Deane, CAPT., xxx-xx-....
Alford, Terry Lanier, CWO., xxx-xx-xxxx.
Alfred, Gerald Oak, Jr., CAPT., xxx-xx-xxxx.
Allard, Richard Michael, SSGT. xxx-xx-xxxx.
Allee, Richard Kenneth, MAJ. xxx-xx-xxxx.
Allen, Henry Lewis, CAPT., xxx-xx-xxxx.
Allen, Thomas Ray, CAPT., xxx-xx-xxxx.
Allen, Wayne Clouse, SP5, xxx-xx-xxxx.
Alley, Gerald William MAJ. xxx-xx-xxxx.
Allinson, David Jay, LTC. xxx-xx-xxxx.
Altus, Robert Wayne, CAPT. xxx-xx-xxxx.
Alwan Harold Joseph, MAJ, xxx-xx-....
Ammon, Glendon Lee LTC, xxx-xx-xxxx.
Amos, Thomas Hugh, CAPT, xxx-xx-xxxx.
Anderson, John Steven, CWO, xxx-xx-xxxx.
Anderson Robert Dale, LTC, xxx-xx-xxxx.
Anderson, Warren Leroy, LTC, xxx-xx-xxxx.
Andrews, Stuart Merrill, COL, xxx-xx-xxxx.
Andrews William Richard, MAJ. xxx-xx-xxxx.
Angstadt, Ralph Harold, LTC. xxx-xx-xxxx.
Apodaca, Victor Joe, Jr., MAJ, xxx-xx-xxxx.
Appelhans, Richard Duane, MAJ. xxx-xx-xxxx.
Appleby, Ivan Dale, LTC, xxx-xx-xxxx.
Ard, Randolph Jefferson, CWO, xxx-xx-xxxx.
Armitstead, Steven Ray, CAPT, xxx-xx-...
Armstrong John William, COL, xxx-xx-xxxx.
Arnold, William Tamm, LCDR, xxx-xx-...
Arroyo-Baez, Gerasimo, SFC, xxx-xx-xxxx.
Ashall, Alan Frederick, LT, xxx-xx-...
Ashlock, Carlos, SGT, xxx-xx-x...
Asire, Donald Henry, COL, xxx-xx-xxxx.
Atterberry, Edwin Lee, MAJ. xxx-xx-xxxx.
Austin, Charles David, CAPT. xxx-xx-xxxx.
Austin, Ellis Ernest, CDR, xxx-xx-...
Austin, Joseph Clair, COL, xxx-xx-xxxx.
Avery, Robert Douglas, CAPT. xxx-xx-...
Ayers, Richard Lee, MAJ, xxx-xx-xxxx.
Ayres, Gerald Francis, MAJ, xxx-xx-xxxx.
Ayres, James Henry, MAJ, xxx-xx-xxxx.
Babula, Robert Leo, SGT, xxx-xx-xx...
Bacik, Vladimir Henry, MAJ, xxx-xx-...
Backus, Kenneth Frank, CAPT, xxx-xx-xxxx.
Bader, Arthur Edward, Jr., SSGT, xxx-xx-xxxx.
Bailey, John Edward, MAJ. xxx-xx-xxxx.
Baker, Arthur Dale, MAJ. xxx-xx-xxxx.
Balamoti, Michael Dimitri, MAJ, xxx-xx-xxxx.
Balcom, Ralph Carol, LTC, xxx-xx-xxxx.
Baldridge, John Robert, Jr., CAPT, xxx-xx-xxxx.
Bannon, Paul Wedlake, MAJ. xxx-xx-xxxx.
Bare, William Orlan, CAPT, xxx-xx-xxxx.
Barnes, Charles Ronald, CAPT. xxx-xx-xxxx.
Barnett, Charles Edward, CDR. xxx-xx-xxxx.
Barras, Gregory Inman, LTC. xxx-xx-xxxx.
Bates, Paul Jennings, Jr., CAPT. xxx-xx-xxxx.
Batt, Michael Lero, SSGT. xxx-xx-xxxx.
Bauder, James Reginald, CDR, xxx-xx-...
Bauer, Richard Gene, SP5 xxx-xx-xxxx.
Bauman, Richard Lee, CWO xxx-xx-xxxx.
Bebus, Charles James, SGT xxx-xx-xxxx.
Becerra, Rudy Morales, SP5. xxx-xx-xxxx.
Beck, Edward Eugene, Jr., SGT, xxx-xx-xx...
Bednarek, Jonathan Bruce, 1LT xxx-xx-xxxx.
Beecher, Quentin Rippetoe, CWO, xxx-xx-x...xx...
Beene, James Alvin, LCDR, xxx-xx-...
Begley, Burriss Nelson, COL, xxx-xx-xxxx.
Behnfeldt, Roger Ernest, CAPT. xxx-xx-xxxx.
Belcher, Glenn Arthur, CAPT xxx-xx-xxxx.
Bennett, Thomas Waring, Jr., CAPT, xx...xxx-xx...
Bennett, William George, LTC xxx-xx-xxxx.
Benton, Gregory Rea, Jr., SGT, xxx-xx-x...
Bergevin, Charles Lee, CAPT. xxx-xx-xxxx.
Bessor, Bruce Carlton, CAPT. xxx-xx-xxxx.
Beutel, Robert Donald, CAPT xxx-xx-xxxx.
Beyer, Thomas John, CAPT xxx-xx-xxxx.
Bezold, Steven Neil, CAPT. xxx-xx-xxxx.
Biediger, Larry William, LTC. xxx-xx-xxxx.
Bifolchi, Charles Lawrence, CAPT, xxx-xx-xxxx.
Biggs, Earl Roger, MSGT. xxx-xx-xxxx.
Billipp, Norman Karl, CAPT, xxx-xx-...
Bingham, Klaus Yurgen, SSGT, xxx-xx-xxxx.
Bishop, Edward James, Jr., SGT, xxx-xx-xxxx.
Bisz, Ralph Campion, LT, xxx-xx-...
Bivens, Herndon Arrington, SGT, xxx-xx-xxxx.
Blackburn, Harry Lee, Jr., CDR. xxx-xx-xxxx.
Blackwood, Gordon Byron, MAJ, xxx-xx-xxxx.
Blair, Charles Edward, COL, xxx-xx-xxxx.
Blodgett, Douglas Randolph, SSGT, xxx-xx-xxxx.
Bloodworth, Donald Bruce, CAPT, xxx-xx-xxxx.
Bobe, Raymond Edward, SSGT, xxx-xx-xxxx.
Bodahl, Jon Keith, MAJ xxx-xx-xxxx.
Bodden, Timothy Roy, SSGT xxx-xx-xx...
Bodenschatz, John Eugen, Jr., SGT, xxx-xx-x...

Bogard, Lonnie Pat, CAPT, xxx-xx-xxxx
Boggs, Paschal Glenn, MAJ, xxx-xx-...
Bogiages, Christos C., Jr., LTC, xxx-xx-xxxx
Bolte, Wayne Louis, LTC, xxx-xx-xxxx
Bond, Ronald Leslie, CAPT, xxx-xx-xxxx
Booth, James Ervin, CAPT, xxx-xx-xxxx
Booth, Lawrence Randolph, CAPT, xxx-xx-xxx...
Booze, Delmar George, CAPT, xxx-xx-...
Borah, Daniel Vernon, Jr., LT, xxx-xx-xxxx
Borden, Murray Lyman, CAPT, xxx-xx-xxxx
Boronski, John Arthur, SSGT, xxx-xx-xxxx
Bors, Joseph Chester, LTC, xxx-xx-xxxx
Borton, Robert Curtis, Jr., SGT, xxx-xx-xxxx
Bosiljevac, Michael Joseph, CAPT, xxx-xx-xxx...
Bossio, Galileo Fred, COL, xxx-xx-xxxx
Boston, Leo Sydney, MAJ, xxx-xx-xxxx
Bott, Russell Peter, SFC, xxx-xx-xxxx
Bouchard, Michael Lora, LCDR, xxx-xx-...
Bowers, Richard Lee, CAPT, xxx-xx-xxxx
Bowling, Roy Howard, CDR, xxx-xx-...
Boyer, Alan Lee, SSGT, xxx-xx-xxxx
Bram, Richard Craig, FSGT, xxx-xx-xxxx
Brand, Joseph William, COL, xxx-xx-xxxx
Brashear, William James, MAJ, xxx-xx-xxxx
Brauner, Henry Paul, MAJ, xxx-xx-xxxx
Brazik, Richard, CAPT, xxx-xx-xxxx
Brennan, Herbert Owen, COL, xxx-xx-xxxx
Brett, Robert Arthur, Jr., 1LT, xxx-xx-xxxx
Breuer, Donald Charles, CAPT, xxx-xx-xxxx
Bridges, Jerry Glen, SSGT, xxx-xx-xxxx
Briggs, Ernest Frank, Jr., SSGT, xxx-xx-xxxx
Briggs, Ronald Daniel, CAPT, xxx-xx-xxxx
Brinckmann, Robert Edwin, COL, xxx-xx-x...-xx...
Broms, Edward James, Jr., LT, xxx-xx-x...
Brooks, John Henry Ralph, SP5, xxx-xx-xxxx
Brooks, Nicholas George, LT, xxx-xx-xxxx
Brooks, William Leslie, LTC, xxx-xx-xxxx
Brown, Donald Alan, MAJ, xxx-xx-xxxx
Brown, Earl Carlye, CAPT, xxx-xx-xxxx
Brown, George R., MSGT, xxx-xx-xxxx
Brown, Harry Willis, SSGT, xxx-xx-xxxx
Brown, Robert Mack, MAJ, xxx-xx-xxxx
Brown, Wayne Gordon, II, CAPT, xxx-xx-xxxx
Brown, Wilbur Ronald, MAJ, xxx-xx-xxxx
Brown, William Theodore, SSGT, xxx-xx-xxxx
Brownlee, Charles Richard, LTC, xxx-xx-xxxx
Brownlee, Robert Wallac, Jr., COL, xxx-xx-xxx...
Brucher, John Martin, MAJ, xxx-xx-xxxx
Buckley, Louis, Jr., SFC, xxx-xx-xxxx
Buell, Kenneth Richard, LCDR, xxx-xx-xxxx
Burdett, Edward Burke, COL, xxx-xx-xxxx
Burkart, Charles Willia, Jr., LTC, xxx-xx-...-xxx...
Burke, Michael John, SGT, xxx-xx-xx...
Burnett, Sheldon John, LTC, xxx-xx-xxxx
Burnham, Donald Dawson, MAJ, xxx-xx-xxxx
Burnham, Mason Irwin, CAPT, xxx-xx-xxxx
Burns, Michael Paul, SSGT, xxx-xx-xxxx
Busch, Jon Thomas, CAPT, xxx-xx-xxxx
Bush, Elbert Wayne, SSGT, xxx-xx-xxxx
Bush, John Robert, CAPT, xxx-xx-xxxx
Bush, Robert Edward, LTC, xxx-xx-xxxx
Butler, James Edward, CWO, xxx-xx-xxxx
Butt, Richard Leigh, CAPT, xxx-xx-xxxx
Bynum, Neil Stanley, CAPT, xxx-xx-xxxx
Byrd, Hugh McNeil, Jr., CAPT, xxx-xx-xxxx
Calhoun, Johnny C., SSGT, xxx-xx-xxxx
Cameron, Kenneth Robbins, CDR, xxx-xx-x...
Cameron, Virgil King, LCDR, xxx-xx-...
Campbell, William Edward, COL, xxx-xx-xxxx
Caniford, James Kenneth, TSGT, xxx-xx-xxxx
Capling, Elwyn Rex, LTC, xxx-xx-xxxx
Cappelli, Charles Edward, LTC, xxx-xx-xxxx
Caras, Franklin Angel, MAJ, xxx-xx-xxxx
Carlton, James Edmund, Jr., CAPT, xxx-xx-...
Carpenter, Nicholas Mallor, LT, xxx-xx-...
Carr, Donald Gene, CAPT, xxx-xx-xxxx
Carrier, Daniel Lewis, CAPT, xxx-xx-xxxx
Carroll, Patrick Henry, CAPT, xxx-xx-xxxx
Carter, Dennis Ray, SGT, xxx-xx-xxxx
Carter, James Louis, COL, xxx-xx-xxxx
Cartwright, Billie Jack, CAPT, xxx-xx-...
Case, Thomas Franklin, LTC, xxx-xx-xxxx
Casey, Donald Francis, COL, xxx-xx-xxxx
Castillo, Richard, MAJ, xxx-xx-xxxx
Castro, Alfonso Roque, CAPT, xxx-xx-xxxx
Cavender, Jim Ray, CWO, xxx-xx-xxxx
Chambers, Jerry Lee, MAJ, xxx-xx-xxxx
Champion, James Albert, SGT, xxx-xx-xxxx
Charvet, Paul Claude, LCDR, xxx-xx-...
Chavez, Gary Anthony, CAPT, xxx-xx-xxxx
Chestnut, Joseph Lyons, LTC, xxx-xx-xxxx
Chiarello, Vincent Augustu, CAPT, xxx-xx-...-xxx...
Chipman, Ralph Jim, CAPT, xxx-xx-xxxx
Christensen, Allen Duane, SP5, xxx-xx-xxxx
Christensen, John Michael, 1LT, xxx-xx-...-xx...
Christensen, William Murre, LCDR, xxx-xx-...
Christiano, Joseph, COL, xxx-xx-xxxx
Christiansen, Eugene F., SP5, xxx-xx-xxxx
Cichon, Walter Alan, SSGT, xxx-xx-xxxx
Clafiin, Richard Ames, MAJ, xxx-xx-xxxx
Clapper, Gean Preston, MSGT, xxx-xx-xxxx
Clark, Jerry Prosper, CWO, xxx-xx-xxxx
Clark, John Calvin II, CAPT, xxx-xx-xxxx
Clark, Lawrence, SMS, xxx-xx-xxxx
Clark, Philip Spratt Jr., LT, xxx-xx-xxxx
Clark, Richard Champ, LT, xxx-xx-...
Clark, Robert Alan, LTJG, xxx-xx-xxxx
Clark, Stanley Scott, COL, xxx-xx-xxxx
Clark, Thomas Edward, CAPT, xxx-xx-xxxx
Clarke, Fred Lee, SMS, xxx-xx-xxxx
Clarke, George William, Jr., CAPT, xxx-xx-xxxx
Claxton, Charles Peter, LTC, xxx-xx-xxxx
Cleary, Peter McArthur, CAPT, xxx-xx-xxxx
Clem, Thomas Dean, CAPT, xxx-xx-...
Cline, Curtis Roy, SGT, xxx-xx-xxxx
Clinton, Dean E., CWO, xxx-xx-xxxx
Coady, Robert Franklin, MAJ, xxx-xx-xxxx
Cobeil Earl Glenn, MAJ, xxx-xx-xxxx
Cochrane, Deverton C., SSGT, xxx-xx-xxxx
Coen, Harry Bob, SSGT, xxx-xx-xxxx
Cohron, James Derwin, SFC, xxx-xx-xxxx
Cole, Legrande Ogden, Jr., LCDR, xxx-xx-...
Cole, Richard Milton, Jr., TSGT, xxx-xx-xxxx
Coleman, Jimmy Lee, SGT, xxx-xx-xxxx
Collamore, Allan Philip, Jr., LCDR, xxx-xx-...
Collins, Richard Frank, CDR, xxx-xx-xxxx
Coltman, William Clare, LTC, xxx-xx-xxxx
Colwell, William Kevin, SMS, xxx-xx-xxxx
Condit, Douglas Craig, CAPT, xxx-xx-xxxx
Conger, John Edward, Jr, SGT, xxx-xx-xxxx
Conklin, Bernard, LTC, xxx-xx-xxxx
Conlon, John Francis III, CAPT, xxx-xx-xxxx
Connell, James Joseph, LCDR, xxx-xx-...
Conner, Lorenza, CAPT, xxx-xx-xxxx
Connolly, Vincent John, LTC, xxx-xx-xxxx
Connor, Charles Richard, MAJ, xxx-xx-...
Consolvo, John Wadswort, Jr., CAPT, xxx-xx-xxxx
Cook, Donald Gilbert, MAJ, xxx-xx-...
Cook, Glenn Richard, CAPT, xxx-xx-xxxx
Cook, Kelly Francis, COL, xxx-xx-xxxx
Cook, William Richard, COL, xxx-xx-xxxx
Cooley, David Leo, CDR, xxx-xx-...
Coons, Henry Albert, CDR, xxx-xx-...
Cooper, Richard Waller, Jr., CAPT, xxx-xx-xxxx
Cooper, William Earl, COL, xxx-xx-xxxx
Copak, Joseph Bernard, Jr., 1LT, xxx-xx-xxxx
Copley, William Michael, SSGT, xxx-xx-xxxx
Corbitt, Gilland Wales, COL, xxx-xx-xxxx
Cordova, Sam Gary, CAPT, xxx-xx-xxxx
Cornweil, Leroy Jason III, CAPT, xxx-xx-xxxx
Cozart, Robert Gordon, Jr., CAPT, xxx-xx-x...-xx...
Craddock, Randall James, CAPT, xxx-xx-xxxx
Craig, Philip Charles, LCDR, xxx-xx-...
Crain, Carroll Owen, Jr., CDR, xxx-xx-...
Cramer, Donald Martin, CWO, xxx-xx-xxxx
Craven, Andrew Johnson, SSGT, xxx-xx-xxxx
Creamer, James Edward, Jr., SP6, xxx-xx-...-xx...
Creed, Barton Sheldon, LT, xxx-xx-xxxx
Cressey, Dennis Clarke, CAPT, xxx-xx-xxxx
Crew, James Alan, CAPT, xxx-xx-xxxx
Crews, John Hunter, III, CAPT, xxx-xx-xxxx
Cristman, Frederick Lewis, CWO, xxx-xx-...-xx...
Crosby, Herbert Charles, CAPT, xxx-xx-xxxx
Crosby, Richard Alexander, SSGT, xxx-xx-x...-xx...
Cross, Ariel Lindley, CAPT, xxx-xx-x...
Crossman, Gregory John, CAPT, xxx-xx-xxxx
Crosson, Gerald Joseph, Jr., CAPT, xxx-xx-...-xx...
Cruz, Carlos Rafael, CAPT, xxx-xx-xxxx
Cunningham, Kenneth Leroy, SP5, xxx-xx-xxxx
Curran, Patrick Robert, 1LT, xxx-xx-xxxx
Cushman, Clifton Emmett, MAJ, xxx-xx-xxxx
Cuthbert, Bradley Gene, MAJ, xxx-xx-xxxx
Cuthbert, Stephen Howard, CAPT, xxx-xx-xxxx
Czerwiec, Raymond George, SSGT, xxx-xx-xxxx
Daffron, Thomas Carl, CAPT, xxx-xx-xxxx
Dahill, Douglas Edward, SSGT, xxx-xx-xxxx
Dailey, Douglas Vincent, MSGT, xxx-xx-xxxx
Dale, Charles Alva, MAJ, xxx-xx-xxxx
Danielson, Benjamin Franklin, CAPT, xxx-xx-xxxx
Danielson, Mark Giles, CAPT, xxx-xx-xxxx
Darcy, Edward Joseph, MSGT, xxx-xx-xxxx
Dardeau, Oscar Moise, Jr., COL, xxx-xx-xxxx
Darr, Charles Edward, 1LT, xxx-xx-xxxx
Davies, Joseph Edwin, CAPT, xxx-xx-xxxx
Davis, Brent Eden, CAPT, xxx-xx-...
Davis, Charlie Brown, Jr., COL, xxx-xx-xxxx
Davis, Daniel Richard, CAPT, xxx-xx-xxxx
Davis, Edgar Felton, MAJ, xxx-xx-xxxx
Davis, Francis John, LCDR, xxx-xx-xxxx
Davis, Gene Edmond, SMS, xxx-xx-xxxx
Davis, Ricardo Gonzalez, SFC, xxx-xx-xxxx
Davis, Robert Charles, MAJ, xxx-xx-xxxx
De Soto, Ernest Leo, LTC, xxx-xx-xxxx
Deane, William Lawrence, MAJ, xxx-xx-xxxx
Deichelmann, Samuel Mackal, MAJ, xxx-xx-xxxx
Deitsch, Charles Edward, CWO, xxx-xx-xxxx
Demmon, David Stanley, SSGT, xxx-xx-xxxx
Dennany, James Eugene, LTC, xxx-xx-xxxx
Dennis, William Roy, SSGT, xxx-xx-xxxx
Dennison, James Richard, CDR, xxx-xx-...
Dennison, Terry Arden, CDR, xxx-xx-...
Derrickson, Thomas G. II, MAJ, xxx-xx-xxxx
Deuter, Richard Carl, LT, xxx-xx-xxxx
Dewispelaere, Rexford John, TSGT, xxx-xx-xxxx
Dexter, Bennie Lee, TSGT, xxx-xx-xxxx
Di Tommaso, Robert Joseph, CAPT, xxx-xx-xxxx
Diamond, Stephen Whitman, CAPT, xxx-xx-xxxx
Dickens, Delma Ernest, CAPT, xxx-xx-xxxx
Diehl, William Calvin Jr., LTC, xxx-xx-xxxx
Dingwall, John Francis, MGYS, xxx-xx-...
Dix, Craig Mitchell, SP5, xxx-xx-xxxx
Doby, Herb, MAJ, xxx-xx-xxxx
Dodge, Edward Ray, SMAJ, xxx-xx-xxxx
Dodge, Ronald Wayne, LCDR, xxx-xx-...
Dodge, Ward Kent, COL, xxx-xx-xxxx
Dolan, Thomas Albert, SP5, xxx-xx-xxxx
Donahue, Morgan Jefferson, CAPT, xxx-xx-xxxx
Donnelly, Verne George, CDR, xxx-xx-xxxx
Donovan, Michael Leo, CAPT, xxx-xx-xxxx
Dooley, James Edward, LT, xxx-xx-...
Dotson, Jefferson Scott, CAPT, xxx-xx-xxxx
Douglas, Thomas Evan, SSGT, xxx-xx-x...
Downing, Donald William, MAJ, xxx-xx-xxxx
Doyle, Michael William, LCDR, xxx-xx-xxxx
Ducat, Bruce Chalmers, CAPT, xxx-xx-xxxx
Duckett, Thomas Allen, CAPT, xxx-xx-xxxx
Dudash, John Francis, LTC, xxx-xx-xxxx
Duy, John Everett, CAPT, xxx-xx-xxxx
Dugan, Thomas Wayne, LTC, xxx-xx-xxxx
Duggan, William Young, MAJ, xxx-xx-xxxx
Duncan, Robert Ray, LT, xxx-xx-...
Dunlap, William Charles, CWO, xxx-xx-xxxx
Dunn, Joseph Patrick, LT, xxx-xx-x...
Dunn, Michael Edward, LCDR, xxx-xx-...
Dusing, Charles Gale, SMS, xxx-xx-xxxx
Duvall, Dean Arnold, MSGT, xxx-xx-xxxx
Dyczkowski, Robert Raymond, MAJ, xxx-xx-xxxx
Dye, Melvin Carnills, SSGT, xxx-xx-xxxx
Eads, Dennis Keith, CWO, xxx-xx-xxxx
Earll, David John, MAJ, xxx-xx-xxxx
Eaton, Curtis Abbot, COL, xxx-xx-xxxx
Eaton, Norman Dale, COL, xxx-xx-xxxx
Echanis, Joseph Ygnacio, MAJ, xxx-xx-xxxx
Echevarria, Raymond Louis, SMAJ, xxx-xx-xxxx
Eckley, Wayne Alvin, MSGT, xxx-xx-xxxx
Ecklund, Arthur Gene, CAPT, xxx-xx-xxxx
Edgar, Robert John, CAPT, xxx-xx-xxxx
Edmondson, William Rothroc, CAPT, xxx-xx-xxxx

Edmunds, Robert Clifton, Jr., CAPT, xxx-xx-xxxx.
Edwards, Harry Sanford, Jr., LCDR, xxx-xx-...
Egan, James Thomas, Jr., CAPT, xxx-xx-x...
Eidsmoe, Norman Edward, CDR, xxx-xx-...
Eilers, Dennis Lee, CAPT, xxx-xx-xxxx.
Elkins, Frank Callihan, LCDR, xxx-xx-...
Elliot, Robert Malcolm, MAJ, xxx-xx-xxxx.
Elliott, Andrew John, CWO, xxx-xx-xxxx.
Elliott, Jerry, W., SSGT, xxx-xx-xxxx.
Elliott, Robert Thomas, SGT, xxx-xx-xxxx.
Ellis, Billy Joe, SSGT, xxx-xx-xxxx.
Ellis, Randall Shelley, SSGT, xxx-xx-xxxx.
Ellis, William, Jr., SSGT, xxx-xx-xxxx.
Ellison, John Cooley, CDR, xxx-xx-...
Elzinga, Richard Gene, CAPT, xxx-xx-xxxx.
Emrich, Roger Gene, LCDR, xxx-xx-...
Engelhard, Erich Carl, LTC, xxx-xx-xxxx.
Englander, Lawrence Jesse, SSGT, xxx-xx-xxxx.
Entrican, Danny Day, CAPT, xxx-xx-xxxx.
Erickson, David Wayne, SGT, xxx-xx-x...
Espenshied, John Lee, LTC, xxx-xx-xxxx.
Estes, Walter O., II, LT, xxx-xx-x...
Estocin, Michael John, CDR, xxx-xx-...
Evans, Cleveland, Jr., SSGT, xxx-xx-x...
Evans, James Joseph, CDR, xxx-xx-...
Evert, Lawrence Gerald, MAJ, xxx-xx-xxxx.
Fallon, Patrick Martin, COL, xxx-xx-xxxx.
Fanning, Hugh Michael, CAPT, xxx-xx-x...
Fanning, Joseph Peter, CAPT, xxx-xx-xxxx.
Featherston, Fieldin W., III, CAPT, xxx-xx-xxxx.
Feldhaus, John Anthony, LCDR, xxx-xx-...
Fellenez, Charles Richard, MSGT, xxx-xx-xxxx.
Fellows, Allen Eugene, COL, xxx-xx-xxxx.
Fenter, Charles Frederick, SGT, xxx-xx-xxxx.
Ferguson, Douglas David, CAPT, xxx-xx-xxxx.
Ferguson, Walter, Jr., SSGT, xxx-xx-xxxx.
Fickler, Edwin James, CAPT, xxx-xx-x...
Fieszel, Clifford Wayne, MAJ, xxx-xx-xxxx.
Finley, Dickie Waine, SSGT, xxx-xx-xxxx.
Finn, William Robert, 1LT, xxx-xx-xxxx.
Finney, Arthur Thomas, COL, xxx-xx-xxxx.
Finney, Charles Elbert, CAPT, xxx-xx-...
Fischer, Richard William, SGT, xxx-xx-xxxx.
Fisher, Donald Ellis, COL, xxx-xx-xxxx.
Fisher, Donald Garth, LTC, xxx-xx-xxxx.
Fitton, Crosley James, Jr., LTC, xxx-xx-xxxx.
Fitts, Richard Allan, SSGT, xxx-xx-xxxx.
Fitzgerald, Joseph Edward, SSGT, xxx-xx-xxxx.
Fitzgerald, Paul L., Jr., SSGT, xxx-xx-xxxx.
Flanigan, John Norlee, CAPT, xxx-xx-xxxx.
Fleming, Horace Higley III, CAPT, xxx-xx-...
Foley, Brendan Patrick, LTC, xxx-xx-xxxx.
Forman, William Stannard, LCDR, xxx-xx-...
Forrester, Ronald Wayne, 1LT, xxx-xx-xxxx.
Fors, Gary Henry, CAPT, xxx-xx-...
Fortner, Frederick John, LT, xxx-xx-...
Foster, Marvin Lee, LTC, xxx-xx-xxxx.
Foster, Paul Leonard, MSGT, xxx-xx-xxxx.
Foulks, Ralph Eugene, Jr., LT, xxx-xx-...
Fowler, Donald Randall, SP6, xxx-xx-xxxx.
Fowler, James Alan, MAJ, xxx-xx-xxxx.
Francisco, San Dewayne, CAPT, xxx-xx-xxxx.
Franklin, Charles Edward, LTC, xxx-xx-xxxx.
Frawley, William David, LCDR, xxx-xx-...
Frederick, John William, Jr., CWO, xxx-xx-...
Frederick Peter Joseph, COL, xxx-xx-xxxx.
Frederick, William V., MAJ, xxx-xx-xxxx.
Frenyea, Edmund Henry, AFCM, xxx-xx-xx...
Fryar, Bruce Carlton, LT, xxx-xx-xxxx.
Fullam, Wayne Eugene, LTC, xxx-xx-xxxx.
Fuller, James Ray, MSGT, xxx-xx-xxxx.
Fuller, William Otis, MAJ, xxx-xx-xxxx.
Fullerton, Frank Eugene, CDR, xxx-xx-...
Gage, Robert Hugh, SGT, xxx-xx-xxxx.
Galbraith, Russell Dale, CAPT, xxx-xx-xxxx.
Gallagher, John Theodore, SSGT, xxx-xx-x...-xx...
Galvin, Ronald Edmond, ATC, xxx-xx-xx...
Ganley, Richard Owen, MAJ, xxx-xx-xxxx.
Ganoe, Berman Junior, SP5, xxx-xx-xxxx.
Garcia, Ricardo Martinez, SP5, xxx-xx-xxxx.
Gardner, John Garrett, CAPT, xxx-xx-...
Garwood, Robert Russell, PFC, xxx-xx-xx...
Gates, James Wayne, MAJ, xxx-xx-xxxx.
Gatewood, Charles Hue, SGT, xxx-xx-x...
Gatwood, Robin Frederic, Jr., CAPT, xxx-xx-xxxx.
Gauthier, Dennis Lee, SGT, xxx-xx-xxxx.
Gee, Paul Stuart, CAPT, xxx-xx-...
Geist, Stephen Jonathan, SSGT, xxx-xx-xxxx.
Gerstel, Donald Arthur, LCDR, xxx-xx-xxxx.
Gervais, Donald Peter, SFC, xxx-xx-xxxx.
Getchell, Paul Everett, MAJ, xxx-xx-xxxx.
Giammarino, Vincent Frank, SSGT, xxx-xx-xxxx.
Giannangeli, Anthony Rober, LTC, xxx-xx-xxxx.
Gilbert, Paul Faris, CAPT, xxx-xx-xxxx.
Gilchrist, Robert Michael, CAPT, xxx-xx-xxxx.
Gillen, Thomas Eldon, LTC, xxx-xx-xxxx.
Gist, Tommy Emerson, MAJ, xxx-xx-xxxx.
Glasson, William Albert, Jr., LCDR, xxx-xx-...
Glover, Calvin Charles, MSG, xxx-xx-xxxx.
Glover, Douglas J., SSGT, xxx-xx-xxxx.
Godwin, Solomon Hughey, CWO, xxx-xx-...
Goff, Kenneth B., Jr., CAPT, xxx-xx-xxxx.
Golberg, Lawrence Herbert, LTC, xxx-xx-xxxx.
Gold, Edward Frank, CDR, xxx-xx-...
Gomez, Robert Arthur, CAPT, xxx-xx-xxxx.
Gonzalez, Jesus Armando, SSGT, xxx-xx-xxxx.
Goodwin, Charles Bernard, LCDR, xxx-xx-...
Goss, Bernard Joseph, COL, xxx-xx-xxxx.
Gould, Frank Alton, MAJ, xxx-xx-xxxx.
Gourley, Laurent Lee, CAPT, xxx-xx-xxxx.
Govan, Robert Allen, MAJ, xxx-xx-xxxx.
Grace, James William, CAPT, xxx-xx-xxxx.
Graf, John George, LCDR, xxx-xx-xxxx.
Graffe, Paul Leroy, CAPT, xxx-xx-xxxx.
Graham, Allen Upton, CAPT, xxx-xx-xxxx.
Graham, Dennis Lee, CAPT, xxx-xx-xxxx.
Graham, James Scott, LCDR, xxx-xx-...
Graustein, Robert Stewart, LCDR, xxx-xx-xxxx.
Graziosi, Francis George, SSGT, xxx-xx-xxxx.
Green, Frank Clifford, Jr., CDR, xxx-xx-xxxx.
Green, Norman Morgan, COL, xxx-xx-xxxx.
Greenwood, Robert Roy, Jr., MAJ, xxx-xx-xxxx.
Greer, Robert Lee, SGT, xxx-xx-xx...
Gregory, Robert Raymond, LTC, xxx-xx-xxxx.
Greiling, David Scott, CDR, xxx-xx-...
Grenzebach, Earl Wilfre, Jr., LTC, xxx-xx-xxxx.
Grewell, Larry Irwin, MSGT, xxx-xx-xxxx.
Griffin, James Lloyd, CDR, xxx-xx-...
Griffin, Rodney Lynn, SGT, xxx-xx-xxxx.
Griffith, Robert Smith, SSGT, xxx-xx-xxxx.
Grosse, Christopher A., Jr., SSGT, xxx-xx-xxxx.
Groth, Wade Lawrence, SSGT, xxx-xx-xxxx.
Grubb, Peter Arthur, CAPT, xxx-xx-xxxx.
Grubb, Wilmer Newlin, LTC, xxx-xx-xxxx.
Guillermin, Louis Fulda, CAPT, xxx-xx-xxxx.
Guillet, Andre Roland, MSGT, xxx-xx-xxxx.
Guillory, Edward Joseph, SMAJ, xxx-xx-xxxx.
Gunn, Alan Wendell, CWO, xxx-xx-xxxx.
Hackett, Harley B., III, CAPT, xxx-xx-xxxx.
Hagan, John Robert, 1LT, xxx-xx-xxxx.
Hagerman, Robert Warren, COL, xxx-xx-xxxx.
Haifley, Michael Firestone, LT, xxx-xx-xxxx.
Hail, William Warren, MAJ, xxx-xx-xxxx.
Hall, Donald Joe, MSGT, xxx-xx-xxxx.
Hall, Fredrick Mervyn, CAPT, xxx-xx-xxxx.
Hall, Harley Hubert, CDR, xxx-xx-xxxx.
Hall, James Shreve, SMS, xxx-xx-xxxx.
Hall, James Wayne, LCDR, xxx-xx-xxxx.
Hallberg, Roger C., SSGT, xxx-xx-xxxx.
Halpin, Richard Conroy, CAPT, xxx-xx-xxxx.
Hamilton, Dennis Clark, CWO, xxx-xx-xxxx.
Hamilton, Eugene David, LTC, xxx-xx-xxxx.
Hamilton, John Smith, LTC, xxx-xx-xxxx.
Hamilton, Roger Dale, SGT, xxx-xx-xxxx.
Hamm, James Edward, CAPT, xxx-xx-xxxx.
Handrahan, Eugene Allen, SSGT, xxx-xx-xxxx.
Hanley, Larry James, CAPT, xxx-xx-xxxx.
Hanley, Terence Higgins, LT, xxx-xx-...
Hanna, Kenneth, MSGT, xxx-xx-xxxx.
Hansen, Lester Alan, CWO, xxx-xx-xxxx.
Hanson, Robert Taft, Jr., LCDR, xxx-xx-x...
Hanson, Stephen Paul, CAPT, xxx-xx-...
Hanson, Thomas Patterson, CAPT, xxx-xx-xxxx.
Harber, Stephen James, SGT, xxx-xx-xxxx.
Hardy, Arthur Hans, 1LT, xxx-xx-xxxx.
Hardy, John Kay, Jr., CAPT, xxx-xx-xxxx.
Hargrove, Olin, Jr., SSGT, xxx-xx-xxxx.
Harley, Lee Dufford, MAJ, xxx-xx-xxxx.
Harned, Gary Alan, SGT, xxx-xx-xxxx.
Harris, Bobby Glenn, SGT, xxx-xx-xxxx.
Harris, Cleveland Scott, CAPT, xxx-xx-xxxx.
Harris, Gregory John, SSGT, xxx-xx-xxxx.
Harris, Jeffrey Lyndol, CAPT, xxx-xx-xxxx.
Harris, Reuben Beaumont, ATCS, xxx-xx-xx...
Harris, Stephen Warren, TSGT, xxx-xx-xxxx.
Harrison, Donald Lee, CAPT, xxx-xx-xxxx.
Harrison, Robert Heerman, MAJ, xxx-xx-xxxx.
Harrold, Patrick Kendal, CAPT, xxx-xx-xxxx.
Hart, Thomas Trammell, III, CAPT, xxx-xx-xxxx.
Hartman, Richard Danner, CDR, xxx-xx-...
Hartness, Gregg, MAJ, xxx-xx-xxxx.
Hartney, James Cuthbert, COL, xxx-xx-xxxx.
Harvey, Jack Rockwood, CAPT, xxx-xx-xxxx.
Harwood, James Arthur, SGT, xxx-xx-xxxx.
Harworth, Elroy Edwin, MSGT, xxx-xx-xxxx.
Haselton, John Herbert, 1LT, xxx-xx-xxxx.
Hasenbeck, Paul Alfred, SSGT, xxx-xx-xxxx.
Hassenger, Arden Keith, SMS, xxx-xx-xxxx.
Hastings, Steven Morris, SSGT, xxx-xx-xxxx.
Hauer, Leslie John, COL, xxx-xx-xxxx.
Hauer, Robert Douglas, CAPT, xxx-xx-xxxx.
Hawkins, Edgar Lee, MAJ, xxx-xx-xxxx.
Hawthorne, Richard William, MAJ, xxx-xx-...
Heggen, Keith Russell, LTC, xxx-xx-xxxx.
Heiskell, Lucius Lamar, CAPT, xxx-xx-xxxx.
Heitman, Steven W., SSGT, xxx-xx-xxxx.
Helber, Lawrence Neal, CAPT, xxx-xx-...
Held, John Wayne, MAJ, xxx-xx-xxxx.
Helmich, Gerald Robert, MAJ, xxx-xx-xxxx.
Henderson, William Roy, SFC, xxx-xx-xxxx.
Henn, John Robert, Jr., CWO, xxx-xx-xxxx.
Henninger, Howard William, LTC, xxx-xx-xxxx.
Hensley, Ronnie Lee, TSGT, xxx-xx-xxxx.
Hensley, Thomas Truett, CAPT, xxx-xx-xxxx.
Herreid, Robert Dale, SSGT, xxx-xx-xxxx.
Herrera, Frederick Daniel, SGT, xxx-xx-xxxx.
Herrick, James Wayne, Jr., 1LT, xxx-xx-xxxx.
Herrin, Henry Howard, Jr., PHCS, xxx-xx-xx...
Herrold, Ned Raymond, CAPT, xxx-xx-xxxx.
Hesford, Peter Dean, CAPT, xxx-xx-xxxx.
Hess, Frederick William, Jr., CAPT, xxx-xx-xxxx.
Hestle, Roosevelt, Jr., COL, xxx-xx-xxxx.
Hewitt, Samuel Eugene, SGT, xxx-xx-x...
Hicks, Prentice Wayne, SSGT, xxx-xx-xxxx.
Hicks, Terrin Dinsmore, MAJ, xxx-xx-xxxx.
Hilbrich, Barry Wayne, CAPT, xxx-xx-xxxx.
Hill, Billy David, SSGT, xxx-xx-xxxx.
Hill, Gordon Clark, 1LT, xxx-xx-xxxx.
Hill, Robert La Verne, SMS, xxx-xx-xxxx.
Hockridge, James Alan, CAPT, xxx-xx-xxxx.
Hodgson, Cecil J., MSGT, xxx-xx-xxxx.
Hoff, Michael George, CDR, xxx-xx-xxxx.
Hoff, Sammie Don, CAPT, xxx-xx-xxxx.
Hogan, Jerry Franks, LCDR, xxx-xx-x...
Holdeman, Robert Eugene, CAPT, xxx-xx-...
Holguin, Luis Gallegos, CWO, xxx-xx-xxxx.
Holley, Tilden Stewart, MAJ, xxx-xx-xxxx.
Holmes, David Hugh, MAJ, xxx-xx-xxxx.
Holmes, Frederick Lee, LCDR, xxx-xx-xxxx.
Holmes, Lester Evan, COL, xxx-xx-xxxx.
Holt, James William, MSGT, xxx-xx-xxxx.
Holton, Robert Edwin, CAPT, xxx-xx-xxxx.
Hopper, Earl Pearson, Jr., CAPT, xxx-xx-xxxx.
Horne, Stanley Henry, LTC, xxx-xx-xxxx.
Hosken, John Charles, CWO, xxx-xx-xxxx.
Hoskins, Charles Lee, CAPT, xxx-xx-xxxx.
Hoskinson, Robert Eugene, LTC, xxx-xx-xxxx.
Housh, Anthony Frank, SP6, xxx-xx-xxxx.
Howard, Lewis, Jr., SGT, xxx-xx-xxxx.
Howell, Carter Avery, CAPT, xxx-xx-xxxx.
Howes, George Andrews, CWO, xxx-xx-xxxx.
Hrdlicka, Davis Louis, MAJ, xxx-xx-xxxx.
Huard, James Linton, CAPT, xxx-xx-xxxx.
Huberth, Eric James, CAPT, xxx-xx-xxxx.
Huddleston, Lynn Ragle, CAPT, xxx-xx-xxxx.
Hummel, John Floyd, CWO, xxx-xx-xxxx.
Huneycutt, Charles J., Jr., CAPT, xxx-xx-xxxx.
Hunt, James D., LT, xxx-xx-...
Hunt, Leon Andrew, SSGT, xxx-xx-xxxx.
Hunt, Robert William, SFC, xxx-xx-xxxx.
Hunt, William Balt, SFC, xxx-xx-xxxx.
Hunter, Russell Palmer, Jr., MAJ, xxx-xx-xxxx.
Huston, Charles Gregory, SSGT, xxx-xx-xxxx.
Ibanez, Di Reyes, SSGT, xxx-xx-x...
Innes, Roger Burns, LT, xxx-xx-...
Ireland, Robert Newell, SMS, xxx-xx-xxxx.
Irsch, Wayne Charles, CAPT, xxx-xx-xxxx.
Irwin, Robert Harry, MAJ, xxx-xx-xxxx.
Ivan, Andrew, Jr., CAPT, xxx-xx-xxxx.
Jackson, James Wesley, Jr., SGT, xxx-xx-xx...

Jakovac, John Andrew, SSGT xxx-xx-xxxx.
Jamerson, Larry Carl, SP6 xxx-xx-xxxx.
James, Samuel Larry, CAPT xxx-xx-xxxx.
Jarvis, Jeremy Michael, CAPT xxx-xx-xxxx.
Jefferson, James Milton, CAPT xxx-xx-xxxx.
Jefferson, Perry Henry, CAPT xxx-xx-xxxx.
Jeffords, Derrell Blackbur, COL xxx-xx-xxxx.
Jeffs, Clive Garth, CAPT xxx-xx-xxxx.
Jensen, George William, COL xxx-xx-xxxx.
Johns, Paul Frederick, LTC xxx-xx-xxxx.
Johns, Vernon Zigman, SSGT xxx-xx-xxxx.
Johnson, Allen Louis, MAJ xxx-xx-xxxx.
Johnson, Bruce Gardner, MAJ xxx-xx-xxxx.
Johnson, Edward Harvey, MAJ xxx-xx-xxxx.
Johnson, Frankie B., Jr., SP6 xxx-xx-xxxx.
Johnson, Guy David, CAPT, xxx-xx-...
Johnson, Randolph Leroy, SP5 xxx-xx-xxxx.
Johnson, William Darrell, SSGT, xxx-xx-x...-xx...
Jones, Bobby Marvin, CAPT xxx-xx-xxxx.
Jones, James E., MSGT xxx-xx-xxxx.
Jones, Louis Farr, COL, xxx-xx-xxxx.
Jones, Orvin Clarence, Jr., CAPT, xxx-xx-x...-xx...
Jones, Wiliam Eugene, CAPT xxx-xx-xxxx.
Jordan, Larry Michael, LCDR, xxx-xx-...
Kahler, Harold, LTC xxx-xx-xxxx.
Kane, Richard Raymond, CAPT, xxx-xx-...
Karins, Joseph John, Jr., MAJ xxx-xx-xxxx.
Karst, Carl Frederick, LTC xxx-xx-xxxx.
Kearns, Joseph Thomas, Jr., MAJ, xxx-xx-...-xx...
Keiper, John Charles, SSGT xxx-xx-xx...
Keler, Jack Elmer, CAPT, xxx-xx-...
Keller, Wendell Richard, MAJ xxx-xx-xxxx.
Kemmerer, Donald Richard, CAPT, xxx-xx...-xxx-...
Kennedy, Allan Gordon, SP6 xxx-xx-xxxx.
Kennedy, James Edward, SP5 xxx-xx-xxxx.
Kennedy, John William, CAPT xxx-xx-xxxx.
Kent, Robert Duane, CAPT, xxx-xx-...
Kerr, Everett Oscar, MAJ xxx-xx-xxxx.
Ketchie, Scott Douglas, 1LT xxx-xx-xxxx.
Ketterer, James Alan, CAPT xxx-xx-xxxx.
Kibbey, Richard Abbott, MAJ xxx-xx-xxxx.
Kiefel, Ernst Philip, Jr., MAJ xxx-xx-xxxx.
Kier, Larry Gene, SGT xxx-xx-xxxx.
Kilcullen, Thomas Michael, CAPT, xxx-xx-x...-xx...
Killian, Melvin Joseph, COL xxx-xx-xxxx.
Kilpatrick, Larry Ronald, LT xxx-xx-xxxx.
Kimsey, William Arthur, Jr., CWO, xxx-xx-xxxx.
King, Charles Douglas, TSGT xxx-xx-xxxx.
King, Donald Lewis, LTC, xxx-xx-xxxx.
Kinkade, William Louis, CAPT xxx-xx-xxxx.
Kipina, Marshall Frederick, SSGT, xxx-xx-xxxx.
Kirby, Bobby Alexander, MAJ xxx-xx-xxxx.
Klemm, Donald Martin, COL xxx-xx-xxxx.
Klenda, Dean Albert, CAPT xxx-xx-xxxx.
Klenert, William Blue, LT xxx-xx-...
Klimo, James Robert, SP6 xxx-xx-xxxx.
Klinck, Harrison Hoyt, MAJ xxx-xx-xxxx.
Kline, Robert Earl, LTC xxx-xx-xxxx.
Klinke, Donald Herman, TSGT xxx-xx-xxxx.
Knabb, Kenneth Keith, Jr., LCDR, xxx-xx...
Knapp, Herman Ludwig, COL xxx-xx-xxxx.
Knebel, Thomas Edward, MSGT xxx-xx-xxxx.
Knight, Henry Clay, CWO, xxx-xx-xxxx.
Knight, Larry Dale, CAPT xxx-xx-xxxx.
Knight, Roy Abner, Jr., LTC xxx-xx-xxxx.
Knutson Richard Arthur, WO xxx-xx-xxxx.
Kolstad, Thomas Carl, CDR, xxx-xx-...
Kommendant, Aado, CAPT, xxx-xx-xxxx.
Koonce, Terry Treloar, MAJ xxx-xx-xxxx.
Koons, Dale Francis, CAPT, xxx-xx-xxxx.
Kosko, Walter, MAJ, xxx-xx-xxxx.
Kott, Stephen Jay, CAPT, xxx-xx-...
Krausman, Edward L., SGT xxx-xx-xx...
Kroboth, Stanley Neal, CAPT xxx-xx-xxxx.
Krommenhoek, Jeffrey Marti, LCDR, xxx-xx...
Kroske, Harold William Jr., CAPT, xxx-xx-xxxx.
Krupa, Frederick, CAPT xxx-xx-xxxx.
Kryszak, Theodore Eugene, LTC xxx-xx-xxxx.
Kuhlman, Robert John, Jr., CAPT xxx-xx-x...
Kwortnik, John Charles, LTC xxx-xx-xxxx.
La Bohn, Gary Russell, SSGT xxx-xx-xxxx.
La Porte, Michael Louis, HMC, xxx-xx-x...
Lacey, Richard Joseph, SSGT xxx-xx-xxxx.
Ladewig, Melvin Earl, CAPT, xxx-xx-xxxx.
Lafayette, John Wayne, MAJ xxx-xx-xxxx.
Lagerwall, Harry Roy, CAPT, xxx-xx-xxxx.
Lancaster, Kenneth Ray, SSGT xxx-xx-xxxx.
Lane, Charles, Jr., CAPT, xxx-xx-xxxx.
Lane, Glen Oliver, MSGT, xxx-xx-xxxx.
Lane, Mitchell Sim, CAPT, xxx-xx-xxxx.
Laney, Billy Ray, MSGT, xxx-xx-xxxx.
Lannom, Richard Clive, LT, xxx-xx-...
Latimer, Clarence Albert, SSGT xxx-xx-xxxx.
Lauierio, Manuel Alonzo, SP5 xxx-xx-xxxx.
Lawrence, Bruce Edward, CAPT xxx-xx-xxxx.
Lee, Charles Richard, LCDR, xxx-xx-...
Lee, Leonard Murray, CDR, xxx-xx-...
Leeper, Wallace Wilson, CWO, xxx-xx-xxxx.
Leet, David Leverett, CAPT xxx-xx-xxxx.
Leetun, Darel Dean, LTC, xxx-xx-xxxx.
Lefever, Douglas Paul, CAPT, xxx-xx-xxxx.
Lehnhoff, Edward Willia, Jr., MAJ, xxx-xx-xxxx.
Lehrke, Stanley Lawrence, SSGT xxx-xx-xxxx.
Lemmons, William E., CAPT, xxx-xx-xxxx.
Lemon, Jeffrey Charles, CAPT xxx-xx-xxxx.
Leonor, Leonardo Capistran, CAPT, xxx-xx-xxxx.
Lerner, Irwin Stuart, CAPT xxx-xx-xxxx.
Lester, Roderick Barnum, LT xxx-xx-xxxx.
Levis, Charles Allen, LTC, xxx-xx-xxxx.
Lewandowski, Leonard J., Jr., SGT xxx-xx-xx...
Lewis, James Wimberley, LTC, xxx-xx-xxxx.
Lewis, Merrill Raymond, Jr., MAJ, xxx-xx-xxxx.
Liles, Robert Leonel, Jr., CAPT xxx-xx-xxxx.
Lillund, William Allan, CAPT xxx-xx-xxxx.
Lilly, Carroll Baxter, MAJ, xxx-xx-xxxx.
Lindewald, Charles W., Jr., MSGT, xxx-xx-xxxx.
Lindland, Donald Fredrick, LCDR, xxx-xx-xxxx.
Lindstrom, Ronnie George, CAPT, xxx-xx-xxxx.
Lineberger, Harold Benton, MAJ xxx-xx-xxxx.
Link, Robert Charles, CWO, xxx-xx-xxxx.
Lini, Donald Michael, SSGT xxx-xx-xxxx.
Lockhart, George Barry, CAPT, xxx-xx-xxxx.
Lodge, Robert Alfred, MAJ, xxx-xx-xxxx.
Loheed, Hubert Bradford, CAPT xxx-xx-...
Long, John Henry Sothorn, CAPT, xxx-xx...-xxx...
Lono, Luther Albert, MAJ, xxx-xx-...
Lord, Arthur James, MAJ xxx-xx-xxxx.
Lucki, Albin Earl, CAPT, xxx-xx-xxxx.
Lull, Howard Burdette, Jr., SFC xxx-xx-xxxx.
Luna, Carter Purvis, COL, xxx-xx-xxxx.
Luna, Donald Alfred, MAJ xxx-xx-xxxx.
Lunsford, Herbert Lamar, COL xxx-xx-xxxx.
Luster, Robert Lee, SGT xxx-xx-xxxx.
Luttrell, James Martin, SFC xxx-xx-xxxx.
Lynn, Robert Ray, CAPT, xxx-xx-xxxx.
Lyon, Donavan Loren, MAJ, xxx-xx-xxxx.
MacCann, Henry Elmer, LTC xxx-xx-xxxx.
MacDonald, George Duncan, 1LT, xxx-xx...-xxx...
MacKedanz, Lyle Everett, SFC xxx-xx-xxxx.
Macko Charles, LTC xxx-xx-xxxx.
Maddox, Notley Gwynn, COL, xxx-xx-xxxx.
Madison, William Louis, SMS xxx-xx-xxxx.
Magee, Patrick Joseph, SP6 xxx-xx-xxxx.
Mahan, Douglas Frank, CAPT xxx-xx-xxxx.
Mallon, Richard Joseph, CAPT xxx-xx-xxxx.
Malone, Jimmy McDonald, SSGT, xxx-xx...-xxx...
Mamiya, John Michio, SMS, xxx-xx-xxxx.
Mangino, Thomas Angelo, SSGT xxx-xx-xxxx.
Marik, Charles Weldon, LCDR, xxx-xx-...
Martin, Douglas Kent, CAPT xxx-xx-xxxx.
Martin, John Murray, MAJ xxx-xx-xxxx.
Martin, Larry Eugene, CAPT xxx-xx-xxxx.
Martin, Richard D., SSGT xxx-xx-xxxx.
Martin, Russell Dean, CAPT xxx-xx-xx...
Mascari, Phillip Louis, CAPT xxx-xx-xxxx.
Mason, William Henderson, COL, xxx-xx...-xxx...
Massucci, Martin John, CAPT xxx-xx-xxxx.
Masterson, Michael John, MAJ xxx-xx-xxxx.
Masuda, Robert Susumu, SSGT xxx-xx-xxxx.
Mateja, Alan Paul, CAPT xxx-xx-xxxx.
Matthes, Peter Richard, CAPT xxx-xx-xxxx.
Mauterer, Oscar, COL, xxx-xx-xxxx.
Maxwell, Calvin Walter, CAPT, xxx-xx-xxxx.
Maxwell, Samuel Chapman, LTC, xxx-xx...-xxx-...
May, David Murray, CAPT, xxx-xx-xxxx.
Mayer, Roderick Lewis, LCDR, xxx-xx-...
Mayercik, Ronald Michael, CAPT, xxx-xx...-xxx...
McCain, Marvin Raymond, Jr., SSGT, xx...-xxx-xx...
McCleary, Georgia Carlton, COL, xxx-xx-xxxx.
McCrary, Jack, SMS, xxx-xx-xxxx.
McCubrin, Glenn Dewayne, CAPT, xxx-xx...-xxx...
McDaniel, Morris L., Jr., LTC xxx-xx-xxxx.
McDonald, Emmett Raymond, MAJ, xxx-xx...-xxx...
McDonald, Kurt Casey, MAJ xxx-xx-xxxx.
McDonnell, John Terence, MAJ xxx-xx-xxxx.
McElhanon, Michael Owen, LTC xxx-xx-xxxx.
McGar, Brian Kent, SSGT xxx-xx-xxxx.
McGarvey, James Maurice, MAJ, xxx-xx-...
McGouldrick, Francis J., Jr., LTC, xxx-x...-xxx...
McGrath, William Darrell, CDR, xxx-xx-...
McKenney, Kenneth Dewey, MSGT, xxx-x...-xxx...
McLean, James Henry, SFC xxx-xx-xxxx.
McMahan, Robert Charles, LT xxx-xx-...
McMurray, Fred Howell, Jr., CAPT, xxx-xx...-xxx...
McPhail, William Thomas, CAPT, xxx-xx...-xxx...
McPherson, Everett Alvin, CAPT, xxx-xx-...
McCarty, James Lon, CAPT, xxx-xx-xxxx.
McCormick, Michael Timothy, LT, xxx-xx-xxxx.
McDonald, Joseph William, 1LT, xxx-xx-xxxx.
McElvain, James Richard, MAJ, xxx-xx-xxxx.
McKittrick, James Clifford, CAPT, xxx-xx-xxxx.
McLaughlin, Arthur Vincent, MSGT, xxx-xx-xxxx.
Meadows, Eugene Thomas, CAPT, xxx-xx-xxxx.
Mearns, Arthur Stewart, COL, xxx-xx-xxxx.
Medaris, Rick Eggburtus, SP5 xxx-xx-xxxx.
Meder, Paul Oswald, MAJ, xxx-xx-xxxx.
Mein, Michael Howard, SSGT, xxx-xx-xxxx.
Meldahl, Charles Howard, SSGT xxx-xx-xxxx.
Mellor, Fredric Moore, LTC, xxx-xx-xxxx.
Menges, George Bruce, CAPT, xxx-xx-xxxx.
Mercer, Jacob Edward, MSGT xxx-xx-xxxx.
Meroney, Virgil Kersh, III, CAPT, xxx-xx-xxxx.
Metz, James Hardin, LTC xxx-xx-xxxx.
Meyer, William Michael, MAJ, xxx-xx-xxxx.
Midnight, Francis Barnes, CAPT xxx-xx-xxxx.
Milikin, Richard, M., III, CAPT xxx-xx-xxxx.
Milius, Paul Lloyd, CAPT, xxx-xx...
Millard, Charles Worth, CWO xxx-xx-xxxx.
Miller, Carl Dean, LTC, xxx-xx-xxxx.
Miller, Curtis Daniel, CAPT, xxx-xx-xxxx.
Miller, Richard Arthur, CAPT xxx-xx-...
Milliner, William Patrick, CWO xxx-xx-xxxx.
Millner, Michael, SFC, xxx-xx-xxxx.
Mills, James Burton, LCDR, xxx-xx-...
Minnich, Richard Willis, Jr., LCDR, xxx-xx-...
Mishuk, Richard Edward, SGT, xxx-xx-xxxx.
Mitchell, Albert Cook, LTC, xxx-xx-xxxx.
Mitchell, Gilbert Louis, LT xxx-xx-x...
Mitchell, Thomas Barry, CAPT xxx-xx-xxxx.
Monroe, Vincent Duncan, CDR, xxx-xx-x...
Moore, Herbert William, Jr., CAPT, xxx-xx...-xxx-...
Moore, James Rodney, SGT, xxx-xx-xxxx.
Moore, Jerry Lawrence, SGT xxx-xx-xxxx.
Moore, Maurice Henry, SSGT xxx-xx-xxxx.
Moore, Thomas, SMS, xxx-xx-xxxx.
Moorman, Frank David, SSGT xxx-xx-xxxx.
Moreida, Manuel Jesus, SSGT xxx-xx-xxxx.
Moreland, James Leslie, SSGT xxx-xx-xxxx.
Moreland, William David, CAPT, xxx-xx-...
Morgan, Charles Elzy, MAJ, xxx-xx-x...
Morgan, Edwin Everton, SMS, xxx-xx-xxxx.
Morgan, James Sheppard, LTC xxx-xx-xxxx.
Morgan, Thomas Raymond, MAJ xxx-xx-xxxx.
Morin, Richard Girard, CAPT, xxx-xx-...
Morley, Charles Frank, CAPT xxx-xx-xxxx.
Morrill, Merwin Lamphrey, MAJ, xxx-xx-xxxx.
Morris, George William, Jr., CAPT, xxx-xx...-xx...
Morris, Robert John, Jr., CAPT xxx-xx-xxxx.
Morrison, Glenn Raymond, Jr., MAJ, xxx-...-xxx-x...

Morrison, Joseph Castleman, LTC, xxx-xx-x...-xxx...
Morrissey, Robert David, MAJ, xxx-xx-xxxx.
Morrow, Larry Kane, SGT, xxx-xx-xxxx.
Morrow, Richard David, CDR, xxx-xx...
Mossman, Harry Seeber, LT, xxx-xx-xxxx.
Mullen, William Francis, MAJ, xxx-xx-...
Mullins, Harold Eugene, SMS, xxx-xx-xxxx.
Mundt, Henry Gerald, II, CAPT, xxx-xx-xxxx.
Munoz, David Louie, SGT, xxx-xx-xxxx.
Murphy, Larron David, CAPT, xxx-xx-xxxx.
Murray, Patrick Peter, CAPT, xxx-xx-x...
Musselman, Stephen Owen, LTJG, xxx-xx-xxxx.
Neal, Dennis Paul, CAPT, xxx-xx-xxxx.
Needl, Bobby Gene, LTC, xxx-xx-xxxx.
Nellans, William Lee, MAJ, xxx-xx-xxxx.
Nelson, James Raymond, SSGT, xxx-xx-xxxx.
Nelson, Richard Crawford, LCDR, xxx-xx-...
Nelson, William Humphrey, COL, xxx-xx...
Netherland, Roger Morton, CAPT, xxx-xx-...
Newman, Larry Jerome, TSGT, xxx-xx-xxxx.
Newsom, Benjamin Byrd, COL, xxx-xx-xxxx.
Newton, Charles Vernon, SFC, xxx-xx-xxxx.
Newton, Donald Stephen, SFC, xxx-xx-xxxx.
Newton, Warren Emery, SSGT, xxx-xx-xxxx.
Nichols, Hubert Campbel, Jr., COL, xxx-xx-xxxx.
Nidds, Daniel Russell, SSGT, xxx-xx-xxxx.
Nobert, Craig Roland, CAPT, xxx-xx-xxxx.
Nopp, Robert Graham, LTC, xxx-xx-xxxx.
Nordahl, Lee Edward, LCDR, xxx-xx-...
Norton, Michael Robert, SGT, xxx-xx-xxxx.
Nyhof, Richard E., TSGT, xxx-xx-xxxx.
Nystrom, Bruce August, CAPT, xxx-xx-...
O'Brien, Kevin, CAPT, xxx-xx-xxxx.
O'Donnell, Michael Davis, CAPT, xxx-xx-xxxx.
O'Donnell, Samuel, Jr., CAPT, xxx-xx-xxxx.
O'Grady, John Francis, COL, xxx-xx-xxxx.
O'Hara, Robert Charles, SP6, xxx-xx-xxxx.
Okerland, Thomas Richard, CWO, xxx-xx-...-xxx...
Olds, Ernest Arthur, LTC, xxx-xx-xxxx.
Olsen, Floyd Warren, MAJ, xxx-xx-xxxx.
Olson, Barry A., SSGT, xxx-xx-xxxx.
Olson, Gerald Everett, CAPT, xxx-xx-xxxx.
Omelia, Dennis William, CWO, xxx-xx-xxxx.
O'Neill, Douglas Lee, WO, xxx-xx-xxxx.
Orell, Quinlan Roberts, CDR, xxx-xx-...
Orr, Warren Robert, Jr., CAPT, xxx-xx-xxxx.
Osborne, Edwin Nelms, Jr., MAJ, xxx-xx-xxxx.
Ostermeyer, William Henry, CAPT, xxx-xx-...-xxx...
Ott, William August, MAJ, xxx-xx-xxxx.
Overlock, John Francis, MAJ, xxx-xx-xxxx.
Owen, Robert Duval, SFC, xxx-xx-xxxx.
Owen, Timothy Samuel, SSGT, xxx-xx-xxxx.
Owens, Joy Leonard, COL, xxx-xx-xxxx.
Pabst, Eugene Matthew, CAPT, xxx-xx-xxxx.
Packard, Ronald Lyle, CAPT, xxx-xx-xxxx.
Padgett, David Eugene, CAPT, xxx-xx-xxxx.
Page, Albert Linwood, Jr., MAJ, xxx-xx-xxxx.
Page, Gordon Lee, LTC, xxx-xx-xxxx.
Palen, Carl Anthony, SP6, xxx-xx-xxxx.
Palenscar, Alexander J., III, LCDR, xxx-xx-...
Palmer, Gilbert Swain, COL, xxx-xx-xxxx.
Palmgren, Edwin David, COL, xxx-xx-xxxx.
Panek, Robert Joseph, Sr., MAJ, xxx-xx-xxxx.
Parker, Frank C., III, CAPT, xxx-xx-xxxx.
Parker, Woodrow Wilson, II, CAPT, xxx-xx-xxxx.
Parra, Lionel, Jr., CAPT, xxx-xx-...
Parsley, Edward Milton, MSGT, xxx-xx-xxxx.
Parsons, Don Brown, Jr., LCDR, xxx-xx-x...
Parsons, Donald Eugene, LTC, xxx-xx-xxxx.
Parsons, Michael Duane, CAPT, xxx-xx-xxxx.
Pasekoff, Robert Edward, LTC, xxx-xx-xxxx.
Pate, Gary, MSGT, xxx-xx-xxxx.
Patterson, James Kelly, LCDR, xxx-xx-x...
Pattillo, Ralph Nathan, MAJ, xxx-xx-xxxx.
Patton, Kenneth James, SSGT, xxx-xx-xxxx.
Paul, Craig Allan, CAPT, xxx-xx-xxxx.
Pauley, Marshall Irvin, MSGT, xxx-xx-xxxx.
Paulson, Merlyn Leroy, TSGT, xxx-xx-xxxx.
Pawlish, George Francis, LT, xxx-xx-...
Paxton, Donald Elmer, COL, xxx-xx-xxxx.
Payne, John Allen, SSGT, xxx-xx-xxxx.
Payne, Norman, SFC, xxx-xx-xxxx.
Peace, John Darlington, III, CDR, xxx-xx-x...
Peacock, John Robert, II, CAPT, xxx-xx-xxxx.
Pearce, Edwin Jack, TSGT, xxx-xx-xxxx.
Pearson, Robert Harvey, CAPT, xxx-xx-xxxx.
Pearson, Wayne Edward, MAJ, xxx-xx-xxxx.
Pederson, Joe Palmer, SFC, xxx-xx-xxxx.
Pemberton, Gene Thomas, COL, xxx-xx-xxxx.
Pender, Orland James, Jr., LT, xxx-xx-xxxx.
Perisho, Gordon Samuel, LCDR, xxx-xx-...
Perrinf, Elton Lawrence, MAJ, xxx-xx-xxxx.
Perry Randolph Allen, Jr., MAJ, xxx-xx-xxxx.
Perry, Ronald Dwight, CAPT, xxx-xx-xxxx.
Perry, Thomas Hepburn, SSGT, xxx-xx-xxxx.
Petersen, Gaylord Dean, MAJ, xxx-xx-xxxx.
Peterson, Delbert Ray, CAPT, xxx-xx-xx...
Peterson, Mark Allan, 1LT, xxx-xx-xxxx.
Phelps, William, 1LT, xxx-xx-xxxx.
Phillips, Daniel Raymond, SSGT, xxx-xx-xxxx.
Phillips, Robert Paul, SP4, xxx-xx-xxxx.
Phipps, James Larry, CWO, xxx-xx-xxxx.
Pierson, William C., III, CWO, xxx-xx-xxxx.
Pietsch, Robert Edward, MAJ, xxx-xx-xxxx.
Piittmann, Alan Dale, MSGT, xxx-xx-xxxx.
Pike, Dennis Stanley, LT, xxx-xx-xxxx.
Pike, Peter Xavier, CAPT, xxx-xx-xxxx.
Pilkington, Thomas Holt, LT, xxx-xx-x...
Pirker, Victor John, SSGT, xxx-xx-xx...
Pitman, Peter Potter, MAJ, xxx-xx-xxxx.
Pitt, Albert, MAJ, xxx-xx-...
Pitzen, John Russell, CDR, xxx-xx-xxxx.
Plassmeyer, Bernard Herber, 1LT, xxx-xx-xxxx.
Platt, Robert Lenwood, Jr., SSGT, xxx-xx-xxxx.
Plowman, James Edwin, LT, xxx-xx-...
Pogreba, Dean Andrew, COL, xxx-xx-xxxx.
Pollin, George John, CAPT, xxx-xx-xxxx.
Polster, Harmon, 1LT, xxx-xx-xxxx.
Pool, Jerry Lynn, CAPT, xxx-xx-xxxx.
Poole, Charlie Sherman, MSGT, xxx-xx-xxxx.
Poor, Russell, Arden, MAJ, xxx-xx-xxxx.
Potter, William Joseph, Jr., CAPT, xxx-xx-xxxx.
Potter, William Tod, CAPT, xxx-xx-xxxx.
Potts, Larry Fletcher, 1LT, xxx-xx-xxxx.
Powers Lowell Stephen, CWO, xxx-xx-xxxx.
Powers, Trent Richard, CAPT, xxx-xx-...
Preston, James Arthur, SMS, xxx-xx-xxxx.
Prevedel Charles Francis, SSGT, xxx-xx-xxxx.
Price, Bunyan Durant, Jr., SP5, xxx-xx-xxxx.
Price, William Marshall 1LT, xxx-xx-xxxx.
Pridemore, Dallas Reese, SFC, xxx-xx-xxxx.
Pringle, Joe Harold, MSGT, xxx-xx-xxxx.
Puentes, Manuel Rameriz, SGT, xxx-xx-xxxx.
Puggi, Joseph David, SSGT, xxx-xx-xxxx.
Pugh, Dennis Gerard, CAPT, xxx-xx-xxxx.
Pugh, Kenneth Ward, PRCS, xxx-xx-xxxx.
Putnam, Charles Lancaster, CAPT, xxx-xx-x...
Pyles, Harley Boyd, COL, xxx-xx-xxxx.
Quamo, George, MAJ, xxx-xx-xxxx.
Quinn, Michael Edward, LCDR, xxx-xx-xxxx.
Rackley, Inzar William, Jr., LTC, xxx-xx-xxxx.
Ragland, Dayton William, COL, xxx-xx-xxxx.
Ralston, Frank Delzell, III, CAPT, xxx-xx-xxxx.
Ramos, Rainer Sylvester, CWO, xxx-xx-xxxx.
Ramsay, Charles James, MAJ, xxx-xx-...
Ramsower, Irving Burns, II, MAJ, xxx-xx-xxxx.
Ransbottom, Frederick Joel, CAPT, xxx-xx-xxxx.
Rash, Melvin Douglas, TSGT, xxx-xx-x xxx...
Rattin, Dennis Michael, SP5, xxx-xx-xxxx.
Ratzel, Wesley Dallas, CAPT, xxx-xx-xxxx.
Rausch, Robert Ernest, CAPT, xxx-xx-xxxx.
Ravencraft, James A., SSGT, xxx-xx-xxxx.
Ravenna, Harry M., III, MAJ, xxx-xx-xxxx.
Ray, Ronald Earl, SSGT, xxx-xx-xxxx.
Raymond, Paul Darwin, CAPT, xxx-xx-xxxx.
Read, Charles Harold W., Jr., COL, xxx-xx-xxxx.
Reaid, Rollie Keith, SGT, xxx-xx-xxxx.
Reed, James Wilson, CAPT, xxx-xx-xxxx.
Rehe, Richard Raymond, SSGT, xxx-xx-xxxx.
Reid, Harold Erich, SGT, xxx-xx-xxxx.
Reid, Jon Eric, CWO, xxx-xx-xxxx.
Reilly, Edward Daniel, Jr., SFC, xxx-xx-xxxx.
Reilly, Lavern George, COL, xxx-xx-xxxx.
Reitmann, Thomas Edward, MAJ, xxx-xx-xxxx.
Renelt, Walter A., COL, xxx-xx-xxxx.
Rex, Robert Alan, CAPT, xxx-xx-xxxx.
Rexroad, Ronald Reuel, CAPT, xxx-xx-xxxx.
Rhodes, Ferris Ansel, Jr., CAPT, xxx-xx-xxxx.
Rich, Richard, CDR, xxx-xx-...
Richardson, Dale Wayne, CAPT, xxx-xx-xxxx.
Richardson, Floyd Whitley, COL, xxx-xx-xxxx.
Richtsteig, David John, CAPT, xxx-xx-...
Rickel, David J., CAPT, xxx-xx-xxxx.
Ricker, William Ernest, LCDR, xxx-xx-...
Rickman, Dwight Gray, 1LT, xxx-xx-xxxx.
Riggs, Thomas F., CWO, xxx-xx-xxxx.
Roach, Marion Lee, SSGT, xxx-xx-xxxx.
Roberts, Richard Dean, SGT, xxx-xx-xxxx.
Robertson, John Hartley, MSGT, xxx-xx-xxxx.
Robertson, John Leighton, LTC, xxx-xx-xxxx.
Robertson, Leonard, CAPT, xxx-xx-xxxx.
Robinson, Floyd Henry, SSGT, xxx-xx-xxxx.
Robinson, Kenneth Dale, MAJ, xxx-xx-xxxx.
Roby, Charles Donald, COL, xxx-xx-xxxx.
Rockett, Alton Craig, Jr., MAJ, xxx-xx-xxxx.
Rodriguez, Albert Eduardo, CAPT, xxx-xx-xxxx.
Roe, Jerry Lee, CAPT, xxx-xx-xxxx.
Romero, Victor, TSGT, xxx-xx-xxxx.
Rose, Luther Lee, SMS, xxx-xx-xxxx.
Rosenbach, Robert Page, CAPT, xxx-xx-xxxx.
Ross, J. Lynn, Jr., SSGT, xxx-xx-xxxx.
Ross, Joseph Shaw, CAPT, xxx-xx-xxxx.
Rowley, Charles Stoddard, LTC, xxx-xx-xxxx.
Rozo, James Milan, SP5, xxx-xx-xxxx.
Ruffin, James Thomas, LCDR, xxx-xx-...
Rusch, Stephen Arthur, CAPT, xxx-xx-xxxx.
Russell, Donald Myrick, LTC, xxx-xx-xxxx.
Russell, Peter John, CAPT, xxx-xx-xxxx.
Ryder, John Leslie, CAPT, xxx-xx-xxxx.
Saavedra, Robert, CDR, xxx-xx-...
Sadler, Mitchell Olen, Jr., CAPT, xxx-xx-xxxx.
Sale, Harold Reeves, Jr., CAPT, xxx-xx-xxxx.
Sanderlin, William Dale, SSGT, xxx-xx-xxxx.
Scharf, Charles Joseph, LTC, xxx-xx-xxxx.
Schell, Richard John, CAPT, xxx-xx-xxxx.
Scherdin, Robert Francis, SSGT, xxx-xx-xxxx.
Scheurich, Thomas Edwin, CDR, xxx-xx-...
Schiele, James Francis, SSGT, xxx-xx-xxxx.
Schmidt, Norman, COL, xxx-xx-xxxx.
Schmidt, Walter Roy, Jr., CAPT, xxx-xx-xx...
Scholz, Klaus Dieter, SSGT, xxx-xx-xxxx.
Schreckengost, Fred Thomas, SGT, xxx-xx-xx...
Schuler, Robert Harry, Jr., MAJ, xxx-xx-xxxx.
Schultz, Ronald James, SP5, xxx-xx-xxxx.
Schultz, Sheldon D., CWO, xxx-xx-xxxx.
Scott, Dain Vanderlin, LT, xxx-xx-...
Scott, Martin Ronald, LTC, xxx-xx-xxxx.
Scott, Mike John, SFC, xxx-xx-xxxx.
Scull, Gary Bernard, CAPT, xxx-xx-xxxx.
Scungio, Vincent Anthony, MAJ, xxx-xx-xxxx.
Scurlock, Lee D., Jr., SFC, xxx-xx-xxxx.
Seagroves, Michael Anthony, CAPT, xxx-xx-xxxx.
Sennett, Robert Russell, ADCS, xxx-xx-xx...
Serex, Henry Muir, MAJ, xxx-xx-xxxx.
Setterquist, Francis Lesli, CAPT, xxx-xx-xxxx.
Seuell, John Wayne, CAPT, xxx-xx-xxxx.
Seymour, Leo Earl, SFC, xxx-xx-xxxx.
Shafer, Philip Raymond, SP6, xxx-xx-xxxx.
Shank, Gary Leslie, LTJG, xxx-xx-xxxx.
Shanley, Michael Henry, Jr., SSGT, xxx-xx-xxxx.
Shark, Earl Eric, SSGT, xxx-xx-xxxx.
Shay, Donald Emerson, Jr., CAPT, xxx-xx-xxxx.
Shelton, Charles Ervin, MAJ, xxx-xx-xxxx.
Sherman, Peter Woodbury, CAPT, xxx-xx-...
Shine, Anthony Cameron, MAJ, xxx-xx-xxxx.
Shingledecker, Armon D., CAPT, xxx-xx-xxxx.
Shoneck, John Reginald, MSGT, xxx-xx-xxxx.
Shriver, Jerry Michael, SFC, xxx-xx-xxxx.
Shue, Donald Monroe, SSGT, xxx-xx-xxxx.
Shumway, Geoffrey Raymond, LCDR, xxx-xx-xxxx.
Sigafoos, Walter Harri, III, CAPT, xxx-xx-xxxx.
Sijan, Lance Peter, CAPT, xxx-xx-xxxx.
Silva, Claude Arnold, CAPT, xxx-xx-xxxx.
Silver, Edward Dean, MAJ, xxx-xx-xxxx.
Simmons, Robert Eugene, SGT, xxx-xx-xxxx.
Singer, Donald Maurice, COL, xxx-xx-xxxx.
Singleton, Daniel Everett, CAPT, xxx-xx-xxxx.
Sisson, Winfield Wade, MAJ, xxx-xx-...
Sittner, Ronald Nicholis, CAPT, xxx-xx-xxxx.
Skarman, Orval Harry, SGT, xxx-xx-x...
Skinner, Owen George, LTC, xxx-xx-xxxx.
Skivington, William E., Jr., SSGT, xxx-xx-xxxx.
Small, Burt Chauncy, Jr., SSGT, xxx-xx-xxxx.
Smith, David Roscoe, CAPT, xxx-xx-xxxx.

Smith, Edward Dewilton, Jr., TSGT, xxx-xx-xxxx.
Smith, Gene Albert, CDR, xxx-xx-...
Smith, George Craig, CAPT, xxx-xx-xxxx.
Smith, Hallie William, CAPT, xxx-xx-xxxx.
Smith, Harding Eugene, Sr., COL, xxx-xx-xxxx.
Smith, Harold Victor, LTC, xxx-xx-xxxx.
Smith, Harry Winfield, CAPT, xxx-xx-xxxx.
Smith, Herbert Eugene, SMS, xxx-xx-xxxx.
Smith, Homer Leroy, CAPT, xxx-xx-...
Smith, Howard Horton, LTC, xxx-xx-xxxx.
Smith, Lewis Philip, II, CAPT, xxx-xx-xxxx.
Smith, Richard Dean, MAJ, xxx-xx-xxxx.
Smith, Robert Norman, COL, xxx-xx-xxxx.
Smith, Victor Arlon, CAPT, xxx-xx-xxxx.
Smith, Warren Parker, Jr., LTC, xxx-xx-xxxx.
Smith, William Arthur, Jr., CWO, xxx-xx-xxxx.
Smith, William Mark, SGT, xxx-xx-xxxx.
Smoot, Curtis Richard, SSGT, xxx-xx-xxxx.
Soyland, David Pecor, CWO, xxx-xx-xxxx.
Sparks, Donald Lee, SGT, xxx-xx-xxxx.
Suarks, Jon Michael, CWO, xxx-xx-xxxx.
Spencer, Warren Richard, CAPT, xxx-xx-xxxx.
Spilman, Dyke Augustus, CAPT, xxx-xx-xxxx.
Spinelli, Domenick Anthony, LCDR, xxx-xx-...
Sprick, Doyle Robert, MAJ, xxx-xx-...
Springston, Theodore, Jr., LTC, xxx-xx-xxxx.
St. Pierre, Dean Paul, CAPT, xxx-xx-xxxx.
Stacks, Raymond Clark, CAPT, xxx-xx-xxxx.
Staehli, Bruce Wayne, SGT, xxx-xx-xx...
Stamm, Ernest Albert, CDR, xxx-xx-...
Standerwick, Robert L., Sr., LTC, xxx-xx-xxxx.
Stanley, Charles Irvin, CWO, xxx-xx-xxxx.
Stanley, Charles Irvin, CWO, xxx-xx-xxxx.
Stanton, Ronald, SSGT, xxx-xx-xxxx.
Stark, Willie Ernest, SMAJ, xxx-xx-xxxx.
Steadman, James Eugene, CAPT, xxx-xx-xxxx.
Steen, Martin William, MAJ, xxx-xx-xxxx.
Stegman, Thomas, LCDR, xxx-xx-...
Stephensen, Mark Lane, LTC, xxx-xx-xxxx.
Stephenson, Howard David, MAJ, xxx-xx-xxxx.
Stevens, Larry James, LT, xxx-xx-...
Stewart, Jack Thomas, MAJ, xxx-xx-xxxx.
Stewart, Peter Joseph, COL, xxx-xx-...
Stewart, Robert Allan, LTC, xxx-xx-xxxx.
Stickney, Philip Joseph, MSGT, xxx-xx-xxxx.
Stine, Joseph Millard, LTC, xxx-xx-xxxx.
Stinson, William Sherril, SP5, xxx-xx-xxxx.
Stolz, Lawrence Gene, CAPT, xxx-xx-xxxx.
Stonebraker, Kenneth Arnol, MAJ, xxx-xx-...
Storz, Ronald Edward, LTC, xxx-xx-xxxx.
Stowers, Aubrey Eugene, Jr., CAPT, xxx-...
Strait, Douglas, SP5, xxx-xx-xxxx.
Strange, Floyd Wayne, CWO, xxx-xx-xxxx.
Stratton, Charles Wayne, MAJ, xxx-xx-xxxx.
Stringer, John Curtis, II, CAPT, xxx-xx-xxxx.
Strobridge, Rodney Lynn, CAPT, xxx-xx-xxxx.
Strohlein, Madison Alexand, SGT, xxx-xx-xx...
Strong, Henry Hooker, Jr., CDR, xxx-xx-xxxx.
Stroven, William Harry, CAPT, xxx-xx-xxxx.
Stuart, John Franklin, MAJ, xxx-xx-xxxx.
Stubberfield, Robert A., LTC, xxx-xx-xxxx.
Stubbs, William W. W., SSGT, xxx-xx-xxxx.
Suber, Randolph Bothwell, SSGT, xxx-xx-x...
Sullivan, Farrell Junior, LTC, xxx-xx-xxxx.
Sullivan, James Edward, LCDR, xxx-xx-xxxx.
Sullivan, John Bernard, III, CAPT, xxx-xx-xxxx.
Sutter, Frederick John, CAPT, xxx-xx-xxxx.
Swanson, John Willard, Jr., MAJ, xxx-xx-x...
Swanson, Roger Wesley, SGT, xxx-xx-xxxx.
Swords, Smith, III, MAJ, xxx-xx-xxxx.
Sykes, Derri, SSGT, xxx-xx-xxxx.
Tapp, Marshall Landis, LTC, xxx-xx-xxxx.
Tatum, Lawrence Byron, COL, xxx-xx-xxxx.
Teague, James Erlan, LT, xxx-xx-x...
Templin, Erwin Benard, Jr., LCDR, xxx-xx-...
Teran, Refugio Thomas, SGT, xxx-xx-xxxx.
Terry, Oral Ray, SSGT, xxx-xx-xxxx.
Thomas, Daniel Wayne, CAPT, xxx-xx-xxxx.
Thomas, James Calven, SGT, xxx-xx-xx...
Thomas, James Richard, TSGT, xxx-xx-xxxx.
Thomas Kenneth Deane, Jr., CAPT, xxx-xx-xxxx.
Thomas, Robert James, 1LT, xxx-xx-xxxx.
Thompson, Donald Earl, LCDR, xxx-xx-...
Thompson, George Winton, CAPT, xxx-xx-x...
Thompson, William James, LTC, xxx-xx-xxxx.
Thornton, Larry C., SMS, xxx-xx-xxxx.
Tiffin, Rainford, MAJ, xxx-xx-xxxx.
Tipping, Henry Albert, COL, xxx-xx-xxxx.
Todd, William Anthony, SSGT, xxx-xx-xxxx.
Tolbert, Clarence Orfield, LCDR, xxx-xx-xxxx.
Toomey, Samuel Kamu, III, MAJ, xxx-xx-xxxx.
Towlf, John Cline, CAPT, xxx-xx-xxxx.
Townsend, Francis Wayne, 1LT, xxx-xx-xxxx.
Trampski, Donald Joseph, SGT, xxx-xx-xxxx.
Treece, James Allen, MAJ, xxx-xx-xxxx.
Trembley, J. Forrest George, LCDR, xxx-xx-...
Trent, Alan Robert, CAPT, xxx-xx-xxxx.
Tromp, William Leslie, LCDR, xxx-xx-...
Trujillo, Joseph Felix, SGT, xxx-xx-xx...
Trujillo, Robert Steven, SSGT, xxx-xx-xxxx.
Tubbs, Glenn Ernest, SSGT, xxx-xx-xxxx.
Tucci, Robert Leon, CAPT, xxx-xx-xxxx.
Tucker, Edwin Byron, CDR, xxx-xx-...
Tucker, James Hale, CAPT, xxx-xx...
Tucker, Timothy Michael, CAPT, xxx-xx-xxxx.
Tyler, George Edward, COL, xxx-xx-xxxx.
Uhlmansiek, Ralph Edward, SSGT, xxx-xx-xxxx.
Underwood, Paul Gerard, COL, xxx-xx-xxxx.
Utley, Russell Keith, LTC, xxx-xx-xxxx.
Van, Bendegom James Lee, SSGT, xxx-xx-xxxx.
Van Buren, Gerald Gordon, MAJ, xxx-xx-xxxx.
Van Dyke, Richard Haven, CAPT, xxx-xx-xxxx.
Van Renselaar, Larry Jack, LT, xxx-xx-...
Vanden Eykel, Martin D., II, CWO, xxx-xx-xxxx.
Vescelus, Milton James, Jr., CDR, xxx-xx-...
Vinson, Bobby Gene, COL, xxx-xx-xxxx.
Visconti, Francis Edward, CAPT, xxx-xx-...
Wade, Barton Scott, LCDR, xxx-xx-xxxx.
Wald, Gunther Herbert, SSGT, xxx-xx-xxxx.
Walker, Bruce Charles, CAPT, xxx-xx-xxxx.
Walker, Michael Stephen, CAPT, xxx-xx-xxxx.
Walker, Samuel Franklin, Jr., MSGT, xxx-xx-xxxx.
Wallace, Hobart McKinle, Jr., LTC, xxx-xx-...
Wallace, Michael John, SFC, xxx-xx-xxxx.
Waller, Therman Morris, MSGT, xxx-xx-xxxx.
Walling, Charles Milton, MAJ, xxx-xx-xxxx.
Walsh, Francis Anthony, Jr., MAJ, xxx-xx-xxxx.
Walsh, Richard Ambrose, III, COL, xxx-xx-xxxx.
Walters, Donovan Keith, CAPT, xxx-xx-xxxx.
Walton, Lewis Clark, SSGT, xxx-xx-xxxx.
Wanzel, Charles Joseph, III, CAPT, xxx-xx-xxxx.
Ward, Neal Clinton, CAPT, xxx-xx-xxxx.
Ward, Ronald Jack, LTC, xxx-xx-xxxx.
Ware, John Alan, SP5, xxx-xx-xxxx.
Warren, Arthur Leonard, CAPT, xxx-xx-xxxx.
Warren, Ervin, SMS, xxx-xx-xxxx.
Warren, Gray Dawson, CAPT, xxx-xx-xxxx.
Waters, Samuel Edwin, Jr., MAJ, xxx-xx-xxxx.
Watson, Jimmy Lee, CWO, xxx-xx-xxxx.
Weisner, Franklin Lee, CAPT, xxx-xx-xxxx.
Weissmueller, Courtney Edw., MAJ, xxx-xx-xxxx.
Welch, Robert John, MAJ, xxx-xx-xxxx.
Welsh, Larry Don, SSGT, xxx-xx-xxxx.
Welshan, John Thomas, CAPT, xxx-xx-xxxx.
Wenaas, Gordon James, MAJ, xxx-xx-xxxx.
Werdehoff, Michael Ray, SFC, xxx-xx-xxxx.
West, John Thomas, CAPT, xxx-xx-xxxx.
Westbrook, Donald Elliot, COL, xxx-xx-xxxx.
Wheeler, Eugene Lacey, MAJ, xxx-xx-...
White, Charles Edward, MSGT, xxx-xx-xxxx.
White, James Blair, MAJ, xxx-xx-xxxx.
Whilford, Lawrence W., Jr., COL, xxx-xx-xxxx.
Whitmire, Warren Taylor, Jr., CWO, xxx-xx-xxxx.
Widdis, James Wesley, Jr., MAJ, xxx-xx-xxxx.
Widner, Danny Lee, SSGT, xxx-xx-xxxx.
Wiggins, Wallace Luttrell, CAPT, xxx-xx-xxxx.
Wilburn, Woodrow Hoover, COL, xxx-xx-xxxx.
Wiles, Marvin Benjamin Chr, LT, xxx-xx-xxxx.
Wilke, Robert Frederick, COL, xxx-xx-xxxx.
Wilkins, George Henry, CDR, xxx-xx-...
Wilkinson, Dennis Edward, CAPT, xxx-xx-xxxx.
Willett, Robert Vincent, Jr., CAPT, xxx-xx-xxxx.
Williams, Billie Joe, MAJ, xxx-xx-xxxx.
Williams, David Beryl, CAPT, xxx-xx-xxxx.
Williams, David Richard, COL, xxx-xx-xxxx.
Williams, Eddie Lee, MSGT, xxx-xx-xxxx.
Williams, Edward Wayne, SGT, xxx-xx-xxxx.
Williams, Howard Keith, MAJ, xxx-xx-xxxx.
William, James Ellis, MSGT, xxx-xx-xxxx.
Williams, James Randall, MSGT, xxx-xx-xxxx.
Williams, Robert John, CAPT, xxx-xx-xxxx.
Williams, Roy Charles, SSGT, xxx-xx-xxxx.
Willilamson, Don Ira, LTC, xxx-xx-xxxx.
Williamson, James D., SSGT, xxx-xx-xxxx.
Willing, Edward Arle, SGT, xxx-xx-x...
Wilson, Gordon Scott, MAJ, xxx-xx-xxxx.
Wilson, Mickey Allen, WO, xxx-xx-xxxx.
Wilson, Peter Joe, SFC, xxx-xx-xxxx.
Wilson, Robert Allan, CAPT, xxx-xx-xxxx.
Wilson, Roger Eugene, CAPT, xxx-xx-xxxx.
Wilson, Wayne Vaster, SGT, xxx-xx-x...
Wimbrow, Nutter Jerome, III, MAJ, xxx-xx-xxxx.
Winningham, John Quitman, TSGT, xxx-xx-xxxx.
Winston, Charles C, III, MAJ, xxx-xx-xxxx.
Winters, David Marshall, SSGT, xxx-xx-xxxx.
Wistrand, Robert Carl, LTC, xxx-xx-xxxx.
Wogan, William Michael, SSGT, xxx-xx-xxxx.
Wolfkeil, Wayne Benjamin, LTC, xxx-xx-xxxx.
Woloszyk, Donald Joseph, LCDR, xxx-xx-...
Wong, Edward Puck Kow, Jr., SP5, xxx-xx-xxxx.
Wood, Don Charles, LTC, xxx-xx-xxxx.
Wood, Patrick Hardy, COL, xxx-xx-xxxx.
Wood, William Commodore, Jr., CAPT, xxx-xx-xxxx.
Worcester, John Bowers, LCDR, xxx-xx-...
Worrell, Paul Laurance, LT, xxx-xx-x...
Worth, James Frederick, CPL, xxx-xx-xxxx.
Wortham, Murray Lamar, CAPT, xxx-xx-xxxx.
Wozniak, Frederick Joseph, CAPT, xxx-xx-xx...
Wright, Arthur, SP4, xxx-xx-xxxx.
Wright, Donald Lee, MSGT, xxx-xx-xxxx.
Wright, Gary Gene, COL, xxx-xx-xxxx.
Wright, James Joseph, LCDR, xxx-xx-...
Wright, Jerdy Albert, Jr., LTC, xxx-xx-xxxx.
Wright, Thomas Thawson, MAJ, xxx-xx-xxxx.
Wrobleski, Walter Francis, CWO, xxx-xx-xxxx.
Wrye, Blair Charlton, COL, xxx-xx-xxxx.
Wynne, Patrick Edward, CAPT, xxx-xx-xxxx.
Yarbrough, William P., Jr., CDR, xxx-xx-...
Yonan, Kenneth Joseph, CAPT, xxx-xx-xxxx.
Young, Barclay Bingham, CAPT, xxx-xx-xxxx.
Young, Charles Luther, SSGT, xxx-xx-xxxx.
Zich, Larry Alfred, CWO, xxx-xx-xxxx.
Zook, David Hartzler, Jr., COL, xxx-xx-xxxx.
Zook, Harold Jacob, CAPT, xxx-xx-xxxx.
Zubke, Deland Dwight, SP5, xxx-xx-xxxx.
Zukowski, Robert John, CAPT, xxx-xx-xxxx.

Mr. DOLE. Assistance in obtaining information for an accounting was clearly and unambiguously included as a mutual commitment in the January 27 agreement. Such assistance has not been forthcoming. On January 27, the Defense Department listed 1,362 Americans in missing status. Today, 4 months later, some 1,284 or more of our men have not yet been accounted for in any manner and as I said earlier, the remains of some 1,120, who have been declared dead, have not been recovered.

INTERESTS CONTINUE

We are told, Mr. President, that the situation in Southeast Asia has changed. Now that the involvement of American ground troops has been terminated and the prisoners have been returned, some contend we no longer have any proper concern in that area of the world, not even a concern in seeing that the peace agreement is adhered to in respect to our

missing men. I cannot accept this contention.

The situation has changed. It has changed immeasurably for the better. But the American stake in securing and solidifying a lasting peace in Southeast Asia has not changed.

If the rights of the South Vietnamese people to peace and self-determination and if the American concern for securing the return of our prisoners and a satisfactory accounting of the missing in action were ever legitimate interests of this country, then they are still legitimate interests.

IMPATIENCE AND WEARINESS

The country has long since grown weary of war. The country has long since tired of hearing news of American military involvement in Indochina, be it the ground combat of an earlier day or the air operations of today. And, of course, the Congress too, has grown weary of the conflict.

FIRM COMMITMENT TO GOALS

But if we allow our weariness of the war and our understandable and quite sincere desire to see an end, for all time, of the American military presence in Southeast Asia to lead us to passage of the Eagleton amendment, we would only open up to the North Vietnamese the possibility for continuing their unfettered aggression in the area. And we would quash any hope whatsoever for securing compliance with the peace agreement with respect to our missing men.

Strong action, courage, and commitment to our principles brought about the successful negotiation of the Paris agreements. The same resolve can now secure compliance with those agreements.

I am not prepared to accept the consequences of a legislated abrogation of the Paris agreements. Of course, I am weary of this fighting. I yield to no Member of this body in desiring a peaceful and just solution to the differences which have divided this region for so long.

But we have a responsibility, an obligation to see our policy successfully through to a lasting peace. And we have an obligation to the nearly 1,300 Americans who are missing throughout Southeast Asia—in North and South Vietnam, Laos, and Cambodia.

LIMITING AMENDMENT

Therefore, I am joining with my colleague from North Carolina (Mr. HELMS) in offering an amendment to limit the effect of the Eagleton amendment to the supplemental appropriations bill as long as the North Vietnamese are not complying with their obligations in regard to our missing men.

There can be no justification or rationalization for defaulting on our obligations to nearly 1,300 Americans and to to their families, loved ones, and friends who wait and wonder at their fates.

It is difficult for those of us who are not directly affected to grasp the agony, the nightmare being lived by the parents, wives, and children of these missing men. They are in a terrible state of suspense. Their lives, their business affairs, their legal and financial status is plagued by uncertainty. They desperately want to know the fate of their husbands, sons, and fathers. And any action which delays or hinders North Vietnamese compliance with the Paris agreements on MIA's also prolongs the uncertainty and doubt of their families.

Mr. President, I wonder how these thousands of American wives, fathers, mothers, and children would vote on a measure which remove and weaken the President's leverage for obtaining information on these men?

Success for our policies and an end to the hostilities are near. Dr. Kissinger returns to Paris next month, and he has expressed confidence in the chances for successfully reaching an agreement with North Vietnam. The Congress cannot now—at this crucial time—place these negotiations in jeopardy by enacting a measure which would reduce our leverage to achieve compliance with the Paris agreements. Neither can it further jeopardize the fate of some 1,300 missing Americans. The amendment I offer with my colleague from North Carolina and the other distinguished Senators who have joined in sponsorship, would remove this jeopardy and would maintain this bit of leverage for the President.

We all want an end to hostilities. But, as I have said so many other times on this floor when we were talking about the American prisoners of war, we can say all we want to, but we still have an obligation to the families of those now listed as missing in action. They want to know. They want verification as to whether their son or husband or father is alive or dead.

So what would we do if the Eagleton amendment is agreed to? We would remove the last bit of leverage that the President has. Why should North Vietnam comply at all?

So I suggest, Mr. President, that we are voting today on whether we want North Vietnam to continue to make a sincere effort to account for and verify the status of some 1,300 Americans.

To me, that is an important obligation.

Mr. President, I ask unanimous consent to have printed in the RECORD the "Agreement Ending the War and Restoring Peace in Vietnam" of January 27, 1973, and the "Protocol to the Agreement Concerning the Return of Captured Military Personnel and Foreign Civilians and Detained Vietnamese Civilian Personnel" ending the war on the same date, and I reserve the remainder of my time.

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

AGREEMENT ON ENDING THE WAR AND RESTORING PEACE IN VIETNAM

The Parties participating in the Paris Conference on Vietnam,

With a view to ending the war and restoring peace in Vietnam on the basis of respect for the Vietnamese people's fundamental national rights and the South Vietnamese people's right to self-determination, and to contributing to the consolidation of peace in Asia and the world,

Have agreed on the following provisions and undertake to respect and to implement them:

CHAPTER I

The Vietnamese people's fundamental national rights

Article 1

The United States and all other countries respect the independence, sovereignty, unity, and territorial integrity of Vietnam as recognized by the 1954 Geneva Agreements on Vietnam.

CHAPTER II

Cessation of hostilities—withdrawal of troops

Article 2

A cease-fire shall be observed throughout South Vietnam as of 2400 hours G.M.T., on January 27, 1973.

At the same hour, the United States will stop all its military activities against the territory of the Democratic Republic of Vietnam by ground, air and naval forces, wherever they may be based, and end the mining of the territorial waters, ports, harbors, and waterways of the Democratic Republic of Vietnam. The United States will remove, permanently deactivate or destroy all the mines in the territorial waters, ports, harbors, and waterways of North Vietnam as soon as this Agreement goes into effect.

The complete cessation of hostilities mentioned in this Article shall be durable and without limit of time.

Article 3

The parties undertake to maintain the cease-fire and to ensure a lasting and stable peace.

As soon as the cease-fire goes into effect:

(a) The United States forces and those of the other foreign countries allied with the United States and the Republic of Vietnam shall remain in-place pending the implementation of the plan of troop withdrawal. The Four-Party Joint Military Commission described in Article 16 shall determine the modalities.

(b) The armed forces of the two South Vietnamese parties shall remain in-place. The Two-Party Joint Military Commission described in Article 17 shall determine the areas controlled by each party and the modalities of stationing.

(c) The regular forces of all services and arms and the irregular forces of the parties in South Vietnam shall stop all offensive activities against each other and shall strictly abide by the following stipulations:

All acts of force on the ground, in the air, and on the sea shall be prohibited;

All hostile acts, terrorism and reprisals by both sides will be banned.

Article 4

The United States will not continue its military involvement or intervene in the internal affairs of South Vietnam.

Article 5

Within sixty days of the signing of this Agreement, there will be a total withdrawal from South Vietnam of troops, military advisers, and military personnel, including technical military personnel and military personnel associated with the pacification program, armaments, munitions, and war material of the United States and those of the other foreign countries mentioned in Article 3(a). Advisers from the above-mentioned countries to all paramilitary organizations and the police force will also be withdrawn within the same period of time.

Article 6

The dismantlement of all military bases in South Vietnam of the United States and of the other foreign countries mentioned in article 3(a) shall be completed within sixty days of the signing of this Agreement.

Article 7

From the enforcement of the cease-fire to the formation of the government provided for in Articles 9(b) and 14 of this Agree-

ment, the two South Vietnamese parties shall not accept the introduction of troops, military advisers, and military personnel including technical military personnel, armaments, munitions, and war material into South Vietnam.

The two South Vietnamese parties shall be permitted to make periodic replacement of armaments, munitions and war material which have been destroyed, damaged, worn out or used up after the cease-fire, on the basis of piece-for-piece, of the same characteristics and properties, under the supervision of the Joint Military Commission of the two South Vietnamese parties and of the International Commission of Control and Supervision.

CHAPTER III

The return of captured military personnel and foreign civilians, and captured and detained Vietnamese civilian personnel

Article 8

(a) The return of captured military personnel and foreign civilians of the parties shall be carried out simultaneously with and completed not later than the same day as the troop withdrawal mentioned in Article 5. The parties shall exchange complete lists of the above-mentioned captured military personnel and foreign civilians on the day of the signing of this Agreement.

(b) The parties shall help each other to get information about those military personnel and foreign civilians of the parties missing in action, to determine the location and take care of the graves of the dead so as to facilitate the exhumation and repatriation of the remains, and to take any such other measures as may be required to get information about those still considered missing in action.

(c) The question of the return of Vietnamese civilian personnel captured and detained in South Vietnam will be resolved by the two South Vietnamese parties on the basis of the principles of Article 21(b) of the Agreement on the Cessation of Hostilities in Vietnam of July 20, 1954. The two South Vietnamese parties will do so in a spirit of national reconciliation and concord, with a view to ending hatred and enmity, in order to ease suffering and to reunite families. The two South Vietnamese parties will do their utmost to resolve this question within ninety days after the cease-fire comes into effect.

CHAPTER IV

The exercise of the South Vietnamese people's right to self-determination

Article 9

The Government of the United States of America and the Government of the Democratic Republic of Vietnam undertake to respect the following principles for the exercise of the South Vietnamese people's right to self-determination:

(a) The South Vietnamese people's right to self-determination is sacred, inalienable, and shall be respected by all countries.

(b) The South Vietnamese people shall decide themselves the political future of South Vietnam through genuinely free and democratic general elections under international supervision.

(c) Foreign countries shall not impose any political tendency or personality on the South Vietnamese people.

Article 10

The two South Vietnamese parties undertake to respect the cease-fire and maintain peace in South Vietnam, settle all matters of contention through negotiations, and avoid all armed conflict.

Article 11

Immediately after the cease-fire, the two South Vietnamese parties will:

achieve national reconciliation and concord, end hatred and enmity, prohibit all acts of reprisal and discrimination against individuals or organizations that have collaborated with one side or the other;

ensure the democratic liberties of the people: personal freedom, freedom of speech, freedom of the press, freedom of meeting, freedom of organization, freedom of political activities, freedom of belief, freedom of movement, freedom of residence, freedom of work, right to property ownership, and right to free enterprise.

Article 12

(a) Immediately after the cease-fire, the two South Vietnamese parties shall hold consultations in a spirit of national reconciliation and concord, mutual respect, and mutual non-elimination to set up a National Council of National Reconciliation and Concord of three equal segments. The Council shall operate on the principle of unanimity. After the National Council of National Reconciliation and Concord has assumed its functions, the two South Vietnamese parties will consult about the formation of councils at lower levels. The two South Vietnamese parties shall sign an agreement on the internal matters of South Vietnam as soon as possible and do their utmost to accomplish this within ninety days after the cease-fire comes into effect, in keeping with the South Vietnamese people's aspirations for peace, independence and democracy.

(b) The National Council of National Reconciliation and Concord shall have the task of promoting the two South Vietnamese parties' implementation of this Agreement, achievement of national reconciliation and concord and ensurance of democratic liberties. The National Council of National Reconciliation and Concord will organize the free and democratic general elections provided for in Article 9 (b) and decide the procedures and modalities of these general elections. The institutions for which the general elections are to be held will be agreed upon through consultations between the two South Vietnamese parties. The National Council of National Reconciliation and Concord will also decide the procedures and modalities of such local elections as the two South Vietnamese parties agree upon.

Article 13

The question of Vietnamese armed forces in South Vietnam shall be settled by the two South Vietnamese parties in a spirit of national reconciliation and concord, equality and mutual respect, without foreign interference, in accordance with the postwar situation. Among the questions to be discussed by the two South Vietnamese parties are steps to reduce their military effectives and to demobilize the troops being reduced. The two South Vietnamese parties will accomplish this as soon as possible.

Article 14

South Vietnam will pursue a foreign policy of peace and independence. It will be prepared to establish relations with all countries irrespective of their political and social systems on the basis of mutual respect for independence and sovereignty and accept economic and technical aid from any country with no political conditions attached. The acceptance of military aid by South Vietnam in the future shall come under the authority of the government set up after the general elections in South Vietnam provided for in Article 9(b).

CHAPTER V

The reunification of Vietnam and the relationship between North and South Vietnam

Article 15

The reunification of Vietnam shall be carried out step by step through peaceful means on the basis of discussions and agreements between North and South Vietnam, without coercion or annexation by either party, and without foreign interference. The time for reunification will be agreed upon by North and South Vietnam.

Pending reunification:

(a) The military demarcation line between the two zones at the 17th parallel is only provisional and not a political or territorial boundary, as provided for in paragraph 6 of the Final Declaration of the 1954 Geneva Conference.

(b) North and South Vietnam shall respect the Demilitarized Zone on either side of the Provisional Military Demarcation Line.

(c) North and South Vietnam shall promptly start negotiations with a view to reestablishing normal relations in various fields. Among the questions to be negotiated are the modalities of civilian movement across the Provisional Military Demarcation Line.

(d) North and South Vietnam shall not join any military alliance or military bloc and shall not allow foreign powers to maintain military bases, troops, military advisers, and military personnel on their respective territories, as stipulated in the 1954 Geneva Agreements on Vietnam.

CHAPTER VI

The Joint Military Commissions, the International Commission of Control and Supervision, the International Conference

Article 16

(a) The Parties participating in the Paris Conference on Vietnam shall immediately designate representatives to form a Four-Party Joint Military Commission with the task of ensuring joint action by the parties in implementing the following provisions of this Agreement:

The first paragraph of Article 2, regarding the enforcement of the cease-fire throughout South Vietnam;

Article 3(a), regarding the cease-fire by U.S. forces and those of the other foreign countries referred to in that Article;

Article 3(c), regarding the cease-fire between all parties in South Vietnam;

Article 5, regarding the withdrawal from South Vietnam of U.S. troops and those of the other foreign countries mentioned in Article 3(a);

Article 6, regarding the dismantlement of military bases in South Vietnam of the United States and those of the other foreign countries mentioned in Article 3(a);

Article 8(a), regarding the return of captured military personnel and foreign civilians of the parties;

Article 8(b), regarding the mutual assistance of the parties in getting information about those military personnel and foreign civilians of the parties missing in action.

(b) The Four-Party Joint Military Commission shall operate in accordance with the principle of consultations and unanimity. Disagreements shall be referred to the International Commissions of Control and Supervision.

(c) The Four-Party Joint Military Commission shall begin operating immediately after the signing of this Agreement and end its activities in sixty days, after the completion of the withdrawal of U.S. troops and those of the other foreign countries mentioned in Article 3(a) and the completion of the return of captured military personnel and foreign civilians of the parties.

(d) The four parties shall agree immediately on the organization, the working procedure, means of activity, and expenditures of the Four-Party Joint Military Commission.

Article 17

(a) The two South Vietnamese parties shall immediately designate representatives to form a Two-Party Joint Military Commission with the task of ensuring joint action by the two South Vietnamese parties in implementing the following provisions of this Agreement:

The first paragraph of Article 2, regarding

the enforcement of the cease-fire throughout South Vietnam, when the Four-Party Joint Military Commission has ended its activities;

Article 3(b), regarding the cease-fire between the two South Vietnamese parties;

Article 3(c), regarding the cease-fire between all parties in South Vietnam, when the Four-Party Joint Military Commission has ended its activities;

Article 7, regarding the prohibition of the introduction of troops into South Vietnam and all other provisions of this article;

Article 8(c), regarding the question of the return of Vietnamese civilian personnel captured and detained in South Vietnam;

Article 13, regarding the reduction of the military effectives of the two South Vietnamese parties and the demobilization of the troops being reduced.

(b) Disagreements shall be referred to the International Commission of Control and Supervision.

(c) After the signing of this Agreement, the Two-Party Joint Military Commission shall agree immediately on the measures and organization aimed at enforcing the cease-fire and preserving peace in South Vietnam.

Article 18

(a) After the signing of this Agreement, an International Commission of Control and Supervision shall be established immediately.

(b) Until the International Conference provided for in Article 19 makes definite arrangements, the International Commission of Control and Supervision will report to the four parties on matters concerning the control and supervision of the implication of the following provisions of this Agreement:

The first paragraph of Article 2, regarding the enforcement of the cease-fire throughout South Vietnam;

Article 3(a), regarding the cease-fire by U.S. forces and those of the other foreign countries referred to in that Article;

Article 3(c) regarding the cease-fire between all the parties in South Vietnam;

Article 5, regarding the withdrawal from South Vietnam of U.S. troops and those of the other foreign countries mentioned in Article 3(a);

Article 6, regarding the dismantlement of military bases in South Vietnam of the United States and those of the other foreign countries mentioned in Article 3(a);

Article 8(a), regarding the return of captured military personnel and foreign civilians of the parties.

The International Commission of Control and Supervision shall form control teams for carrying out its tasks. The four parties shall agree immediately on the location and operation of these teams. The parties will facilitate their operation.

(c) Until the International Conference makes definitive arrangements, the International Commission of Control and Supervision will report to the two South Vietnamese parties on matters concerning the control and supervision of the implementation of the following provisions of this Agreement;

The first paragraph of Article 2, regarding the enforcement of the cease-fire throughout South Vietnam, when the Four-Party Joint Military Commission has ended its activities;

Article 3(b), regarding the cease-fire between the two South Vietnamese parties;

Article 3(c), regarding the cease-fire between all parties in South Vietnam, when the Four-Party Joint Military Commission has ended its activities.

Article 7, regarding the prohibition of the introduction of troops into South Vietnam and all other provisions of this Article;

Article 8(c), regarding the question of the return of Vietnamese civilian personnel captured and detained in South Vietnam;

Article 9(b), regarding the free and democratic general elections in South Vietnam;

Article 13, regarding the reduction of the military effectives of the two South Vietnamese parties and the demobilization of the troops being reduced.

The International Commission of Control and Supervision shall form control teams for carrying out its tasks. The two South Vietnamese parties shall agree immediately on the location and operation of these teams. The two South Vietnamese parties will facilitate their operation.

(d) The International Commission of Control and Supervision shall be composed of representatives of four countries: Canada, Hungary, Indonesia and Poland. The chairmanship of this Commission will rotate among the members for specific periods to be determined by the Commission.

(e) The International Commission of Control and Supervision shall carry out its tasks in accordance with the principle of respect for the sovereignty of South Vietnam.

(f) The International Commission of Control and Supervision shall operate in accordance with the principle of consultations and unanimity.

(g) The International Commission of Control and Supervision shall begin operating when a cease-fire comes into force in Vietnam. As regards the provisions in Article 18(b) concerning the four parties, the International Commission of Control and Supervision shall end its activities when the Commission's tasks of control and supervision regarding these provisions have been fulfilled. As regards the provisions in Article 18(c) concerning the two South Vietnamese parties, the International Commission of Control and Supervision shall end its activities on the request of the government formed after the general elections in South Vietnam provided for in Article 9(b).

(h) The four parties shall agree immediately on the organization, means of activity, and expenditures of the International Commission of Control and Supervision. The relationship between the International Commission and the International Conference will be agreed upon by the International Commission and the International Conference.

Article 19

The parties agree on the convening of an International Conference within thirty days of the signing of this Agreement to acknowledge the signed agreements; to guarantee the ending of the war, the maintenance of peace in Vietnam, the respect of the Vietnamese people's fundamental national rights, and the South Vietnamese people's right to self-determination; and to contribute to and guarantee peace in Indochina.

The United States and the Democratic Republic of Vietnam, on behalf of the parties participating in the Paris Conference on Vietnam, will propose to the following parties that they participate in this International Conference: the People's Republic of China, the Republic of France, the Union of Soviet Socialist Republics, the United Kingdom, the four countries of the International Commission of Control and Supervision, and the Secretary General of the United Nations, together with the parties participating in the Paris Conference on Vietnam.

CHAPTER VII

Regarding Cambodia and Laos

Article 20

(a) The parties participating in the Paris Conference on Vietnam shall strictly respect the 1954 Geneva Agreements on Cambodia and the 1962 Geneva Agreements on Laos, which recognized the Cambodian and the Lao peoples' fundamental national rights, i.e., the independence, sovereignty, unity, and territorial integrity of these countries. The parties shall respect the neutrality of Cambodia and Laos.

The parties participating in the Paris Conference on Vietnam undertake to refrain from using the territory of Cambodia and the territory of Laos to encroach on the sovereignty and security of one another and of other countries.

(b) Foreign countries shall put an end to all military activities in Cambodia and Laos, totally withdraw from and refrain from reintroducing into these two countries troops, military advisers and military personnel, armaments, munitions and war material.

(c) The internal affairs of Cambodia and Laos shall be settled by the people of each of these countries without foreign interference.

(d) The problems existing between the Indochinese countries shall be settled by the Indochinese parties on the basis of respect for each other's independence, sovereignty, and territorial integrity, and non-interference in each other's internal affairs.

CHAPTER VIII

The relationship between the United States and the Democratic Republic of Vietnam

Article 21

The United States anticipates that this Agreement will usher in an era of reconciliation with the Democratic Republic of Vietnam as with all the peoples of Indochina. In pursuance of its traditional policy, the United States will contribute to healing the wounds of war and to postwar reconstruction of the Democratic Republic of Vietnam and throughout Indochina.

Article 22

The ending of the war, the restoration of peace in Vietnam, and the strict implementation of this Agreement will create conditions for establishing a new, equal and mutually beneficial relationship between the United States and the Democratic Republic of Vietnam on the basis of respect for each other's independence and sovereignty, and non-interference in each other's internal affairs. At the same time this will ensure stable peace in Vietnam and contribute to the preservation of lasting peace in Indochina and Southeast Asia.

CHAPTER IX

Other provisions

Article 23

This Agreement shall enter into force upon signature by plenipotentiary representatives of the parties participating in the Paris Conference on Vietnam. All the parties concerned shall strictly implement this Agreement and its Protocols.

Done in Paris this twenty-seventh day of January, One Thousand Nine Hundred and Seventy-Three, in Vietnamese and English. The Vietnamese and English texts are official and equally authentic.

[Separate Numbered Page]

For the Government of the United States of America:

WILLIAM P. ROGERS,
Secretary of State.

For the Government of the Republic of Vietnam:

TRAN VAN LAM,
Minister for Foreign Affairs.

[Separate Numbered Page]

For the Government of the Democratic Republic of Vietnam:

NGUYEN DUY TRINH,
Minister for Foreign Affairs.

For the Provisional Revolutionary Government of the Republic of South Vietnam:

NGUYEN THI BINH,
Minister for Foreign Affairs.

AGREEMENT ON ENDING THE WAR AND RESTORING PEACE IN VIETNAM

The Government of the United States of America, with the concurrence of the Government of the Republic of Vietnam,

The Government of the Democratic Republic of Vietnam, with the concurrence of the Provisional Revolutionary Government of the Republic of South Vietnam,

With a view to ending the war and restoring peace in Vietnam on the basis of respect of the Vietnamese people's fundamental national rights and the South Vietnamese people's right to self-determination, and to contributing to the consolidation of peace in Asia and the world,

Have agreed on the following provisions and undertake to respect and to implement them:

[Text of Agreement Chapters I–VIII Same As Above]

CHAPTER IX

Other provisions

Article 23

The Paris Agrement on Ending the War and Restoring Peace in Vietnam shall enter into force upon signature of this document by the Secretary of State of the Government of the United States of America and the Minister for Foreign Affairs of the Government of the Democratic Republic of Vietnam, and upon signature of a document in the same terms by the Secretary of State of the Government of the United States of America, the Minister for Foreign Affairs of the Government of the Republic of Vietnam, the Minister for Foreign Affairs of the Government of the Democratic Republic of Vietnam, and the Minister for Foreign Affairs of the Provisional Revolutionary Government of the Republic of South Vietnam. The Agreement and the protocols to it shall be strictly implemented by all the parties concerned.

Done in Paris this twenty-seventh day of January, One Thousand Nine Hundred and Seventy-Three, in Vietnamese and English. The Vietnamese and English texts are official and equally authentic.

For the Government of the United States of America:

WILLIAM P. ROGERS,
Secretary of State.

For the Government of the Democratic Republic of Vietnam:

NGUYEN DUY TRINH,
Minister for Foreign Affairs.

PROTOCOL TO THE AGREEMENT ON ENDING THE WAR AND RESTORING PEACE IN VIETNAM CONCERNING THE RETURN OF CAPTURED MILITARY PERSONNEL AND FOREIGN CIVILIANS AND CAPTURED AND DETAILED VIETNAMESE CIVILIAN PERSONNEL

The parties participating in the Paris Conference on Vietnam,

In implementation of Article 8 of the Agreement on Ending the War and Restoring Peace in Vietnam signed on this date providing for the return of captured military personnel and foreign civilians, and captured and detained Vietnamese civilian personnel,

Have agreed as follows:

THE RETURN OF CAPTURED MILITARY PERSONNEL AND FOREIGN CIVILIANS

Article 1

The parties signatory to the Agreement shall return the captured military personnel of the parties mentioned in Article 8(a) of the Agreement as follows:

All captured military personnel of the United States and those of the other foreign countries mentioned in Article 3(a) of the Agreement shall be returned to United States authorities;

All captured Vietnamese military personnel, whether belonging to regular or irregular armed forces, shall be returned to the two South Vietnamese parties; they shall be returned to that South Vietnamese party under whose command they served.

Article 2

All captured civilians who are nationals of the United States or of any other foreign countries mentioned in Article 3(a) of the Agreement shall be returned to United States authorities. All other captured foreign civilians shall be returned to the authorities of their country of nationality by any one of the parties willing and able to do so.

Article 3

The parties shall today exchange complete lists of captured persons mentioned in Articles 1 and 2 of this Protocol.

Article 4

(a) The return of all captured persons mentioned in Articles 1 and 2 of this Protocol shall be completed within sixty days of the signing of the Agreement at a rate no slower than the rate of withdrawal from South Vietnam of United States forces and those of the other foreign countries mentioned in Article 5 of the Agreement.

(b) Persons who are seriously ill, wounded or maimed, old persons and women shall be returned first. The remainder shall be returned either by returning all from one detention place after another or in order of their dates of capture, beginning with those who have been held the longest.

Article 5

The return and reception of the persons mentioned in Articles 1 and 2 of this Protocol shall be carried out at places convenient to the concerned parties. Places of return shall be agreed upon by the Four-Party Joint Military Commission. The parties shall ensure the safety of personnel engaged in the return and reception of those persons.

Article 6

Each party shall return all captured persons mentioned in Articles 1 and 2 of this Protocol without delay and shall facilitate their return and reception. The detaining parties shall not deny or delay their return for any reason, including the fact that captured persons may, on any grounds, have been prosecuted or sentenced.

THE RETURN OF CAPTURED AND DETAINED VIETNAMESE CIVILIAN PERSONNEL

Article 7

(a) The question of the return of Vietnamese civilian personnel captured and detained in South Vietnam will be resolved by the two South Vietnamese parties on the basis of the principles of Article 21(b) of the Agreement on the Cessation of Hostilities in Vietnam of July 20, 1954, which reads as follows:

"The term 'civilian internees' is understood to mean all persons who, having in any way contributed to the political and armed struggle between the two parties, have been arrested for that reason and have been kept in detention by either party during the period of hostilities."

(b) The two South Vietnamese parties will do so in a spirit of national reconciliation and concord with a view to end hatred and enmity in order to ease suffering and to reunite families. The two South Vietnamese parties will do their utmost to resolve this question within ninety days after the cease-fire comes into effect.

(c) Within fifteen days after the cease-fire comes into effect, the two South Vietnamese parties shall exchange lists of the Vietnamese civilian personnel captured and detained by each party and lists of the places at which they are held.

TREATMENT OF CAPTURED PERSONS DURING DETENTION

Article 8

(a) All captured military personnel of the parties and captured foreign civilians of the parties shall be treated humanely at all times, and in accordance with international practice.

They shall be protected against all violence to life and person, in particular against murder in any form, mutilation, torture and cruel treatment, and outrages upon personal dignity. These persons shall not be forced to join the armed forces of the detaining party.

They shall be given adequate food, clothing, shelter, and the medical attention required for their state of health. They shall be allowed to exchange post cards and letters with their families and receive parcels.

(b) All Vietnamese civilian personnel captured and detained in South Vietnam shall be treated humanely at all times, and in accordance with international practice.

They shall be protected against all violence to life and person, in particular against murder in any form, mutilation, torture and cruel treatment, and outrages against personal dignity. The detaining parties shall not deny or delay their return for any reason, including the fact that captured persons may, on any grounds, have been prosecuted or sentenced. These persons shall not be forced to join the armed forces of the detaining party.

They shall be given adequate food, clothing, shelter, and the medical attention required for their state of health. They shall be allowed to exchange post cards and letters with their families and receive parcels.

Article 9

(a) To contribute to improving the living conditions of the captured military personnel of the parties and foreign civilians of the parties, the parties shall, within fifteen days after the cease-fire comes into effect, agree upon the designation of two or more national Red Cross societies to visit all places where captured military personnel and foreign civilians are held.

(b) To contribute to improving the living conditions of the captured and detained Vietnamese civilian personnel, the two South Vietnamese parties shall, within fifteen days after the cease-fire comes into effect, agree upon the designation of two or more national Red Cross societies to visit all places where the captured and detained Vietnamese civilian personnel are held.

WITH REGARD TO DEAD AND MISSING PERSONS

Article 10

(a) The Four-Party Joint Military Commission shall ensure joint action by the parties in implementing Article 8(b) of the Agreement. When the Four-Party Joint Military Commission has ended its activities, a Four-Party Joint Military team shall be maintained to carry on this task.

(b) With regard to Vietnamese civilian personnel dead or missing in South Vietnam, the two South Vietnamese parties shall help each other to obtain information about missing persons, determine the location and take care of the graves of the dead, in a spirit of national reconciliation and concord, in keeping with the people's aspirations.

OTHER PROVISIONS

Article 11

(a) The Four-Party and Two-Party Joint Military Commissions will have the responsibility of determining immediately the modalities of implementing the provisions of this Protocol consistent with their respective responsibilities under Articles 16(a) and 17 (a) of the Agreement. In case the Joint Military Commissions, when carrying out their tasks, cannot reach agreement on a matter pertaining to the return of captured personnel they shall refer to the International Commission for its assistance.

(b) The Four-Party Joint Military Commission shall form, in addition to the teams established by the Protocol concerning the cease-fire in South Vietnam and the Joint Military Commissions, a subcommission on captured persons and, as required, joint military teams on captured persons to assist the Commission in its tasks.

(c) From the time the cease-fire comes into force to the time when the Two-Party Joint Military Commission becomes opera-

tional, the two South Vietnamese parties' delegations to the Four-Party Joint Military Commission shall form a provisional subcommission and provisional joint military teams to carry out its tasks concerning captured and detained Vietnamese civilian personnel.

(d) The Four-Party Joint Military Commission shall send joint military teams to observe the return of the persons mentioned in Articles 1 and 2 of this Protocol at each place in Vietnam where such persons are being returned, and at the last detention places from which these persons will be taken to the places of return. The Two-Party Joint Military Commission shall send joint military teams to observe the return of Vietnamese civilian personnel captured and detained at each place in South Vietnam where such persons are being returned, and at the last detention places from which these persons will be taken to the places of return.

Article 12

In implementation of Articles 18(b) and 18(c) of the Agreement, the International Commission of Control and Supervision shall have the responsibility to control and supervise the observance of Articles 1 through 7 of this Protocol through observation of the return of captured military personnel, foreign civilians and captured and detained Vietnamese civilian personnel at each place in Vietnam where these persons are being returned, and at the last detention places from which these persons will be taken to the places of return, the examination of lists, and the investigation of violations of the provisions of the above-mentioned Articles.

Article 13

Within five days after signature of this Protocol, each party shall publish the text of the Protocol and communicate it to all the captured persons covered by the Protocol and being detained by that party.

Article 14

This Protocol shall come into force upon signature by plenipotentiary representatives of all the parties participating in the Paris Conference on Vietnam. It shall be strictly implemented by all the parties concerned.

Done in Paris this twenty-seventh day of January, One Thousand Nine Hundred and Seventy-Three, in Vietnamese and English. The Vietnamese and English texts are official and equally authentic.

[Separate Numbered Page]

For the Government of the United States of America:

WILLIAM P. ROGERS,
Secretary of State.

For the Government of the Republic of Vietnam:

TRAN VAN LAM,
Minister for Foreign Affairs.

[Separate Numbered Page]

For the Government of the Democratic Republic of Vietnam:

NGUYEN DUY TRINH,
Minister for Foreign Affairs.

For the Provisional Revolutionary Government of the Republic of South Vietnam:

NGUYEN THI BINH,
Minister for Foreign Affairs.

PROTOCOL TO THE AGREEMENT ON ENDING THE WAR AND RESTORING PEACE IN VIETNAM CONCERNING THE RETURN OF CAPTURED MILITARY PERSONNEL AND FOREIGN CIVILIANS AND CAPTURED AND DETAINED VIETNAMESE CIVILIAN PERSONNEL

The Government of the United States of America, with the concurrence of the Government of the Republic of Vietnam,

The Government of the Democratic Republic of Vietnam, with the concurrence of the Provisional Revolutionary Government of the Republic of South Vietnam,

In implementation of Article 8 of the Agreement on Ending the War and Restoring Peace in Vietnam signed on this date providing for the return of captured military personnel and foreign civilians, and captured and detained Vietnamese civilian personnel,

Have agreed as follows:

[Text of Protocol Articles 1–13 same as above]

ARTICLE 14

The Protocol to the Paris Agreement on Ending the War and Restoring Peace in Vietnam concerning the Return of Captured Military Personnel and Foreign Civilians and Captured and Detained Vietnamese Civilian Personnel shall enter into force upon signature of this document by the Secretary of State of the Government of the United States of America and the Minister for Foreign Affairs of the Government of the Democratic Republic of Vietnam, and upon signature of a document in the same terms by the Secretary of State of the Government of the United States of America, the Minister for Foreign Affairs of the Government of the Republic of Vietnam, the Minister for Foreign Affairs of the Government of the Democratic Republic of Vietnam, and the Minister for Foreign Affairs of the Provisional Revolutionary Government of the Republic of South Vietnam. The Protocol shall be strictly implemented by all the parties concerned.

Done in Paris this twenty-seventh day of January, One Thousand Nine Hundred and Seventy-Three, in Vietnamese and English. The Vietnamese and English texts are official and equally authentic.

For the Government of the United States of America:

WILLIAM P. ROGERS,
Secretary of State.

For the Government of the Democratic Republic of Vietnam:

NGUYEN DUY TRINH,
Minister for Foreign Affairs.

Mr. DOLE. Mr. President, I yield to the Senator from North Carolina (Mr. HELMS) such time as he may require.

Mr. HELMS. Mr. President, I thank my distinguished colleague from Kansas.

The agreement which was signed in Paris on January 27, 1973, provides in article 8 that—

(b) The parties shall help each other to get information about those military personnel and foreign civilians of the parties missing in action, to determine the location and take care of the graves of the dead so as to facilitate the exhumation and repatriation of the remains, and to take any such other measures as may be required to get information about those still considered missing in action.

In addition, the protocol to the agreement "Concerning the Return of Captured Military Personnel and Foreign Civilians and Captured and Detained Vietnamese Civilian Personnel" states in article 10, "With Regard to Dead and Missing Persons," that—

(a) The Four-Party Joint Military Commission shall ensure joint action by the parties in implementing Article 8(b) of the Agreement. When the Four-Party Joint Military Commission has ended its activities, a Four-Party Joint Military team shall be maintained to carry on this task.

Furthermore, according to article 17 of the agreement, disagreements will be referred to the International Commission on Control and Supervision.

Mr. President, so far, these provisions have been substantively inoperative. The Four-Party Joint Military Commission has met for its allotted 60 days, and has left Vietnam. The Four-Party Joint Military Team remains. Two visits have been made to Hanoi under very strictly supervised circumstances. But, for the most part, the meetings of the parties have been perfunctory. We are still in the process of negotiating with the North Vietnamese for permission to visit crash sites, and possible graveyards. They have not budged 1 inch to help us substantively to identfy the missing in action.

On January 27, we had 1,929 military personnel officially listed as missing in action. As of May 26, the number is 1,284 throughout Southeast Asia. This decrease has not come about because of any help from the North Vietnamese Communists; it is because some of the MIA's have been identified as returning prisoners of war. Yet we still have the right under the agreement, to remove the remains of those identified, but we have not been granted that permission.

Mr. President, the U.S. Joint Casualty Resolution Center has been established at Nakhon Phanom, Thailand, and is assigned the mission of resolving the status of U.S. missing personnel. They are ready to locate crash sites or grave sites. Their teams are ready. Their identification laboratory is ready. All they are waiting for is permission to go out into the jungles and into the local inhabited areas to make searches and ask questions of the local inhabitants. Yet the permission to do so has not been forthcoming. The Four-Party Military Team does nothing but talk. Why do not the Communists give us the permission they agreed to give us?

A further complication is that a goodly number of these MIA's may be in Cambodia and Laos, with at least 300 in Laos alone. The Khmer Rouge and the Laotian Communists are not parties to the Paris agreement. They are, however, strongly influenced by the presence of the North Vietnamese troops in that area. The only way that we can ever expect the Cambodian and Laotian Communists to give the requisite permission to visit possible sites in those areas is to continue our military operations in those areas. We must not forget that it was the decisive actions of our President that brought the North Vietnamese to enter serious negotiations and forced them to agreement. Similar military activity is the only thing which will force the North Vietnamese to adhere to these agreements to withdraw from Cambodia and force the native Communists to allow us to find our MIA's, dead or alive.

Mr. President, I repeat, the only way to get a satisfactory accounting of our MIA's is to allow the President the discretion to continue air support as necessary, but to continue under the conditions which are specifically stated in our proposed amendment.

I would point out, Mr. President, and emphasize, that this amendment contains a requirement that the President report to Congress.

It is apparent from yesterday's vote that there is sentiment in this body to cut off immediately appropriations for military action in Laos and Cambodia. I

disagree with this sentiment. Yet at the same time, I think that my distinguished colleagues will realize the importance of our receiving a full accounting of the MIA's. The amendment which the distinguished Senator from Kansas (Mr. DOLE) and I are offering today seeks a reasonable compromise among reasonable men. It would simply withhold the effect of the amendment offered by the junior Senator from Missouri until such time as we received a satisfactory accounting of our MIA's. I am sure that no one in this body would want to be responsible for prolonging such an accounting of our MIA's.

Under the Paris agreement, the four parties are supposed to cooperate in such an accounting. The Communists have not cooperated. At the very least, the Communists are supposed to allow the United States to take the necessary steps to arrive at an accounting. They have not given us the simple permission to make our own searches. Yet at the very moment when we are poised to begin such searches, there are some who would tie the hands of the President and remove from him the only sanctions we have to force Hanoi to comply with the agreement in respect to accounting for MIA's. If there are those who favor the Eagleton amendment, let them at least consider whether its effect should be delayed until there is a demonstration of good faith on the part of the Communists that they are willing to live up to article 8 of the agreement which they signed.

Surely we owe this to the wives and families and other loved ones of the American men who went out there to do their duty for our country—men who are now missing, men whose wives and families still live in the agony of uncertainty.

Mr. President, I reserve the remainder of my time.

Mr. EAGLETON. Mr. President, there is not a Senator in this body who does not want the North Vietnamese to provide a full accounting of our missing in action as is required by the Paris agreement. Many would support diplomatic or economic sanctions against North Vietnam, to force that nation to uphold its obligations under the agreement.

But that is not the issue before us today. The issue is whether the combat activities being conducted in Cambodia by the President of the United States are legal or wise.

As Secretary Richardson has said, a vote to defeat section 305 would be a vote to acquiesce in the air operation. But we are now confronted with an amendment which, if adopted and passed into law along with section 305 would constitute the legal authorization of Congress to continue the bombing until the President decides it should stop. This amendment is dynamite in sheep's clothing, and the Senator from Kansas knows it.

My amendment deals only with Cambodia and Laos, nations whose governments have no obligations under the Paris agreement. North Vietnam is obliged to carry out that agreement, but to link the failure of that country to abide by the provisions of the Paris agreement to a decision to go to war in a nation only incidentally affected by that agreement would be sheer nonsense. Yet, that is what the Dole amendment is asking us to do—to give our legal sanction to the Cambodian war.

The tactic is clear, of course—obscure the central issue with a totally unrelated matter—a matter of great concern to the Members of this body. But we have come too far to be hoodwinked into authorizing a new war in Indochina through the back door. This amendment would not only undercut section 305, it would, in effect, transform it into a declaration of war.

I urge my colleagues, before we take the drastic step the Senator from Kansas is asking us to take, to look at the effort that has been undertaken to date in pursuit of a full accounting of our MIA's.

Before the dissolution of the Four-Party Joint Military Commission on May 28, a Four-Party Joint Team was established as an ongoing adjunct of the original Four Power Commission. This team meets regularly in Saigon and is specifically designated to carry out the portions of the cease-fire agreement on missing in action.

As a result of the continuing meetings between the Four-Party Team, two recent visits took place to North Vietnam for the purpose of identifying and recovering missing in action. On May 11, the team was taken by the North Vietnamese to an empty cemetery where, according to the North Vietnamese, 12 Americans had been buried. One week later, on May 18, the team was taken to a gravesite outside of Hanoi where they inspected 23 gravesites and verified that each contained the remains of Americans previously listed as MIA's.

The Four-Party Team continues to meet in Saigon 2 or 3 times a week and are now discussing methods to repatriate the remains of the American dead. In addition, the team is discussing with the North Vietnamese an inspection schedule whereby the team could travel to known or suspected crash sites in North Vietnam.

According to investigators from the Foreign Relations Committee, military personnel assigned to our Joint Casualty Resolution Center in Thailand have advised that they have no complaints of noncooperation on the part of the North Vietnamese. They indicated that the procedure may be going along slower than we would like; however, there is no indication that our Government is prepared to protest the current level of activity.

Mr. President, what we are asked to do by the Dole amendment, before we have even filed a formal protest with the ICCS, before we even communicate with the North Vietnamese with respect to the recovery of the MIA's, is to declare war in a third nation—Cambodia.

I would like to read from the testimony that is going to be delivered this afternoon by Mr. Frank A. Sieverts, special assistant to the Deputy Secretary of State for Prisoners of War and Men Missing in Action. This testimony will be delivered—perhaps it is being delivered now—before a subcommittee of the House Committee on Foreign Affairs. This is what Mr. Sieverts says about the cooperation we are receiving with respect to the MIA's. I read from page 12:

> We are in direct contact with officials of the communist side. In Saigon, we are proceeding through the Four-Party Joint Military Team, established under the Viet-Nam Agreement. The Team has already made two trips to North Viet-Nam to visit cemeteries where Americans who died in captivity are buried. Communist officials have also acknowledged the existence of additional graves of Americans who died in aircraft crashes or of other causes. Our aim is to arrange the early repatriation of the remains of as many of these persons as possible.
>
> At the same time, we have made clear our urgent interest in receiving information on the missing. Complete lists of our missing personnel have been provided to the Four-Party Team for this purpose.
>
> In Laos, U.S. officials have been in direct contact with representatives of the Lao Patriotic Front (the Pathet Lao) to press for additional information on Americans missing or captured in Laos. We have told the communist side of our concern at the small number of Americans listed as captured in Laos, in view of past hints that a larger number were held by Pathet Lao forces, and in view of evidence that at least two others had been captured in Laos. The communist side has repeatedly told us and has recently stated publicly that there are no more Americans captured or held in Laos. They have also said that further accounting for the missing must await the formation of a coalition government, as specified in the February 21 Laos cease-fire agreement. Our efforts to convince the communist side to proceed with this accounting without waiting for a new government to be formed have thus far been in vain.
>
> * * * * *
>
> We are carrying out our own efforts to search for information on our missing and dead. Specific responsibility for this has been assigned to the Joint Casualty Resolution Center (JCRC), located in Thailand near the Laos and Viet-Nam borders. The JCRC is manned by American military personnel and functions with the close assistance of our embassies and consulates in the area. We have told the communist side about the JCRC, making clear its peaceful, open, and humanitarian purpose. The JCRC already has carried out a number of searches, so far in South Viet-Nam. We plan to work in harmony with local people wherever Americans may be missing or dead, and we hope to have the cooperation of the communist authorities. Our aim is to find the fullest possible information on each missing man. We recognize this is an enormous undertaking, and that we cannot succeed in every case, or even in a majority of cases. But we intend to try.

There are no more tragic victims of war than the families of MIA's. These families are destined to continue their life never fully knowing whether their loved one may still be alive in some far-off corner of the world. The Indochina war is not much different than other wars we have fought in that regard—the tragedy and the sorrow is the same. In World War II the United States had a total of 35,368 missing personnel; 29,151 are now considered dead and 1,754 are still carried in missing status. In the Korean war 5,178 Americans were either missing or captured. A larger percentage of that number were returned by the enemy where they had been held as POW's. But still over 1,000 are listed as missing in action.

So the unfortunate tragedy of the MIA is not unique to our most recent war experience. In every case, the U.S. Government puts forth a maximum effort to obtain a full accounting of its missing in action. But I submit that never in our history have we made the mistake of entering another war before we have exhausted all diplomatic efforts to obtain that full accounting.

Mr. President, I have received letters from the families of our missing in action. It is difficult to give these people even a little hope. Dr. Kissinger and the Defense Department have expressed strong doubts that any are still alive.

I read again from the testimony Mr. Sieverts is submitting this afternoon:

It should be noted that there is no indication from these debriefings of POW's that any American personnel continue to be held in Indochina. All American prisoners known to any of our returned POW's have either been released or been listed by the communist authorities as having died in captivity. Returnees with whom I have talked, including those who appeared before this Subcommittee May 23, are clear in their belief that no U.S. prisoners continue to be held.

It is a tragic irony that the Defense Department carried no MIA in Cambodia prior to the January 27 cease-fire agreement. Since that agreement, however, two Americans have been lost in bombing operations and are now listed as missing in action. Yet, the Senator from Kansas wants this body to give legal sanction to the combat activity which is adding Americans to the list of MIA's.

No one can return life to those who are dead, but what we can do here today, in our own way, is see to it that no more die and that there are no more missing in action. It is because we should now be well aware of the pain suffered by the families of MIA's that we must reject this amendment.

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

The PRESIDING OFFICER. The Senator from Missouri has 9 minutes remaining.

Mr. EAGLETON. I yield 8 minutes to the Senator from Missouri.

BOMBING OF CAMBODIA

Mr. SYMINGTON. Mr. President, in recent days Senators advocating a continuation of the United States bombing of Cambodia have made a series of misstatements of fact in support of their position.

I feel confident, of course, that none of those involved have made these mistaken statements deliberately. Indeed, they appear to have been based on similar misstatements persistently made by executive branch officials in recent months.

Fortunately, in this instance the Senate does not have to rely solely on information provided by the executive branch in considering the Cambodian question. Members of the staff of the Subcommittee on U.S. Security Agreements and Commitments Abroad of the Senate Foreign Relations Committee, which subcommittee I have the honor to chair, spent the month of April in Indochina and have brought back a report which, after review by the executive branch, has been made available to the Senate and the public, and which contradicts the basic premises of the administration's argument in support of the Cambodian bombing.

I wish briefly to note some of the principal errors made by the administration and its supporters in this debate.

It has been claimed, for instance, that:

We are bombing North Vietnamese troops.

The fact is that the vast majority of our bombing is directed not at the North Vietnamese, but at the troops of the Cambodian faction opposing Lon Nol. In briefings at the Pentagon, at U.S. 7th Air Force Headquarters in Thailand and at the American Embassy in Phnom Penh, our staff was told that the heavy preponderance of forces opposing the Lon Nol forces are Cambodian insurgents.

It has also been claimed that—

The North Vietnamese are currently maintaining some 40,000 troops in Cambodia. Of this total, some 30,000 are support troops, at least 3,500 are targeted against the Cambodian government forces, and some 30 military advisors per battalion are helping the Cambodian insurgent forces.

As is evident even from the quote itself, it is deceptive to speak of "40,000 North Vietnamese troops in Cambodia" when only a small percentage of these troops are targeted against the forces of the Phnom Penh regime. Furthermore, the number of North Vietnamese engaged against Lon Nol's forces, according to figures given the subcommittee staff as an agreed U.S. intelligence community estimate in early April, was not "at least 3,500" but probably "about 2,000 or at most 3,000." Moreover, the subcommittee staff was told that at most there were three or four advisers attached to some—but not all—insurgent battalions. Cambodian insurgent ralliers with whom our staff was asked to meet by the Cambodian Government said there were no North Vietnamese attached to their former battalions.

One of the most serious misrepresentations is that which involves the alleged North Vietnamese violation of the Vietnamese cease-fire agreement as regards Cambodia. The Administration's supporters have said, for example—

U.S. air operations were a precise response to the North Vietnamese violation of Article 20 (of the Vietnam ceasefire agreement).

The fact is that there has been no North Vietnamese violation of article 20. According to the State Department, the terms of article 20 are not yet operative and do not require withdrawal until or unless there is a cease-fire agreement in Cambodia. Secretary Rogers himself recently acknowledged in a hearing before the Foreign Relations Committee that the North Vietnamese are not in violation of article 20.

Another erroneous assertion is that which states that—

When the (Vietnam) cease-fire was signed, the Cambodian Government declared a cease-fire.

In fact, following the Vietnam cease-fire, Lon Nol announced that his troops would suspend offensive operations so that the North Vietnamese could withdraw and Lon Nol warned that if they did not withdraw, his troops would take action against them. This was not a cease-fire offer; it was an ultimatum. Furthermore, Lon Nol's troops did not all suspend operations whereas for several days most of the Cambodian insurgents apparently did.

It has also been said that—

(U.S.) air strikes are meticulously targeted and controlled to avoid civilian casualties.

Our Air Force, while it undoubtedly does its best to avoid civilian casualties, is unable to do so because our authorities do not have available to them the type of detailed information required to avoid civilian casualties and because the airplanes being used and the manner in which they are employed make it impossible to avoid civilian casualties.

Furthermore, our staff has reported that the procedural safeguards employed in Cambodia are nowhere near as tight as those previously used in Laos where thousands of civilian casualties resulted from our devastation of the Plain of Jars. In fact, local Cambodian commanders are reported to call for air strikes without regard to possible civilian presence and an assistant air attaché in the American Embassy, far from the scene of the fighting, authorizes strikes on behalf of our Ambassador.

Mr. President, these are the facts that these men went out and obtained shortly before this debate started. There are many other misstatements of fact which I could cite that have been made on the floor in an effort to justify this incredible bombing. But those which I have noted should be sufficient to indicate that once again the American people have been given a distorted view of the war in Indochina. What these mistatements amount to is an erroneous picture of who we are fighting, where we are bombing, and a misrepresentation of the basis for our bombing.

As mentioned previously, the legal rationale for the President's authority to continue the bombing as presented by the executive branch is equally invalid.

Mr. DOLE. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from Kansas has 9 minutes remaining and the Senator from Missouri has 12 minutes remaining.

Mr. DOLE. Mr. President, I wish to use this time to make as a part of the Record a statement delivered today by Dr. Roger E. Shields, Assistant to the Assistant Secretary of Defense—International Security Affairs—before the Subcommittee on National Security Policy and Scientific Development, of the Foreign Affairs Committee of the House. I would like to make one comment with reference to the paragraph on page 8 where Dr. Shields speaks of the efforts to verify the status of our MIA's and discusses those responsible for the verifications. He states:

On two occasions, May 11 and 18, the team, along with representatives of the joint casualty resolution center, journeyed to North Vietnam where burial sites, allegedly of American servicemen, were seen. Identification and recovery of remains were not undertaken on these occasions because of

lack of permission from the North Vietnamese.

Mr. President, I ask unanimous consent to have printed in the RECORD the entire statement made by Dr. Roger E. Shields, Assistant to the Assistant Secretary of Defense, to which I have just referred.

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

STATEMENT OF DR. ROGER E. SHIELDS

Mr. Chairman, members of the committee: It is a privilege for me to represent the Department of Defense here today. I particularly welcome the opportunity to talk with you because, unlike the last time we met, part of a great effort in behalf of our missing and captured men and their families has reached a heartwarming and satisfying conclusion. I am referring specifically to the return from captivity of 566 American military personnel and 25 U.S. civilians. Nine foreign nationals were also released. I would like to insert in the record at this point a statistical summary of these 591 returned Americans.

As you know, these Americans were taken prisoner while serving in Southeast Asia. Their period of captivity ranged from only a few months to as long as ten years. During this time they faced deprivations and made sacrifices that very few men ever encounter. Here at home the families of our missing and captured endured years of frustration waiting for some word about the condition or status of their men. These families were joined by countless Americans and virtually every government agency in a great national endeavor to obtain a full and accurate accounting of all the men, and better treatment and the ultimate release of those held captive. As I have indicated, only part of our work is finished. About 1300 men still remain unaccounted for and their families continue the seemingly endless vigil in their behalf. I will discuss our current efforts to resolve the perplexing issue of those who did not return in just a moment.

During the months and years preceding the long awaited return of our men, a major part of our work involved detailed planning for their repatriation. Presentations before this and other committees usually centered around the anticipated problems of reception, processing, rehabilitation, and readjustment of the returned prisoners of war. Much of this planning was done in the face of great uncertainty. For example, we did not know how many men would be released, what condition they would be in, or even where they would be returned to us. These uncertainties necessitated planning for a wide range of possibilities with contingency plans ready at our military hospitals in Europe as well as in the Pacific Theater. I can say with considerable satisfaction that our homecoming plans were well-founded. From the moment the first 116 men were released in North Vietnam on February 12, 1973, until the last one was released by the PRG in South Vietnam on April 1, 1973, the return of our men was handled with efficiency, thoroughness, and sensitivity. The initial reception, aeromedical evacuation, enroute medical treatment, and the ultimate family reunions and processing in the United States are a tribute to the outstanding cooperation and mutual support demonstrated by the four military services. We in the Department of Defense received unparalleled cooperation and assistance from agencies in both the Federal and State Governments; especially from the Department of State, the Congress of the United States, and our President.

Our returned men have now completed the homecoming processing events. Most of them are on convalescent leave and are busy getting acquainted with their families and their country once again. Many have already received future assignments and are preparing to resume active military careers. Some are undergoing scheduled treatment to correct physical deficiencies noted during the detailed medical evaluation received overseas and here at home. All of the men have been brought up to date in personnel and financial matters and have been debriefed on their experiences in captivity. The 31 military installations that accomplished the processing in the U.S. remain as headquarters for the men while they are free on convalescent leave and until they actively resume military or civilian professions. All agencies in the Department of Defense stand ready to help the men and their families during this transition period.

In the future, we are prepared to provide whatever assistance is required for as long as may be necessary. For example, the Department of Defense has implemented a program through which returned men who leave the military prior to obtaining retirement eligibility will, along with their families, be authorized to obtain health care in any military medical facility for a period of five years from the date of separation. Near the end of the five year period, each situation will be reevaluated. This program will help guarantee that each returned prisoner of war will receive immediate and long-term medical attention from military medical specialists who are familiar with the Southeast Asia captivity environment, and who have access to complete records and documentation in the military medical archives. For those who elect to leave the military, we are also prepared to provide a full range of job counseling and assistance in cooperation with private industry. For those who remain on active duty, the Services have developed special retraining and familiarization programs. One program, for example, involves two weeks of academic updating on military, national, and international matters.

Much of the credit for the success of homecoming must be given to the men themselves and to their families. They handled the repatriation events and the reunion with families and countrymen with great dignity and patriotism. They have been an inspiration to this country. Based on the accounts of their captivity experiences, I would say that their ability to endure so long under such harsh conditions can be largely attributed to their courage and determination and to their faith in God and country.

While we are grateful for the return of these men, our joy and sense of accomplishment are tempered by the fact that others, listed by our government as missing and captured, did not return. A full accounting for these men is not yet available to us. Some fear that in the wake of homecoming, we will forget those who are unaccounted for and ignore the plight of their families. I want to assure you that this will not happen. The Department of Defense will continue to seek the fullest possible accounting for these men and to provide their families with every possible assistance just as we have in the past. In addition, we will seek to recover the remains of the missing who have died and those who are already listed as killed in action but whose remains have not been recovered.

Before discussing the preparations that we have made and the actions we are now taking to achieve our objectives, I would like to place the problem in perspective by inserting in the Record a statistical breakdown of some 1300 men who remain unaccounted for in Southeast Asia. In addition to this number, there are about 1100 others who have been declared dead by the Services but whose remains have not been recovered.

As the members of the committee know, every possible avenue was explored prior to the release of our men to gain accurate information about those listed as missing or captured. Even while we planned our repatriation activities, we simultaneously prepared for the time when direct action to account for our missing would be possible through negotiation or systematic search. To date, extensive data has been gathered and stored in automated data handling systems for ease in correlation and analysis. This data includes extensive descriptive information on the individuals concerned, such as carefully plotted locations where they were last seen, and eyewitness accounts from our own forces as well as all accessible indigenous residents who were known to possess information about our prisoners or missing. One computerized program that is particularly unique contains information taken from medical records concerning all individual physical characteristics which would, with the aid of advanced technology, help facilitate the prompt and accurate identification of any remains that are recovered.

In order to update members of Congress on efforts being made to resolve the serious problem of accounting for the missing, the Department of Defense submitted a paper to them on February 2, 1973. Before proceeding further, I would like to submit for the record this paper and its memorandum of transmittal.

There are now two primary agencies upon which we are relying heavily to help resolve the status of our missing: The Four-Party Joint Military Team (FPJMT) and the Joint Casualty Resolution Center (JCRC). In accordance with the agreements signed in Paris, the Four-Party Joint Military Team was established after termination of the Four-Party Joint Military Commission expressly for the purpose of arranging for the recovery of remains and exchanging information to help clarify the status of the missing. The Joint Casualty Resolution Center was activated in January of this year in South Vietnam. In February, with approval of the Royal Thai Government, the Joint Nakhon Phanom Royal Thai Air Force Base in northeastern Thailand. Within the limits imposed upon it, the Joint Casualty Resolution Center supervises and conducts search operations designed to resolve the fate of the missing and recover remains wherever possible. The entire operation is peaceful, open, and humanitarian in nature. In its current location, the Joint Casualty Resolution Center is centrally located with regard to all the areas in which American personnel were lost.

The mission of our delegation to the Four-Party Joint Military Team has three primary aspects: (1) To obtain information from the other side about U.S. military and civilian persons who are missing in action; (2) to obtain information about the location of the graves of those persons who died in captivity or were killed in action; and (3) to negotiate entry rights for U.S. search and inspection operations into areas where there are believed to be unrecovered remains or where those still unaccounted for were last believed to be located.

The chief of our delegation, an Army colonel, is responsible through the defense attache office in Saigon and the U.S. support activity group in Thailand to the U.S. commander in chief, Pacific, Admiral Noel Gayler. Our delegation is also responsive to the policy guidance and instructions of the ambassador in Saigon. Since the first meeting of the team on April 4, over twenty sessions have been held. On two occasions, May 11 and 18, the team, along with representatives of the joint casualty resolution center, journeyed to North Vietnam where burial sites, allegedly of American servicemen, were seen. Identification and recovery of remains were not undertaken on these occasions because of lack of permission from the North Vietnamese. We are currently trying to arrange

for the exhumation and repatriation of these remains and of any other American dead known to the other side.

Another issue that is of major concern to us is the acquisition of entry rights for our search teams to areas throughout Southeast Asia where our men are missing. The success of the joint casualty resolution center's mission depends heavily on the operating authorities and the cooperation of the countries involved. We believe that our search teams should be given access to all locations where our men are believed to be missing. This is especially true for Laos where only nine Americans were listed for repatriation while over 300 of our men still remain unaccounted for. Our teams possess the great expertise required for this complex and dangerous mission, as well as the motivation to do a complete and thorough job. Nevertheless, we invite and welcome host country participation in the activities of our field teams. Indeed, we feel that host country participation is essential to the safety of our own teams and to the success of the mission.

To give you a better idea of the task facing the joint casualty resolution center and our negotiators, let me turn back to some statistics that I mentioned earlier. As you recall, I said that there are some 1,300 who are unaccounted for in Southeast Asia and some 1,100 others who have been declared officially dead by the services but whose remains have not been recovered. More than 1,900 of the composite 2,400 in these two categories are the result of air crashes. There are more than 1,000 such crash sites involving over 50 different types and models of aircraft. The number varies from nearly 400 in North Vietnam to less than 20 in Cambodia. These crash sites are scattered throughout the rugged terrain in Southeast Asia—on mountains and in dense uninhabited jungles. Approximately 150 of the crashes were at sea. Some 90 percent of the sites are in militarily contested areas or in areas controlled by the other side.

So far, some five crash sites in non-contested areas of South Vietnam have been inspected. The inspection of these sites has allowed refinement of procedures and techniques in preparation for the more complex and hazardous operations to come. Pieces of aircraft wreckage and other materials have been located and are being analyzed for identification purposes. On one of the first search operations, a South Vietnamese soldier was killed by an unexploded booby trap while participating with an advance element that had been sent to clear the area for the main search party. This is a clear indication that the overall effort will be both difficult and dangerous. For the record, I would like to submit a fact sheet on the joint casualty resolution center that explains in greater detail the unit's organizational structure and methods of operation.

I would like to address now the question of the degree of success that we might ultimately achieve and how long this might take. Prior to the repatriation of our prisoners there were high expectations that large numbers of missing in action cases could be resolved from debriefing of the returned men. Unfortunately, this has not been the case. The debriefings have been performed in a professional manner with sensitivity, and the data carefully analyzed and stored for future reference. Nevertheless, it appears that less than 100 status changes will be made on the basis of this information. We are hopeful that a significant number of additional status changes will result from negotiated arrangements for the exchange of information and the return of remains from locations throughout Indochina. How quickly we will achive results from these efforts I cannot say. The four-party joint military team has made some progress in this area, and I am hopeful that our patience and persistence will be rewarded by ultimate success.

Even after all information has been exchanged and all known remains exhumed and repatriated, there will undoubtedly be cases which yet remain to be resolved. Take as an example the case of a missing aircraft which crashed in the sea or uninhabited jungle. It is likely neither side in the recent conflict would know the whereabouts of the wreckage or the fate of the crew. In other cases, even though the locations were once known, it is possible that both wreckage and grave sites may have succumbed to the ravages of time and the havoc of war. It is abundantly clear that the tasks of determining how some of our missing died and the recovery of remains could be prolonged if not impossible.

As for those who are thought to have been captured alive but who have not been returned, let me say that this is perhaps the most agonizing and frustrating issue of all. These are the cases of men who were seen on the ground or whose pictures were released subsequent to capture but who, for one reason or another, have not returned and for whom the other side has yet to provide a satisfactory explanation. We do not consider the lists received so far to be a complete and accurate accounting for our men. We do have, though, an agreement which provides for all actions necessary to account as completely as possible for all who have not returned or are otherwise unaccounted for. We believe that implementation of this agreement will provide the speediest and most satisfactory answers to our questions.

In summary, we are working now to finalize arrangements which will provide for the speedy return of remains of our known dead from locations throughout Southeast Asia, and for the acquisition of clarifying information on any others. On the other hand, the task of inspecting crash sites or locations where the missing were last seen and of finding, exhuming, and identifying remains may be difficult and prolonged, at least over several years, especially if operating limitations remain an obstacle. Some crash sites and graves may never be found.

As for status changes, I want to emphasize that they are not unalterably tied to the inspection of combat sites or to the recovery or remains. We have made changes in status from missing in action or prisoner of war to killed in action throughout the recent conflict. Since March, the services have made about 80 more status changes to killed in action, and we can expect that more will be made on a continuing basis in the future.

The recording and changing of status of the missing are governed by sections 551–558, title 37, United States Code. Under public law, the service secretaries are given responsibility for status changes. To assist him, each secretary calls upon professionals within his organization who conduct an exhaustive study, based on all available information of each individual case. Their task is a painful one requiring countless hours of deliberation and calling ultimately for difficult decisions. The subject of status determinations is not a new one for the services. Those involved in this often unhappy part of the prisoner of war/missing in action issue are experienced and skilled and expert in upholding the public law and at the same time protecting, to the best of their ability, the ultimate interests of the missing men and their families.

In making status determinations, two possibilities exist besides the option of retaining the individual in a missing status. In those cases where information is received which conclusively establishes that the member is dead, then a report of death will be issued. A finding of death, commonly known as a "presumptive finding" is made when circumstances are such that the missing individual cannot reasonably be presumed to be living. An individual who was lost over water and who was not among those released or acknowledged by the other side in any way is a good example of a potential "presumptive finding."

The problems surrounding the question of those not yet accounted for are difficult in every respect. We are prepared to do the job through the machinery that we now have in motion, but we are convinced that the issue will not be resolved quickly or easily. I want to assure you again that we will uphold our responsibilities and our obligations in this matter. We will provide the families of our missing men every possible assistance. And for those who must face a final negative determination, we are prepared to offer complete counseling and guidance to help ease the resulting burdens, as well as heartfelt sympathy.

Mr. Chairman, members of this subcommittee, may I again express the appreciation of the Department of Defense for your kind invitation to appear here today and for your steadfast work in behalf of our men and their families. The opportunity to discuss the current status of our returned men and the issue of our missing is truly welcomed.

REPORTED FOR RELEASE AND RETURNED TO U.S. CONTROL—FEB. 12, —APR. 1, 1973

Country	USA	USN	USAF	USMC	Civilian	Total
North Vietnam.	0	135	312	9	1	457
South Vietnam.	77	1	6	17	21	122
Laos	0	1	6	0	2	9
China	0	1	1	0	1	[1] 3
Total	77	138	325	26	25	[2] 591

[1] Detainees in PRC who were released during the referenced time period and processed through the homecoming system.
[2] Total does not include third country nationals.

RELEASE INCREMENTS AND DATES

Place	Date—1973	Military	Civilian
North Vietnam (DRV)	Feb. 12	116	0
South Vietnam (PRG)	do	19	8
North Vietnam (DRV)	Feb. 18	20	0
North Vietnam (DRV)	Mar. 4	106	0
North Vietnam (PRG)	Mar. 5	27	3
China (PRC)	Mar. 12	0	1
North Vietnam (DRV)	Mar. 14	107	1
China (PRC)	Mar. 15	2	0
North Vietnam (PRG)	Mar. 16	27	5
North Vietnam (PRG)	Mar. 27	27	5
North Vietnam (Pathet Lao)	Mar. 28	7	2
North Vietnam (DRV)	do	40	0
North Vietnam (DRV)	Mar. 29	67	0
South Vietnam (PRG)	Apr. 1	1	0
Total		566	25

PERSONNEL UNACCOUNTED FOR IN SOUTHEAST ASIA (AS OF MAY 26, 1973)

Country	Army	Navy	USMC	USAF	Total
North Vietnam [1]	3	133	25	322	483
South Vietnam [2]	329	5	70	89	493
Laos	16	13	14	265	308
Total	348	151	109	676	1,284

[1] Includes five missing as a result of twoaircraft losses in the vicinity of Hainan Island while in transit to the Tonkin Gulf.
[2] Includes 20 missing in Cambodia as a result of U.S. air losses and operations in enemy sanctuary area along SVN/Cambodian border.

OFFICE OF THE SECRETARY OF DEFENSE,
Washington, D.C., February 2, 1973.

MEMORANDUM FOR SENATORS AND MEMBERS OF THE HOUSE OF REPRESENTATIVES

I have prepared the attached information to insure that you are informed concerning the very important and serious problem of

accounting for our servicemen who are missing in action in Southeast Asia.

I want to assure you personally that we in the Departemnt of Defense will meticulously explore all avenues and exhaust all clues in our quest to account for each individual lost in Southeast Asia. Also, I want to reaffirm that we consider each of our missing equally as important as our prisoners who are returning.

Your interest and support in our endeavor is appreciated.

Sincerely,

ROGER E. SHIELDS,
Assistant for PW/MIA Matters.

OFFICE OF THE SECRETARY OF DEFENSE,
Washington, D.C., February 2, 1973.

ACCOUNTING FOR MILITARY PERSONNEL WHO ARE LISTED AS MISSING IN ACTION

The purpose of this memorandum is to provide a description of the efforts being made to acquire as full an accounting of our missing in action personnel as possible.

The United States Government will make every possible effort to acquire an accounting for our servicemen missing in action in Southeast Asia.

In this regard, the Agreement which was signed in Paris on January 27, 1973, provides in Article 8 that:

". . . (b) The parties shall help each other to get information about those military personnel and foreign civilians of the parties missing in action, to determine the location and take care of the graves of the dead so as to facilitate the exhumation and repatriation of the remains, and to take any such other measures as may be required to get information about those still considered missing in action."

In addition, the Protocol to the Agreement "Concerning the Return of Captured Military Personnel and Foreign Civilians and Captured and Detained Vietnamese Civilian Personnel" states in Article 10, "With Regard to Dead and Missing Persons" that:

"(a) The Four-Party Joint Military Commission shall ensure joint action by the parties in implementing Article 8(b) of the Agreement. When the Four-Party Joint Military Commission has ended its activities, a Four-Party Joint Military team shall be maintained to carry on this task." Disagreements will be referred to the International Commission on Control and Supervision (Article 17 of the Agreement).

It is reemphasized that the U.S. Government will do everything in its power to insure that all parties adhere to the true sense of the Agreement. To this end, Major General Gilbert H. Woodward, United States Army, has been appointed as the United States Representative on the Four-Party Military Commission which will have representation from the United States, South Vietnam, North Vietnam and the Viet Cong. General Woodward has had extensive experience in negotiations of this type as the Senior Member United Nations Command, Military Armistice Commission, United Nations Command/United States Forces Korea during the period leading up to and at the time of the USS PUEBLO crewmembers' release. The task of the Four-Party Military Commission will be to implement appropriate provisions of the Agreement, including Article 8 quoted above. As the U.S. Representative, General Woodward is responsible for obtaining from other members of the Commission all MIA information held by them, and will coordinate with them the investigations by U.S. teams of incidents surrounding the loss of each of our MIA personnel.

The United States Joint Casualty Resolution Center (JCRC) has been established at Nakhon Phanom (NKP), Thailand and is assigned the mission of resolving the status of U.S. missing personnel. Personnel from the JCRC will locate and investigate crash sites or grave sites throughout Southeast Asia as arranged through the Four-Party Joint Military Commission. The organization of the JCRC will provide the expertise for these investigations, utilizing air search and ground search teams and a central identification laboratory with a pool of specialists to inspect located crash and grave sites and recover remains.

It is expected that endeavors in *remote areas* will normally include air and ground searches for crash sites. U.S.-led teams in conjunction with an air search will thoroughly investigate assigned areas of operation for suspected crash and grave sites. If a crash or grave site is located, personnel from the Central Identification Laboratory (graves registration specialists) and crash site investigators will be utilized for a detailed on-scene investigation.

In the more *inhabited areas*, personal contact with the local people following extensive information programs and coordination will be a primary technique. Grave registration specialists with interpreters, exploiting information gained from all sources and with authority to grant suitable rewards for useful information will conduct the major efforts in those areas where the location of crash or grave sites is more likely to be known and reasonably accessible.

Certain areas require that highly qualified U.S. personnel lead the ground searches because many are in highly remote areas or in the vicinity of roads or trails which are heavily booby trapped and endangered by unexploded ordnance. It is anticipated that recovery detachment teams will include indigenous personnel recruited, trained, and utilized in each country of interest with the cooperation of the host government.

While the Department of Defense will strive to accomplish this massive task of accounting for the missing military personnel in the shortest possible time, it must be realized that it will not be done quickly or easily. For example, in the case of a missing aircraft which crashed in the sea or uninhabited jungle, it is likely neither side in the recent conflict would know the whereabouts of the crash.

The Secretary of Defense and all Defense Department personnel realize and accept the obligation to *do their best* in performing this important task. This we owe to the families of the missing in action personnel. We intend to fulfill that obligation.

FACT SHEET: UNITED STATES JOINT CASUALTY RESOLUTION CENTER

The Joint Casualty Resolution Center (JCRC), commanded by Army Brigadier General Robert Kingston, is a joint task force established by and under the command of the Commander in Chief Pacific. The unit is under the operational control of the Commander, United States Support Activities Group (USSAG). The Joint Casualty Resolution Center operates under Joint Chiefs of Staff approved mission and joint table of distribution.

The Joint Casualty Resolution Center is an outgrowth of United States Government efforts to identify, document, and maintain records of known and suspected missing in action and prisoners of war. These records were initially maintained by the Joint Personnel Recovery Center (JPRC), Saigon beginning in 1966. When the JCRC was established in Saigon on 23 January 1973, the records of the JCRC were turned over to the new organization.

The mission of the JCRC is to assist in resolving the status of those U.S. personnel missing in action (MIA) and those personnel declared dead whose bodies were not recovered (BNR), through the provision of information/coordination and/or conduct of operations to locate and investigate crash and grave sites and recover and identify remains throughout Southeast Asia.

In planning for our field operations, we use the following assumptions:

a. All parties concerned will meet their obligations with respect to MIA's and dead assumed under the Vietnam and Lao agreements and will mutually assist in the resolution of such cases.

b. Conditions for coordination with personnel in countries concerned will be provided in accordance with terms of the cease-fire agreements.

c. Coordination of in-country activities in Laos and Cambodia will be accomplished through CINCPAC senior military representatives or designated American Embassy officers.

d. Coordination of in-country activities within North and South Vietnam will be accomplished through negotiations within the Four-Party Joint Military Team.

e. Access to all pertinent areas of Southeast Asia will be sought to allow JCRC teams to conduct casualty resolution operations.

In Saigon, an officer assigned to the Office of the Defense Attache, American Embassy has been designated to act as a channel for direct communications between JCRC Headquarters and the U.S. Delegation to the FPJMT.

The JCRC is organized under a dual deputy system: The Deputy Commander for Staff Operations is responsible for the staff planning and coordination; the Deputy Commander for the Field Operations supervises the field units.

Organizationally, the JCRC staff accomplishes the normal staff functions. Additional comments need to be made on three of the staff elements.

The Public Affairs Officer on the staff provides all available information on JCRC activities to the MACTHAI PAO in Bangkok. A JCRC officer is assigned to that office, where he serves as a casualty resolution point of contact and is in constant contact with the JCRC on all casualty resolution matters.

The Casualty Data Division assembles, correlates, and analyzes information on personnel who are missing in the vicinity of crash and burial sites. The function of this division includes data analysis, automated data processing, photo interpretation of aerial photos of crash sites, crash/grave site identification of areas in which JCRC teams will operate, and the maintaining of casualty records or dossiers on those personnel who have been in a missing in action status at one time or another during the conflict.

The Operations Division directs activities in the areas of operations, plans and communications. It also has a Public Communications Branch which provides staff assistance in the development of public information programs in an effort to obtain additional information concerning crash and burial sites.

The major subordinate elements involved in field operations are two control teams, one oriented toward operations in Vietnam and one toward Laos and Cambodia. These control teams provide command and control of casualty resolution field teams, each comprised of five men, and will have operational command of all special augmentation personnel needed to accomplish the mission. Each control team has the capability of launching, supporting, and extracting the field teams and provides for requisite air, communications, and logistics support.

The field teams which will search for crash or grave sites consist of an officer, a radio operator, a medic, an interviewer, and a general duty assistant to the officer in charge, who are all Special Forces Troops.

Special Forces personnel will be used because they are trained to operate harmoniously with indigenous peoples, are familiar with jungle terrain and survival techniques, and are available for this humanitarian effort with minimum additional training. The field teams will be augmented, as required, by Air Force air crash investigators, ordnance demolition technicians provided to disarm unexpended ordnance and booby traps near

crash sites, and by indigenous personnel who will assist in the search and on-site operations. The JCRC has 11 organic field teams, with an augmentation capability of 10 more teams from the 1st Special Forces Group on Okinawa and 16 teams from U.S. Special Forces assets in Thailand.

The Central Identification Laboratory, Thailand (CIL), located at Samae San, between U-tapao and Sattahip in Southeastern Thailand, about 80 miles from Bangkok, is under the operational command of the Joint Casualty Resolution Center. The CIL is organized into an identification laboratory and eight five-man recovery teams which will accompany the casualty resolution field teams.

The field teams will be deployed in various ways. They can be utilized as separate entities in the search operations for selected locations, or they can be deployed in a cluster arrangement. This concept visualizes a number of concurrent and consecutive crash/grave site operations located in one general area. This area would be in the vicinity of a forward operating base which ideally would be adjacent to an air strip that could accommodate arrival, resupply, and departure aircraft. The cluster concept provides a single area to concentrate on, allows for maximum advantage to be taken of predicted climatic and weather cycles, maximizes the use of helicopters by short but frequent missions to support several teams in one area, enhances the command, control, and communications support of a number of field teams from the central operating base, facilitates logistics and reduces the insertion problem of the special augmentation personnel (Explosive Ordnance Disposal [EOD], crash investigators, documentary photographers, and CIL recovery teams).

A review of the steps that would be involved in the recovery process follows. First, the Casualty Resolution Staff develops selected areas for search and investigation based on known crash and grave sites. The detailed planning and coordination effort using all available information culminates in an aerial search of the area, if authorized. This combined research will be followed by insertion of the forward operating base and later the field teams and special augmentation personnel. A detailed search and inspection will follow. The results of these missions will be carefully documented. Upon completion of the search and investigation process, the teams and forward operating base will be extracted. Remains that have been located will be flown to the CIL for identification.

After analysis and recording has been completed, a detailed report will be forwarded to the services to assist in final determination on status of the personnel. Identified remains will be returned to the United States for burial as desired by next of kin.

Mr. DOLE. Mr. President, I would hope that the North Vietnamese would carry out the agreement signed on January 27 with respect to the MIA's, even though they are not carrying out the agreement with reference to military operations in Cambodia.

But I would suggest, as I said before, that I am not attempting to restrict, in effect, the Eagleton amendment in regard to strictly military considerations. The amendment offered by me and by the Senator from North Carolina states:

"*Provided, however,* That these restrictions shall be of no force or effect if the President finds and forthwith so reports to the Congress that the Government of North Vietnam is not making an accounting, to the best of its ability, of all missing in action personnel of the United States in Southeast Asia, or is otherwise not complying with the provisions of article 8 of the agreement signed in Paris on January 27, 1973, and article 10 of the protocol to the agreement 'Concerning the Return of Captured Military Personnel and Foreign Civilians and Captured and Detained Vietnamese Civilian Personnel'."

That is all we suggest by this amendment. That is all we suggested, I might add, in the past 2, 3, or 4 years, with reference to POW's. We had about the same arguments for and the same arguments against. No one questions the motives or patriotism of those who had a different view, but I stand here as one who has worked with families of MIA's and POW's. This is the least we can do.

Yes, we can say the North Vietnamese are going to permit us to do this and that, but what assurance do we have? What are the diplomatic sanctions referred to by the Senator from Missouri that we would impose?

I do not want the bombing of Cambodia to continue, either, but I do not want to take away from the President of the United States whether it is the present President or some other President—that leverage if the North Vietnamese turn their backs and say, "There will be no further investigation with reference to MIA's."

Having talked with some of the wives and some of the families of MIA's since January 27th of this year, I think it is fair to say that the great majority of these people, those directly involved, want to know the status of their sons or husbands. Are they dead or alive?

There was once a great hope that once the POW's came back and were debriefed, the status of many MIA's could be determined or changed, but, as I understand it, only 100 changes were made from "missing in action" to "killed in action."

I happen to believe that we owe the families of these Americans—of course they are not many; there are only 1,300—a quick accounting and a quick verification, so their status will be known.

I really cannot see that it does any great damage to the so-called Eagleton amendment to provide the President this leverage. First, the President must make a finding. Then he must make a report. And then, and only then, could he avoid the restrictions of the Eagleton amendment.

The POW's are home now, and the POW's, as I said, have been welcomed, and we all rejoice in their homecoming. We all are concerned about those who were killed in Southeast Asia, those who remain, and those who are hospitalized. And, yes, we are concerned about the MIA's, who have no voice at all, unless it comes from the Congress.

I am under no illusion. I do not expect this amendment to the Eagleton amendment to prevail. But I would hope those who read the RECORD and those who sit down next year or 20 years from now to read the RECORD, in the event the North Vietnamese do not carry out the agreement, will know there were those of us in the Senate who stood and let our views be known.

There has been reference to where the bombs are going in Southwest Asia. I would like to read from a staff report prepared for the use of the Subcommittee on U.S. Security Agreements and Commitments Abroad of the Committee on Foreign Relations, entitled "U.S. Air Operations in Cambodia: April 1973."

On page 1, subparagraph (b) reads:

During the last two weeks in March, the U.S. Air Force had flown a daily average of 58 B-52 sorties, 30 F-111 sorties, 11 gunship sorties and 140 other tactical air sorties, more than two times the sortie rate before January 29.

In subparagraph (e), it states:

(e) Only 20 percent of the U.S. air strikes being flown were in support of Cambodian forces while 80 percent were directed at the interdiction of North Vietnamese lines of communication into South Vietnam.

Mr. President, I wish to reserve time for my colleague from North Carolina, but I want to conclude my statement by reading from a letter we sent to every Member of this body.

First, I ask unanimous consent that the entire letter be inserted in the RECORD, at this point.

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

U.S. SENATE,
Washington, D.C., May 31, 1973.

DEAR COLLEAGUE: Today, more than four months since the Paris Peace Agreement on Vietnam was signed, some 1,300 Americans are still missing in Southeast Asia. In spite of specific provisions in Article 8 of the Agreement and its protocols for verification and information on missing men, the North Vietnamese have failed to allow inspection operations to be undertaken or to provide any information concerning the status or fate of these men.

We believe that the Senate must go on record for a clear accounting of all MIA's. We must have a full, complete, and detailed resolution of the status of each man insofar as possible. Every means of securing compliance in this respect must be available to the President. Yet the Eagleton Amendment to H.R. 7447, the Supplemental Appropriations bill, would severely limit the President's efforts to secure compliance.

Therefore, today, we intend to offer an amendment to suspend the restrictions of the Eagleton Amendment if the President finds and so reports to Congress that North Vietnam is not making an accounting as required under the Paris Agreement. Congress needs to know if North Vietnam is not living up to the Paris Agreement; our amendment would encourage the President to keep Congress informed in this respect. At the same time, it would give the President the means to continue whatever pressure is necessary to resolve the status of the MIA's.

If you would care to join us as a co-sponsor, please contact us on the Floor, or call John Smith (ext. 6521) or Jim Lucier (ext. 6342).

Sincerely,

BOB DOLE,
U.S. Senate.
JESSE HELMS,
U.S. Senate.

Mr. DOLE. Mr. President, let me read a part of that letter:

We believe that the Senate must go on record for a clear accounting of all MIA's. We must have a full complete, and detailed resolution of the status of each man insofar as possible. Every means of securing compliance in this respect must be available to the President. Yet the Eagleton Amendment to H.R. 7447, the Supplemental Appropriations bill, would severely limit the President's efforts to secure compliance.

Mr. President, that is all we wish to do by offering this amendment. We wish to make certain that we preserve the President's right, the Commander in

Chief's right, to make certain that those who are missing in action are properly accounted for.

The PRESIDING OFFICER. All of the Senator's time has expired.

Mr. EAGLETON. Mr. President, how much time remains to me?

The PRESIDING OFFICER. The Senator has 12 minutes remaining.

Mr. EAGLETON. I yield 6 minutes to the Senator from Montana.

Mr. MANSFIELD. Mr. President, if the amendment offered by the distinguished Senator from Kansas (Mr. DOLE) and the distinguished Senator from North Carolina (Mr. HELMS) is adopted, we can kiss the Eagleton-Brooke-McClellan amendment good-bye. The effect will be to nullify what the Senate Committee on Appropriations did without opposition and what the Senate itself, in effect, did by a vote of 55 to 21 on Tuesday last.

Under the amendment now being considered, the bombing in Cambodia could go on indefinitely, because I note from the news ticker this morning that "the United States is still identifying missing in action from World War II, a quarter-century ago, and it could take months—if not years—for the status of remaining Vietnam MIA's to be settled."

There is no person in this Chamber who is not interested—if not more interested—in the missing in action, just as we were interested in the release of the POW's, the return of the POW's, and the return of U.S. personnel in South Vietnam.

I think we ought to face up to the realities and recognize that our Government has created a joint committee which is now stationed, I believe, in Bangkok for the purpose of finding and identifying some 1,400 or 1,500 personnel still listed as missing in action.

As the distinguished senior Senator from Missouri said, it is a tragic irony that the Department of Defense carried no MIA's in Cambodia prior to the January 27 ceasefire agreement. Since that agreement, however, two Americans have been lost in bombing operations and are now listed as missing in action.

If Senators want to create more missing in action, let them vote to continue the bombing. If they want to acquiesce in the present policy of the administration to continue the bombing, let them vote for this amendment. If they want to get out of Laos and Cambodia, and all of Southeast Asia, on a lock, stock, and barrel basis, they will see to it that the Eagleton-Brooke-McClellan amendment remains intact.

I have received 13 or 14 letters from men stationed at Utapao and Anderson Field in Guam.

Here is the last one:

DEAR MR. MANSFIELD: At long last, Congress is asserting itself in its opposition to American military involvement in Indochina. It is with deep interest that I have been watching the recent developments in the House and now in the Senate. I have a personal interest in such developments because I am a B-52 copilot currently stationed temporarily on Guam.

Of the several significant reasons which would justify an immediate halt to the bombing of Cambodia, the most significant is the questionable legality of the bombing. The reasoning behind the legality has thus far, at least, been flimsy.

In addition, the tremendous amount of fuel consumed by all of the B-52s in their daily missions contributes dramatically to the severe energy crisis being experienced in the United States. Utilization of B-52s alone, operating out of Guam and Thailand on bombing missions, use up approximately 2½ million gallons of fuel every day.

Also, a most serious concern is the possible loss of planes and men over Cambodia, thus resulting in additional prisoners being taken by the enemy.

The flight crews engaged in these operations are truly being utilized as mercenaries. Apparently all that is required for B-52s and the various other aircraft involved in these operations to conduct their missions is a request by a besieged government for such assistance. It is a frightening thought.

Mr. President, the only way to deal with this situation is to face up to our responsibility. The only way to do it effectively is to cut the purse strings. And that is what the Eagleton amendment does, because it locks off funds from any and all directions and any and all acts so that if the Congress speaks on this basis, it will mean that we will at long last—13 years too late—get out of Southeast Asia all the way. And, as far as the MIA's are concerned, this Government is making every effort, and will continue to do so, to attempt to identify them. But if we want more MIA's, we should vote for the pending amendment and we will get them, just as we are getting them now in Cambodia.

If we want quicker action as far as the MIA's are concerned, we should keep the Eagleton amendment intact.

The PRESIDING OFFICER. Who yields time?

Mr. EAGLETON. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from Missouri has 4 minutes remaining.

Mr. EAGLETON. Mr. President, I will be very brief because I could not add to the excellent remarks which the distinguished majority leader has just made on this subject matter.

The Senator from Kansas (Mr. DOLE) said: "This is the least we can do," meaning the Dole-Helms amendment.

Mr. President, I say that this is the worst we could do insofar as this country is concerned. This gives the President the right to continue bombing as long as he sees fit, on and on and on, endlessly, in a new area of warfare.

As the Senator from Montana said, this will not recover the MIA's, and, unquestionably, this will add to the MIA list.

I repeat, in summarizing the testimony being given today by the Assistant Secretary, the administration is in contact with the North Vietnamese, and the effort is going forward insofar as recovering and identifying the MIA's.

Insofar as the Dole amendment enhancing the possibility of peace, I point out that all it would do would be to involve us in another war, but this time it would be called the Cambodian War.

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

Mr. EAGLETON. I yield.

Mr. CHILES. Mr. President, I wonder if the Senator from Missouri or perhaps the Senator from Kansas could explain the meaning of the amendment to me. I am trying to understand the amendment.

The amendment says:

These restrictions shall be of no force or effect if the President finds and forthwith so reports to the Congress that the government of North Vietnam is not making an accounting, to the best of its ability, of all missing in action personnel of the United States in Southeast Asia.

That is the language as I read it. What I am trying to understand is, if this amendment is agreed to, would it not be to the advantage of North Vietnam to not make an effort, because if they did not make an effort, the restrictions would not be in effect.

Mr. DOLE. Mr. President, first there must be a finding by the President. Second, there must be a report to the Congress, and after the report is made, we could cut off the action just like that. If we did not cut it off, there would then be the bombing.

Mr. CHILES. Mr. President, would not the North Vietnamese want the restrictions not to be in effect?

Mr. DOLE. They want the Eagleton restrictions to be in effect, because then they could do anything.

All I am saying is that in this one rare instance, in this one small instance, we are talking about American MIA's. Some are from Florida, some from Kansas, and some from Missouri. In that one instance, where there is no effort made for an accounting, if the President so finds and reports to the Congress, we resume the bombing.

Mr. CHILES. Mr. President, it looks to me as this would in no way help the effort. It could confuse the effort, and I would not want to do that.

Mr. DOLE. Mr. President, I want to keep the pressure on.

The PRESIDING OFFICER. Who yields time?

Mr. EAGLETON. Mr. President, I yield back the remainder of my time.

Mr. PERCY. Mr. President, I think it is fair to say that my concern for the fate of Americans unaccounted for in Indochina is as great as any man's. I have supported every responsible effort to achieve the release of prisoners of war and a full accounting of those missing in action. I have conferred at length with the Department of Defense officials whose task is to find the missing Americans in Indochina, and I have told them that we will not be satisfied until the job is done.

However, at this time I cannot justify continued American air combat over Cambodia and Laos in an effort to put greater pressure on North Vietnam to release information about the missing in action. Passage of this amendment, I believe, would bring more American deaths, the taking of more American prisoners, and an increase in the number of Americans missing in action, for this would inevitably be the result of continued American participation in combat.

The PRESIDING OFFICER. All time has expired. The question is on agreeing to the amendment of the Senator from Kansas to the committee amendment. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. STEVENS (after having voted in the affirmative). Mr. President, on this vote I have a pair with the Senator from Connecticut (Mr. WEICKER). If he were present and voting, he would vote "nay"; if I were at liberty to vote, I would vote "yea." Therefore, I withdraw my vote.

Mr. ROBERT C. BYRD. I announce that the Senator from Nevada (Mr. BIBLE), the Senator from Nevada (Mr. CANNON), the Senator from Idaho (Mr. CHURCH), the Senator from North Carolina (Mr. ERVIN), the Senator from Connecticut (Mr. RIBICOFF), the Senator from Georgia (Mr. TALMADGE), and the Senator from Wyoming (Mr. MCGEE) are necessarily absent.

I further announce that the Senator from Alabama (Mr. ALLEN), and the Senator from Colorado (Mr. HASKELL) are absent on official business.

I also announce that the Senator from Mississippi (Mr. STENNIS) is absent because of illness.

I further announce that the Senator from Maine (Mr. MUSKIE) is absent because of a death in the family.

I further announce that if present and voting, the Senator from Colorado (Mr. HASKELL), the Senator from Idaho (Mr. CHURCH), the Senator from Connecticut (Mr. RIBICOFF), and the Senator from Nevada (Mr. BIBLE) would each vote "nay."

Mr. GRIFFIN. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Utah (Mr. BENNETT), the Senator from Colorado (Mr. DOMINICK), the Senator from Hawaii (Mr. FONG), and the Senator from Connecticut (Mr. WEICKER) are necessarily absent.

The Senator from Arizona (Mr. GOLDWATER) is absent by leave of the Senate on official business.

The Senator from New Hampshire (Mr. COTTON) is absent because of illness in his family.

The pair of the Senator from Connecticut (Mr. WEICKER) has been previously announced.

The result was announced—yeas 25, nays 56, as follows:

[No. 161 Leg.]

YEAS—25

Bartlett	Fannin	Roth
Beall	Griffin	Scott, Pa.
Bellmon	Gurney	Scott, Va.
Brock	Hansen	Sparkman
Buckley	Helms	Taft
Curtis	Hruska	Thurmond
Dole	Jackson	Tower
Domenici	Long	
Eastland	McClure	

NAYS—56

Abourezk	Hartke	Montoya
Aiken	Hatfield	Moss
Bayh	Hathaway	Nelson
Bentsen	Hollings	Nunn
Biden	Huddleston	Packwood
Brooke	Hughes	Pastore
Burdick	Humphrey	Pearson
Byrd, Harry F., Jr.	Inouye	Pell
Byrd, Robert C.	Javits	Percy
Case	Johnston	Proxmire
Chiles	Kennedy	Randolph
Clark	Magnuson	Saxbe
Cook	Mansfield	Schweiker
Cranston	Mathias	Stafford
Eagleton	McClellan	Stevenson
Fulbright	McGovern	Symington
Gravel	McIntyre	Tunney
Hart	Metcalf	Williams
	Mondale	Young

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Stevens, for.

NOT VOTING—18

Allen	Cotton	McGee
Baker	Dominick	Muskie
Bennett	Ervin	Ribicoff
Bible	Fong	Stennis
Cannon	Goldwater	Talmadge
Church	Haskell	Weicker

So Mr. DOLE's amendment was rejected.

The PRESIDING OFFICER (Mr. DOMENICI). The question recurs on agreeing to the committee amendment on page 58.

Mr. MANSFIELD. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

The PRESIDING OFFICER. Do Senators yield back their time?

Mr. MCCLELLAN. Mr. President, I yield back the remainder of my time.

Mr. EAGLETON. Mr. President, 2 days ago, the Senate voted overwhelmingly to support the motion I raised over the germaneness of my amendment, section 305 of this bill. It was only a procedural vote, but the message delivered by the Senate was clear—there is finally a majority in both Houses willing to put an end to our military involvement in Indochina.

A number of the old, familiar arguments were wheeled out by the opposition, but this time it seemed only a faint echo of a distant past. We were told that we must wait to hear the results of the negotiations—that we must maintain the credibility of our Government—that we must help the President maintain "peace with honor" by continuing to wage war.

But this time the majority was marching to another beat—a beat that said that the maintenance of our legal system is more important than a policy devised by the President but never approved by Congress—that America is afraid of reinvolvement in Indochina—that the destruction of an agrarian society is not worth the ambiguous policy goal our bombing is supposed to achieve.

Today we will hear the same opposition voices arguing that Congress should sit on its hands and allow the President to handle the Nation's problems. But I am confident that those voices will again be quieted by the marching beat of a determined majority.

We heard a great deal 2 days ago about the "shattering" of Senate rules. But opponents of my amendment seemed less eager to talk about the shattering of the rule of constitutional law by the President's unilateral decision to conduct combat activities over Cambodia and Laos in the absence of congressional approval.

The administration's rather interesting legal position is that, since the President had authority to conduct combat operations in Indochina prior to January 27, he retains that authority to carry out the provisions of the Paris cease-fire agreement. But as I attempted to demonstrate yesterday, both the administration and Congress were in agreement that the only authority possessed by the President prior to January 27 was the authority to protect American forces.

The administration argument seems to fall heavily on article 20 of the Paris cease-fire agreement. It would, therefore, be instructive to examine that article to see where it pertains to the President's constitutional powers to wage war unilaterally.

The sections of article 20 most often cited by the administration read as follows:

(b) Foreign countries shall put an end to all military activities in Cambodia and Laos, totally withdraw from and refrain from reintroducing into these two countries troops, military advisers and military personnel, armaments, munitions and war material.

(c) The internal affairs of Cambodia and Laos shall be settled by the people of each of these countries without foreign interference.

Article 20 is, of course, an agreement unilaterally executed by the administration. While it carries obligations to the respective parties under international law, it carries no weight whatsoever under the constitutional law of this Nation. It therefore may be considered a legitimate commitment to withdraw, but it can never constitute legal authority to continue combat activity which, after the total withdrawal of all American forces, can no longer be justified on the basis of unilateral Commander in Chief powers.

It should also be pointed out that article 20 was concluded as part of a peace agreement signed by three Vietnamese parties and the United States. No Cambodian or Laotian elements were represented at the Paris negotiations. It is, therefore, difficult to accept the administration's argument that implementation of article 20 can only be satisfied by a cease-fire agreement among the dissident forces in Cambodia.

Article 20 does not mention the word cease-fire. We are, therefore, technically left with the more amorphous requirement for reciprocal withdrawal. We say the North Vietnamese have not withdrawn, and they say the same about us. And what was probably a purposely ambiguous part of the Paris Agreement becomes, in the administration's mind, a vehicle for an indefinite American commitment.

The President had no statutory authority to initiate combat activities in Cambodia before the cease-fire agreement. Prior to March 28, our air operations were based on the President's claimed authority as Commander in Chief "to protect the lives and security of our men in South Vietnam." The basis of the President's own claim was thus eliminated when the withdrawal of U.S. forces was completed.

But, in a clumsy attempt at legal gymnastics, the administration has chosen the obscure article 20 as its authority. It was as good a choice as any because, short of specific congressional approval, the President's legal position is indefensible.

We also hear the familiar argument that Congress should wait for the results of Dr. Kissinger's negotiations. But even assuming we would agree to ignore the obvious abuse of the Constitution—and I would not—how long would we have to wait?

It had been rumored that a draft protocol on the question of Cambodia had been agreed to. The administration prefered to leave us with the impression that Ambassador Sullivan was simply seeking the expected concurrence of our

allies. But now we hear that Sinanouk will not meet with Lon Nol.

Now, Dr. Kissinger admits, under questioning by the press, that there is no tentative agreement on Cambodia. And today it appears that our bombing will continue indefinitely—unless Congress acts to stop it.

Not the least among our considerations is the terrible story of destruction that is told by those who have recently seen Cambodia.

Few American reporters are allowed to see much of Cambodia nowadays, but Sydney Schanberg of the New York Times has, and the story he tells is one of despair. This is his description of Cambodia in the May 27 issue of the Times:

> In the past, when Communist troops entered an area or a village, the worst that would happen would be a brief exchange of fire with the half-hearted Government army. But now when the insurgents arrive, the villagers know that the bombs are not far behind.
>
> "This bombing is a terrible thing," said a Western diplomat here, "not only because of all the villages already destroyed, but because it has terrified all the rest of the villagers, who are moving out of their homes in the thousands to escape. This had swollen the refugee population at a time when food is getting scarcer."

Whether or not we support the objectives of our bombing policy, we must concede that its effect is to render meaningless the phrase "to the victor go the spoils." For if we continue bombing there will be no victor in Cambodia, and there will be no spoils.

The Nation is watching Congress today. And many are wondering if the constitutional prerogatives we have long claimed to be ours will be used to benefit America. Many are wondering if we will perform our duty, or defer our judgment, as we have so often in the past. And many are wondering if those assigned the awesome task of declaring war can also summon the courage to declare peace.

Mr. President, I believe the distinguished Senator from Virginia (Mr. HARRY F. BYRD, JR.) has very brief remarks he wants to make directed to this section of the bill.

Mr. HARRY F. BYRD, JR. Mr. President the issue before the Senate on the question of denying funds for military operations for Cambodia and Laos is whether the Congress shall demand a voice in determining the future role of the United States in Southeast Asia.

If there is a need for further U.S. military activity in Indochina—and I am not prejudging the question—the President should submit the case to the Congress. This is not a time for unilateral action by the executive branch. This is a time for thorough review of our policies in Indochina.

I consistently supported the Commander in Chief, both President Johnson and President Nixon, while U.S. troops were in Vietnam. But now, all such troops are out, and all of our prisoners of war have been returned. The President has stated that our objectives in Indochina have been achieved.

As I see it, if any further military action in Southeast Asia is needed, it must be taken jointly by the Congress and the President, and not by the President alone.

The need for the pending amendment was underscored by the arrogant testimony of then Secretary of Defense Richardson before the Senate Appropriations Committee. Mr. Richardson said that the executive branch would utilize public funds as it wishes in the absence of a clear-cut mandate from the Congress.

This statement shows an attitude which makes it imperative that the Congress assert its constitutional role in determining the basic question of foreign military involvement.

For these reasons, I shall vote in favor of the Eagleton amendment and will keep an open mind in any specific proposal made by the President.

Mr. EAGLETON. Mr. President, I yield briefly to the distinguished Senator from South Carolina (Mr. HOLLINGS).

Mr. HOLLINGS. Mr. President, I want to associate myself with the remarks just made by the distinguished Senator from Virginia (Mr. HARRY F. BYRD, JR.). He and I discussed this issue at length. We have gone over the hearing record that the then Secretary of Defense Richardson made before the Appropriations Committee.

I think that the statement of the Senator from Virginia sums up in capsule form the issue at hand and I join him in support of Senator EAGLETON'S amendment.

Mr. BEALL. Mr. President, we were deeply relieved when a cease-fire in the Southeast Asian conflict was negotiated in January. The Paris accords enabled us to withdraw our remaining troops from South Vietnam, recover our known prisoners of war and initiate a cease-fire in North Vietnam, South Vietnam, and shortly thereafter in Laos. The Government of Cambodia declared a unilateral cease-fire but it collapsed in the face of continuing attacks by the Khmer insurgents.

When the Paris agreements went into effect in January, all of us knew that their full implementation would be a difficult task. In spite of the continuing instability in Cambodia, and the threat it poses to the security of South Vietnam, the agreements have gradually taken effect in most of Southeast Asia. Since January 27 the major and minor cease-fire violations in South Vietnam have gradually diminished as have the ARVN's weekly casualties.

In light of the overall progress we have achieved to date, as well as the current round of negotiations designed to tighten up the cease-fire agreement and extend it to Cambodia, I think it would be unwise for the Congress to take unilateral action that would negate these deliberations.

Mr. President, I am as anxious as anyone to see the bombing in Cambodia come to a halt, but I do not believe that the public interest would be served by the Congress pre-empting the current negotiations. If the Kissinger-Tho negotiations do not bring the residual aspects of this conflict to an end, then I believe it would be appropriate for the Congress to set a date certain for the termination of all U.S. military operations in Southeast Asia.

Mr. KENNEDY. Mr. President, we appear today to be near the end of the extended debate over the extended bombing of the land and people of Cambodia.

I rise in support of this amendment, which is a long overdue effort to finally end America's financing of a massive air war over Laos and Cambodia. We can only wonder how this delay in ending the bombing appears to the refugees and civilians in Cambodia—to the women and children sifting through the rubble of their bombed homes—a picture which flashed across our television screens only last night. How must it seem to them to learn that the U.S. Senate, having finally deemed that the American bombing of their homes is a germane issue, is now preoccupied with perfecting amendments to what is to them a tragically imperfect and disastrous bombing war? How they must wonder, Mr. President, when they hear American officials and some Senators say American bombs hit only North Vietnamese and insurgent troops.

Some will debate the reasons for this senseless bombing of Cambodia—reasons so dubious that the administration has constantly changed them, and reasons which have no basis or authority in law—but none can debate the shattering impact the bombing and the war is having on the land and people of Cambodia. Even as we speak today bombs are falling—American bombs dropped by American pilots. And there is violence from all sides. Each day of bombing and war brings another day of human suffering, and tragedy is piled upon tragedy. More civilians become casualties or die. More children are orphaned or maimed. More refugees flee devastated villages and towns.

I think we should condemn the violence from both sides. But the real question that confronts us today is how much longer will we be a part of this violence. There is no question that the North Vietnamese and the Khmer Rouge and the other insurgents are involved in this bloodbath. There is no question that there is terrorism and shelling from all sides. The only question is how much longer will we spend our dollars to fuel this violence—to take part in a continuing civil struggle in Cambodia and Laos.

And make no mistake about it, Mr. President, American bombs are substantially contributing to this violence. American bombs create refugees—they kill and maim civilians—on a scale far greater than low-level terrorism or mining or shelling.

Nowhere is this better documented than in the reports and hearings of the Judiciary Subcommittee on Refugees, which I serve as chairman. Most recently this was underscored in a report prepared by the subcommittee's recent study mission to Indochina. In Cambodia the study mission team found that "bombing is the most pervasive reason for refugee movement."

Visiting the refugee camps around Phnom Penh, and the refugees shantytowns which now surround the city, as well as in the provinces of Svay Rieng, the study mission's interviews with refugees largely confirmed the earlier find-

ings of the General Accounting Office as to the impact of the bombing on civilians. In interviews in 1971, the GAO found that some 60 percent of the refugees cited aerial bombardment as the principal reason for moving, while about 40 percent spoke of artillery fire or actual ground fighting from both sides as the cause. Obviously no scientific surveys have been taken of refugee opinion, but the study mission reported that in their random sample nearly all of the refugees spoke of their homes being destroyed or damaged by bombing or artillery, or burned in the conflict. Several spoke of the brutalities of the Vietnamese—referring to both North and South Vietnamese troops in their country.

Direct statements from the refugees themselves are perhaps more revealing of the impact of the bombing and of the difficulty of life in rural areas because of the extended bombing. As one woman from Kampong Speu Province, now living in a little shack on the edge of Phnom Penh, told the subcommittee study mission:

My house and all my things were destroyed by the bombs. I don't know why they bombed. I never saw a Vietnamese. My whole village was burned by the bombing.

Another refugee, an older man with a family of six from a village in Kampong Thom Province, said he and his family fled because:

At first we heard artillery in the distance and then the sound of airplanes. Before we knew it, the airplanes were over us. Many felt danger and left for town. Later the airplanes bombed and the artillery fired.

He did not know which destroyed his house. He said he was surprised because he did not see soldiers of any kind.

According to the study mission's report many Cambodian refugees have had to move two or more times. One woman, who now lives in the Phnom Penh refugee camp at O bek Kaam, told this agonizing story:

Her family lived in the eastern province of Svay Reing in a village not far from the Vietnamese border. Over the last few years before they moved they had seen Vietnamese, but the Vietnamese had not bothered them or their land. They weren't sure in the beginning if they were North or South Vietnamese. Then the war started and there were Vietnamese all over, some South and some North, they couldn't tell which, and there was fighting and bombing. Her husband and daughter were killed in the bombing—she doesn't know whose airplanes they were. That is when she decided to move into the city of Svay Rieng. She stayed there for two years because they thought it safe to be near the cannons instead of in the fields where they fire. But life was difficult in Svay Rieng; they got no help from anyone and barely made enough to eat. Then conditions this year got worse, and even Svay Rieng did not seem safe. There was fighting nearby and she moved her family to Phnom Penh where she moved into a refugee house of a friend.

Mr. President, over the past 3 years these stories have been repeated countless times. Each day of the war has brought more refugees into constantly smaller areas controlled by the Government, and uncounted numbers in other areas outside of Government control.

As in South Vietnam, most people have crowded into the provincial towns and into the capitol city to avoid the fighting and bombing. Surely, as the refugee woman said "it is better to live near the cannon than out in the field where it fires."

The effect of the war on Cambodia, as in South Vietnam, is to push the countryside into the city. A rural people, once self-sufficient, are being forced into a false urban situation for which they are totally unprepared and where work and food are desperately short. A nation, once self-sufficient in rice production, now faces severe food shortages and the prospect of famine, even though the United States now provides three-fourths of all the rice consumed in Cambodia.

This is what the bombing in Cambodia has produced in human terms. Bombing which is as senseless as it has been brutal. Bombing that is out of proportion to whatever goals we originally sought. And this, Mr. President, is the correct rule of international law—a rule which the administration says is correct, but which it refuses to follow.

It was stated in a letter from the general counsel of the Department of Defense regarding American bombing policy in Indochina:

The correct rule of international law which has applied in the past and continued to apply to the conduct of our military operations in Southeast Asia is that "the loss of life and damage to property must not be out of proportion to the military advantage to be gained."

I would submit, Mr. President, that by the Department's own rule, the extended bombing in Cambodia long ago became out of proportion. It is time for the Congress to assert its role in defining a new sense of proportion, to vote an end to any further financing of a bombing campaign which has already taken such a massive toll in "life and damage to property." It is time for the Congress to tell the Department of Defense to live by its own rule.

The people of America want peace—not a peace that comes and goes, from day to day and month to month—but a durable peace, so that our Nation can finally turn all its resources to all the other things that command our attention at home and abroad. The time has come for America to stop sending its bombers to produce a war that is called peace, and to end our role in the violence and bloodbath that has engulfed the people of Cambodia.

Nowhere is the issue before us better stated than in letters I have received recently from U.S. Air Force personnel flying B–52 missions over Cambodia from Guam. An Air Force captain writes:

I am writing to you in regard to the continuing war in Southeast Asia . . . is it moral what we are doing in Cambodia? There is no constitutional justification for our presence in Cambodia.

Those of us that continue to fight a war without purpose look to you and the Congress to put an end to this.

Finally, another Air Force captain eloquently states the urgency of our task today:

I am a B–52 navigator currently on temporary duty at Andersen AFB, Guam. I am writing this letter to urge you to do your utmost to end our continuing war in Southeast Asia.

We are now no more than a mercenary army fighting solely on the discretion and whims of our President. The people never having their say through Congress as provided for in our Constitution. Under what justification do we bomb a population merely upon the request of another Government? With more POW's sure to follow, can we expect another ten years of war trying to free them, or will Mr. Nixon just forget them? We have no money for social programs at home, but we spend millions to bomb innocent civilians. Many, if not all of the B–52 crew members are tired of killing for no reasons. We think we deserve a chance to patch up the many personal problems we all have that have been created by these many years of war. If Mr. Nixon will not stop this insanity then the people, through Congress, must.

Mr. CHILES. Mr. President, I notice that the distinguished Senator from New York, Senator JAVITS, inserted into the RECORD on May 16 some important documents on the debate concerning the bombing of Cambodia. Senator JAVITS has presented the State Department's 13 page memorandum called "Presidential Authority To Continue United States Air Combat Operations in Cambodia" which is the Government's legal brief justifying the bombing, Senator JAVITS own excellent memo of rebuttal and the text of Judge Wyzanski's opinion in Mitchell versus Laird, a court of appeals case cited in the State Department memo.

For the record I would like to point out that the State Department in their legal brief justifying the bombing, called Mitchell versus Laird, misquoted this case which they relied on for their authority to continue the bombing. That memo says:

The recent opinion of the *United States Courts of Appeals* for the *District of Columbia Circuit* in *Mitchell* v. *Laird* makes it clear that the President has the constitutional power to pursue all of these purposes. In the words of Judge Wyzanski the President properly acted "with a profound concern for the durable interests of the nation—its defense, its honor, its morality."

In fact this is not what the Court said. The text of Judge Wyzanski's opinion in Mitchell versus Laird actually reads as follows:

Even if his predecessors had exceeded their constitutional authority, President Nixon's duty did not go beyond trying, in good faith and to the best of his ability, to bring the war to an end as promptly as was consistent with the safety of those fighting and with a profound concern for the durable interests of the nation—its defense, its honor, its morality.

Whether President Nixon did so proceed is a question which at this stage in history a court is incompetent to answer.

On this basis the Court dismissed the case.

So the Court did not hold, as cited by the State Department brief, that the President "properly acted with profound concern for the durable interests of the Nation—its defense, its honor, its morality." Rather, the Court held that this was only his duty, having inherted the war. At the moment of history when the Court was asked to rule—with troops in the field and our prisoners still held—the Court also determined that this presented a question on which the Court was incompetent to rule.

This was the only court case cited by the State Department justfying the President's authority to continue the bomb-

ing and it in no way can be construed to give the President such authority.

This misquoting of a legal case as part of the State Department's argument to us concerning the President's authority to continue bombing in Cambodia is remarkable considering the importance of this question before us.

The rest of the State Department's memorandum is no more convincing. Much of the memo deals with the foreign policy implications of not continuing to bomb Cambodia. This of course clouds the issue. We are not debatng here a foreign policy question so much as we are debating a constitutional question. We are debating whether the Congress of the United States has any legitimate role at all in deciding major foreign policy questions of this Nation. I believe that the Congress not only does have a vital role to play but must be a participant in these important issues or our whole system of government becomes weakened.

The thing that bothers me most is that the administration is not meeting this issue of consitutional authority head on. They are ducking behind the clouded uncertainties of what will and what will not happen in Cambodia and the rest of Southeast Asia or what will or will not happen in Paris in the discussions between Dr. Kissinger and the North Vietnamese if the Senate votes to stop the bombing. The issue is, Does the President now have the authority to bomb or not?

What is left of the administration's argument is a heavy reliance on article 20 of the Paris Peace Agreement which states that the parties to the agreement should see to it that the hostilities end in Cambodia and Laos and that troops are withdrawn from these two countries.

Now the Paris Peace Agreement is the most important international agreement the United States has entered into in the 1970's. It is in fact a treaty of historic significance. And yet the President chose to negotiate it as an executive agreement not as a treaty, and therefore was not obliged to send it to the Senate for ratification. So the argument is that the President's authority to bomb Cambodia rests on an article to a Presidential agreement which should have been a treaty and should have been ratified by the Senate. So the President has created his own legal basis for justifying actions he wants to take. This just cannot be.

Gentlemen, I think the State Department needs to hire some lawyers to write their briefs. The administration's case is about as weak as can be imagined.

The memo concludes:

> In light of these facts, it seems clear that the argument that the Constitution requires immediate cessation of U.S. air strikes in Cambodia because of the Paris Agreement is, in reality, an argument that the *Constitution which has permitted the United States to negotiate a peace agreement*—a peace that guarantees the right of self-determination to the South Vietnamese people as well as the return of United States prisoners and withdrawal of United States armed forces from Vietnam—is a Constitution that contains an automatic self-destruct mechanism designed to destroy what has been so painfully achieved.

This is nonsense. The Constitution does not "require immediate cessation of U.S. air strikes in Cambodia." The Constitution does not "contain an automatic self-destruct mechanism." The Constitution does set up a system of government based on law with three equal branches of government designed to check and balance each other. There can be no doubt that the Constitution requires the President to seek congressional authority for activities of war. This requirement has been seriously weakened in recent years.

The President has no constitutional or legal authority to bomb Cambodia. He must seek that authority from the Congress.

We must pass the amendment put forward by Senator EAGLETON to cut off funds for military activities in Cambodia and Laos until the President seeks the proper authority from the Congress.

Mr. TUNNEY. Mr. President, on January 27 the signing of the Paris peace accord appeared to signal the end of the longest and costliest war in the Nation's history. It was the hope of us in the Senate that we could put the senseless bloodshed, which cost the lives of 53,000 Americans and countless Vietnamese, behind us and turn our attentions to the pressing needs here at home.

We had reason to believe that the bitter debates which divided our country would end. We thought that as we honored the returning prisoners of war and the thousands of Vietnam veterans who served so courageously, we also were making a solemn pledge to avoid future military involvements in Southeast Asia. We expected the Government to heed the overwhelming desires of the American people and the Congress to withdraw finally, completely, and irrevocably from the quagmire of Indochina, and to devise new and more enlightened policies in dealing with that part of the globe.

Now, hardly 3 months after the ink on the cease-fire agreement has been allowed to dry, the military forces of the United States are engaged in a heavy and expanding aerial bombardment of Laos and Cambodia, in direct contravention of the language and spirit of the ceasefire provisions to which we are sworn parties. Thus, while our nominal policy is disengagement, we pursue an undisguised policy of headlong intervention. While the administration announces its intentions of establishing an enduring peace in Southeast Asia, bombs from American planes continue to rain down on the unprotected villages and innocent civilian populations.

Former Secretary of Defense Elliot Richardson has said the raids are necessary to induce North Vietnamese observance of the peace accords. Thus, we are conducting unrestrained air attacks upon one country as a form of retaliation against another. We are saying in effect, that to enforce the agreements, we must ourselves breach the agreements. This ignores the fact that the ostensible reason for going into Cambodia in the first place was to protect our troops in Vietnam. That justification no longer exists; the troops are out.

Equally troublesome is the Defense Department's argument that the bombing is legal without further specific congressional consent, since the cease-fire has never really gone into effect, and, therefore, the bombing is merely an extension of the existing conflict.

Under such an interpretation, the President, without approval by the Congress, could take any step he considered necessary to widen the war in Southeast Asia, regardless of the opposition of Congress or the American people. If the Senate accepts such a proposition, it ignores its authority, abdicates its responsibilities, and acquieses in a de facto Executive dictatorship in the conduct of the Nation's foreign and military policies.

If the provisions built into the Paris accords are now to be undone by the arbitrary and legally unsupportable acts carried out in open violation of those accords, then this administration will be legitimizing the use of force whenever its diplomacy fails. The way to rebuild the peace and to repair the damage already done to these beleaguered countries is not to wage further war and not to seek refuge in shaky legal doctrine in doing so. If the aftermath of the ceasefire agreement is to be the spilling of more blood, the loss of more American servicemen, the creation of thousands of Cambodian and Laotian refugees, and the poisoning of the climate in which the reconstruction of these countries should begin to take place, then we have accomplished little toward our goal of freedom and security in that part of the world.

It is apparent that the constitutional checks and balances and the weights of public opinion have been ineffective in halting the unilateral warmaking decisions of the executive branch. Despite strong condemnation of the bombing by majorities in both Houses of the Congress, the administration persists in expanding the conflict. The deadly air bombardment going on even as we deliberate here today, imperils the steps toward peace we have already taken, risks more American prisoners and additional casualties.

In pursuing these measures, the President undercuts the very objective of the so-called Nixon doctrine in which he stated:

> The time has passed when America will make every other nation's conflict our own, or make every other nation's future our responsibility, or presume to tell the people of other nations how to manage their own affairs.

The time has come to hold the President to his word.

For too long, the Senate has stood by while its constitutional powers have been eroded by the executive branch. Mr. President, I think this body must now respond to this challenge, and restore to itself its constitutional role in the decisionmaking process. We can no longer tolerate executive abuses of the congressional mandate in this vital area of foreign policy without seriously undermining public confidence in the Congress to curb the executive branch when it advocates measures that may be no longer truly reflective of the national interest.

The spreading involvement of the United States in other areas of Southeast Asia could precipitate a crisis of major proportions between the legislative and executive branches if not dealt with promptly and effectively. The Eagleton amendment forbidding further expenditure of appropriations, either present or past, in support of any combat activities in Cambodia or Laos, compels us to act.

To fail to act would be acquiescing in a policy that violates our desires for peace and peace itself.

Mr. MONTOYA. Mr. President, this is a time when the American people must wonder what to believe—and whom to believe.

What they hear from the administration is in sharp contrast with what they see on their TV screens at night. They have been told that the ugly war in Vietnam is over, that an agreement was signed in Paris in January which finally ended American participation in that war with something called honor. They have heard protestations by the administration that now the troops are home, the POW's are home, and that we are entering into a generation of peace.

Yet every night they still see the pitiful human victims of war in Cambodia and Vietnam, and hear again the frightening reports of American B–52's and fighter-bombers flying unknown numbers of sorties, leaving destruction and death behind.

What are they to believe?

From Washington they hear a babel of voices, statements, arguments about what is true and what is not true, what is constitutional and what is not constitutional, what is necessary and what is not necessary.

Is it any wonder that their confidence in government, their confidence in politicians, their confidence in us as their representatives is shaken?

They want to know how these decisions are made, and who is making them? They want to know how they can begin again to control their own lives and the future of their children? They want to know how many secret agreements have been made, how many shaky governments their sons have been committed to defend, and they want to know why?

I think, Mr. President, that the people are beginning to see us—their representatives—as a last line of defense against a mind-boggling bureaucratic madhouse where the buck never stops and where no one is willing to accept responsibility for representing the people. If they cannot turn to us for a clear statement of responsibility and truth, where can they turn?

They know what they want.

They want American participation in the war ended—in reality, not in rhetoric.

They want U.S. forces out of Southeast Asia—in reality, not in rhetoric.

They want no more American POW's captured or held hostage.

They want no more American soldiers drawn into a conflict thousands of miles away—a conflict which has lost any meaning it ever had for the defense of American interests.

On May 8 of this year Secretary Rogers said:

> We will not slide into another Vietnam. We will not introduce American ground forces. We are not committed to any particular Cambodian government. Our only purpose is to insure that the Paris peace agreement is observed.

I believe the American people want those statements backed up by reality.

There is ample evidence that neither side in Southeast Asia is complying fully with the Paris agreement. That is why Mr. Kissinger is in Paris, and of course we must all hope that he is able to assist in bringing new meaning and honesty to those agreements. But it is not possible for the American people—or for me—to understand how our continuing to participate in the reality of a fighting war, while the administration talks the rhetoric of a nonexistent cease-fire, will bring any meaning to that agreement.

They did not understand the expansion of the war into Cambodia in 1970. They do not understand all the kaleidescope of excuses which have been given by the administration for continuing that expansion. All the original reasons given—protection of our troops, saving American lives, rescuing American POW's—are now "inoperative."

There are no legal treaties which compel, or even permit, us to continue to make war in Cambodia. There is nothing left but the real question which is basic to our decision today.

That question, of course, is: who is responsible for making war in the name of the people of the United States? Who is responsible for appropriating the people's money for war? Who is responsible for declaring this Nation to be at war? Who is responsible for sending American airmen into combat and American planes into conflict?

The people of this country think they are entitled to a clear answer to those questions today. I agree with them. They may not understand all of the legal arguments and historical precedents which will come to this floor, or the serious considerations which must he given to them. They expect us to represent them in those considerations, and properly so.

But the continuation of our form of representative government is dependent upon an understanding by both the people and the various branches of their government about responsibility: who makes the law, who carries out the law, who makes and approves treaties with foreign governments, and who sends our sons to war. The people understand that, and that is what is important about our vote today.

It has taken us a long time to come to this day. Inch by inch, we in the Congress have forfeited our constitutional powers to control warmaking. Whatever our reasons in the past, they are no longer acceptable to the people today. They are asking—they are demanding—that we finally stand as their representatives and use our constitutional powers to fulfill their will.

They know what they want: a government which is constitutional and representative.

We know what they want: representatives who will insist on constiutional action in both war and peace, in our own Nation and in our relations with other nations.

There is no valid legal or constitutional excuse for the continuing combat activities of the U.S. forces in or over Cambodia or Laos. I believe, Mr. President, that the American people know that, and have turned to us as their only hope for a return to the rule of law in this Nation.

I urge your support for the cutoff of all appropriations which could support combat activities in or over Cambodia or Laos by U.S. forces.

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

Mr. MANSFIELD. Mr. President, will the Senator withhold that briefly. Yield back your time.

Mr. EAGLETON. Mr. President, I yield back the remainder of my time.

Mr. SCOTT of Pennsylvania. Mr. President, I yield back the remainder of my time on behalf of all Senators.

Mr. MANSFIELD. This applies only to the committee amendment.

Mr. SCOTT of Pennsylvania. To the committee amendment only, yes.

The PRESIDING OFFICER. That is correct.

The question recurs on agreeing to the committee amendment on page 58.

On this question the yeas and nays have been ordered, and the clerk will call the roll.

Mr. MANSFIELD. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Montana will state it.

Mr. MANSFIELD. To make the record straight, do I correctly understand that a vote "yea" will be in favor of the Eagleton-McClellan-Brooke amendment and a vote of "nay" will be against it?

The PRESIDING OFFICER. The Senator is correct. It will be on the committee amendment, the so-called Eagleton amendment.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. SPARKMAN (when his name was called). On this vote I have a pair with the Senator from Georgia (Mr. TALMADGE). If he were present and voting, he would vote "yea." If I were permitted to vote, I would vote "nay." I therefore withhold my vote.

Mr. ROBERT C. BYRD. I announce that the Senator from Nevada (Mr. BIBLE), the Senator from Nevada (Mr. CANNON), the Senator from Idaho (Mr. CHURCH), the Senator from North Carolina (Mr. ERVIN), the Senator from Georgia (Mr. TALMADGE), and the Senator from Wyoming (Mr. MCGEE) are necessarily absent.

I further announce that the Senator from Alabama (Mr. ALLEN) and the Senator from Colorado (Mr. HASKELL) are absent on official business.

I also announce that the Senator from Mississippi (Mr. STENNIS) is absent because of illness.

I further announce that the Senator from Maine (Mr. MUSKIE) is absent because of death in the family.

I further announce that if present and voting, the Senator from Nevada (Mr. BIBLE), the Senator from Nevada (Mr. CANNON), the Senator from Idaho (Mr. CHURCH), the Senator from North Carolina (Mr. ERVIN), and the Senator from Colorado (Mr. HASKELL) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Utah (Mr. BENNETT), the Senator from Colorado (Mr. DOMINICK), the Senator from Hawaii (Mr. FONG), and the Senator from Connecti-

cut (Mr. WEICKER) are necessarily absent.

The Senator from Arizona (Mr. GOLDWATER) is absent by leave of the Senate on official business.

The Senator from New Hampshire (Mr. COTTON) is absent because of illness in his family.

If present and voting, the Senator from New Hampshire (Mr. COTTON), the Senator from Colorado (Mr. DOMINICK), and the Senator from Hawaii (Mr. FONG) would vote "yea."

On this vote, the Senator from Connecticut (Mr. WEICKER) is paired with the Senator from Arizona (Mr. GOLDWATER). If present and voting, the Senator from Connecticut would vote "yea" and the Senator from Arizona would vote "nay."

The result was announced—yeas 63, nays 19, as follows:

[No. 162 Leg.]

YEAS—63

Abourezk	Hart	Moss
Aiken	Hartke	Nelson
Bartlett	Hatfield	Nunn
Bayh	Hathaway	Packwood
Bellmon	Hollings	Pastore
Bentsen	Huddleston	Pearson
Biden	Hughes	Pell
Brooke	Humphrey	Percy
Burdick	Inouye	Proxmire
Byrd, Harry F., Jr.	Javits	Randolph
	Johnston	Ribicoff
Byrd, Robert C.	Kennedy	Saxbe
Case	Magnuson	Schweiker
Chiles	Mansfield	Stafford
Clark	Mathias	Stevens
Cook	McClellan	Stevenson
Cranston	McClure	Symington
Domenici	McGovern	Tunney
Eagleton	McIntyre	Williams
Fulbright	Metcalf	Young
Gravel	Mondale	
Gurney	Montoya	

NAYS—19

Beall	Griffin	Scott, Pa.
Brock	Hansen	Scott, Va.
Buckley	Helms	Taft
Curtis	Hruska	Thurmond
Dole	Jackson	Tower
Eastland	Long	
Fannin	Roth	

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Sparkman, against.

NOT VOTING—17

Allen	Cotton	McGee
Baker	Dominick	Muskie
Bennett	Ervin	Stennis
Bible	Fong	Talmadge
Cannon	Goldwater	Weicker
Church	Haskell	

So the committee amendment on page 58 was agreed to.

The PRESIDING OFFICER (Mr. HELMS). The next committee amendment will be stated.

The legislative clerk read as follows:

On page 6, line 20, after the word "Cambodia", insert "or in or over Laos".

Mr. MCCLELLAN. Mr. President, I yield back my time on the amendment.

Mr. YOUNG. I yield back my time on the amendment.

The PRESIDING OFFICER. All time is yielded back. The question is on agreeing to the amendment.

The amendment was agreed to.

The PRESIDING OFFICER. The next committee amendment will be stated.

The legislative clerk read as follows:

On page 6, after line 21, insert:

Section 735 of the Department of Defense Appropriation Act, 1973, is amended by deleting "$750,000,000" and inserting in lieu thereof "$920,000,000": *Provided*, That on and after the date of enactment of H.R. 7447 of the 93rd Congress (a bill making supplemental appropriations for the fiscal year ending June 30, 1973, and for other purposes), no funds may be transferred under the authority of section 735 of the Department of Defense Appropriation Act, 1973, to support directly or indirectly combat activities in, over or from off the shores of Cambodia or in or over Laos by United States forces.

Mr. MCCLELLAN. Mr. President, I yield back my time on the amendment.

Mr. YOUNG. I yield back my time on the amendment.

The PRESIDING OFFICER. All time is yielded back. The question is on agreeing to the amendment.

The amendment was agreed to.

AMENDMENT NO. 133

Mr. HUMPHREY. Mr. President, I call up my amendment No. 133.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

On page 58, line 14, insert a new section 306:

No part of any appropriation contained in this or any other Act, or of funds available for expenditure by any corporation or agency shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or film presentation designed to support or defeat legislation pending before the Congress, except in presentation to the Congress itself.

BATTLE OF BUDGET KIT AMENDMENT

Mr. HUMPHREY. Mr. President, this amendment is similar to section 608(a) last year's Treasury, Post Office, and general Government appropriations bill that prohibited the expenditure of funds for publicity or propaganda purposes.

My amendment would specify what kinds of activities are a legitimate expenditure of public funds for publicity purposes. It also places limits on the kinds of public relations activities that can be undertaken by the executive branch.

It says specifically:

No part of any appropriation contained in this or any other act, or of funds available for expenditure by any corporation or agency shall be used, other than for normal and recognized executive-legislative relationships, for publiicty or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or film presentation designed to support or defeat legislation pending before the Congress, except in presentation to the Congress itself.

Mr. President, this amendment has grown out of efforts by Senator EDMUND MUSKIE and myself to call a halt to the distribution and usage of the administration's "battle of the budget kit"—a compilation of one liners, sample speeches, and basic background information.

This battle of the budget kit was, to my mind an illegal use of Government funds. It was an attempt by the Nixon administration to propagandize the American people in favor of or against specific bills pending before the Congress.

When this "kit" first came to my attention, I requested the Comptroller General to undertake an investigation of it. The Comptroller General reported to Senator MUSKIE and myself that the preparation and use of the kit was illegal.

Mr. President, I previously inserted in the CONGRESSIONAL RECORD—on May 7, 1973—the report of the Comptroller General. I quote the relevant portion of that report at this time:

It is clear that the kit is part of an effort to defeat the 15 pieces of legislation pending in Congress which the Administration opposes. It explains reasons for the Administration's opposition to the legislation and includes a statement that people could be urged to write their representatives in Congress. In our opinion, this use of appropriated funds violates the provision of section 608 (a) of the Act.

Yet, in spite of the Comptroller General's report, the Nixon administration continued, until May 23, 1973, to utilize the kit.

I have a report, as published in the Washington Post that an article by Secretary Dent of the Commerce Department made extensive use of the "kit." I have written to Secretary Dent, asking that he explain his use of an illegal kit, and requesting that he take appropriate steps to rectify his actions.

As of this date, I have not had a reply to my letter from the Secretary.

Mr. President, I ask unanimous consent that the article and a copy of my letter to the Secretary be printed in the RECORD, as well as an additional article on the matter.

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

(See exhibits 1, 2, and 3.)

Mr. HUMPHREY. Mr. President, there should be no need for this amendment. There are laws already on the books—one statute that involves criminal sanctions and another pertaining to the recovery of funds if appropriations are expended improperly.

However, the Nixon administration has made, I believe, my amendment necessary by engaging in propaganda and publicity activities outside the bounds of prudent and proper informational activities. What is more, until the Comptroller General's report that expenditure of funds for the "battle of the budget kit" was illegal, the administration gave every intention of continuing to break the law.

It is my judgment that the normal legislative-executive comity, the normal relationships fully sanctioned by our Constitution have been violated by this administration. As far as the battle of the budget kit is concerned, there seemed to be little recognition that laws were broken. And, even when that recognition was made clear, there was little effort to stop usage of this kit.

It was only when Senator MUSKIE and I wrote to the Attorney General and asked for an investigation to determine possible criminal liabilities that the White House ceased using this kit and recalled it.

But, simple recall does not absolve the administration from illegality.

And, it surely does not bode well for the future.

That is why I am offering this amendment today—to attempt to spell out what is a legitimate use of public funds for informational purposes.

Under my amendment, normal and recognized legislative executive informational relationships would not be prohibited. There could be, for example, ex-

penditure of funds for legislative liaison, preparation of messages and draft legislation, preparation of legislative support material, and assistance in the preparation of testimony. In addition, if a member of Congress requested the executive branch to do so, there could be the preparation and distribution of fact sheets and so forth, stating administration position on legislation.

The amendment would not prohibit agencies from providing public information, such as through press releases or radio programs, if it is of a general information nature and not an advocacy of legislation pending before the Congress.

Mr. President, I would hope that the Senate would approve this amendment. I believe that the Congress must be constantly on guard over the use of public funds to engage in propaganda or publicity. It must constantly watch over the public relations part of the executive branch. And, it must insist on a strict accounting of public funds used for public information purposes.

Mr. President, this is merely to spell out some of the generalities that were found in section 608(a) of last year's Treasury, Post Office and General Government appropriations bill. This amendment is the result of a study made by the General Accounting Office and the language proposed in the amendment has come to us as a suggestion following a discussion with the General Accounting Office on how we will further implement section 608 of last year's appropriation bill for Treasury, Post Office and the general Government.

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

Mr. HUMPHREY. I yield.

Mr. McCLELLAN. I have before me a copy of the Senator's amendment. Underlined are the provisions that point out the Senator's changes to existing law.

Mr. HUMPHREY. That is correct.

Mr. McCLELLAN. I have read it and as I interpret it I have no objection to the additional provision which the Senator is offering.

I do want to make clear for the RECORD and for the legislative history of these changes that it is not the intention of the author to place any inhibition on departments or agencies testifying before a committee of Congress to submit to that committee any documents, literature, or anything else in support of its request for either appropriations, or for authorizing legislation.

Mr. HUMPHREY. That is correct. This amendment would in no way impede or impair that relationship. In other words, the normal executive-legislative relationship is preserved and obviously left intact.

Mr. McCLELLAN. In other words, what we are saying, as an illustration, particularly the Department of Defense that when it comes before the Committee on Appropriations with any charts, tables, and illustrations in the nature of literature—such presentation would in no way contravene the provisions of this amendment.

Mr. HUMPHREY. Absolutely not. If any Congressman or Senator would ask any department of Government for information, not only would that be provided for under the terms of the amendment, but it would be looked upon as a request of the executive branch to so provide such information.

Mr. McCLELLAN. That was my next question, and I am glad the Senator has clarified this point. It does not prevent any Member of Congress from receiving from an agency or department any document or information it may desire.

Mr. HUMPHREY. No, it does not, but it does prohibit——

Mr. McCLELLAN. This is my final question: Does it prohibit an agency of Government or a representative of an agency of Government from mailing to Senators any information pertinent to any current legislative issue that might be before the Congress or that is contemplated to come before the Congress—in other words, saying, "You cannot contact us unless we contact you?"

Mr. HUMPHREY. Quite to the contrary. This specifically provides that any normal relationship between the executive and the legislative shall be untouched; that the executive branch is at liberty, of course, to forward its recommendations, its bills, and its proposals to Members of Congress.

What it does prohibit is the expenditure of public money to provide literally propaganda, for speeches in the countryside or for radio or television shows that are designed to defeat legislation that is here in the Congress, or designed to influence the general public by the expenditure of public funds.

Mr. McCLELLAN. But it may give that information to a Congressman or a Senator who requested it of the agency?

Mr. HUMPHREY. Yes, and the Senator or Congressman is at liberty to use it.

Mr. McCLELLAN. What the Senator is protecting against is voluntary initiative by an agency in developing propaganda to pass out, and to control in that way, and to influence, the action of the Congress?

Mr. HUMPHREY. The Senator is correct.

Mr. McCLELLAN. But it does not preclude it from being responsive to a Senator or to a Member of Congress or to a committee of Congress in securing information that they may need in the performance of their duties?

Mr. HUMPHREY. In no way would this amendment affect that normal relationship. What it would prevent is the kind of thing that happened in providing a kit for what was called the "battle of the budget," which the Senator from Maine (Mr. MUSKIE) and his committee looked into, as others did, in which public funds were used in violation of section 608. The Comptroller General felt that that section should have more specificity. The purpose of the amendment is to fortify the language passed a year ago in section 608(a) of the Treasury-Post Office appropriation bill.

Mr. McCLELLAN. I thank the Senator for yielding to me. I thought this history should be made in the RECORD regarding what this proposal intends to do and what it does not intend to do.

Mr. HUMPHREY. I thank the Senator. I might say that I did mention this matter to the distinguished ranking minority member of the Appropriations Committee, the Senator from North Dakota (Mr. YOUNG) and explained to him what its purpose was. I have discussed it with members of the staff of the Appropriations Committee. I believe it is meritorious legislation that will clarify the law and be of help to us.

Mr. MAGNUSON. Mr. President, if the Senator will yield, I hope the Senator will pursue this also, as we will in the regular appropriation bill, in a short time.

Mr. HUMPHREY. I will do so.

Mr. MAGNUSON. What the Senator from Minnesota has said is correct. There was a kit sent out, I guess on other legislation, but one in particular, telling different people what to say when they went out into the country and made speeches, to the effect that anyone who voted for extra amounts in the HEW appropriation should be labeled as big spenders.

Mr. HUMPHREY. The Senator's recitation of what was in that kit is accurate.

Mr. MAGNUSON. From cabinet officers on down.

Mr. HUMPHREY. Yes.

Mr. President, I ask unanimous consent to have printed in the RECORD a letter I received from the Comptroller General.

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

PRELIMINARY REPORT OF THE GENERAL ACCOUNTING OFFICE—APRIL 30, 1973

This is in response to your letter of April 9, 1973, in which you requested that we conduct an examination into the use of speechmaking guidelines—commonly referred to as the "Battle of the Budget" kit—being used by Federal officials. Enclosed is a complete copy of the kit which was obtained from Mr. Ken Clawson, Deputy Director of Communications for the Executive Branch.

We interviewed Mr. Clawson and Mr. Fred Fielding, Deputy Counsel to the President, on the matter. The results of our interview were as follows:

Question 1—Who prepared the kit titled "Battle of the Budget 1973"?

The "Battle of the Budget" had its origins in a TV speech made by the President during which the need to hold the line on the 1974 budget was emphasized. Following this speech Mr. John Ehrlichman, Assistant to the President for Domestic Affairs, held a press conference and discussed 15 bills under consideration by the Congress which the President intended to veto, if necessary. Fact sheets were passed out giving the administration's rationale.

Most of the substance of the fact sheets was developed by staff of the Domestic Council during preparation of the budget. Later the fact sheets became a part of the "Battle of the Budget."

Assembly of the "Battle of the Budget" was by White House staff writers.

Question 2—How many copies were produced and who received them?

There were two sets of copies prepared. The first set, estimated as numbering 30 to 50 copies, was prepared by the White House and distributed only to presidential appointees of the highest rank, such as cabinet officers, agency heads, and some undersecretaries. The second set, estimated as numbering 120 to 150 copies, was printed by the Republican National Committee and paid for by them. These copies were made available to subcabinet level presidential appointees, such as assistant secretaries, assistant administrators, and public affairs officers.

Question 3—What instructions were given on use of the "Battle of the Budget"?

The "Battle of the Budget" was discussed during routine meetings conducted by the Office of Communications with public affairs directors who were presidential appointees. The Office of Communications is responsible for coordinating and consulting on public affairs information in the executive branch.

The public affairs directors were advised by Mr. Clawson that presidential appointees should talk about the budget, where appropriate, as often as possible to get across the President's position.

Question 4—What were the costs of preparing the "Battle of the Budget" and how were they financed?

As noted earlier, we were informed that the "Battle of the Budget" kit included material developing during formulation of the budget. Inspection of the kit indicates that it is essentially a compilation, consisting largely of speech excerpts, letters, poll results, and fact sheets carrying various dates. Inasmuch as this material appears to have been originally prepared or accumulated by the White House staff for other purposes, its cost is not clearly assignable to the kit. In any event, the accounting records of the White House are not maintained in a manner which permits identification of the cost of any material or work which permits identification to the "Battle of the Budget" kit.

With respect to your question as to whether the "Battle of the Budget" kits violate 18 U.S.C. 1913, lobbying with appropriated moneys, it is our position that in view of the criminal nature of this statute, determinations as to its violation should be made by the Department of Justice. Since 18 U.S.C. 1913 contains fine and imprisonment provisions which may be enforced only through judicial criminal proceedings, it is not within our jurisdiction to determine the statute's applicability in any given circumstances.

However, there is also to be considered Section 608(a) of the Treasury, Post Office, and General Government Appropriations Act of 1973, Public Law 93-351, 86 Stat. 471, which provides that:

No part of any appropriations contained in this or any other Act, or of the funds available for expenditures by any corporation or agency, shall be used for publicity or propaganda purposes designed to support or defeat legislation pending before Congress.

It is clear that the kit is part of an effort to defeat the 15 pieces of legislation pending in Congress which the administration opposes. It explains the reasons for the administration's opposition to the legislation and includes statements that people should be urged to write their representatives in Congress. In our opinion, this use of appropriated funds violates the provisions of section 608 (a) of the act.

However, the action to be taken by our Office with respect to such improper use of appropriated funds is limited to recovery of the amounts improperly expended. Essentially, there is involved the cost of paper and printing and the time of personnel. While appropriated funds apparently were used in preparing the kit, it appears that the amount would be small and comingled with proper expenditures.

We hope that this report will serve your purposes.

Sincerely yours,

ELMER B. STAATS,
Comptroller General of the United States.

EXHIBIT 1

UNITED STATES SENATE,
Washington, D.C., May 15, 1973.

HON. FREDERICK B. DENT,
Secretary of Commerce,
Washington, D.C.

DEAR MR. SECRETARY: I have read in the Washington Post on Tuesday, May 14, 1973, that the Commerce Department in its "Commerce Daily" magazine published an article under your by-line using materials from the "Battle of the Budget" kit. I understand that the "Commerce Daily" is a taxpayer funded magazine distributed throughout the nation.

As I am certain you are aware, the General Accounting Office has issued a report saying that the use of this "kit" violates section 608 (a) of the Treasury, Post Office, and General Government Appropriations Act of 1973. And, Senator Muskie and I have written to the Attorney General asking him to investigate the preparation and use of this "kit" and take appropriate legal action if criminal statutes were violated.

In view of the finding of this matter by the General Accounting Office, I am puzzled why the Commerce Department would utilize government funds to publish material which is in violation of law. I am even more disturbed by your willingness to utilize material from these illegal kits, almost on a word for word basis, to propagandize the readers of "Commerce Daily." I request that you provide my office with an official explanation. I want to know how much of the taxpayers dollars were expended in the preparation of that article and its publication in your departmental magazine. I also want to know what other articles of this nature have been prepared by your department and where your department is seeking to have them published.

Finally, I want to know specifically Mr. Secretary whether or not in view of the GAO report you are ordering a complete halt to the use of this kit and are taking appropriate steps to end all departmental publicity lobbying on legislation pending before the Congress.

I am referring a copy of this letter to the General Accounting Office and the Attorney General asking that these two agencies as part of their on going investigation of the "Battle of the Budget Kit" examine the activities of the Commerce Department in this regard.

Sincerely,

HUBERT H. HUMPHREY.

EXHIBIT 2

COMMERCE IGNORES ANTILOBBYING LAW

(By Mike Causey)

The Commerce Department bent, if it didn't break, a federal antilobbying statute by using the April 16 issue of its taxpayer-financed magazine to knock legislation pending before Congress. By law, federal agencies are barred from lobbying for or against bills in Congress.

Last month, however, "Commerce Daily" which has a circulation of about 20,000 carried a warning that big spenders in Congress are about to enact a package of bills that could boost individual taxes by 15 per cent. The magazine goes to about 10,000 subscribers who pay $33 a year, and to another 10,000 newspapers, libraries and special interest groups on the freebie list.

Anti-congressional material in a by-lined article by Secretary Frederick Dent was lifted straight from a controversial White House kit on how to write speeches and press releases that was handed out to federal agencies in early April. The General Accounting Office has since said that use of the kit by government offices violates an antilobbying law designed to prevent the executive branch from using its resources to battle bills in Congress.

That guide, called The Battle of the Budget—1973, was written at the White House and partially paid for by the Republican National Committee. This column first spotlighted it April 4, noting that copies of the speech kit which contains anti-Congressional jokes, was passed out to federal public relations offices with orders to use it in preparing speeches and press releases for public consumption.

The General Accounting Office, in a report to Sen. Edmund Muskie (D-Me.) and Hubert H. Humphrey (D-Minn.), said the antilobbying law was broken. GAO said it would be up to the Justice Department to take action against persons who devised the kit and ordered federal agencies to use it. Main thrust of the kit is to tell agencies how to attack the "Far Out 15," the White House name for bills it opposes. Federal writers are given key phrases to use, jokes to be inserted into speeches and instructed how best to use "epithets" against the Congress.

In his by-lined piece in the Commerce magazine, Secretary Dent leaned heavily on material in the controversial anti-Congress kit in a one-page story.

Dent wrote that the President is trying to eliminate "wasteful and unproductive uses of the taxpayers money" but that "up to this point, the greatest noise level reaching the Congress is coming from special interest groups whose place at the federal trough would be eliminated if President Nixon's budget cuts stand."

Congress, however, is hearing "not from the poor who are benefitting from the greatest human needs budget in history," Dent wrote, "but from the vast network of poverty bureaucrats and professional grant-grabbers who have made a living out of poverty."

Borrowing a chapter from the White House budget kit called "Horror Stories," Dent lists four job training and community action programs that, the White House says, were losers.

In another line from the speech-kit, Dent says, "If Congress refuses to go along with President Nixon's budget cuts, the American people will be faced with a Hobson's choice of higher taxes, greater inflation, or both."

Congressmen—especially those of the Democratic persuasion—are furious over the bueaucratic assault on programs which they feel, out of politics or compassion, must be saved and expanded. They are also worried that his administration is manipulating the government's massive public relations apparatus to blackmail them back home with the voters.

While some agencies have reduced their efforts to produce material in line with the White House speech-writers kit, Commerce continues to use it for what some employees feel is an unfair, and possibly illegal, propaganda campaign.

How to lobby: National Alliance of Postal and Federal Employees will hold a two-day seminar beginning May 17 at the Sheraton-Park, instructing members how to win friends and influence people on Capitol Hill.

EXHIBIT 3

U.S. SPEECH-WRITING KIT IS RECALLED

(By Mike Causey)

The White House is recalling all copies of the controversial speech-writers kit it distributed to federal information offices, telling them how to attack "big spenders" in Congress using the bureaucracy's vast communications machinery.

Cabinet officers and top information specialists in government were given the White House-produced document in early April, and told to use it in preparing speeches and press releases. The kit, called "The Battle of the Budget—1973" was partially paid for by the Republican National Committee and was aimed at whipping up public opposition to 15 spending proposals in Congress.

Public information officers were told to use the kit's "epithets" section to describe spenders in Congress, given a list of "one liners" to insert in speeches, and told to detail "horror stories" which were also supplied to show federal program failures, many in the antipoverty area. Staffs were also told to arrange suitable audiences for bosses at which the speeches could be made.

Democrats in Congress howled when they first read of the speech kits here April 4. Sens. Edmund M. Muskie (D-Maine) and Hubert H. Humphrey (D-Minn.) ordered the General Accounting Office to determine if laws barring federal workers from lobbying had been violated. GAO in its report back,

said the laws had been broken, but it would be up to the Justice Department to take action.

Ralph Nader's Public Citizen Litigation Group filed request for a stop order in federal court here, asking that the kits be removed from active federal service. Word now is out that the White House has decided to withdraw the controversial kits and is sending a confirming note to the court.

Pension Bonus: Federal workers who retire by June 30—and the nearly one million already-retired civil servants and their families—will qualify for a record cost-of-living pension bonus of 6.1 per cent.

An estimated 70,000 retired federal and military personnel living in the Washington metro area will benefit from higher annuities which will show up in pension checks mailed out for early August delivery.

The 6.1 percent boost was assured yesterday when the Bureau of Labor Statistics released the April Consumer Price Index 130.7. That was a big jump over March's 129.8 CPI, and translates into an annuity increase for federal-military retirees of 6.1 per cent.

Government officials expect thousands of eligible employees to quit between now and June 30. Last year, an annuity increase of 5.4 per cent triggered a record 80,000 government retirements. Normally about 5,000 employees retire each month.

Former military personnel who retired before the last pay raise will get the full 6.1 per cent. Those who retire this year will get a fraction of the cost-of-living raise, about 2 per cent in most cases. All eligible federal workers who retire by June 30 will qualify for the full 6.1 per cent.

Government-military pensions are tied to the CPI. Under the system used, the CPI must rise three per cent over the level of the last increase to begin a three month count-down. If the CPI remains at or above that three per cent level for three consecutive months, an annuity increase is activated. Because it takes several months for the government to actually get the cost-of-living raise cranked into pension checks, Uncle Sam adds a one per cent sweetener. This means that the actual CPI-measured jump in living costs over last year was 5.1 per cent. The added one per cent from the government will make it 6.1 per cent.

Younger employees, who have no thoughts of retirement, will also benefit from the June 30 bonus cutoff. Thousands of higher grade, senior employees will no doubt leave and this will open up many middle and top grade jobs for promotions.

A big exodus from government could also ease the impact of layoffs in federal agencies, opening up jobs that can be filled by younger workers who are normally the first fired in economy cutbacks.

Federal officials won't hazard a guess at this point as to how many employees will retire by the end of June. But they point out that 80,000 quit last year when the bonus was less generous.

Mr. McCLELLAN. Mr. President, I yield back the remainder of my time.

Mr. HUMPHREY. Mr. President, I yield back my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment of the Senator from Minnesota.

The amendment was agreed to.

Mr. BEALL. Mr. President, I have an amendment at the desk that I would like to call up, on behalf of myself and Senators COTTON, COOK, YOUNG, DOMINICK, DOLE, and TOWER.

The PRESIDING OFFICER. The clerk will read the amendment.

The legislative clerk proceeded to read the amendment.

Mr. BEALL. Mr. President, I ask unanimous consent to dispense with further reading of the amendment.

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

The amendment is as follows:

On page 14, between lines 11 and 12, add the following new paragraph:

"For the additional amount for "health

"For the additional amount for "health manpower" to remain available until expended to carry out the Physician Shortage Area Scholarship Program (Subpart III of Part F of Title VII of the Public Health Service Act), $2,000,000."

Mr. BEALL. Mr. President, this amendment authorizes $2 million for the funding of the physician shortage area scholarship program, which I authored along with approximately one-quarter of the Senate in the last Congress, and which was included as part of Public Law 92–157, the Comprehensive Health Manpower Training Act of 1971.

With the strong support of Senators COTTON, MAGNUSON, YOUNG, and other members of the Appropriations Committee, the Congress last year funded this program in the Labor-HEW appropriations measure at the $2 million level. The Labor-HEW bill was subsequently vetoed and since this program represented a new start, it was not funded under the continuing resolution.

Mr. President, the Senate on three separate occasions has voted to fund this program in the supplemental appropriations bill, H.R. 11955, which passed in December 1971, in the Labor-HEW appropriations bill, H.R. 15417, which was vetoed on October 16 of last year and in H.R. 16654, the Congress' second attempt at a Labor-HEW appropriations measure which was also vetoed.

The physician shortage problem is one of the most critical health problems facing countless counties and communities in the country today. I am certain that Members of the Senate have either heard directly from communities in their State or read of efforts by communities to secure a physician through road sign advertisements, plea to medical societies and to the Federal Government. It is often said that there is a need in the Nation for an additional 50,000 physicians. A 1970 study by the American Medical Association identified 134 counties in the country without a single physician. This is an increase of 36 since 1963.

There are many more communities without a single physician or without an adequate number of doctors. Maryland illustrates this point. While I am pleased that my State's counties are not on the AMA's list, there is no doubt that many Maryland communities are in dire need of physicians. For example, in 1970 an article in the Public Health Report focused on the situation in Baltimore. This article identified 16 census tracks with a population of 174,000 primarily disadvantaged citizens, in the innercity as well as some outlining areas, which were totally lacking in primary care physicians.

To help meet the needs of physician shortage areas, I introduced S. 790 in 1971 and as I previously indicated, the measure was incorporated in the overall health manpower legislation. Basically, this program provides for scholarships of up to $5,000 annually for a young man or woman who agrees to practice primary care in physician shortage areas. A physician shortage area may be a rural community, an innercity area, or among the Nation's migrant farm workers. One year of service is required for each year of the scholarship. If an individual does his residency or internship in a physician shortage area and the training or experience received is designed to prepare him to engage in the practice of primary care, then the service commitment is reduced by 1 year.

A unique system of priority in awarding the scholarships is established which I believe significantly increases the probability that this program will work. Essentially this system gives priority to individuals from physician shortage areas under the theory that such individuals are not only more likely to return to such shortage areas, but also because they are more likely to remain and to continue to serve the citizens of their "home" areas. Since a secondary purpose of the program is to increase the opportunity to lower-income students to attend medical school, priority is also granted to such individuals. Specifically, the priority system for awarding the scholarships is as follows:

The first priority is granted to individuals from lower-income families who live in a physician shortage area and who agree to return and practice in such area.

The second priority goes to individuals, regardless of income, who reside in a physician shortage area who agree to return and practice in such area.

The third priority is allocated to individuals from lower-income families, who although residing in an area where there is not a physician shortage, agree to practice in any physician shortage area.

The final priority would go to individuals, regardless of income, who do not come from any area of physician shortages, but who agree to practice in any physician shortage area.

There are two primary purposes for the system of priorities for selecting eligible students for scholarships and fellowships under the bill. First, the evidence supports, what commonsense tells us, the hypothesis that persons from physician shortage areas are more likely to return and to remain in such areas and practice medicine.

The results of an American Medical Association's survey questioning physicians on the factors that influence their decision to practice in a certain area gives support to the bill's priorities. This survey found that over 45 percent of the physicians indicated that they were practicing in or around the town in which they were raised. The survey also revealed that 49 percent of the physicians raised in small towns were practicing in communities of 2,500 or less. An equal percentage of doctors raised in nonmetropolitan communities of 25,000 or more were practicing in cities of that size. This AMA survey confirmed previous studies which had indicated the "physicians who practice in small towns are more likely to have a rural than urban background."

The AMA study concluded that—

Physician recruitment for rural areas

would be enhanced if more young men and women with rural backgrounds were encouraged to enter the medical profession.

Continuing, the report had this to say about the influence of a doctor's origins on his place of practice:

Physicians who practice in small towns are more likely to have a rural rather than urban backgrounds . . . rural physicians have predominately rural backgrounds and metropolitan physicians generally had urban locations during their youth.

If we can persuade young men and women to practice in physician shortage areas, the evidence indicates that most are likely to remain. The AMA study of this point states that—

Once a physician establishes a practice he is not likely to move.

Their survey found:

At least 63 percent of the physicians had not moved from their original practice location. This percentage was consistent regardless of the community size. A more detailed breakdown of the area showed that about one-fourth of the physicians in nonmetropolitan areas had practiced twenty years or more in the same place.

This measure is then drafted to give priorities to lower income individuals from physician shortage areas because it is felt that these individuals are more likely to return and remain in these areas in which they were reared.

The second advantage of the priorities established by the bill would be that it would have the effect of attracting and making it possible for more minority and lower-income individuals to go to medical school. Across the country there has been a concern over the poor representation of the minority groups in our medical schools.

Another important feature of the legislation is that it would encourage students to enter family medicine. In 1931, three out of four of the Nation's doctors were engaged in family practice. In 1967, only one out of five doctors were in general practice. In Baltimore City only 9 percent of the practicing physicians are in family practice. Indications are that this trend toward specialization and away from general practice is continuing. I believe we need more family physicians. My bill would encourage this.

Mr. President, the overall health manpower legislation enacted in the last Congress includes various provisions directed toward the maldistribution problem. The loan forgiveness program under which loans are forgiven for practice in physician shortage areas was liberalized from the former law of 10 percent to 15 percent annual forgiveness up to a maximum of 50 percent for practice in physician shortage areas to 60 percent forgiveness over a 2-year period plus an additional 25 percent for third-year for total forgiveness of 85 percent. In addition, the Congress has enacted Senator MAGNUSON'S National Health Service Corps. These are important programs and they have my unqualified support.

But I believe the physician shortage problem is so critical that it is literally a matter of life or death for some communities and citizens in those communities, that various approaches are desirable. I naturally hope the loan forgiveness program will work, but the evidence to date makes one skeptical as only a few students have taken advantage of the loan forgiveness program since its enactment.

Finally, I want to emphasize the features of my program which I believe increase the probability of its success.

First, an individual would make commitment to serve in a physician shortage area prior to entering medical school rather than as an afterthought to unload a large indebtedness.

Second, the program attempts to attract individuals from physician shortage areas, commonsense, as well as the evidence I cited supports this premise that such students are more likely to return and remain in shortage areas.

Third, the scholarship program is particularly important to lower-income individuals. Many deans advise me that lower-income students are very reluctant to assume indebtedness of the magnitude necessary to complete medical school.

Fourth, the scholarships are only for primary care practice and this will have the desirable effort of encouraging more family physicians which are desperately needed.

Finally, I would point out that if an individual does not carry out the commitment, the scholarship in effect, is converted to a loan which must be repaid with interest within 3 years.

Thus, if the program is successful, I believe my colleagues will agree that it has been a good investment. On the other hand, if it does not work, it will not cost the Government a single cent. It is my understanding that one of the reasons we lost the funding last year was that the House was reluctant to increase scholarship programs. I suspect that there was not a full understanding of the operations of this program and the fact the scholarship is converted to a loan if the student reneges on his commitment. I hope that this will not occur again this year.

Mr. President, I come from an area that frequently experiences physician shortage problems. I am convinced that there are talented and qualified men and women in my home area and other similar areas who will jump at the chance to participate in this program and that these individuals, following graduation, will return to practice medicine and to serve among their friends and neighbors. The Physician Shortage Scholarship program has been endorsed by the American Academy of General Practitioners, the deans of various medical schools, and the National Medical Association.

I strongly urge that the Senate fund this program and hold firm in conference for I am convinced that this program does hold out considerable amount of hope for physicians shortage communities throughout the country.

Mr. YOUNG. Mr. President, I am happy to join as a cosponsor of the amendment. My home county in North Dakota is an example of the need for this amendment. It would help get doctors in physician shortage rural areas. My home county does not have a full-time doctor. A few years ago we had as many as 12, but there is not a full-time doctor in the whole county.

This is a serious problem in all of the United States, and I do not know of a more meritorious proposal than this. It should be more than $2 million, but the amendment will give this worthy program a chance to get started.

The PRESIDING OFFICER. Who yields time?

Mr. McCLELLAN. Mr. President, I yield myself 2 minutes.

The distinguished Senator from Maryland conferred with me about this amendment, and I have agreed to take it to conference and give it further study.

I may say that, if this proposal intends to accomplish what I have been told—the providing of medical services, more doctors, in rural America—then I shall give it my enthusiastic support in conference and try to get it retained in the bill. I do want to study it further, but we have in my State large rural areas, and in some counties they have no doctor at all. It is a very distressing situation.

I do not think we can manufacture doctors by merely providing more appropriations. That is why I want and intend to study it, but if it gives any legitimate promise of helping to get doctors into rural areas. I believe we all want that, and if it will accomplish this, I shall strongly support this additional appropriation.

So I am willing, with this explanation of my position, to take it to conference.

Mr. BEALL. I thank the Senator from Arkansas for his consideration. I feel sure he will find that there are inducements in this proposal that make it very attractive for doctors to go to physician-shortage areas. After he examines the amendment, I think he will find that.

Mr. TOWER. Mr. President, will the Senator yield me 1 minute?

Mr. McCLELLAN. I yield.

Mr. TOWER. I am delighted to be a consponsor of the amendment. In the State of Texas we have 254 counties. In over 30 of them we have no doctor at all. We certainly need some kind of incentive programs to get doctors to practice in these physician-shortage areas. I certainly hope the distinguished Senator from Arkansas will support this amendment in conference.

Mr. McCLELLAN. Mr. President, I have already stated that after studying the amendment, if it gives promise to give relief to the situation it is intended to remedy, I will certainly support it.

Mr. President, I yield back my time.

Mr. BEALL. Mr. President, I yield back my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment, all time having been yielded back.

The amendment was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. YOUNG. Mr. President, I yield 10 minutes to the Senator from Texas (Mr. TOWER).

Mr. TOWER. Mr. President, I intend to vote against this bill on final passage, because we have included in it the Eagleton amendment. And I express a fervent hope that when this bill reaches conference the Eagleton amendment will not survive the conference.

This is a far-reaching thing we do in adopting this amendment. It has tremendous significance because it marks the placing on the President of a tremendous inhibition in the conduct of foreign rela-

tions, in the negotiating of agreements and treaties, and in the implementation and enforcement of those agreements once arrived at.

We have seen how North Vietnam will not live up to its treaty commitments. And North Vietnam has no regard for agreements, but as little more than a convenience. We have seen that North Vietnam intends to do anything it can get away with.

What we have in effect done in the Eagleton amendment is said to them: "You may do whatever you please. Having concluded this agreement, we intend to walk away from it, and we don't care whether you violate those provisions or not."

A great deal is said about the bombing and how it creates the kind of climate in which we cannot have peace. It has been suggested that the bombing serves to prolong and intensify the war. I believe that was said back when the President made the decision during the Christmas season to resume the bombing of North Vietnam. But it was that very thing that brought them to the conference table.

It is a verity in the conduct of this diplomacy that a President or head of state of any country cannot successfully negotiate with foreign powers if he has no military strength. Any such negotiation is a negotiation from weakness. And if we are to negotiate from a posture of inferiority, then we must inevitably concede more than we get.

Mr. President, in tying the President's hands, I think that we have taken a very unusual step. Only the President can be responsible for the conduct of diplomacy. Only the executive branch can formulate foreign policy. We cannot formulate and implement foreign policy in the Congress of the United States. This is a responsibility that is a necessary concomitant of the Presidency.

Obviously 535 men of different and varying views cannot formulate and implement foreign policy. The Congress cannot negotiate agreements. The Congress did not negotiate the agreement with North Vietnam that has resulted in the present agreement which we are today treating like a scrap of paper.

The Vietnamese accord was met with broad acceptance by Members of Congress. It was generally applauded. It was probably the best kind of agreement that the President could have got under the circumstances. It is a great tribute to Mr. Kissinger and to Ambassador Sullivan, and others, who were instrumental in achieving this agreement that we were able to accomplish so much.

But most of the provisions of this agreement have, in some way or another, been violated by North Vietnam. For example, there was no cease-fire in Laos until the United States brought air strikes to bear against the North Vietnamese in their support of the so-called Pathet Lao, which is a paper tiger and is little more than a cosmetic application to the North Vietnamese military. If the Eagleton amendment is allowed to stand, and if in its wake other similar legislation is passed by Congress, then I can say, and I think with certainty, that we are facing the twilight of American influence in this world.

We have the War Powers bill coming along. There is a very exotic flower, indeed. It has attracted widespread support. But I wonder how much thought has been given to the stultifying effect it will have on the President to negotiate with a super power like the Soviet Union.

The Eagleton amendment, the debate that has preceded it, and the action in the Committee on Appropriations have been duly and carefully noted by Hanoi; and Hanoi, I think next week, through Le Duc Tho, will say to Mr. Kissinger that he can go fly a kit, because the United States will no longer—or at least the executive branch will no longer—possess the force which is necessary to bring about a successful implementation of the agreement that we reached last January with North Vietnam.

It has already been pointed out many times in the Senate today that article 20 has been ignored by North Vietnam. They are inblatant and flagrant noncompliance. They have not withdrawn their troops from Laos and Cambodia. They have violated article 7 and are using Laos and Cambodia as lines of communication there. They move supplies to their forces in South Vietnam. Article 7 provides for not only a cessation of hostilities. It provides also that there will be no reinforcements or resupply except on a piece for piece basis. This provision is being flagrantly violated, and we have said to them, "You can continue to do it now unhampered, because we are not going to bomb and are not going to interdict your lines of communication any more. So it is wide open, boys. Send all the equipment, all the troops, all the military hardware and ammunition you want to your troops."

We are saying, in effect, further, "Since you have got yourselves in a logistical position to support a massive invasion, you may do so; we are not going to have anything to say, because we are tired and are quitting."

So to North Vietnam we are saying, "Do as you please."

By this amendment we are not deescalating the war; we are making certain that the war will be of longer and greater duration.

Great concern has been expressed in the Senate today over the plight of Cambodian civilians who have been killed by American bombers. There is no substantial documentary evidence that there have been extensive civilian deaths in Cambodia as a result of our air strikes there. As a matter of fact, there are reporters who have been, according to the news media, running all over that little country, trying to find such evidence, and they have not found any. I have heard no one say much in sympathy for the civilians of Cambodia or Laos or Vietnam who were killed by the daily acts of terrorism of the North Vietnamese. The North Vietnamese wantonly shell residential areas. They shell marketplaces. They slaughter civilians—innocent women and children—by the hundreds—yes, by the thousands—but nobody seems to care.

By encouraging North Vietnam to violate the terms of the treaty accords, we are encouraging them to prolong the war.

The way they wage war is through acts of terrorism. So let us understand that what we are doing here today is encouraging further bloodshed in Indochina. Oh, yes, we are washing our hands of it. We are out of it. We have turned our backs on it, and we are walking away.

But let us not beguile ourselves into thinking we have ended the fighting. Let us not kid ourselves into thinking that lives are going to be spared, because of what we have done here today, because quite the contrary is true.

The United States does not choose to initiate war as an instrument of national policy. We have gone into four wars in this century reluctantly and ill-prepared, and each time we have gone to war, we have gone to war, because somebody else has started it.

We did not start this war. We are not the ones who committed the overt acts of aggression against South Vietnam, against Laos, against Cambodia. It was the Government of North Vietnam. We do not have a first-strike policy. We do not have a first-strike mentality. We do not start wars.

I think reasonable men may argue whether or not we were right in being in Vietnam. I for one am convinced that we made many mistakes that led us there, and should not have been there in the first place. But once we went there, we should have brought about the massive application of military force to bring that war to the earliest possible successful conclusion.

We have certainly learned one thing, and that is that the doctrine of graduated response simply will not work.

Now we have concluded an agreement. But can we believe that the aggressive designs of North Vietnam are any less now than when North Vietnam committed thousands of the flower of its youth to a massive offensive in South Vietnam last year? They have broken virtually every rule in the book. They have initiated military offensives in various parts of South Vietnam, and they now hold more real estate there than they did at the time of the cease-fire—not because the South Vietnamese have abandoned it, but because they have taken it away from them. So be sure that they intend to take over the Government of South Vietnam by any means possible. And their ability to do so is vastly enhanced by a prohibition on our President from conducting any combat activity over Laos or Cambodia.

I think this is going to come home to haunt us for another reason. We are a treaty signatory with Thailand, and we have ample reason to believe that North Vietnam has designs on Thailand. Indeed, the Communist infrastructure in Thailand is not ethnic Thai primarily. In the main it is ethnic Chinese and ethnic North Vietnamese. I suppose a lot of us will stand here and say, if war ever breaks out in Thailand, that it is just a civil war and, therefore, we have no obligation to go to the assistance of the Government of Thailand. But I think ultimately by failing to try to get some assurance of the sanitization of Laos and Cambodia, we may be faced with the choice of either going to the military

assistance of Thailand or abrogating our treaty agreement with them, treating it as a scrap of paper, saying we will not honor our commitments—and, of course, when that day comes no one is going to take us seriously any more.

So I hope we will reflect on each and every one of these so-called antiwar amendments that are going to be offered to various pieces of legislation or are already incorporated in them when they come to the Senate floor, because we are gradually going to erode away the power of the President to negotiate, to make policy, and to make it stick.

Historically Congress has always left the conduct of foreign policy to the President. If we want to reclaim power that we have delegated away to the executive branch, why do we not assist in dismantling some of this vast bureaucracy over which we cannot exercise adequate oversight, this bureaucracy to which we have delegated away so much of our legislative power?

We have independent regulatory agencies that have, in their specific areas, more power than Congress, because they not only make the rules, they serve as the prosecution, the jury, and the judge in many instances. I can cite several agencies that have too much power—powers that Congress perhaps did not intend to give them. If we really want to reassert the power of Congress, let us dismantle some of this vast bureaucracy. Let us reclaim some of the legislative authority in domestic affairs that we have steadily delegated away since the 1930's.

In that unhappy era, we virtually made Franklin D. Roosevelt a benevolent dictator. Thank God he was benevolent. He himself said that we were conferring upon him power that, if it ever fell into the wrong hands, would mean the end of American democracy as we know it.

The important thing is that we assert our power, our authority, and our ability on domestic matters, not that we tie the hands of the President in the formulation of foreign policy, the conduct of diplomacy, and the implementation thereof. And you cannot conduct successful diplomatic negotiations these days unless you have military force, unless you have the willingness to use it if necessary, and unless you can use it with some flexibility and some discretion.

So I think we have done a very serious thing here today, a regrettable thing. For that reason I shall vote against the passage of this bill, although it is a meritorious bill from the standpoint of the rest of it. Perhaps there is a little too much money in it, but there are many worthwhile things.

I cannot in good conscience vote for a bill that contains what I consider to be an odious provision.

The PRESIDING OFFICER. Who yields time?

Mr. McCLELLAN. I yield the distinguished Senator from Florida 3 minutes.

Mr. CHILES. Mr. President, I have listened with interest to the statements of the distinguished Senator from Texas. I heard a lot about foreign policy and a lot about power, but what I did not hear anything about was the Constitution of the United States.

In my reading of the Constitution of the United States, it says that the Congress has the power to declare war. What this issue is about, or at least what the junior Senator from Florida thought it was about, is whether Congress is going to follow, finally, the Constitution of the United States, and whether it is going to exercise its duty and its obligation, that it would be the body that would declare war, and the President as the Commander in Chief would make war after that war had been declared by Congress.

We have witnessed two Presidential wars of late times, in Korea and in Vietnam, in both of which Congress did surrender its obligation and its duty, and in both of which we can easily say that the President committed troops and we simply are having to pay the bill.

When I look back over Vietnam and the tragedy that went on there, I cannot find a date at which we can say that the people of the United States, through their elected representatives, said, "The national policy of this country is going to be that we go to war, that we are going to commit young men, their lives, their blood, and the dollars and energy of this country to war," as the Founding Fathers set forth that we would when we sent our people to war. I cannot find a date when we really committed ourselves, over four Presidential terms. I ask my fellow Senators, Can you pick the date that we irrevocably committed ourselves to that war? to that war, and I would like to see it. There never was national debate and therefore, we never had a national unity that would have tied the country together for a purpose. We sent young men off to war who did not know why they were going or what the goal was. We tied their hands behind their backs. There were certain areas into which we could not go.

Then when President Nixon came along, of course, he inherited the war. Then when there was a court test over whether President Nixon had the power, the court said—and the court was right—that he did have a duty as Commander in Chief of an inherited war to try to remove our troops, and to try to get our prisoners of war back. I think he was clothed with that authority when he took over the office of President and the war.

Now that we have done that, removed our troops and returned our prisoners of war home, what kind of shred of power does the President stand on now in any action he takes in bombing Cambodia?

There is no SEATO pact. There is no treaty obligation between Cambodia and the United States. There is nothing, no shred of power that he can hang on, and certainly no congressional authority.

This issue was ably set forth by the distinguished senior Senator from Virginia (Mr. HARRY F. BYRD, JR.), that it is not really a question of whether Congress is now speaking to the merits of what we should be doing in Cambodia, but that we are a country of laws and that we have a Constitution we should operate under. Under that Constitution, Congress does have the authority to declare war. But we have not done it here. There is no authority whatsoever for this action.

So this issue has nothing to do with the foreign policy that we are talking about here. It has to do with whether we will follow and obey the Constitution of the United States.

Mr. HUMPHREY. Mr. President, I greatly appreciate the very knowledgeable and profound remarks of the distinguished Senator from Florida (Mr. CHILES). I thought that his response to the arguments made by the distinguished Senator from Texas (Mr. TOWER) was right on target and focuses the attention of the Nation as well as the Senate on the central issue; namely, the constitutionality of the actions taken in the instance of the heavy bombardments in Cambodia.

I have listened with great interest to the distinguished Senator from Texas (Mr. TOWER). Much of what he said I can concur in; namely, that North Vietnam has committed atrocities, that the Vietcong have committed unlimited atrocities, and that the North Vietnamese have violated many agreements, and that they have engaged in aggression in the past. These are facts which history will record as being genuine, reliable facts.

I cannot agree, however, with the deduction that the Senator from Texas makes from those facts, as to the role of the United States and particularly in the instance of the bombing of Cambodia.

As was said here, there is no law that grants the President this authority, nor is there anything in article I of the Constitution relating to the executive branch that grants the President this authority.

The Senator from Texas says that only the executive can formulate foreign policy.

That is not true at all.

Foreign policy's conduct is by the executive, but the substance of foreign policy is a joint enterprise between Congress and the President.

The problem we face today is that we have interpreted the words "conduct of foreign policy" to be the substance of foreign policy.

The Executive Officer, the President of the United States, is responsible for the conduct of foreign policy. He is the chief spokesman of this country in the field of foreign policy. He is the chief spokesman for this Nation in the field of national security. But he cannot raise armies and he cannot conscript men without authority of the Congress.

The foreign policy of this country is not something to be handed over to any one man. It is the joint responsibility of the two branches of Government—the executive and the legislative.

That is the issue here.

Again, as was stated by the distinguished Senator from Virginia (Mr. HARRY F. BYRD, JR.), whatever may be the ultimate judgment of Senators as to whether we should be in Cambodia, that judgment must be based on whether the President will come to Congress and ask for the authority to be there.

Today we voted on the question of whether the President was exercising his powers under the duly granted authority given him by Congress.

It is my judgment that the overwhelming majority vote cast today was eminently correct.

One other point which was raised by the Senator from Texas, he spoke to the fact that there is a violation of the agreement, the accords, at Paris. I think this points out something we have noted before, that executive agreements are not subject to congressional ratification—Senate ratification, so that the President always runs the risk when he does not come to Congress with an agreement in the form of a treaty, to get congressional approval—senatorial approval. The Constitution of the United States provides that treaties must be ratified to be effective, in order to become the official law of the land, by a two-thirds vote of the Senate. When we bypass or shortcircuit that process, we run into the dangers we now face. We run into all these hazards.

Thus, I do not believe it is right for us to look at article 20 of the Paris agreement as being binding authority upon Members of Congress of the United States nor, under article 20, to bypass the constitutional provisions.

There is no executive agreement that is over and beyond the Constitution.

Another point the Senator from Texas raised was the treaty with Thailand, that is, what would we do if Thailand were invaded or Thailand had a war, would we declare it a civil war?

First of all, may I say, the treaty with Thailand provides that any response by the U.S. Government shall be taken within the constitutional processes. When that treaty was ratified, when SEATO was ratified, it was explicitly stated on the floor of the Senate—and I was right here as a Member at that time—that we would follow constitutional processes.

Those constitutional processes include the executive branch's coming to Congress not only for appropriations but also for whatever express authority the Congress has to engage American forces in a war.

I do not agree that the executive branch is the only branch that can formulate foreign policy.

I do agree that it is the executive branch which negotiates agreements and treaties. The Constitution provides for their ratification or their rejection right here in the Senate.

Above all, I think it is most important that we take a look at our own national interests. At least in the instance of Vietnam, there was a Gulf of Tonkin resolution, regardless of what people may think of it. That resolution did provide, and we voted on it here in the Senate, that the President could take whatever steps were necessary, including use of the Armed Forces of the United States, for the protection of American forces and for the fulfillment of our responsibilities.

There is no Gulf of Tonkin resolution now. It has been repealed.

There is nothing under the United Nations Charter that affects what is going on in Cambodia now.

At least Mr. Truman could refer, in the instance of Korea in 1950, to our obligations under the United Nations Charter, because we were there as a member of the United Nations, with a responsibility as a member of the United Nations. That charter was a duly ratified treaty by the Senate.

There is no treaty that includes Cambodia. There is no law that relates to Cambodia. There is no power in the Presidency to bomb Cambodia.

It is illegal, unconstitutional, and immoral.

Thank God that the Senate had the courage to stand up and say, "Halt! Stop!"

Mr. President, the Senate has had the good sense to say that if we are going to engage in such a policy, the President should come here and defend it, advocate it, and seek the response of the Senate or the Congress.

That, he has not done.

The Senate has acted wisely.

Mr. JAVITS. Mr. President, I wish to take this time—I have tried to get it as we have gone along, but we have had other things—to comment on a little-noticed aspect of this measure, for which I thank the Appropriations Committee. In particular, I wish to express to the distinguished chairman, and my colleague from North Dakota (Mr. YOUNG), the ranking member, that they are entitled to great credit for the disposition made of the Legal Services item. It is clear by now that one of the most valuable and important developments in respect of the longstanding effort to deal with poverty in this country came out of this Legal Services program, which brings what to most of the poor is even more important than money—dignity.

We were deeply concerned that in being caught in the crack between a corporate organization for the program and the ending of the fiscal year, the program would somehow not be financed, as the administration had not sought financing for it in respect of a proposal for a corporation.

We think, Mr. President, that the Committee on Appropriations has made a splendid disposition of this proposition by affirming its intention that the continuing operation of the program at the level of $71.5 million should be carried on, and that if there was going to be any hiatus, the committee undertook to see that no such hiatus occurred, but that under a continuing resolution, based on existing authority and the present level of funding, the work would go on.

I wish to tell the chairman and the ranking member how important that is to the personnel of the legal services program. These are lawyers. They cannot wait around in great uncertainty until the ax falls. They need to have some sense of assurance that the work will go on and that their compensation will continue to be paid. It certainly is nothing munificent. It is far less than they could earn for comparable work in private law practice.

I think, therefore, that the disposition which was made in lieu of any need to move an amendment to this bill was most satisfactory. Inasmuch as it has not been mentioned in the debate, I wish to express, as I am the ranking member of the committee which traditionally has handled this matter—the Committee on Labor and Public Welfare—my appreciation to the Appropriations Committee and I know the appreciation of hundreds of thousands of poor people who have benefited, and appreciation to the chairman and the ranking member for the way this matter was handled.

Mr. McCLELLAN. Mr. President, I yield to the distinguished majority leader such time as he may require.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the vote on the pending business occur at the hour of 4:30 p.m., and that rule XII be waived.

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

Mr. MANSFIELD. Mr. President, I ask for the yeas and nays on final passage.

The yeas and nays were ordered.

Mr. HELMS. Mr. President, the situation which has developed here on the floor today has left us with no easy choices. Indeed, for things that really matter, all choices are hard choices. On the one hand we are faced with the necessity of passing a second supplemental appropriations bill. Many of the items in this bill are worthy items in themselves. They should be funded by the U.S. Government from the funds provided by the taxpayers. On the other hand, the language inhibiting the actions of the Commander in Chief in Southeast Asia has been left in the bill. If this language goes into law, it can have serious consequences not only for the future of Southeast Asia, but for our own leadership position in the world.

Anyone who looks at a map can see that the geography of Cambodia is vital to the military stability of South Vietnam. Indeed, whoever controls that geography will, in the long run, be in striking range of a complete takeover of South Vietnam, either directly or through subversion. Today, contrary to article 20 of the Paris agreements, North Vietnamese troops continue to be in Cambodia. The sole U.S. objective in Cambodia is to help bring about a cease-fire and withdrawal of foreign troops as agreed upon. I think that the President has amply demonstrated that the only language that the North Vietnamese understand is force, and he should be allowed to use his discretion to finish up the job of negotiating for which he has received almost unanimous acclaim. It should be contradictory to tie his hands at this moment. Moreover, the credibility of any international undertaking we agree to would be in grave jeopardy.

Our national security must be put before domestic considerations and certainly before mere political rivalry. As I pointed out a moment ago, there are many things I agree with in this bill. In particular, I am disappointed that the question of impact aid funds is put before us at the same time that we are asked to approve a momentous national security question. It is a kind of political pressure that is unseemly and prevents rational consideration of important policies. As the Members of this body know, we have already treated the question of impact aid once before this session in the Urgent Supplemental Appropriations Act. In that act we were asked to consider the release of $86 million for aid to schools enrolling so-called A group children, that is, those whose parents live and work on Federal property. I voted for that appropriation for impact aid.

At the present time, we are considering aid to shcools for B children, that is

those whose parents work, but do not live on Federal property. This bill merely raises the entitlement level for B children from 54 percent to 68 percent. Although this is a supplemental appropriation bill, it is noteworthy that no new funds are being appropriated for impact aid; the Senate is merely indicating its interest in raising the disbursement level of funds previously appropriated, but partially withheld by HEW for budgetary consideration. Had this issue been presented in isolation, I would have supported it. But I cannot support this bill when it is encumbered with crippling national security policy restrictions.

Mr. HANSEN. Mr. President, I rise to urge full bipartisan support for the $100 million appropriation now contained in H.R. 7447 pending before us, and ask my colleagues to continue this support when this bill goes to conference.

As the second ranking Republican member of the Senate Special Committee on Aging, I am deeply concerned that our elderly will be shortchanged should they not receive the full $100 million we authorized for their nutrition program under title VII of the Older Americans Act. Since full funding for this program has been recommended by President Nixon, the $50 million appropriation provision passed by the House seems inappropriate and inadequate.

Since the passage of Public Law 92–258 on March 22, 1972, authorizing $100 million for a nutrition program for the elderly, no money has been appropriated. After making our older Americans wait this long for funding—it is a cruel and unusual punishment to cut their promised authorization in half.

Back in the 92d Congress, we had the foresight to establish this Nutrition program to help the Nation's elderly in obtaining adequate nutrition. Let us now fulfill our promise to our country's older Americans by appropriating the full $100 million for this program and seeing that this amount is sustained in conference.

IMPORTANCE OF SENATE HOLDING FIRM ON FUNDING OF PUBLIC LAW 92–541: VA MEDICAL SCHOOL ASSISTANCE AND HEALTH MANPOWER TRAINING ACT OF 1972

Mr. CRANSTON. Mr. President, I am particularly gratified that H.R. 7447, the Second Supplemental Appropriations Act, fiscal year 1973, as reported from the Committee on Appropriations, contains an appropriation of $25 million to carry out the provisions of Public Law 92–541, the Veterans' Administration Medical School Assistance and Health Manpower Training Act of 1972, which I authored in the Senate last Congress as chairman of the Health and Hospitals Subcommittee of the Veterans' Affairs Committee.

I would like to thank the members of the Appropriations Committee for their favorable consideration of the recommendation to add these funds, in which I was joined by both of the distinguished Senators from West Virginia. Senator BYRD and Senator RANDOLPH both worked mightily and enormously effectively in support of this provision.

The bill as reported from committee would provide $25 million to the Veterans' Administration to carry out programs authorized by Public Law 92–541—$15 million for carrying out subchapter I of the new chapter 82 added to title 38 by that public law for assistance in the establishment of new State medical schools, and $10 million for carrying out the full new chapter 82, including subchapter I as well as the subchapters II and III provisions for the expansion of the training capacities of existing medical schools and other health manpower training institutions affiliated with VA medical facilities.

PURPOSES AND GOALS OF PUBLIC LAW 92–541

In the last Congress, Mr. President, this authorizing legislation was approved unanimously by both Veterans' Affairs Committees. It was approved unanimously by the Senate, and it was approved unanimously by the House of Representatives.

The program it authorizes would benefit every veteran who needs medical care. It would benefit medical care generally in our country, helping bring medical care to communities where there are not enough or in some cases no doctors, and it could benefit every State where there is a VA hospital now operating.

The authorizing legislation provides new authority to the Veterans' Administration to support pilot programs for the establishment of eight new medical schools at State colleges or universities, which schools will be affiliated with a Veterans' Administration hospital—subchapter I. It will also authorize support for the improvement and expansion of the ability to train health care personnel of medical schools, nursing schools, and schools of the health and allied health professions affiliated with Veterans' Administration facilities—subchapters II and III. The Veterans' Administration is also authorized to make expenditures to remodel facilities and allocate funds for the improvement of its own health training programs at VA facilities—subchapter IV.

SUBCHAPTER I PROGRAM

Mr. President, great interest has been expressed across the country by State colleges and universities in establishing new medical schools which would utilize the Veterans' Administration hospital as their clinical facility. I have personally discussed this interest with many Senators and Congressmen.

An appropriation of funds this fiscal year will enable the Veterans' Administration to begin implementing this new authority immediately. Any school which is able to begin initial organization this year, will be that much further ahead in its ability to recruit students for its first class. Initial estimates are that any school supported by this program would have a small class the first year, limited to perhaps 25 students, while the second year entering class could enroll 50. Thus, the earlier we can start this program, the greater the number of graduates that will be realized sooner.

SUBCHAPTERS II AND III

Another major new program which this supplemental appropriation would support, Mr. President, is that of aiding existing medical schools, schools of nursing, other health professions schools, and schools of the allied health professions affiliated with VA hospitals in expanding and improving their ability to train health care personnel, and in establishing area health education centers to provide coordination, focus, and stimulation, on a geographical basis, for the training of health care personnel, especially through multidisciplinary and team training techniques and approaches. The Veterans' Administration hospitals are affiliated with 88 medical schools, 57 dental schools, 314 nursing schools, 80 schools of social work, 89 graduate departments of psychology, 45 schools of pharmacy and has 687 affiliations with all other allied health professions and occupations training programs.

These affiliations have been of mutual benefit to both the institution and the Veterans' Administration facility with which they are affiliated. The VA hospital has gained in having the services of faculty members assisting in the treatment of VA patients, providing the hospitalized veteran with the outstanding skills available at major university medical centers. The medical school has gained by its ability to utilize the VA hospital as a training center for its interns and other health care trainees. The Veterans' Administration is also better able to recruit highly skilled professionals as employees at its hospitals where they will have the opportunity to be associated with a medical school and to serve in a faculty capacity at the school, in addition to caring for the veteran patient.

The Veterans' Administration through these affiliations trains approximately one-half of all physicians entering practice each year. Many VA trainees are thereafter recruited for employment in the VA itself.

An untapped potential exists in the VA hospitals which are not now affiliated with medical schools.

In addition, there is considerable room for expansion of training programs in the VA itself and in institutions presently affiliated with the VA.

Well over 62,000 individuals are currently being trained for health care careers each year in VA facilities. The potential exists for doubling this number over the next 5 years.

A survey conducted a little over a year and one-half ago indicated that with additional funds for trainee stipends, instructor salaries, and space modification, some 12,000 additional health professions trainees could be accommodated immediately. The appropriation of the $25 million in the bill before will enable the VA to make a substantial beginning toward this expanded training program. It will also enable the affiliated medical education institution to undertake innovative training programs, and to expand and improve its capacity to train health care manpower jointly with the Veterans' Administration.

TRAINING VETERANS WITH MILITARY HEALTH CARE EXPERIENCE

Mr. President, a very important dividend which can be realized from implementation of the authorities in Public Law 92–541 and these supplemental funds is the opportunity which will be provided for returning veterans who have been trained in military occupation specialties to participate in education and training programs leading to a civilian career in health.

In the programs which will be sup-

ported by this appropriation, the Veterans' Administration has been directed to encourage to the maximum extent the participation of these veterans in those training programs.

A great potential exists Mr. President, in utilizing these veterans who have been highly trained and have experience in performing tasks which normally fall within the responsibility of the physician, to develop new types of health careers in conjunction with medical schools, where they can be trained with other members of the health professions to work together in a team effort to care for the patient.

I believe new types of health careers can provide a large part of the answer to the shortage of physicians, by making available the skills of an individual highly trained in one aspect of care, who can alleviate the burden placed upon the physician, in acting as a physician extender.

CONCLUSION

In summary, by appropriating $25 million for these authorities—just one-third of the full authorization of $75 million—we will enable the VA to make an early start in developing the new medical schools authorized, to take the necessary steps to provide additional assistance to existing affiliated educational institutions to improve and expand their programs and establish area health education centers, to upgrade and expand the VA's own training programs, and to expand the opportunities for health careers for returning veterans. The greatest single need in health care in the Nation is for more and better trained and more accessible health manpower.

Mr. President, these new programs seek to utilize to the fullest the potential of the Veterans' Administration for the education and training of these vital resources to assist in the care of disabled veterans and to expand the health care capacity of the entire Nation.

NEED FOR FUNDING

The appropriation of $25 million included in the Second Supplemental Appropriations Act, fiscal year 1973, as reported will be the second time during this fiscal year the Senate will be adding funds to appropriation bills to carry out Public Law 92–541. Last October 12, the Senate adopted my amendment to add $40 million for this purpose to the First Supplemental Appropriation bill, fiscal year 1973, which was enacted as Public Law 92–607 without these funds due to refusal of the other body to accept the Senate amendment.

On April 16 and April 18, Mr. President, the Subcommittee on Health and Hospitals, which I am privileged to chair, of the Veterans' Affairs Committee, held oversight hearings on the impact on Veterans' Administration medical care of the revised fiscal year 1973 and proposed fiscal year 1974 budget requests and the failure to implement Public Law 92–541. At those hearings the Chief Medical Director of the Veterans' Administration stated that the VA had received 62 inquiries about grants under the new chapter from health manpower and other institutions.

Thirteen of these inquiries were regarding subchapter I—"New State Medical Schools"—27 were regarding subchapter II—"Grants to Affiliated Medical Schools," which also generally inquired regarding subchapter III—and 22 were regarding subchapter III—"Assistance to Public and Nonprofit Institutions of Higher Learning, Hospitals, and Other Health Manpower Institutions Affiliated With the Veterans' Administration To Increase the Production of Professional and Other Health Personnel." These inquiries covered the following 31 States: Alabama, Arizona, California, Connecticut, Georgia, Idaho, Illinois, Kansas, Kentucky, Maine, Michigan, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Virginia, West Virginia, and Wisconsin.

At the hearings on April 18, Mr. President, the VA indicated that the regulations implementing the new law would be published in the Federal Register in 45 days—in other words, by the end of May.

HEALTH EDUCATORS CALL FOR FUNDING

The hearings also developed important support for the need to fund the new public law. A number of outstanding leaders in the health education field testified to the importance of affiliations between the health professions schools and VA medical facilities in terms of the beneficial effect on the care provided the veteran as well as the impact on meeting national needs for additional health care personnel. A few quotes from some of these individuals eloquently express the benefits of such affiliations, and the effect of inadequate funding of these programs on the ability of these affiliations to achieve their full potential.

Mr. President, Dr. Dennis, vice president for health sciences at the University of Arkansas Medical Center, said:

On the basis of information provided to us, our V.A.-Denas Committee Hospital can, with the projected budget for fiscal year 1974 (July 1973–June 1974), expect to be fortunate to maintain operations at the 1973 level yet the service demands will be greater. They can employ no more than the current number of house staff (residents and interns) at a time the medical school enrollments are increasing and the need for an additional ten resident positions are essential. Other deficiencies in the FY 1974 budget include (1) inability to obtain additional staffing that would permit employment ratios of staff to patients equivalent to that of the average private hospital, (2) inability to recruit additional professional and allied health personnel required to serve ever increasing demands, particularly in the outpatient areas, (3) inability to fund the new School of Health Related Professions in order to provide for the students, programs and facilities that would permit even a fraction of the tremendous growth potential in this short supply field of health manpower, and (4) indefinitely delayed are plans, meticulously generated over a period of several years, to activate an innovative, critically needed program for high quality geriatric medical care and a unique program of Geriatric Home Care. These programs were designed to provide the basis for a new medical school department for research and teaching in the field of aging. Neither institution can do this alone. The importance of the intolerable neglect of research, teaching and care for the aged requires no amplification.

Dr. Edmund Pellegrino, vice president for health sciences and director of the Health Sciences Center of the State University of New York, concisely stated the importance of funding Public Law 92–541 to achieving up to date methods of providing quality care to veterans:

I would like to emphasize that my support for the specific provisions of S. 59 I have discussed and elements of 92–541 now awaiting funding is based on my conviction that they will improve the care of veterans and especially those veterans in the category for which we have the greatest moral responsibility as a nation. These measures if enacted and funded as the case may be—will bring certain aspects of medical care delivered to all veterans closer to optimal than is now the case. Surely, the veteran should not receive inferior care when a comprehensive pattern is available (to the nonveteran) in the community. But these measures will also enable the veterans hospitals to develop and provide improved methods of care. Thus, in selected areas of care, the veterans hospitals can take a role of leadership for the benefit of those they serve and all others, as well.

Dr. Schmidt, vice president for academic affairs and dean of the College of Medicine at the Upstate Medical Center, SUNY-Syracuse, seconded this statement saying:

The contributions of the Veterans Administration to health science education have been great and have been amply documented by others. Suffice it to state that a very large proportion of practicing health professionals in the United States have had portions of their education and training with Veterans Hospitals. In turn, the partnership between the Veterans Hospitals and Academic Health Science Centers has materially benefited the veteran patient in terms of the quality of his care. Largely because of this partnership, patients in veterans hospitals have had available to them most of the skills and resources that modern scientific medicine and technology can offer. This partnership has not been free of stress or critics and there are admitted points of weakness. In my testimony, however, I would prefer to dwell on opportunities, especially as they concern the three major missions of patient care, education and research. These three are interdependent and no one of them can be of highest quality without each of the others.

And Dr. Stanley S. Bergen, Jr., president of the College of Medicine and Dentistry of New Jersey, gave examples of the benefits to the veterans resulting from an affiliation with the New Jersey Medical School:

In return, the Veterans Administration Hospital receives numerous advantages as a result of its participation with the medical school. Prior to its affiliation with the College the East Orange Hospital had no intensive care unit, no coronary care unit, no dialysis unit, nor any vascular caterization program. In large part these deficiencies were due to the difficulties experienced by the Hospital in attracting adequately trained staff. Furthermore, the hospital had difficulty attracting sufficient housestaff to meet its needs.

The affiliation with the medical school has substantially altered the picture. The assurance of faculty appointments and the stimulation involved through participation in a teaching environment has greatly enhanced the ability of the Veterans Administration Hospital in East Orange to attract

highly qualified and in some cases nationally known individuals to its staff. It has also been of great assistance in attracting housestaff.

Based on all the information available to the Subcommittee on Health and Hospitals, Mr. President, it is clear to me that, first, implementation of the new law can play a major role both in upgrading care to veterans and assisting the nation to meet its health manpower shortages; second, there is great interest in the public and the health community and enormous capacity and untapped potential to carry out effective programs; and third, the VA will finally—after more than 6 months—be issuing its regulations so that applications can begin to be submitted in June. It is important to stress that under sections 5072(b) and 5082(b) of title 38, sums appropriated for the new chapter 82 remain available until the end of the sixth fiscal year following the final year of appropriation.

I brought these facts to the attention of the distinguished chairman of the Subcommittee on HUD-Space, Science-Veterans Appropriations (Mr. PROXMIRE) in a letter along with a detailed listing of the inquiries made of the Veterans' Administration by States interested in applying for grants under the provisions of Public Law 92–541. I am very pleased that the full committee took positive action on the recommendation in which I joined with Senators BYRD and RANDOLPH.

Mr. President, I ask unanimous consent, that a copy of my May 9, 1973 letter to Chairman PROXMIRE as well as the enclosure be printed in the RECORD at this point.

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

MAY 9, 1973.

Hon. WILLIAM PROXMIRE,
Chairman, HUD-Space, Science-Veterans Subcommittee, Committee on Appropriations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I am writing in support of an amendment to the Second Supplemental Appropriations bill, FY 1973, in which I am joining with Senator Byrd of West Virginia to add $25 million to carry out the new chapter 82 (Assistance in Establishing New State Medical Schools; Grants to Affiliated Medical Schools; Assistance to Health Manpower Training Institutions) in title 38; as enacted in P.L. 92–541, the Veterans' Administration Medical School Assistance and Health Manpower Training Act of 1972. Our amendment would fund only one-third of the $75 million FY 1973 authorizations, and under it, $15 million would be to carry out subchapter I (Pilot Program for Assistance in the Establishment of New State Medical Schools) pursuant to section 5072, and $10 million would be to carry out the full chapter (including subchapter I) pursuant to section 5082.

On April 16 and April 18, the Subcommittee on Health and Hospitals, which I am privileged to chair, of the Veterans Affairs Committee, held oversight hearings on the impact on Veterans Administration medical care of the revised FY 1973 and proposed FY 1974 budget requests and the failure to implement P.L. 92–541. At these hearings the Chief Medical Director of the Veterans Administration stated that the VA had received 62 inquiries about grants under the new chapter from health manpower and other institutions. Thirteen of these inquiries were regarding subchapter I (New State Medical Schools), 27 were regarding subchapter II (Grants to Affiliated Medical Schools) (which also generally inquired regarding subchapter III), and 22 were regarding subchapter III (Assistance to Public and Nonprofit Institutions of Higher Learning, Hospitals and other Health Manpower Institutions Affiliated with the Veterans' Administration to Increase the Production of Professional and other Health Personnel). These inquiries covering the following 31 states are detailed in the enclosure: Alabama, Arizona, California, Connecticut, Georgia, Idaho, Illinois, Kansas, Kentucky, Maine, Michigan, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Virginia, West Virginia, and Wisconsin.

At the hearings, the VA indicated on April 18 that the regulations implementing the new law would be published in the Federal Register in 45 days—in other words, by the end of May.

The hearings also developed important support for the need to find the new Public Law. A number of outstanding leaders in the health education field testified to the importance of affiliations between the health professions schools and VA medical facilities in terms of the beneficial effect on the care provided the veterans as well as the impact on meeting national needs for additional health care personnel. A few quotes from some of these individuals eloquently express the benefits of such affiliations, and the effect of inadequate funding of these programs on the ability of these affiliations to achieve their full potential.

Dr. Dennis, Vice President for Health Sciences at the University of Arkansas Medical Center, said: "On the basis of information provided to us, our V.A.-Dennis Committee Hospital can, with the projected budget for fiscal year 1974 (July 1973-June 1974), expect to be fortunate to maintain operations at the 1973 level yet the service demands will be greater. They can employ no more than the current number of house staff (residents and interns) at a time the medical school enrollments are increasing and the need for an additional ten resident positions are essential. Other deficiencies in the FY 1974 budget include (1) inability to obtain additional staffing that would permit employment ratios of staff to patients equivalent to that of the average private hospital, (2) inability to recruit additional professional and allied health personnel required to serve ever increasing demands, particularly in the outpatient areas, (3) inability to fund the new School of Health Related Professions in order to provide for the students, programs and facilities that would permit even a fraction of the tremendous growth potential in this short supply field of health manpower, and (4) indefinitely delayed are plans, meticulously generated over a period of several years, to activate an innovative, critically needed program for high quality geriatric medical care and a unique program of Geriatric Home Care. These programs were designed to provide the basis for a new medical school department for research and teaching in the field of aging. Neither institution can do this alone. The importance of the intolerable neglect of research, teaching and care for the aged requires no amplification."

Dr. Edmund Pellegrino, Vice President for Health Sciences and Director of the Health Sciences Center of the State University of New York, concisely stated the importance of funding P.L. 92–541 to achieving up to date methods of providing quality care to veterans: I would like to emphasize that my support for the specific provisions of S. 59 I have discussed and elements of 92–541 now awaiting funding is based on my conviction that they will improve the care of veterans and especially those veterans in the category for which we have the greatest moral responsibility as a nation. These measures if enacted and funded as the case may be—will bring certain aspects of medical care delivered to all veterans closer to optimal than is now the case. Surely, the veteran should not receive inferior care when a comprehensive pattern is available (to the non-veteran) in the community. But these measures will also enable the veterans hospitals to develop and provide improved methods of care. Thus, in selected areas of care, the veterans hospitals can take a role of leadership for the benefit of those, they serve and all others, as well.

Dr. Schmidt, Vice President for Academic Affairs and Dean of the College of Medicine at the Upstate Medical Center SUNY Syracuse, seconded this statement saying: "The contributions of the Veterans Administration to health science education have been great and have been amply documented by others. Suffice it to state that a very large proportion of practicing health professionals in the United States have had portions of their education and training with Veterans Hospitals. In turn, the partnership between the Veterans Hospitals and Academic Health Science Centers has materially benefited the veteran patient in terms of the quality of his care. Largely because of this partnership, patients in veterans hospitals have had available to them most of the skills and resources that modern scientific medicine and technology can offer. This partnership has not been free of stress or critics and there are admitted points of weakness. In my testimony, however, I would prefer to dwell on opportunities, especially as they concern the three major missions of patient care, education and research. These three are interdependent and no one of them can be of highest quality without each of the others."

And Dr. Stanley S. Bergen, Jr., President of the College of Medicine and Dentistry of New Jersey, gave examples of the benefits to the veteran resulting from an affiliation with the New Jersey Medical School: "In return, the Veterans Administration Hospital receives numerous advantages as a result of its participation with the medical school. Prior to its affiliation with the College the East Orange Hospital had no intensive care unit, no coronary care unit, no dialysis unit, nor any vascular caterization program. In large part these deficiencies were due to the difficulties experienced by the Hospital in attracting adequately trained staff. Furthermore, the hospital had difficulty attracting sufficient housestaff to meet its needs.

The affiliation with the medical school has substantially altered the picture. The assurance of faculty appointments and the stimulation involved through participation in a teaching environment has greatly enhanced the ability of the Veterans Administration Hospital in East Orange to attract highly qualified and in some cases nationally known individuals to its staff. It has also been of great assistance in attracting housestaff."

Based on all the information available to the Subcommittee on Health and Hospitals, it is clear to me that (1) implementation of the new law can play a major role both in upgrading care to veterans and assisting the nation to meet its health manpower shortages; (2) there is great interest in the public and the health community and enormous capacity and untapped potential to carry out effective programs; and (3) the VA will finally—after more than 6 months—be issuing its regulations so that applications can begin to be submitted in June. It is important to stress that under sections 5072(b) and 5082 (b) of title 38, sums appropriated for the new chapter 82 remain available until the end of the sixth fiscal year following the final years of appropriation.

Thus, this $25 million can get the program started and avoid the almost inevitable delay, under a continuing resolution for FY 1974, in starting up the program next fiscal year.

In closing, I wish to reiterate my convic-

tion that the money is needed for these programs now and express my opinion that any expression to the contrary by the VA or the administration is dictated by OMB, which strenuously opposed enactment of P.L. 92-541, despite the facts involved. I very much hope you will support the amendment.

I have taken the liberty of sending copies of this letter and the enclosure to Senator Byrd and Chairman McClellan.

With best regards,

Sincerely,

ALAN CRANSTON,
Chairman,
Subcommittee on Health and Hospitals.

EXPRESSIONS OF INTEREST IN THE VETERANS' ADMINISTRATION MEDICAL SCHOOL ASSISTANCE AND HEALTH MANPOWER TRAINING ACT OF 1972, PUBLIC LAW 92-541

SUBCHAPTER I

There have been inquiries or statements of interest on behalf of 13 States (Attachment A). This number, and the still lesser number (about seven) which reflect potential immediate eligibility, is probably accounted for on two bases: The Act itself requires that the applicant present reasonable assurance of appropriate accreditation of the new medical schools to be initiated with this assistance (Section 5073b 1 D). Implementing regulations, as presently drafted, would also eliminate from eligibility under this subchapter the "new" schools which are provisionally accredited and receiving Federal assistance under one or more of the authorities contained in the Comprehensive Health Manpower Training Act of 1971 (PL 92-157) administered by the Bureau of Health Manpower, NIH, DHEW. Such schools, if they are presently affiliated with the VA hospitals, would be eligible for assistance under Subchapter II.

SUBCHAPTERS II AND III

There have been about 27 inquiries from Medical Schools specifically concerning *Subchapter II*, the majority of these also express interest in Subchapter III in behalf of nursing or other allied health programs conducted either by the School or by other Schools within the academic health center of which they are a part (Attachment B). There have been an additional 22 letters from institutions inquiring specifically about *Subchapter III* (Attachment C). These range from Schools of Allied Health, Schools of Pharmacy, etc. which are components of academic health centers to single programs conducted in community and junior colleges.

Most of these inquiries and statements of interest do not include specific proposals. Although the Act itself is rather explicit in defining eligibility, it is not all specific regarding the kinds of "projects and programs in furtherance of the purposes of the subchapter" (Sections 5083 and 5093) for which grant assistance might be sought. Publication of regulations will undoubtedly elicit more detailed plans.

Letters, submitted directly and through Congressmen, generally express the need for additional clinical experience opportunities for medical students (Subchapter II) and other health professions and occupations students at all levels (Subchapter III), to complement the academic programs in medical schools, schools of nursing, dentistry, pharmacy, and other health-related fields which have been created or significantly expanded in response to recent Federal, State, or local funding initiatives.

General inquiries

There have been several expressions of general interest from health professions societies, organizations of health professions schools, and others; and inquiries on behalf of "otherwise eligible veterans" (Section 5070e) who are seeking or planning to seek admission to medical schools (Attachment D).

(Attachment A)

SUBCHAPTER I

State, Institution or Agency, and VA Hospital(s)

Alabama—University of Alabama, Tuscaloosa; Troy State University, Medical District No. 14.

Arizona—Navajo Health Authority, Medical District No. 34.

California—Charles R. Drew Postgraduate School of Medicine, Sepulveda; San Joaquin Valley Health Consortium, Fresno; San Fernando Valley Health Consortium, Medical District No. 36.

Georgia—Georgia State University, Atlanta.

Idaho—Medical Education Foundation, Inc., Boise.

Maine—University of Maine, Bangor, Togus.

Mississippi—Fifth Congressional District of Mississippi, Gulfport/Biloxi.

New Hampshire—University of New Hampshire, Manchester.

Ohio—Wright State University, Dayton.

South Carolina—University of South Carolina, Columbia.

Tennessee—East Tennessee State University, Mountain Home.

Texas—Texas A&M University System, Temple/Waco/Marlin; Texas College & University System, Medical District No. 26.

West Virginia—Marshall University, Huntington.

(Attachment B)

SUBCHAPTER II (AND SUBCHAPTER III*)

State and Institution or Agency

Alabama—*University of Alabama in Birmingham; University of South Alabama, Mobile.

California—*Stanford University Medical Center.

Kansas—Wichita State University; College of Health Related Professions.

Kentucky—*University of Kentucky Medical Center.

Louisiana—*Louisiana State University, Medical Center.

Massachusetts—*Boston University; Tufts University School of Medicine.

Michigan—University of Michigan School of Medicine.

Mississippi—*University of Mississippi Medical Center.

Nevada—University of Nevada School of Medical Sciences.

New York—*Mt. Sinai Medical Center; *S.U.N.Y. at Stonybrook.

North Carolina—*University of North Carolina School of Medicine.

North Dakota—University of North Dakota School of Medicine.

Oklahoma—*University of Oklahoma Medical Center.

Oregon—*University of Oregon Medical Center.

Rhode Island—Brown University Division of Biological and Medical Sciences.

South Carolina—*Medical University of South Carolina.

South Dakota—University of South Dakota School of Medicine.

Tennessee—*University of Tennessee Medical Units.

Texas—University of Texas Southwestern Medical School of Dallas; *Baylor College of Medicine; *Texas College & University System (all campuses); and Texas Tech. University School of Medicine.

Virginia—Eastern Virginia Medical School.

Wisconsin—University of Wisconsin (Madison) Medical College of Wisconsin.

(Attachment C)

SUBCHAPTER III

State and Institution or Agency

Alabama—Tuskegee Health Education Center.

California—East Bay Area Health Education Center; De Anza Community College; San Joaquin Valley Health Consortium (Fresno Area Health Education Center).

Connecticut—Western Connecticut State College.

Georgia—Georgia State University.

Illinois—University of Illinois at the Medical Center, School of Allied Health Professions.

Michigan—Saginaw Valley Center—Saginaw Area Health Education Center.

Missouri—Central Missouri State College.

Nebraska—University of Nebraska—Lincoln Area Health Education Center.

New York—Consortium of Health and Educational Institutions—Bath, New York; S.U.N.Y.—Downstate Medical Center.

New Mexico—University of Albuquerque.

North Carolina—Duke University Medical Center—Division of Allied Health, Western Carolina University.

Ohio—Wright State University.

(Attachment D)

GENERAL INQUIRIES

Local Organizations and Groups

Arkansas—Arkansas State Medical Society; a practicing physician.

Maine—Maine's Regional Medical Program.

New York—29th District of New York (Congressman Stratton) Albany/Schenectady area.

Ohio—"Interested citizens of Ross County" (Chillicothe area).

Associations and Societies

Association of American Medical Colleges.

Association of Schools of Allied Health.

American Medical Association—Council on Medical Education.

American Podiatric Association.

American Optometric Association.

Association of Colleges of Pharmacy.

Letters in Behalf of Potential Students

Senator Jacob Javits.

Senator James Buckley.

Senator Bob Packwood.

Congressman Olin Teague.

State and Institution or Agency

Pennsylvania—St. Francis College, Altoona; Lakes Area Health Education Center.

Tennessee—Vanderbilt University School of Allied Health Professions.

Texas—St. Joseph's Hospital, Houston. Central Texas Regional Medical Education Foundation (Temple Junior College).

Utah—Weber State College.

Washington—City of Seattle—Schools and Colleges.

CONCLUSION

Mr. CRANSTON. Mr. President, I am hopeful that this time the House will be willing to accept the Senate amendment to fund these programs. The hearings on that side have developed support for this program and I know that the chairman of the Committee on Veterans' Affairs in that body (Mr. DORN) and the former chairman (Mr. TEAGUE) will strongly urge that the House recede to the Senate provision on this point in conference.

VETERANS' COST-OF-INSTRUCTION PROGRAM FUNDING

Mr. President, I was delighted to learn that the $25 million which was appropriated in Public Law 92-607 last October for the Veterans' Cost-of-Instruction—VCI—program, which I authored last year in the Education Amendments of 1972, was finally released by the Office of Education on May 21.

I had contacted Senator MAGNUSON, chairman of the Subcommittee on Labor, Health, Education, and Welfare of the Appropriations Committee, in March of this year, urging him and the subcommittee to stand firm and not agree to the

administration's proposal that Congress rescind the small amount of funds appropriated for fiscal year 1973 for this program. Chairman MAGNUSON's April 2 response indicated that he was not impressed by HEW's arguments for granting a rescission. I would like to thank Chairman MAGNUSON and the subcommittee for their efforts on behalf of this program and for their decision not to entertain the totally unjustified rescission proposal.

In this connection, the Senate report (No. 93-160) accompanying H.R. 7447, the Second Supplemental Appropriations Act, fiscal year 1973, as reported from the Committee on Appropriations, states that—

> Both the House and Senate reports on this bill indicate the Congress is not concurring in the requested rescissions.

Moreover, Mr. President, I am especially pleased that the bill as reported contains an amendment to make funds available for obligation for the VCI program until September 30, 1973.

Last week, Mr. President, I wrote to Dr. John Ottina, Acting Commissioner of Education, urging, among other things, that the application deadline of June 1 be extended by at least 10 days. In view of the 3-month extension in H.R. 7447 of the date by which funds for the VCI program must be obligated, I have today contacted Commissioner Ottina's office requesting a further extension of the application deadline to at least July 1, 1973.

Mr. President, I ask unanimous consent that the full texts of my March 21, 1973, letter to Senator MAGNUSON, of Senator MAGNUSON's April 2, 1973, response to my letter, and of my May 24, 1973, letter to Commissioner Ottina be set forth in the RECORD at this point.

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

COMMITTEE ON VETERANS' AFFAIRS,
Washington, D.C., March 21, 1973.

Hon. WARREN G. MAGNUSON,
Chairman, Subcommittee on Labor-Health, Education and Welfare, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: As the Subcommittee considers the Second Supplemental Appropriation bill for fiscal 1973, I am increasingly concerned over prospects for funding the Veteran Cost-of-Instruction (VCI) Program I authored in the 92nd Congress as part of P.L. 92-318.

I applaud again the concern showed by your Subcommittee by appropriating $25 million in the Supplemental Appropriations Act, 1973 (P.L. 92-607) to initiate the VCI program in fiscal 1973, despite adamant Administration opposition. Ever since that Appropriations Act was enacted with the President's signature, the Office of Education—which is responsible for administering the program—has dragged its feet and completely disregarded the wishes of the Congress. Regulations and guidelines have not been published though the program is approaching its first birthday.

Now, the Administration asks the Congress to rescind its VCI appropriation, leaving the program with no funding.

In the past months, I have received numerous letters and phone calls from colleges and veterans groups from all over the country, urging the release of the present appropriated monies and asking additional funds for fiscal year 1974. The 95 community colleges in my state of California, the nine campuses of the University of California, and the California Colleges and Universities have been in close touch with me, stating the concern I find expressed over and over again: the colleges and universities of America, both public and private, recognize the acute needs of the Vietnam veteran in particular, and seek to meet those special needs with the assistance offered by the VCI allowances.

As the Congress recognized in authorizing the VCI program, and your Subcommittee affirmed by approving program initiation monies, the Vietnam veteran has special needs unmet by existing programs, including those of the Veterans Administration. There are significant contrasts between the World War II veteran and today's Indochina veteran. Generally, today's veteran has a lower total level of VA benefits than did the World War II veteran. Veterans of previous wars received full tuition at any college in the country, along with a living allowance that very nearly met the cost of living. The veteran of today studying full-time, however, gets $220 per month in cash, if he is single, from which tuition, fees, books, and all living expenses must be paid. Moreover, studies indicate that a large proportion of Vietnam returnees are from lower-income backgrounds with the attendant hardships of less education and fewer opportunities to enter college or jobs that require specialized training.

Finally, the veteran returning from Vietnam duty faces a different climate of public attitude: for the average veteran, there have been no victory parades, and colleges generally have not geared up to welcome the veteran and help him in the way and to the extent they did after World War II.

The VCI program is designed to encourage institutions of all kinds to provide for specific education or training opportunities for veterans in college, pre-college, and job training; especially for veterans who are educationally disadvantaged and in need of remedial or tutorial assistance. The VCI law specifies that fifty percent of funds paid to any institution under the program is to be used directly for veteran services; and indications are that many colleges would use more than 50 percent. USOE officials who have worked on preliminary planning for the VCI Program say they intend to encourage maximum employment of veterans in the program—in outreach, counselling, tutorial and other services.

The VCI Program would also generate additional allowances for veterans through the greater use of the G.I. bill itself, special tutorial assistance, remedial-refresher veterans programs, and the new veteran-student services programs. Also, a prime function of the program is to inform veterans about specific education and training opportunities; this is not now being done adequately either by the Federal Government or by the colleges and other educational institutions, largely because funds needed to set up necessary outreach programs and machinery are not available in a quantity commensurate with the need.

Mr. Chairman, I applaud the wisdom of your Subcommittee, and the full Appropriations Committee, in affirming the commitment of the Congress to the special needs of the Vietnam era veteran. On behalf of veterans in my state of California and elsewhere, I most strongly urge you to stand firm and not rescind the small amount of funds so far appropriated for FY 1973, as the Administration urges.

In light of current needs, I believe the existence of the VCI Program is even more necessary now than ever before. It surely merits the $25 million funding level, and a substantially increased allocation as we look forward to fiscal year 1974, if we are to fulfill our obligations to our returning veterans.

With best regards,

Sincerely,

ALAN CRANSTON,
Chairman, Subcommittee on Health and Hospitals, Committee on Veterans' Affairs.

COMMITTEE ON APPROPRIATIONS,
Washington, D.C., April 2, 1973.

Hon. ALAN CRANSTON,
U.S. Senate,
Washington, D.C.

DEAR SENATOR CRANSTON: Thank you for your letter of March 25 expressing concern over the proposed rescission of Veterans' cost-of-instruction funds.

Our Subcommittee recently concluded its hearings on Supplemental requests and the proposed rescissions. I, for one, was not impressed by HEW's arguments for granting a rescission. However, I am still very concerned over the fate of this very worthwhile program. Despite the good intentions of Congress, the President may, nevertheless, refuse to spend the $25 million for veterans' payments before the end of this fiscal year. His refusal to date has destroyed the effective timing that the Committee had in mind when it provided this appropriation.

Sincerely,

WARREN G. MAGNUSON,
Chairman, Subcommittee on Labor-Health, Education and Welfare.

COMMITTEE ON LABOR
AND PUBLIC WELFARE,
Washington, D.C., May 24, 1973.

Dr. JOHN OTTINA,
Acting Commissioner of Education, Office of Education, Department of Health, Education, and Welfare, Washington, D.C.

DEAR DR. OTTINA: I was delighted to learn that the $25 million which were appropriated in P.L. 92-607 last October for the Veterans Cost of Instruction (VCI) program, which I authored last year in the Education Amendments of 1972, were finally released on May 21. I am most disturbed, however, by matters related to this program that have just come to my attention.

It is my understanding that application procedures for the program are being seriously hampered as a result of the direct mailing of application materials to the Presidents of colleges and universities, rather than the Financial Aids Offices. These application materials could easily be overlooked, or at least held up, in the President's office. In fact, we have information that many potentially eligible schools are still totally unaware of the VCI program. As I indicated in my floor statement upon introduction of this amendment (S. 2740 on February 28, 1972), many colleges and universities have been slow in establishing special veterans' programs in the past because they were hindered by a lack of publicity about new programs. I believe such problems with the VCI program could be ameliorated by mailing all application materials directly to the Financial Aids Offices. In view of the proximity of the June 1st deadline for application, I urge you immediately to direct a new mailing of application materials to the Financial Aids Offices, and to extend the June 1st deadline—set forth in Acting Deputy Commissioner Muirhead's April 17th letter to college President's—by at least 10 days.

I recognize that the funds must be obligated by June 30, and that processing the applications in a 20-day period is a difficult task. Nevertheless, I believe that the far too widespread lack of understanding about the program and the recency of the decision to release the funds argues strongly for a new application mailing, and a modest time delay, and justifies any administrative inconveniences these steps might cause.

There are also several other matters regarding the failure of the April 16, 1973, Regulations (38 Fed. Reg. No. 72, page 9472, 45 C.F.R. Part 189) to carry out the law or clear Congressional intent in three major respects. Before discussing these points, I do wish to state very strongly that I believe the Regulations are generally excellent, and I am particularly gratified with the substance of the "Required Services and Uses of Funds" set forth in Subpart B, especially the O.E. adequacy assessment criteria and reporting requirements. These seem to me right in line with the basic purpose of the Congress (there is one point of clarification I suggest under item d. below).

I also wish to apologize for my delay in getting these comments to you after the 30-day comment period, but I am sure you will want to consider them carefully.

a. *Veterans eligible for $150 bonus payment.* Section 189.3(a)(2) defines educationally disadvantaged veteran students (subchapter V or subchapter VI of chapter 34 of title 38) who carry a $150 bonus, as those in attendance on April 16, 1973 "who have, *while attending such institution during the academic year in which such date occurred,* received educational assistance under . . . "those subchapters (Emphasis added). The same language is set forth in your May 7, 1973, Administrative Bulletin #2, under *"Clarification of Category 2 Veterans (Item 11, Part I of the Application),"* which states the following:

" 'Category 2' veterans (i.e., 'educationally disadvantaged') are those who are enrolled on a half-time or greater basis and who are receiving or have received *at some time during the current (1972–1973) academic year* educational assistance under one of the following three G.I. Bill programs authorized by Subchapters V and VI of title 38, United States Code. . . ." (Emphasis added.)

I strongly object to the underlined language as inconsistent with the clear language of the law.

As I will attempt to demonstrate, the language of section 420(b)(1)(B) clearly requires that the bonus be paid on behalf of each veteran who has, *at any time,* received G.I. Bill assistance under subchapter V or VI. Subsection (b)(1)(B) of section 420 states:

"The amount of any payment to which any institution is entitled under this section for any fiscal year shall be—

* * * * *

in addition, $150, except in the case of persons on behalf of whom the institution has received a payment in excess of $150 under section 419, for each person *who has been the recipient of educational assistance under subchapter V or subchapter VI of chapter 34 of such title 38,* and who is in attendance at such institution as an undergraduate student during such year." (Emphasis added.)

This clause makes no reference to the receipt of such subchapter assistance in a particular academic year. The language is written entirely in the past tense in contrast to the present tense used in clause (A) to spell out the basic $300 entitlement per "veteran receiving" chapter 31 or 34 assistance. Furthermore, note the comma after "title 38" in clause (B) which totally separates the concluding language ". . . during such year" from the language defining which veterans shall be counted. In short, I find absolutely no basis in the law for the interpretation you have taken and the requirement you have imposed in the regulations. Moreover, as I shall discuss at the end of the letter, this added requirement is itself in violation of section 521(c)(2)(A) of the General Education Provisions Act, as amended by section 302(a) of P.L. 92–318, which I also authored.

In addition to not comporting with the plain language of the law, your additional language violates the expressed Congressional intent. The section-by-section analysis of the amendment, adopted by the Senate on February 28, as set forth at S 2741, explains clause (B)—which was not changed in conference—by reducing it into two separate and distinct conditions of eligibility for the bonus. It states:

"each institution shall be paid $150 for each person who—

"(1) is in attendance at such institution as an undergraduate student; and

"(2) has been the recipient of educational assistance under subchapter V or VI of chapter 34 of such title 38."

And in the Explanatory Statement of the Committee on Conference, it is stated on page 228 of the Conference Report (No. 92–798): "(2) in addition, $150 for each veteran who has participated in one of the special remedial veterans programs." Again, there is no indication of a specified period of time in which the veteran's participation in such a remedial program was required to have occurred.

One of the principal purposes of the VCI Program is to encourage schools to recruit and enroll those educationally disadvantaged students who have participated in PREP or other remedial programs under the G.I. Bill *at any time,* rather than just those students who were enrolled during the current academic year. This philosophy pervades my February 28 floor statement. The intention was to provide a two-pronged incentive to schools with respect to educationally disadvantaged veterans: (1) to recruit and enroll them in pre-college or PREP programs under subchapters V or VI, for which a school would receive $300 per such veteran—and I note with great pleasure how carefully your regulations in the last two parentheticals in section 189.2(b) follow the Congressional intent expressed in the last two sentences of the Explanatory Statement (p. 228) so as to count these veterans for that purpose; and (2) to recruit and enroll in college curricula courses veterans who had received such remedial or preparatory courses and were eligible for admission. In other words, our plan was to try to make maximum use of the successes of PREP and section 1691 college preparatory programs by seeing to it that the veterans so trained had opportunities to pursue a higher education using the preparation they had received.

(I would note that I would not insist on this same analysis with respect to tutorial assistance student recipients under section 1692 of title 38, although the law makes no (and probably does not allow any) such distinction since section 1692 is included within subchapter V of chapter 34. I would not object to paying the bonus on behalf of such a tutorial assistance recipient veteran (who had *not* otherwise participated in a subchapter V or VI program) only if he had received such assistance in the academic year in question. I would be delighted to confer with you and your legislative people to change the law or otherwise clarify it with respect to bonus payments to schools on behalf of tutorial assistance recipients.)

Thus, I think the law and Congressional intent are unmistakeably clear that if a veteran student has, at *any time,* been a participant in a subchapter V or VI preparatory program, the school is to be eligible for the $150 bonus under section 420(b)(1)(B). I urge you to alter the regulations immediately in this respect.

b. *Payment of the full $300 or $450 entitlement per eligible veteran.* Section 420 is clearly written as an entitlement. See the use of "shall be entitled" in subsections (a)(1), (a)(2), and (b)(1), and the use of "entitled" in subsections (a)(2) (twice), (c)(1), and (d). Moreover, and I think this is absolutely conclusive, section 420 contains no pro rata reduction provision of the type contained in section 419(b)(2)(B)(ii) for the comparable "Payments to Institutions of Higher Education" program provisions. Thus, I take strong exception to any O.E. implication of pro rata reductions, such as is contained in regulation section 189.3(b) ("subject to the availability of funds") and in point 2 of Administrative Bulletin No. 2 ("On the basis of the limited appropriation likely to be available . . ." and "If first payments are substantially less . . .").

I think a law suit will clearly lie to compel full payment in installments over the academic year 1973–74, as I discuss in item c. below.

c. *Periodic progress payments.* I have been unable to find any reference in the regulations to the requirement in the second sentence of subsection (d) of section 420, which provides:

"Payments under this subsection shall be made in not less than three installments during each academic year and shall be based on the actual number of persons on behalf of whom such payments are made in attendance at the institution at the time of the payment."

Not only is this language explicit and mandatory in nature, but section 421(c)(2)(B) of the General Education Provisions Act clearly prohibits the distribution of funds appropriated to carry out any applicable program "in any manner or by any method different from that specified in the law authorizing the appropriation."

It seems clear to me that what you must do to follow the law with respect to this point and the entitlement aspect discussed under item b. above, is to pro-rate the *first* payment to each school on the basis of entitlements out of the $25 million appropriation now available and submit to Congress a request either for a Supplemental FY 1973 or for an FY 1974 appropriation necessary to make the remaining two (or more) progress payments, as required by section 420(d), during academic 1973–74. In any event, I will seek such appropriations and ask that you immediately provide me with the information necessary once the first payments have gone forth.

d. *Clarifying language with respect to the $150 bonus and the use of Federal work/study funds to carry out outreach activities.* I suggest two minor clarifications in the regulations. First, in section 189.3(b)(2), strike out "For" and insert in lieu thereof "In addition to the payment under paragraph (a)(1) of this section, for". I trust there is no thought that the $150 is anything other than a bonus or add-on payment and not the full payment on behalf of qualifying educationally disadvantaged students. The law and all the legislative history is totally explicit on this, yet the regulations do not make this explicit.

Second, in section 189.13(b), insert after "programs" at the end of that clause the following: "(particular attention is directed to the new veteran-student services program established in the G.I. Bill by Public Law 92–540 in section 1685 of title 38; consult your VA Regional Office for details)". I think it is very important that schools be made aware of the existence of this new VA work/study entitlement program for which $4 million will be available in FY 1974 ($500,000 has been allocated from the FY 1973 VA readjustment benefits account), and I have urged the VA to target this money more extensively on G.I. Bill trainees carrying out outreach activities at schools and VA regional offices in organized programs.

Finally, I wish to point out that section 421(c)(2)(A) and (B) of the General Education Provisions Act, as added by Section 302(a) of the Education Amendments of 1972 (P.L. 92–318), which I authored, provides:

"(2)(A) No requirement or condition imposed by a law authorizing appropriations for

carrying out any applicable program, or controlling the administration thereof, shall be waived or modified, unless such a waiver or modification is expressly authorized by such law or by a provision of this title or by a law expressly limiting the applicability of this paragraph.

"(B) There shall be no limitation on the use of funds appropriated to carry out any applicable program other than limitations imposed by the law authorizing the appropriation or a law controlling the administration of such program; nor shall any funds appropriated to carry out an applicable program be allotted, apportioned, allocated, or otherwise distributed in any manner or by any method different from that specified in the law authorizing the appropriation."

As I have indicated in part above, these provisions require that no requirement or condition imposed by law may be waived or modified, no limitation may be imposed on the use of funds appropriated, and no distribution of funds may be made in a manner or method different from that specified in the authorizing law, except as expressly authorized by law. This provision was written to deal specifically with numerous prior situations in which the Congress found that the provisions of laws it enacted were either not being carried out or were being nullified by additional administrative requirements not expressly authorized by law. Although I do not believe that the situations I have covered above in items a., b., and c. would turn out any differently without these section 421(c) provisions—because I think the command of the law in section 420 is very clear on these points—, these provisions of section 421(c) do, to say the least, strongly bolster my contentions.

I would appreciate your immediate attention to the points I have covered in this letter and look forward to your reply and to appropriate corrective actions vis-a-vis the VCI regulations.

Sincerely,

ALAN CRANSTON.

IMPACT EDUCATION AID

Mr. CRANSTON. Mr. President, I am extremely pleased to note that both House and Senate Appropriations Committees acted so decisively and responsibly on the issue of impact aid moneys.

As a result of the committees' refusal to sanction the administration's plan to fund category 3(b) students 54 percent of their entitlement, and its decision instead to raise that entitlement to 68 percent, my State of California will recover some $23 million in Federal school funds that would have been denied them under the administration's formula.

We must recognize, however, that most category 3(b) school districts had planned their budgets in expectation of receiving 73 percent of entitlement. That is what the continuing resolution, as passed by the Congress several months ago, provided. But the administration applied a different interpretation to the language of the continuing resolution and set 3(b) payments at 54 percent of entitlement.

The prompt action by the Senate Committee in concert with the House, is important not only in terms of moneys provided to financially hard-pressed school districts in my State. It is important because it illustrates, once again, that the Congress is not going to duck its stated commitment to school districts via the impact aid program—a commitment to compensate districts for the financial impact of the Federal presence there.

Mr. President, the measure before us is good news to the California property taxpayer. The $23 million in Federal school moneys is absolutely essential to keeping many California schools open. Having the amount restored by the Congress means that the outrageously overburdened property taxpayer in California will not have to dip further into his pocket in order to make up for lost Federal funds.

HEALTH PROGRAM FUNDING AMENDMENTS TO SECOND SUPPLEMENTAL APPROPRIATIONS ACT, FISCAL YEAR 1973

Mr. President, I was pleased to cosponsor the health amendments to the Second Supplemental Appropriations Act, 1973, offered on Tuesday by the distinguished Senator from Massachusetts (Mr. KENNEDY), chairman of the Subcommittee on Health of the Labor and Public Welfare Committee, and adopted by the Senate on a series of roll call votes.

These amendments addressed, on a very selective basis, certain health programs which the administration has proposed to terminate in fiscal year 1974, and which programs, the administration, solely on the basis of that recommendation has moved ahead—without congressional authorization—to begin to phase out immediately in the current fiscal year. These administration phase-out suggestions have not been accepted by Congress, and our amendments generally provide for a continuation of these programs throughout this fiscal year at levels well below those of fiscal year 1972.

In fact, the Senate has passed legislation, S. 1136, the Public Health Service Act Extension of 1973, which would extend these programs through fiscal year 1974 authorizing the same level of funding as authorized for fiscal year 1973. The House has reported comparable legislation from the Committee on Interstate and Foreign Commerce, and it is expected that this legislation will be adopted by the House very soon.

I feel confident Congress will indicate forcefully its desire to retain these programs on the statute books and that these programs will continue to be operating in fiscal year 1974.

These are regional medical programs; the Hill-Burton program; support to all schools of the health professions, except medicine, osteopathy, and dentistry—which the administration does not plan to phase out, at least this year—support to schools of public health, to schools of nursing, and to schools of allied health; and support for research training grants.

In addition, Mr. President, we also sought to add funds for general research support.

MAINTAINING PROGRAM SUPPORT

Mr. President, I believe it is essential to make these funds available in order to avoid any unnecessary interuption of the activities supported by these legislative authorities.

If the administration's plan is followed to limit funding in the remaining period of fiscal year 1973 to only that amount needed to close down these programs, money will be wasted and efforts will be expended which will very likely have to be undone. The result could well be to require the expenditure in July of funds to reestablish the programs which the administration proceeded to phase out in June.

This is a most uneconomical approach to Federal spending; let alone a confusing and counterproductive method of program administration.

Mr. President, the amendments which were offered by the distinguished Senator from Massachusetts will prevent this waste and inefficiency.

RMP

They will mean that the tremendous contributions made to improving health care by regional medical programs can be continued. In my State of California, this has been an outstanding program and one which has contributed immensely to the better utilization of health manpower through specialized training programs upgrading nursing skills and the skills of health support personnel, as well as improving the quality of health care generally.

HILL-BURTON

In the case of the Hill-Burton program, the recommended funds are specifically limited to support of projects for the improvement or expansion of outpatient facilities for the remainder of this fiscal year. Improvement of outpatient facilities is in full keeping with the current trend away from inpatient care to ongoing preventive care provided on an ambulatory basis. Many hospitals, particularly in the urban centers, have faced an escalating demand for outpatient care that has been well beyond their capacity to provide. Assisting communities to render these outpatient services is essential if we are to meet today's priority needs in health care.

HEALTH PROFESSIONS SCHOOLS

The funding recommended in the amendment for institutional support for the schools of veterinary medicine, optometry, podiatry, and pharmacy, is very moderate. These schools provide the necessary health manpower which can be used most efficiently to meet skilled/health personnel scarcities and which offers the best means of making health care available to all who need it but do not receive it because of scarcity or maldistribution of traditional health professional, such as the doctor or dentist. The veterinarian has long been a source of outstanding biomedical research-making discoveries which have led to scientific breakthroughs improving treatment procedures for human illness.

NURSING SCHOOLS

The decision of the administration to terminate support to schools of nursing runs totally contrary to HEW's Division of Nursing's own projection that we will need 1 million additional nurses by 1975. The small amount included in these amendments for schools of nursing will enable these schools to continue their training programs free from the threat of immediate insolvency in fiscal year 1973.

PUBLIC HEALTH SCHOOLS

Today, Mr. President, the public health specialist is an important element in a community's ability to provide its citizens with the benefits of modern medicine.

Dean Warren Winkelstein of the School of Public Health at the University of California at Berkeley, defined the

role of the public health specialist in a succinct and articulate fashion in a published article arguing that the environment plays as important a role in the health status of the population as the quality and quantity of available medical care. He argued that even though certain medical care measures can prevent specific diseases, more attention and resources should be directed to identify the specific components of the environment which promote health. This is the role of the public health specialist trained in the schools of public health. Abrupt termination of traditional Federal support to the schools of public health presents them with an almost insoluble problem if they are to continue to provide professionals with this expertise to the community. The amendments we offered provides a small amount to maintain these schools at a level even below that of fiscal year 1972 through the remainder of this fiscal year.

ALLIED HEALTH SCHOOLS

The amendment will also permit funding for schools of allied health to be maintained at levels below that of fiscal year 1972. These training programs also are the source of the necessary skilled personnel to provide the backup and the supplemental assistance to the health professional, enabling him or her to make the optimum use of their skills and time in providing specialized skilled care for patients.

RESEARCH TRAINING

And, Mr. President, the amendment to provide additional funds for research training programs will enable our research institutions to utilize the fine young minds that will belong to the research scientists of tomorrow, to provide these gifted youth the opportunity to pursue scientific leads in an environment which will attract them to a research career. Without this exposure, many will not pursue this career. In a decade, the Nation would begin to feel the impact of this shift. In 20 years, there could well be but a handful of scientific researchers left. The loss to the Nation would be immense, and to the future of medicine, immeasurable.

GENERAL RESEARCH

Mr. President, in terms of wise investment of scarce Federal dollars, investment in general research support grants is an area of high payoffs. While there is indeed a need for targeted research, the contributions of general medical research today provide the basis for targeted research in the future. Without the broad area of unrestricted basic research in the general medical sciences, too many opportunities may be missed or real breakthroughs overlooked, in the scientist's single-minded pursuit of one goal. The recommendation in our amendment of an additional amount for general research support grants will enable this research to be sustained at the fiscal year 1972 level.

CONCLUSION

Mr. President, each of these amendments represented a prudent use of limited Federal funds, an investment that will yield a high rate of return in terms of improved medical care, efficient use of health personnel, and optimum utilization of health facilities and resources.

I was very pleased to join with Senator KENNEDY in these amendments, and wish to express my admiration for the effective leadership he has provided in advocating these most reasonable amendments.

INDIAN HEALTH

Mr. President, I would also like to express my support of the action taken by the Appropriations Committees in both Houses in refusing to accept the President's proposed rescissions of other appropriations enacted in fiscal year 1973.

Among these proposed rescissions was almost $5 million for Indian Health Service. From this amount, funds had been allocated for the California Rural Indian Health Board and for the Urban Indian Health Board, Inc., in San Francisco, which would have enabled these organizations to assess Indian health needs in California and develop resources to meet those needs. These two organizations have already made substantial gains in making native Americans more aware of their eligibility to participate in medicaid programs or other services provided in the local communities, and the funds provided from this appropriation will enable them to continue the very promising beginnings that have been made.

The benefits in the long run from such expenditures will be substantial in terms of cost savings to the Federal Government.

Mr. President, in March I exchanged letters with the distinguished chairman of the Appropriations Subcommittee on Interior (Mr. BIBLE) expressing my concern that this rescission not be agreed to, and I am grateful to him for his leadership and to the subcommittee and full committee for their actions in refusing to agree to the rescission.

Mr. President, I ask unanimous consent that these letters be printed in the RECORD at this point.

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

COMMITTEE ON LABOR
AND PUBLIC WELFARE,
Washington, D.C., March 2, 1973.

Hon. ALAN BIBLE,
Chairman, Subcommittee on Interior and Related Agencies, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I know you share my concern for the special problems American Indians have in getting into the mainstream of health care. The action taken by your committee last year in recommending substantially increased appropriations over the Administration's request for the Indian Health Service is evidence of your recognition of the needs of native American Indians for health care. The Administration's proposed rescission of these funds is difficult to justify, and I would like to advise you of my opposition to that proposal.

The additional $5 million included in the appropriation would have had a major impact on programs to meet the health needs of native American Indians residing in California.

Included in this amount was $1.1 million allocated for the California Rural Indian Health Board and $450,000 for the Urban Indian Health Board, Inc., in San Francisco, which would have enabled these organizations to assess Indian health needs in California and develop resources to meet those needs. These organizations have already made substantial gains in making native Americans more aware of their eligibility to participate in Medicaid programs or other services provided in the local communities, and the funds provided from this appropriation would have enabled them to continue the very promising beginnings that have been made. The benefits in the long run would be substantial in terms of cost savings to the Federal Government.

The Administration proposal seems to me to be very shortsighted and, if accepted, would result in higher costs to the Federal Government in the long run. I urge your committee to reaffirm its support of these programs and to refuse to accept the proposed rescission.

With best personal regards,
Sincerely,

ALAN CRANSTON.

COMMITTEE ON APPROPRIATIONS,
Washington, D.C., March 20, 1973.

Hon. ALAN CRANSTON,
U.S. Senate,
Washington, D.C.

DEAR ALAN: This will acknowledge your letter of March 7 in opposition to the Nixon Administration's proposal to rescind, or cancel, $4,700,000 appropriated for the current fiscal year for Indian health activities.

You have made an excellent case in support of retaining these funds, including those for the California Rural Indian Health Board and the Urban Health Board, Inc. The Committee will hear the rescission proposal April 4 in advance of testimony on the regular fiscal 1974 budget estimates of the Indian Health Service. You may be assured your views, together with the stated needs of the Indian health boards in California, will have the Committee's full consideration.

Kindest personal regards.
Cordially,

ALAN BIBLE,
Chairman, Subcommittee on the Department of Interior and Related Agencies.

NEIGHBORHOOD YOUTH CORPS SUMMER JOBS

Mr. CRANSTON. Mr. President, I was pleased to join with Senator JAVITS again this year in sponsoring an amendment to the second supplemental to add an aggregate of $67,660,011 for the Neighborhood Youth Corps summer jobs program. I have received hundreds of letters from concerned Californians—private citizens, program participants, and elected officials—expressing their deep concern over the effect the reduced administration's NYC summer program proposal would have on communities across California.

The administration has proposed that the counties, cities, and States use as much as $300 million of the $1.25 billion available for Emergency Employment Act public service employment programs to support the 1973 summer jobs program. As an original cosponsor of the EEA legislation during the 91st and 92d Congresses, and as a member of the subcommittee having legislative jurisdiction over the extension of the EEA, I simply cannot fathom the administration's rationale. As Senator JAVITS stated so well, the administration has proposed that we "fire the fathers to hire the sons."

Senator JAVITS' amendment reflects the minimum appropriation necessary to meet the summer program needs, as estimated by the National League of Cities/U.S. Conference of Mayors, while preserving the present fiscal year 1973 funding available for the Emergency Employment Act programs.

Mr. President, I have joined in sponsoring similar amendments which have been adopted to increase NYC summer programs each year during my service in the Senate, and would like to express my gratitude to Senator JAVITS for his continued and outstanding leadership on this issue.

Mr. President, I am gratified that the committee has accepted this amendment—as revised to $44.5 million—and pledged its support to attempt to hold onto this amendment at the revised level in conference with the House.

Mr. President, I think it would be very helpful for my colleagues in the Senate to see an analysis I recently received from the Los Angeles County Board of Supervisors on the effects of utilizing EEA money to finance the NYC summer program, and ask unanimous consent that it be printed at this point in the RECORD.

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

COUNTY OF LOS ANGELES,
Los Angeles, Calif., May 21, 1973.

Hon. ALAN CRANSTON,
Subcommittee on Employment, Poverty and Migratory Labor, Old Senate Office Building, Washington, D.C.

Attention: Pam Duffy

DEAR SENATOR CRANSTON: The County of Los Angeles Board of Supervisors took action on May 15, 1973 to commit the County to create a Summer Jobs Program for 5,700 poverty youth this summer. They endorsed the efforts of Senator Javits to have the Neighborhood Youth Corps Summer Jobs funds for this summer included in the Second Supplemental Appropriations, Fiscal 1973 bill.

The Board has rejected the Labor Department's suggestion that Public Employment Program (PEP) funds be used for funding a Summer Jobs Program. Attached is a copy of a memorandum that explains the impact of such an action.

Sincerely,

SANTOS ZUNIGA,
Chief, Manpower Program Division.

APRIL 9, 1973.

To: Gordon T. Nesvig.
From: Santos Zuniga.
Subject: Public Employment Program: Preliminary Phase-Out Plans and Impact of Summer Jobs Program.

We now estimate that the County of Los Angeles will be allocated less funds than expected from the Labor Department to provide for an orderly phase-out of PEP by June of 1974. We expect that both Sections 5 and 6 will be reduced 20% and 16.5% respectively from our first year's grant level. Official allocations will be announced on Thursday, April 12, 1973.

The reductions force us to either quickly and substantially accelerate our current rate of hiring of participants, even while taking full advantage of the 13 months of phase-out time, or to face massive layoffs of participants when the money runs out. The first alternative is obviously the one we will pursue.

That approach, however, still includes a risk that many participants may not be hired by June 30, 1974, depending on the response from line departments and subagents during the next few months. Some emergency action will need to be taken to increase hiring of participants including freezing all open competitive examinations for jobs for which PEP participants qualify until PEPs are provided for. We are preparing a PEP Phase-Out Report including recommendations for such actions.

If we decide to create a summer job program from PEP funds, we further increase the risk of layoffs.

The attached charts reflect some alternative approaches for dealing with the phase-out of PEP.

In these charts, we provided for a 5,700 youth jobs program from the combined resources of Sections 5 and 6 for the coming summer.

You should note that every two summer jobs we create from PEP cost us one months funding for an adult job. In other words, 5,700 jobs for youths would deny us about 2,850 man months of PEP jobs for adults.

ATTRITION RATES WITH FUNDING THROUGH JUNE 1974

WITHOUT SUMMER NYC

	Sec. 5 terminations	Sec. 6 terminations	Combined terminations
June	68	21	89
July	170	20	190
August	68	19	87
September	68	18	86
October	120	22	142
November	120	21	141
December	120	16	136
January 1974	120	39	159
February	120	34	154
March	120	31	151
April	120	90	210
May	318	99	417
June	318	90	408
Total	1,850	520	2,370

WITH SUMMER NYC

June	120	34	154
July	170	48	218
August	120	34	154
September	120	34	154
October	120	34	154
November	120	34	154
December	120	34	154
January 1974	120	34	154
February	120	34	154
March	120	33	153
April	120	33	153
May	240	67	307
June	240	67	307
Total	1,850	520	2,370

PROJECTIONS REFUNDING PEP SECS. 5 AND 6, MAY 1, 1973, TO JUNE 30, 1974

	Sec. 5	Sec. 6
Original allocation	$16,500,000	$5,300,000.
Tentative allocation	$11,300,000 (less 16.5 percent).	$4,100,000 (less 20 percent).
Onboard participants (May 1, 1973).	1,850	502.
Current attrition rate (monthly).	4 percent	4 percent.
Average monthly cost per participant.	$706	$756.
Termination of PEP at current attrition rate.	Mar. 15, 1974, resulting in 1,227 layoffs.	May 30, 1974, resulting in 391 layoffs.
Termination of PEP with a summer NYC program at current attrition rate.	Feb. 13, 1974, resulting in 1,278 layoffs.	Jan. 9, 1974, resulting in 391 layoffs.
Contribution to fund 5,700 NYC slots at total cost of $2,185,000.	$921,000	$1,264,000.

OLDER AMERICANS VOLUNTEER PROGRAM

Mr. CRANSTON. Mr. President, as chairman of the authorizing subcommittee having jurisdiction over the domestic volunteer programs of the Action Agency—the Special Subcommittee on Human Resources—I am particularly pleased to note the Appropriation Committee's recommendations with regard to the older Americans volunteer programs. Because of a legal technicality, $42 million which had originally been appropriated by the Congress in the first fiscal year 1973 Supplemental Appropriation Act—Public Law 92-607—for older Americans volunteer programs, specifically, the Foster Grandparent program and R.S.V.P., have not been made available for obligation.

The basic problem has arisen because of the veto last Congress of the Comprehensive Older Americans Act Amendments of 1972 including amendments I authored to expand significantly the Foster Grandparent program. The President has recently signed a new measure, containing these amendments, now Public Law 93-29. However, since the first Supplemental Appropriations Act was enacted before the President signed the Older Americans Act amendments under the present appropriations situation the ACTION Agency could not obligate the $42 million appriated in the first supplemental, especially not for any new programs.

As soon as I became aware of this unfortunate combination of circumstances—which would in the end work against the purposes of the Congress in expanding the highly successful FGP program—I talked with Senator MAGNUSON, chairman of the Appropriations Subcommittee which handles the ACTION agency appropriation, and sought his assistance in providing the mechanism whereby these funds could be expended by the Agency and certain amounts continued available for obligation to insure that $25 million would be expended in fiscal years 1973 and 1974 for the traditional Foster Grandparent program as well as $6 million in fiscal year 1974 for the new programs authorized in Public Law 93-29.

The Appropriation Committee has subsequently recommended a transfer of the $42 million in question from the First Supplemental Appropriation Act and the direction that $8 million would remain available until expended. I think it is important to note the committee report language on this, which states:

Should this provision be enacted, the Committee is hopeful that the Administration will now use this additional authority to implement the new law [P.L. 93-29] to its maximum potential.

As the author of the amendments contained in the Older Americans Act which authorize that expansion, while at the same time insuring the preservation of the traditional Foster Grandparent program, I fully endorse the committee's statement of intent regarding the utilization of these funds.

Mr. President, I would also like to take this opportunity to express my deep appreciation to the distinguished Senator from Washington (Mr. MAGNUSON) for his efforts in enabling this transfer to take place, and for the very helpful staff assistance provided to me by Mr. Harley Dirks of the Appropriations Subcommittee staff.

CONCLUSION

Mr. President, I urge the conferees on this bill to do all in their power to retain the Senate amendments I have discussed today with respect to the VA for Public Law 92-541, to the Office of Education for the VCI program, to the ACTION Agency for Older Americans Volunteer programs, to the Labor Department for NYC summer jobs, and to H.E.W. for

health program funding, as well as the language added on page 16 of the reported bill under "Social and Rehabilitation Services," to correct certain technical deficiencies in language contained in Public Law 92–607 regarding vocational rehabilitation program funds, an effort in which I joined with the distinguished Senator from West Virginia (Mr. RANDOLPH) and others.

Mr. ROBERT C. BYRD. Mr. President, I wish to express my strong support for H.R. 7447, and particularly my amendment included therein which adds $25 million to implement Public Law 92–541, the Veterans' Administration Manpower Training Act of 1972.

Public Law 92–541 authorizes the establishment of up to eight new medical schools in conjunction with ongoing VA hospitals, and staffing and construction grants to existing medical and allied health training institutions. It authorizes $75 million for fiscal year 1973 and $75 million for each fiscal year thereafter for the next 6 fiscal years.

I have consistently supported Public Law 92–541 both prior to, and subsequent to, its enactment. The Senate Appropriations Committee, in its full committee mark-up session, on May 15, 1973, accepted my amendment to include $25 million for the balance of fiscal year 1973 to begin planning of the medical schools. When I first introduced this amendment on January 3, 1973, I requested the full authorized amount of $75 million. On April 30, however, I modified my amendment and reduced it to $25 milion. I took this action because this amount would let the program get started, and at the same, it is a reasonable amount which could be defended on both the Senate floor and in conference with the House of Representatives. My colleague, Senator RANDOLPH, and Senator CRANSTON both wrote letters to the committee supporting my amendment.

Mr. President, there is an urgent need for additional medical personnel, especially in areas such as West Virginia where the physician-patient ratio is 1 doctor per 1,000 potential patients compared with a national average of 1 doctor for every 636 potential patients. The American Association of Medical Colleges believes that this ratio is unsatisfactory and has stated its goal would be to achieve 1 doctor for every 500 potential patients.

I am hopeful that, with the inclusion of my amendment in H.R. 7447, we shall have moved one step closer to the establishment of a VA affiliated medical school at Huntington, W. Va. I believe that the amount included by my amendment will be sufficient to get this program started and to allow VA officials to proceed with criteria development and site selection.

It is unfortunate that the administration has not requested funding for this program, and has left the initiative to Congress. I believe that the existing shortage of physicians throughout the United States is a matter of deep concern to all Americans and I do not think that anything deserves a higher priority.

I wish to again express my thanks to the distinguished chairman of the committee, Mr. MCCLELLAN, for his support of my amendment, and I wish to urge passage of the bill.

SENATOR RANDOLPH SUPPORTS APPROPRIATION OF $25 MILLION THROUGH AMENDMENT OF SENATOR ROBERT C. BYRD TO FUND MEDICAL SCHOOL PROGRAM

Mr. RANDOLPH. Mr. President, I express my strong support for the amendment of the Appropriations Committee to provide $25 million to begin implementation of Public Law 92–541, the Veterans' Administration Medical School Assistance and Health Manpower Training Act of 1972.

It is my firm conviction that the committee has taken a significant step to set in motion a progressive and innovative program which provides the Veterans' Administration with clear-cut authority to participate in the efforts to solve the health manpower crisis in this country. The amendment in the pending bill was offered by my able and diligent colleague from West Virginia (Mr. ROBERT C. BYRD) who is an effective member of the Appropriations Committee. It was a privilege to join with Senator BYRD in documenting the importance of the $25 million request and in urging its approval. The capable Senator from California (Mr. CRANSTON), the chief sponsor of the authorizing legislation, was an active participant in this effort.

It is my belief, Mr. President, that the effort to more fully utilize the Veterans' Administration facilities and programs and personnel in education and training of health care personnel presents a very unique opportunity to help alleviate the critical shortage in health manpower.

As a member of the Senate Committee on Veterans' Affairs and as an active original sponsor of the authorizing legislation, it is my belief that the program constitutes a significant advancement in improving the capacity of the Veterans' Administration to train needed health care personnel. It will maximize the potential of VA's medical resources to provide leadership to the Nation's medical community in developing health manpower education and training programs. It will not, however, detract from the primary responsibility of the VA to provide services and health care for our veterans.

Rather, I believe that the implementation of this program will lead to improved health care under the VA programs. Our veterans and citizens generally will benefit. The cooperative effort between the VA and institutions of higher learning envisioned in Public Law 92–541 will hopefully lead to the full utilization of VA facilities, personnel, and programs, so that more efficient and effective health manpower education and training efforts will be brought into being.

Mr. President, Public Law 92–541 authorizes $25 million for pilot programs for the establishment of eight new medical schools affiliated with VA faciliites and $50 million to be used for these new schools or to expand and improve programs at existing medical schools or at other health manpower institutions affiliated with VA hospitals.

Our country needs additional physicians, dentists, nurses, other health professionals, allied health professionals and paraprofessionals, and other health manpower, including new types of health-care personnel such as physicians' assistants, dentists' assistants, and nurse practitioners.

To meet these manpower shortages requires the establishment of additional institutions and programs to provide the necessary training and education and innovative leadership. The VA is uniquely qualified to work toward this goal. It has the nationwide network of hospitals, clinics, and extended care facilities and ongoing reputable training and education programs. We are challenging the VA and charging it with the responsibility to be the leader in putting its medical resources to work in meeting the great national need for additional new types of health manpower.

It is my belief that the VA stands ready to meet this challenge and we should give them the funds to begin this vital endeavor.

The amendment which is in the pending bill will allow the VA to move forward with the important planning and implementation process without delay. I recognize that there is no budget proposal on this. But I also recognize that there is the element of urgency and that is the reason for the attempt to move with this initial funding. It was this same sense of urgency and belief in the merits of this new program which prompted the Senator from California (Mr. CRANSTON), who worked so diligently and effectively to bring this program into being, to offer a $40 million funding amendment to the supplemental appropriations bill last year. Our amendment was adopted by the Senate by a vote of 32 to 28. While the House refused to accept that amendment, I believe that our past efforts will help set the stage for success this year.

As the Senator from California (Mr. CRANSTON) has outlined to the Senate, the recent hearings of the Subcommittee on Health and Hospitals of the Senate Veterans' Affairs Committee revealed the strong and important support for this new public law and the urgent need to approve funds for its implementation. During those hearings, outstanding leaders in the health education field submitted comprehensive testimony stressing the importance of affiliations between the health professions schools and VA medical facilities in terms of the beneficial effect on the care provided the veterans as well as the impact on meeting national needs for additional health care personnel.

Additionally, the Veterans' Administration indicated that the implementing regulations for Public Law 92–541 should be published by the end of May and that they had received 62 inquiries about grants under the new chapter from health manpower and other institutions. Thirteen of these inquiries were regarding subchapter II—grants to affiliated medical schools, which also generally inquired regarding subchapter III—and 22 were regarding subchapter III—assistance to public and nonprofit institutions affiliated with the Veterans' Administration to increase the production of professional and other health personnel.

The PRESIDING OFFICER. Who yields time?

Mr. McCLELLAN. Mr. President, if no one else desires to speak, I yield back the remainder of my time on the bill.

Mr. YOUNG. I yield back the remainder of my time.

Mr. McCLELLAN. 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. 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.

The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment of the amendments and the third reading of the bill, as amended.

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

The bill was read the third time.

Mr. MANSFIELD. 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. 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.

Pursuant to the previous order, the Senate will now proceed to vote upon the bill (H.R. 7447), as amended. The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MATHIAS. Mr. President, on this vote I have a live pair with the Senator from South Carolina (Mr. THURMOND). If he were present and voting, he would vote "nay." If I were permitted to vote, I would vote "yea." Therefore, I withhold my vote.

Mr. TOWER. Mr. President, on this vote I have a live pair with the junior Senator from Connecticut (Mr. WEICKER), who is necessarily absent. If he were present and voting, he would vote "yea." If I were permitted to vote, I would vote "nay." Therefore, I withhold my vote.

Mr. ROBERT C. BYRD. I announce that the Senator from Nevada (Mr. BIBLE), the Senator from Idaho (Mr. CHURCH), the Senator from North Carolina (Mr. ERVIN), the Senator from Georgia (Mr. TALMADGE), and the Senator from Nevada (Mr. CANNON) are necessarily absent.

I further announce that the Senator from Alabama (Mr. ALLEN), the Senator from Colorado (Mr. HASKELL), and the Senator from Montana (Mr. METCALF) are absent on official business.

I also announce that the Senator from Mississippi (Mr. STENNIS) is absent because of illness.

I further announce that the Senator from Maine (Mr. MUSKIE) is absent because of a death in the family.

I further announce that, if present and voting, the Senator from Nevada (Mr. BIBLE), the Senator from Nevada (Mr. CANNON), the Senator from Idaho (Mr. CHURCH), the Senator from North Carolina (Mr. ERVIN), the Senator from Colorado (Mr. HASKELL), the Senator from Montana (Mr. METCALF), and the Senator from Georgia (Mr. TALMADGE) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Utah (Mr. BENNETT), the Senator from Colorado (Mr. DOMINICK), the Senator from Hawaii (Mr. FONG), the Senator from Idaho (Mr. MCCLURE), the Senator from Alaska (Mr. STEVENS), the Senator from South Carolina (Mr. THURMOND), and the Senator from Connecticut (Mr. WEICKER) are necessarily absent.

The Senator from Arizona (Mr. GOLDWATER) is absent by leave of the Senate on official business.

The Senator from New Hampshire (Mr. COTTON) is absent because of illness in his family.

If present and voting, the Senator from Colorado (Mr. DOMINICK) and the Senator from Hawaii (Mr. FONG) would each vote "yea."

The respective pairs of the Senator from South Carolina (Mr. THURMOND) and the Senator from Connecticut (Mr. WEICKER) have been previously announced.

The result was announced—yeas 73, nays 5, as follows:

[No. 163 Leg.]

YEAS—73

Abourezk	Fulbright	McIntyre
Aiken	Gravel	Mondale
Bartlett	Griffin	Montoya
Bayh	Gurney	Moss
Beall	Hansen	Nelson
Bellmon	Hart	Nunn
Bentsen	Hartke	Packwood
Biden	Hatfield	Pastore
Brock	Hathaway	Pearson
Brooke	Hollings	Pell
Buckley	Hruska	Percy
Burdick	Huddleston	Randolph
Byrd, Harry F., Jr.	Hughes	Ribicoff
Byrd, Robert C.	Humphrey	Roth
Case	Inouye	Saxbe
Chiles	Jackson	Schweiker
Clark	Javits	Scott, Pa.
Cook	Johnston	Sparkman
Cranston	Kennedy	Stafford
Curtis	Long	Stevenson
Dole	Magnuson	Symington
Domenici	Mansfield	Tunney
Eagleton	McClellan	Williams
Eastland	McGee	Young
	McGovern	

NAYS—5

Fannin	Proxmire	Taft
Helms	Scott, Va.	

PRESENT AND GIVING LIVE PAIRS, AS PREVIOUSLY RECORDED—2

Mathias, for.
Tower, against.

NOT VOTING—20

Allen	Dominick	Muskie
Baker	Ervin	Stennis
Bennett	Fong	Stevens
Bible	Goldwater	Talmadge
Cannon	Haskell	Thurmond
Church	McClure	Weicker
Cotton	Metcalf	

So the bill (H.R. 7447) was passed.

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

Mr. FULBRIGHT. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. McCLELLAN. Mr. President, I move that the Senate insist upon its amendments and request a conference with the House, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the the Presiding Officer (Mr. DOMENICI) appointed Mr. McCLELLAN, Mr. MAGNUSON, Mr. PASTORE, Mr. BIBLE, Mr. ROBERT C. BYRD, Mr. MCGEE, Mr. PROXMIRE, Mr. MONTOYA, Mr. HOLLINGS, Mr. BAYH, Mr. YOUNG, Mr. HRUSKA, Mr. COTTON, Mr. CASE, Mr. FONG, and Mr. STEVENS conferees on the part of the Senate.

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on today, May 31, 1973, he presented to the President of the United States the enrolled bill (S. 1235) to amend Public Law 50–553 authorizing an additional appropriation for an International Center for Foreign Chanceries.

CAMBODIAN BOMBING

Mr. SYMINGTON. Mr. President, in the course of the debate today on Cambodian bombing, the Senator from Kansas (Mr. DOLE) referred to the report of the staff of the Subcommittee on U.S. Security Agreements and Commitments Abroad which I have the honor to chair. The Senator quoted a section appearing on page 1 of the report which reads as follows:

> (e) Only 20 percent of the U.S. air strikes being flown were in support of Cambodian forces while 80 percent were directed at the interdiction of North Vietnamese lines of communication into South Vietnam.

The Senator apparently cited this passage in the belief that it and the report from which it was taken would substantiate the administration's assertion that U.S. bombing in Cambodia is directed primarily against North Vietnamese forces rather than the Cambodian opponents of Marshal Lon Nol. In citing this passage, however, the Senator failed to tell the Senate that it applied only to bombing prior to April of this year. Perhaps the Senator did not read the preceding paragraphs which made that fact clear.

It also appears that the Senator from Kansas may not have read beyond page 1 of the report. Had he done so, he would have found the following passage on page 8:

> Thus, during the first two and a half weeks in April, the distribution of air strikes was no longer 80 percent against the North Vietnamese and their lines of supply into South Vietnam and 20 percent against the Khmer insurgent forces fighting Cambodian Government troops but close to the reverse as far as B–52 strikes were concerned with a heavy preponderance of tactical air strikes also devoted to helping Cambodian forces rather than to attacking North Vietnamese and Viet Cong units and supply routes.

I am sure it was only the result of an oversight on the Senator's part that he failed to cite this latter portion of the report which was based on information provided the staff by the Pacific Command Headquarters in Hawaii and which

directly contradicts the point he was seeking to make.

Mr. HUMPHREY and Mr. MANSFIELD addressed the Chair.

Mr. HUMPHREY. I yield to the majority leader, of course.

ALLOCATION OF CRUDE OIL AND REFINED PETROLEUM PRODUCTS

Mr. MANSFIELD. Mr. President, if I may have the attention of the Senate, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 152, S. 1570, so that it may become the pending business.

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

The assistant legislative clerk read as follows:

A bill (S. 1570) to authorize the President of the United States to allocate energy and fuels when he determines and declares that extraordinary shortages or dislocations in the distribution of energy and fuels exist or are imminent and that the public health, safety, or welfare is thereby jeopardized; to provide for the delegation of authority to the Secretary of the Interior; and for other purposes.

The PRESIDING OFFICER. Without objection, the Senate will proceed to its consideration.

Accordingly, the Senate proceeded to consider the bill, 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 this Act may be cited as the "Emergency Petroleum Allocation Act of 1973".

FINDINGS AND PURPOSES

SEC. 101. (a) The Congress hereby determines that extraordinary shortages of crude oil (including natural gas liquids) and refined petroleum products (including liquid petroleum gas), caused by unprecedented demand, inadequate domestic production of crude oil and refined petroleum products, environmental constraints and the unavailability of imports sufficient to satisfy domestic demand, now exist or are imminent. The Congress further determines that such shortages have created or will create severe economic dislocations and hardships, including loss of jobs, closing of factories and businesses, reduction of crop plantings and harvesting, and curtailment of vital public services, including the transportation of food and other essential goods. The Congress further determines that such hardships and dislocations jeopardize the normal flow of commerce and constitute a national energy crisis that is a threat to the public health, safety, and welfare and can only be averted or minimized through prompt action by the executive branch of Government.

(b) The purpose of this Act is to grant to the President of the United States temporary authority to deal with a national energy crisis involving extraordinary shortages of crude oil and petroleum products or dislocations in their national distribution system. The authority granted under this Act shall be exercised for the purpose of dealing with said national energy crisis by minimizing the adverse impacts of such fuel shortages or dislocations on the American people and the domestic economy and achieving the objectives set forth in section 102.

OBJECTIVES

SEC. 102. In implementing the authority granted under this Act the President shall take such actions as are necessary to achieve the following specific objectives—

(a) protection of public health, safety, and welfare;

(b) maintenance of all public services;

(c) maintenance of essential agricultural operations, including crop plantings, harvesting; and transportation and distribution of food and livestock;

(d) preservation of an economically sound and competitive petroleum industry, including the competitive viability of the independent producing, refining, marketing, distributing, and petrochemical sectors of that industry;

(e) equitable distribution of fuels at equitable prices among all regions and areas of the United States and all classes of consumers;

(f) economic efficiency; and

(g) minimization of economic distortion, inflexibility, and unnecessary interference with market mechanisms.

AUTHORITY

SEC. 1033. (a) The President may delegate all or any portion of the authority granted under this Act to the Secretary of the Interior or to the head of any other Federal agency he deems appropriate.

(b) The authority granted under this Act shall terminate on September 1, 1974.

FUELS ALLOCATION

SEC. 104. (a) Within sixty days of the date of enactment of this Act, the President shall cause to be prepared and published, priority schedules, plans, and regulations for the allocation or distribution of crude oil and any refined petroleum product which is or may be in short supply nationally or in any region of the United States in accordance with the objectives of this Act.

(b) In order to accomplish the objectives of section 1102 of this Act, and subject to the provisions thereof, the President is hereby authorized to allocate or distribute or cause to be allocated and distributed, pursuant to the schedules, plans, and regulations required by subsection (a) hereof, any liquid fuel, whether crude or processed, and whether imported or domestically produced, currently or prospectively in extraordinarily short supply nationally or in an a region of the United States.

(c) The regulations required by subsection (a) herein shall include standards and procedures for determining or reviewing prices of fuels allocated by the President under the provisions of this Act to prevent (1) appropriation of private property without due compensation or (2) exorbitant price increases reflecting temporary shortage conditions.

SALES TO INDEPENDENT REFINERS AND DEALERS

SEC. 105. (a) DEFINITIONS.—For the purpose of this section, (1) the "base period" is the period from July 1, 1971, to June 30, 1972, inclusive; (2) "nonaffiliated" refers to a buyer (seller) who has no substantial financial interest in, is not subject to a substantial common financial interest of, and is not subject to a substantial common financial interest with, the seller (buyer) in question; (3) "independent refiner" means a refiner who produced in the United States less than thirty thousand barrels per day of petroleum products during the base period; (4) "independent dealer" means a terminal operator, jobber, dealer, or distributor, at wholesale or retail, who obtains refined petroleum products either on term contract or in spot markets, and who purchased during the base period at least half of such products from nonaffiliated sellers.

(b) In order to achieve the objectives of this Act, (1) any producer or importer of crude petroleum and/or natural gas liquids who produced in the United States and/or imported more than two hundred thousand barrels per day of crude oil and natural gas liquids during the base period shall sell or exchange to nonaffiliated independent refiners or to any other reasonable and appropriate class of refiners established by regulation, in the aggregate during each quarter during the effective term of this Act a proportion of his domestic production and imports no less than the proportion he sold or exchanged to such refiners during the base period; and (2) any refiner of petroleum products who produced in the United States and/or imported more than two hundred thousand barrels per day of refined petroleum products including residual fuel oil during the base period shall sell or exchange to nonaffiliated independent dealers or to any other reasonable and appropriate class of purchasers established by regulation, in the aggregate in each quarter during the effective term of this Act, a proportion of his refinery production and imports of said products no less than the proportion he sold or exchanged to such dealers during the base period.

(c) The President shall designate an agency to supervise compliance with the requirements of this section and promulgate regulations hereunder. The head of said agency shall have authority to require periodic reports from the producers, importers, refiners, dealers, and all others subject to the requirements of this section in such form as may be necessary to determine whether the requirements of this section have been or are being met.

(d) The head of an agency exercising authority under this section, or his duly authorized agent, shall have authority, for any purpose related to this section, to sign and issue subpenas for the attendance and testimony of witnesses and the production of relevant books, papers. and other documents, and to administer oaths. Witnesses summoned under the provisions of this section shall be paid the same fees and mileage as are paid to witnesses in the courts of the United States. In case of refusal to obey a subpena served upon any person under the provisions of this section, the head of the agency authorizing such subpena, or his delegate, may request the Attorney General to seek the aid of the district court of the United States for any district in which such person is found to compel such person, after notice, to appear and give testimony, or to appear and produce documents before the agency.

(e) Whenever it appears to the head of the agency exercising authority under this section, or to his delegate, that any individual or organization has engaged, is engaged, or is about to engage in any acts or practices constituting a violation of this section, or any order or regulation thereunder, such person may request the Attorney General to bring an action in the appropriate district court of the United States to enjoin such acts or practices, and upon a proper showing a temporary restraining order or a preliminary or permanent injunction shall be granted without bond. Any such court may also issue mandatory injunctions commanding any individual or organization to comply with this section, or any order or regulation thereunder.

REPORTS TO CONGRESS

SEC. 106. (a) The President shall submit to both Houses of Congress, and cause to be published in the Federal Register any schedules, plans, and regulations promulgated for implementing the provisions of this Act.

(b) The President shall make to the Congress quarterly reports, and upon termination of authority under this Act a final report, including a summary and description of all actions taken under the authority of this Act, an analysis of their impact, and an evaluation of their effectiveness in implementing the objectives of section 102 hereof.

Mr. MANSFIELD. Mr. President, there will be no further votes this evening, and I doubt that there will be any discussion of the pending business.

ORDER FOR ADJOURNMENT UNTIL 11 A.M. TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until the hour of 11 a.m. tomorrow.

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

UNANIMOUS-CONSENT AGREEMENT

Mr. MANSFIELD. Mr. President, I ask unanimous consent that at the conclusion of morning business tomorrow, there be a time limitation of 1 hour on each amendment, the time to be equally divided between the sponsor of the amendment and the manager of the bill, and a time limitation of one-half hour on amendments to the amendment, on the same basis.

Provided further, that this request does not apply to an amendment to be offered, I believe, by the distinguished Senator from Nebraska (Mr. CURTIS) and the distinguished Senator from Georgia (Mr. TALMADGE) on Monday. The time as to that amendment will be worked out in the meantime.

Provided further, that the final vote will occur at the hour of 4 o'clock Tuesday afternoon.

Provided further, that rule XII be waived.

Mr. CURTIS. Mr. President, reserving the right to object, and I shall not object, I just want to have the Record show that I expect to present this matter to the Senator from Georgia (Mr. TALMADGE), but to this point he has not agreed to join me. I shall be offering an amendment.

Mr. MANSFIELD. And that this request be in the regular form.

Mr. SCOTT of Pennsylvania. Mr. President, if the distinguished majority leader will yield, I would like to make the point, on behalf of the managers of the bill on both sides, that they request that Senators make available to them their amendments, even though not offered at the desk, as quickly as possible, and preferably, if it can be done, during tomorrow, so that the managers of the bill may be able to decide whether to accept some of the amendments.

Mr. JACKSON. Mr. President, reserving the right to object, and I shall not object, I would like to emphasize the same point made by the distinguished minority leader. I would hope that all of my colleagues on our side of the aisle and the Senate as a whole will offer and present their amendments or file them tomorrow, so that we can go over those amendments. I believe that some of them may well be accepted, and we can expedite the business of the Senate by having that information in advance. I would hope that would be a part of the unanimous-consent agreement.

Mr. MANSFIELD. Mr. President, I join the distinguished Senators in support of that request.

Mr. PERCY. Mr. President, reserving the right to object, and I do not intend to object, as I have discussed with the distinguished manager of the bill, the Senator from Georgia (Mr. NUNN) and I are conducting official hearings in Atlanta on urgent legislation involving the drug law enforcement portion of Government Reorganization Plan No. 2, and we have a definite time limit on that. On behalf of my colleague, who must also be away tomorrow, we would like to be excused for official business; and secondly, can we be advised in any event of how many votes we may miss, and is there any way that we can determine what amendments might be brought up tomorrow, so that we can at least make known our positions on them?

Mr. SCOTT of Pennsylvania. Will the Senator first address the Chair with his request for leave of absence?

LEAVE OF ABSENCE

Mr. PERCY. Mr. President, I ask unanimous consent that the senior Senator from Illinois and the junior Senator from Georgia may be absent on official business tomorrow, for the purpose of conducting Senate committee hearings.

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

UNANIMOUS-CONSENT AGREEMENT—CONTINUED

Mr. JACKSON. Mr. President, may I merely respond to the Senator from Illinois by saying that I would hope that tomorrow we could try to identify the areas on which we can reach agreement without yea-and-nay votes, but I cannot guarantee that there will not be a yea-and-nay vote. If we receive amendments from various Senators who will offer them, then we can go over them and try to reach agreement on those amendments that will be offered. But undoubtedly there will be a yea-and-nay vote or two.

Mr. MANSFIELD. One, not more than two.

Mr. FANNIN. Mr. President, I assure the distinguished Senator from Washington, the chairman of our committee, that we on the minority side will attempt to offer our amendments by tomorrow, but I know that some Senators will not be present, so I cannot assure him that an amendment or two will not be offered later.

Mr. SCOTT of Pennsylvania. Mr. President, I at this time serve notice, with respect to the time allocated to the minority, that I transfer the control of that time to the Senator from Arizona (Mr. FANNIN), who is one of the managers of the bill.

The PRESIDING OFFICER (Mr. DOMENICI). Is there objection to the unanimous-consent request? The Chair hears none, and it is so ordered. The unanimous-consent request will be in the usual form, as requested.

Mr. MANSFIELD subsequently said: Mr. President, I had forgotten, under the unanimous-consent request, which has been agreed to among Senators consulted, to ask that there be 3 hours time on the bill, the time to be equally divided between the Senator from Arizona (Mr. FANNIN) and the Senator from Washington (Mr. JACKSON), the manger of the bill, or whomever they may designate, and I ask unanimous consent for that.

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

The text of the unanimous-consent agreement is as follows:

Ordered, That, during the consideration of S. 1570, a bill to authorize the President of the United States to allocate energy and fuels when he determines and declares that extraordinary shortages or dislocations in the distribution of energy and fuels exist or are imminent and that the public health, safety, or welfare is thereby jeopardized, debate on any amendment (except the Curtis-Talmadge amendment, on which there is no time limitation) shall be limited to 1 hour, to be equally divided and controlled by the mover and the manager of the bill, and that debate on any amendment in the second degree, debatable motion or appeal shall be limited to ½ hour, to be equally divided and controlled by the mover of such and the manager of the bill: *Provided,* That in the event the manager of the bill is in favor of any such amendment or motion, the time in opposition thereto shall be controlled by the minority leader or his designee: *Provided further,* That no amendment that is not germane to the provisions of the said bill shall be received.

Ordered further, That on the question of the final passage of the said bill, debate shall be limited to 3 hours, to be equally divided and controlled, respectively, by the Senator from Washington (Mr. JACKSON) and the Senator from Arizona (Mr. FANNIN), or their designees: *Provided,* That the said Senators, or either of them, may, from the time under their control on the passage of the said bill, allot additional time to any Senator during the consideration of any amendment, motion or appeal.

Ordered further, That the vote on final passage of the said bill shall occur at 4 p.m. on Tuesday, June 5, 1973.

AMENDMENT NO. 159

Mr. MANSFIELD. Mr. President, I ask unanimous consent that it be in order at this time to ask for the yeas and nays on the Moss amendment, which will be called up tomorrow.

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

Mr. MANSFIELD. Mr. President, I now ask for the yeas and nays on the Moss amendment.

The yeas and nays were ordered.

Mr. ROBERT C. BYRD subsequently said: Mr. President, at the request of the Senator from Utah (Mr. Moss), I ask unanimous consent that the Chair lay before the Senate an amendment by Mr. Moss to be proposed to S. 1570. There will be no action on that amendment today, but it will be the pending question tomorrow.

The PRESIDING OFFICER. Without objection, the amendment will be printed in the RECORD.

AMENDMENT NO. 159

At the end of the bill add three new sections as follows:

"GENERAL PROVISIONS

"SEC. 108. (a) SHORT TITLE.—Sections 108 through 110 may be cited as the 'Fair Marketing of Petroleum Products Act'.

"(b) DEFINITIONS.—As used in this Act—

"(1) 'Commerce' means commerce among the several States or with foreign nations or in any State or between any State and foreign nation.

"(2) 'Base period' means the period from October 1, 1971, to September 30, 1972.

"(3) 'Franchise' means any agreement or contract between a petroleum refiner or a petroleum distributor and a petroleum re-

tailer or between a petroleum refiner and a petroleum distributor under which such retailer or distributor is granted authority to use a trademark, trade name, service mark, or other identifying symbol or name owned by such refiner or distributor, or any agreement or contract between such parties under which such retailer or distributor is granted authority to occupy premises owned, leased, or in any way controlled by a party to such agreement or contract, for the purpose of engaging in the distribution or the sale for purposes other than resale of petroleum products.

"(4) 'Market area' means any State or any area so defined by the Secretary of the Interior.

"(5) 'Notice of intent' means a written statement of the alleged facts which, if true, constitute a violation of section 109 of this Act.

"(6) 'Person' means an individual or a corporation, partnership, joint-stock company, business trust, association, or any organized group of individuals whether or not incorporated.

"(7) 'Petroleum distributor' means any person engaged in commerce in the sale, consignment, or distribution of petroleum products to wholesale or retail outlets whether or not it owns, leases, or in any way controls such outlets.

"(8) 'Petroleum refiner' means any person engaged in the importation or refining of petroleum products.

"(9) 'Petroleum product' means any liquid refined from petroleum and usable as a fuel.

"(10) 'Petroleum retailer' means any person engaged in commerce in the sale of any petroleum product for purposes other than resale in any State, either under a franchise or independent of any franchise or who was so engaged at any time after the start of the base period.

"(11) 'State' means any State, the District of Columbia, the Commonwealth of Puerto Rico, and any organized territory or possession of the United States.

"PROTECTION OF DEALERS

"SEC. 109. (a) PROHIBITED CONDUCT.—Except as otherwise provided pursuant to this Act, the following conduct is prohibited:

"(1) A petroleum refiner or a petroleum distributor shall not deliver or tender for delivery in any quarter to any petroleum distributor or petroleum retailer a smaller quantity of petroleum products than the quantity of such products delivered by him or his predecessor or predecessors during the corresponding quarter in the base period, unless he delivers to each petroleum distributor or petroleum retailer doing business in commerce the same percentage of the total amount as is delivered to all such distributors or retailers in the market area who are supplied by such refiner or distributor.

"(2) A petroleum refiner or a petroleum distributor shall not sell petroleum products to a nonfranchised petroleum distributor or petroleum retailer at a price, during any calendar month, which is greater than the price at which such petroleum products are sold to a franchised petroleum distributor or petroleum retailer in the market area except that a reasonable differential which equals the value of the goodwill, trademark, and other protections and benefits which accrue to franchised distributors or retailers is not prohibited.

"(b) REMEDY.—(1) If a petroleum refiner or a petroleum distributor engages in prohibited conduct, a petroleum retailer of a petroleum distributor may maintain a suit against such refiner or distributor. A petroleum retailer may maintain such suit against a petroleum distributor whose actions affect commerce and whose products he purchases or has purchased, directly or indirectly, and a petroleum distributor may maintain such suit against a petroleum refiner whose actions affect commerce and whose products he purchases or has purchased.

"(2) The court shall grant such equitable relief as is necessary to remedy the effects of such prohibited conduct, including declaratory judgment and mandatory or prohibitive injunctive relief. The court may grant interim equitable relief, and punitive damages where indicated, in suits under this section, and may, unless such suit is frivolous, direct that costs, including a reasonable attorney's fee, be paid by the defendant.

"(c) PROCEDURE.—A suit under this section may be brought in the district court of the United States for any district in which the petroleum distributor or the petroleum refiner against whom such suit is maintained resides, is found, or is doing business, without regard to the amount in controversy. No such suit shall be brought by any person unless he has furnished notice of intent to file suit by certified mail at least ten days prior thereto with (1) each intended defendant, (2) the attorney general of the State in which the prohibited conduct allegedly occurred, and (3) the Secretary of the Interior.

"PROTECTION OF FRANCHISED DEALERS

"SEC. 110. (a) PROHIBITED CONDUCT.—The following conduct is prohibited:

"(1) A petroleum refiner or a petroleum distributor shall not cancel, fail to renew, or otherwise terminate a franchise unless he furnishes prior notification pursuant to this paragraph to each petroleum distributor or petroleum retailer affected. Such notification shall be in writing and shall be accomplished by certified mail to such distributor or retailer, shall be furnished not less than ninety days prior to the date on which such franchise will be canceled, not renewed, or otherwise terminated; and shall contain a statement of intention to cancel, not renew, or to terminate together with the reasons herefor, the date on which such action shall take effect, and a statement of the remedy or remedies available to such distributor or retailer under this Act together with a summary of the provisions of this section.

"(2) A petroleum refiner or a petroleum distributor shall not cancel, fail to renew, or otherwise terminate a franchise unless the petroleum retailer or petroleum distributor whose franchise is terminated failed to comply substantially with essential and reasonable requirements of such franchise or failed to act in good faith in carrying out the terms of such franchise, or unless such refiner or distributor withdraws entirely from the sale of petroleum products in commerce for sale other than resale in the United States.

"(b) REMEDY.—(1) If a petroleum refiner or a petroleum distributor engages in prohibited conduct, a petroleum retailer or a petroleum distribtuor may maintain a suit against such refiner or distributor. A petroleum retailer may maintain such suit against a petroleum distributor whose actions affect commerce and whose products he sells or has sold under a franchise and against a petroleum refiner whose actions affect commerce and whose products he sells or has sold, directly or indirectly, under a franchise. A petroleum distributor may maintain such suit against a petroleum refiner whose actions affect commerce and whose products he distributes or has distributed to petroleum retailers.

"(2) The court may grant an award for actual damages resulting from the cancellation, failure to renew, or termination of a franchise together with such equitable relief as is necessary, including declaratory judgments and mandatory or prohibitive injunctive relief. The court may grant interim equitable relief and punitive damages where indicated in suits under this section, and may, unless such suit is frivolous, direct that costs, including a reasonable attorney's fee, be paid by the defendant.

"(c) PROCEDURE.—A suit under this section may be brought in the district court of the United States for any district in which the petroleum distributor or the petroleum refiner against whom such suit is maintained resides, is found, or is doing business, without regard to the amount in controversy. No suit shall be maintained under this section unless commenced within three years after the cancellation, failure to renew, or termination of such franchise or the modification thereof."

Mr. HUMPHREY. Mr. President, it is now understood that we will take up the energy fuels allocation bill, S. 1570, which has been reported from the Committee on Interior and Insular Affairs.

Today, I merely wish to place in the RECORD some reports that ought to be helpful to Senators as they face the issue of energy allocation and fuel allocation in tomorrow's debate and in our legislative endeavor.

Today, Secretary of Agriculture Butz is in Des Moines, Iowa, at a meeting with officials there, to discuss the fuel shortage situation in the Midwest and other matters relating to the production of food and fiber. I shall read from a dispatch that appeared on our news ticker:

At a Midwest fuel shortage jawboning meeting today Agricultural Secretary Earl Butz gave farm and trade representatives a severe piece of news—that country elevators, in the face of an expected record crop, may refuse to accept harvested grain unless they have ample storage space.

In remarks prepared for delivery at a Des Moines conference, Butz said some country elevators have already warned farmers there may not be a cash market at harvest time because they will not pile wheat on the ground beside tracks waiting for the end of a car shortage that some grainmen predict could last for up to six months as the U.S. wheat harvest moves northward.

The Secretary explained that country grain handlers have been told by terminal buyers that they will get no advance money until wheat is loaded. They can draw an advance, Butz said, only when the grain is loaded in rail cars or trucked to the terminal and applied to a specific contract.

Warning that the Government and private trade must find solutions to short-run fuel problems "before they jeopardize our prospects for a record harvest this year," Butz told the fuel meeting current gasoline and diesel fuel stocks plus domestic production could meet summer and winter needs, barring extremely cold weather. But, the Secretary added, there are some problems getting the right amounts of fuel produced from the supply and getting them distributed.

I also have a dispatch from the United Press International that reads as follows:

Officials of the Ohio Farm Bureau said Tuesday that by the end of this week Ohio farmers "could well be without tractor fuel."

"Diesel fuel shortages have reached the critical stage and the Farm Bureau has urged prompt Federal action to get fuel to farmers so food and fiber crops can be planted," the organization said in a statement. "The corn crop's only half in and soybean planting has barely begun."

C. W. Swank, Ohio Farm Bureau executive vice president, said at least a 25-percent increase in fuel supplies was needed.

He said the problem stemmed from fuel allocation on the basis of last year's demands when fall plowing was completed on a near normal pattern. Swank said that "even if the present fuel crisis eases, there will be a greater one at harvest time."

Now, Mr. President, as have noted from California:

Diesel fuel shortages have reached the critical stage and the Farm Bureau has urged prompt Federal action to get fuel to farm-

ers so food and fiber crops can be planted," the organization said in a statement, "The corn crop's only half in and soybean planting has barely begun."

There are other reports from around the country.

Those of us from the agricultural producing areas are well aware of the fact that we are facing a critical fuel situation. In some places it is being handled temporarily by action from officials of the Government who are calling up the large petroleum suppliers.

For example, yesterday, I was fortunate enough to be able to get the Amoco Co. to supply diesel fuel to the metropolitan bus system of the Twin Cities. That bus system had requested five million gallons and asked for a contract. Amoco said they could supply 3.7 million gallons. Otherwise, this would mean that the bus system would have to close down on Saturdays, Sundays, or some evenings, or some parts of the mid-day. But because we got good cooperation from the Department of the Interior, Mr. Likens from the Office of the Director of Oils and Fuel, I believe it is called, we were able to get Amoco to come through with the full contract.

But we cannot go around trying to find answers day by day, item by item, company by company, or problem by problem. We must have a better system. Hopefully, the voluntary system could work. But, frankly, it is not. That is why this legislation is before us. We have a system of mandatory allocations. This is not an ordinary matter. The question of availability of food supplies is right on the line.

Yesterday before the Foreign Relations Committee, a distinguished witness testified as to the amount of fuel being used, a certain percentage for home heating, a certain percentage for industrial use, a certain percentage for gasoline for automobiles, a certain percentage for transport—all adding up to 100 percent; but, mind you, Mr. President, this distinguished and able witness did not include fuel supplies for agriculture.

Agriculture is the largest user of petroleum products in the Nation, yet the lead witness forgot even to mention the use of petroleum products for the production of food and fiber, for the distribution of food and fiber, and for the manufacture or processing of food and fiber.

Agriculture seems to be an afterthought around this town, unless there are shortages, unless there are high beef prices—which we now understand are still going up more.

So, Mr. President, I raise my voice tonight on this issue, because we will be deciding tomorrow in this body whether we will have fuel oil in the colder areas of the Nation this coming fall and winter. Because, as surely as I stand behind my desk in the Senate tonight, without mandatory allocations, we will be without adequate fuel oil in the Midwest. As I have said in many a meeting, we cannot depend on the good Lord to provide us with a warm winter. In fact, the Secretary of Agriculture said that if the winter is not too cold, we may get by.

Well, let me say to the Secretary, I have lived in South Dakota and Minnesota all my life and it is cold—plenty cold—in November, December, January, February, and March. It is also cold in Ohio, and in Michigan, and in Wyoming. It may not be cold all over the country but last year the South had the worst weather ever. Temperatures in Georgia, Alabama, and Texas were colder than those in Minnesota. Our turn may come this fall and winter.

Mr. President, I shall stand here today and tomorrow to see that we get some form of allocations that will take what appears to be a shortage of petroleum products and make an equitable distribution of them with priorities.

The first priority must be for the production of food and fiber. Another priority must be our public institutions, our schools and hospitals. Another priority must be to provide an adequate system of motor transport so that we can move our goods. Another priority of need will be for the movement of people such as mass transit systems.

But, for some reason, this city does not quite understand, yet, that we could be facing a major food crisis because, when we talk of the shortage of fuel we are talking about the shortage of food as well.

If we should have a drop of approximately 10 percent in our estimate in the protein crop—that is, soybeans and corn, and feed grains—we will have a major food crisis in the United States. That drop could take place because we do not have the fuel oil or the propane natural gas to dry the corn and the soybeans. Agriculture is a complicated business. It requires large amounts of petroleum products.

I might add that the demand for agricultural products looks like it will be very heavy. I hope that it will be. I notice for example, in looking over some reports that I get daily, that the demand for food seems to be growing in the country as well as throughout the world.

I noted from the same news service of May 30 a headline, "Huge World Wheat Demand."

This is good news for us, if we can deliver.

It reads:

Eugene Shannon, president of Paramount Citrus in Los Angeles, said despite the Government directives he has received letters from fuel suppliers advising his citrus association that it would be subject to cutbacks in fuel supplies this summer.

Shannon said there is no problem now, but the "worst is yet to come in California because the summer and fall brings the heaviest activity."

Mr. President, we also see, for example, that there is an increasing demand for protein in East and West Europe. The Soviet Union and possibly China, it has been predicted by Mr. J. C. Randag, president of the International Association of Seed Crushers, will make an extra demand again on our protein sources.

We now see, for example, that Argentina, which is a heavy supplier of wheat, today in the news has experienced very heavy rains and floods which have significantly damaged the Argentine grain sorghum crop, and will be probably down 30 to 40 million bushels from the earlier estimate.

All of this is another way of citing what some of us have been trying to tell the Congress and the country; namely, that we have some rough days ahead.

I want to make one or two suggestions.

First, that the Department of Agriculture had better keep a close eye on the board of trade, the commodities market, to see that there is not undue, dangerous speculation. I do not want to have to write a letter to the Department of Agriculture. I want them to look at this Record I am making tonight, as a member of the Committee on Agriculture and Forestry, and as chairman of the Consumer Economics Subcommittee of the Joint Economic Committee. I am hereby formally requesting the Department of Agriculture and the Department of Justice to keep a watchful eye on speculation of commodities, because prices are going out of the roof. The news reports are frightening—"Surging Grain Prices Alarm Government."

A story in the Washington Star on May 30, "Grain Prices Soar as Market Augurs Big Rise in Margin."

These prices have gone up. A year ago, soybeans were $85 a ton, and they are $400 a ton tonight.

Mr. President, that means the dairy farmers are going out of business; that means higher prices, higher beef prices.

I think we have to take a good look at why soybeans are selling for $10 a bushel. There may be a legitimate reason, but I want the Department of Agriculture officials to look at the problem carefully.

I have no evidence that indicates that there is any tampering or fooling with the market. But I think that in this period, in which we see so much speculation on futures, we need to have a constant monitoring of the market in commodities. I think this is one of the ways to prevent investigations later on that may reveal some wrongdoing.

Second, I call upon the Government to examine immediately the storage capacity for our feed grain and wheat farmers. We have had other experiences. I want to remind this administration that Harry Truman was reelected in 1948 primarily by the votes of farmers in the Midwest, from Ohio to the Rockies, from Minnesota down to Texas, because of the lack of adequate storage for their crops. Farmers had to pile their wheat on the ground. Farmers could not harvest their corn. Farmers could not harvest their feed grains. There was no storage, and prices went down. Crops were destroyed.

The Secretary of Agriculture has now said that there is a lack of adequate storage. Grain elevators are jam packed. Farmers cannot borrow any more money.

I know we are all concerned about Watergate, but I suggest that somebody around here had better be concerned about the feedlot and about the wheat fields and about the cornfields and about the soybeans; because if we do not show some concern now, just as surely as this Senate is sitting in session today, we are going to have a big stinkeroo later on, and then everybody is going to want to investigate everybody else. They are going to be looking for scapegoats. All we need to do is take an ounce of preven-

tion right now, and we will not have to look for the pound of cure later on.

Some of us have been around here long enough to know what is happening. I have been interested in the matter of grain storage, commodity movement, and agricultural policy ever since I was a young man, working with my father in South Dakota. It has been our life. One of the reasons why I want to serve on the Committee on Agriculture is that I am interested in the well-being of the American family farmer, the ranchers, and the farmers of this Nation.

I know that unless we have adequate prices for food and fiber, we are not going to have adequate supply. I know that if we do not have adequate transportation, it will not make any difference how much supply we have.

Mr. President, the transportation system is overworked. There is not only a shortage of boxcars; there is a shortage of hopper cars.

Congress passed a resolution calling upon the Government to take immediate action to alleviate this shortage. The shortage is worse today than it was a month ago.

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

Mr. HUMPHREY. I yield.

Mr. SAXBE. I am very interested in what the Senator has to say. I am quite aware of the problem.

Last year, within half a mile of my house, there was a pile of 100,000 bushels of corn on the ground. The wheat harvest is going to start to move within 3 weeks, possibly 2. We already have these boxcars tied up, trying to get the wheat into Houston and other ports for Russia.

What does the Senator suggest that can be done about this boxcar shortage between now and the first of July, and then continuing on through, as the harvest moves North? We cannot build elevator space. I do not see how that would be possible.

Mr. HUMPHREY. First of all, may I say, we can have what we call on-the-farm storage, and we have to encourage that. The Senator may recall the old Butler-type bins, steel bins. They are very good. Many of those have been sold. The Government sold many of them because they said we are not going to need them, and I understand that. I am not going to say that we should have had foresight. The fact is that at the time we did not need them.

All I am asking now, without trying to scold the Secretary—he has enough problems—is that the Department of Agriculture take a good look at the storage picture promptly. They have men in the field. In every State and county are agricultural people, in the agricultural stabilization committees, the old ASC system.

Let us find out what is available now and what we can do to find additional storage in case we need it.

Next, I think it is imperative that somewhere in the executive branch of Government someone be appointed to ride herd on the transportation problem. I mean a boxcar czar, so to speak. Not just boxcars; that is kind of old stuff now. We use hopper cars now. Many of these hopper and boxcars can get caught in the railroad yards of Philadelphia or New York or other large cities, where the railroads do not see the necessity of the rapid turnaround. It is a difficult problem. I am not saying that the railroads are ganging up on us. Sometimes it is just grossly inefficient.

As the Senator has properly remarked, that crop is going to start coming in from Texas and Oklahoma. By the way, they got a bad deal last year in terms of the Russian wheat sale, because it came at a time when the prices were not up, so far as these farmers were concerned. I want to be sure that that crop can move. I do not represent Texas or Oklahoma, except as a U.S. Senator. I want to see them be able to get a cash price for their wheat.

The Secretary of Agriculture has given a warning here, and I thank him for doing it. He said the terminal buyers who work with the country elevators, who make the advance payments to the country elevators, will not have the cash. Those terminal buyers will not give the country elevators the cash to make the purchases of the wheat unless the elevators are full. That means that my friend, Senator BELLMON, who I consider a great friend of the farmers, and other Senators in that part of the country are going to be faced with farmers calling them on the phone and saying, "We can't sell our wheat. We have a double jolt. We got a haymaker last year and now we get a right to the jaw."

Last year they could not get any price, and this year they will not be able to get any cash unless we look at it now.

I do not know what the answer is. I am prepared to cooperate in any way I can, and I know the Senator from Ohio is. I hope we can get a sort of immediate emergency analysis or study made by the Department of Agriculture and have them come to us now, within the next couple of weeks.

Mr. SAXBE. I think that probably they will be able to take care of the winter wheat from down in Oklahoma and Texas and on into Kansas, because it is moving at a time when nothing else is moving except this overseas grain. But what I can foresee as a real difficulty is when it comes into Iowa, Nebraska, and the Dakotas, and we are faced with the problem then of having all the storage and terminal warehouses full, with barges full.

Those country elevators up there, as the Senator knows, are a long way apart, and the reason they are cutting off the country elevators is that it used to be a matter of 3 or 4 days, or perhaps a week or 10 days, in which they could get a car out. But with the national car shortage, they will not advance money for grain that is lying on the ground, and you cannot blame them.

Mr. HUMPHREY. Not at all.

Mr. SAXBE. It seems to me that we have at least 2 months for that harvest. Perhaps some kind of temporary storage can be rigged between now and those 2 months, so that the country elevators can take this. As the Senator knows, the story on wheat is that it usually comes in dry enough that it can be stored anywhere.

Mr. HUMPHREY. That is correct.

Mr. SAXBE. When corn comes in——

Mr. HUMPHREY. It comes in wet.

Mr. SAXBE. It comes in wet. And more and more, soybeans are coming in wet. That has to be dried, and then it has to be stored dry, or you put it back in the condition in which it was when you brought it in.

Perhaps what they should be thinking about—and I, like the Senator, have no specific suggestion—is some kind of temporary arrangement, perhaps using plastic films, by which they can provide temporary storage and get started now and have it ready when the crop comes in in the Middle West.

Mr. HUMPHREY. I thank the Senator from Ohio for his customary practical suggestions. He has cited what could be the possibility. All I am saying is that we should look ahead, because we have gone through a miserable period on the transportation crisis, and every time this happens somebody is involved in something that is not quite right. I think our problems are the result of the mass movement of grains that have glutted our transportation system, but we are going to have more.

The export demand seems to be growing more every day. There is India, Bangladesh, the Argentina crop is off, Eastern Europe is having trouble, the Middle Eastern countries, like Syria and other places have trouble in connection with their big crops. Possibly we could have the greatest amounts of exports in the history of our Nation.

The Agriculture Department requested farmers to plant 45 million more acres in feed grains and wheat. Farmers are responding to that request. That can mean tremendous crops and improvement in our economy if we can move it and if the farmers can get cash for their crops. They cannot afford to leave them on the ground. If they do, they take a terrible loss.

Mr. SAXBE. I do not think the world is aware of the amount of grain we can raise in this country. Agriculture has been changed to a high technology business. We have the ability to raise, I am convinced, 2 million bushels of wheat.

Mr. HUMPHREY. Yes.

Mr. SAXBE. And once we cut loose, as they have done this year, and it was a dangerous thing to do, but once we cut loose on the American farmer so he can produce, he will surprise everyone. If he has the machinery and gets the fuel, he can produce enough to surprise the world. There is no question about it.

Mr. HUMPHREY. I agree. The American agriculture production technology is amazing. It is not only in the realm of probability, but I think 2 million bushels of wheat is more than within the realm of possibility.

We are going to produce 6 million more acres of soybeans this year. We will have a tremendous crop if conditions continue at present, despite the floods in the South.

However, that poses both an opportunity and a problem. The opportunity is for world markets, which I think are going to come. The problem is storage and transportation.

I just raise my voice today in the Sen-

ate, not in criticism, but only as a kind of warning: please take a look. Get the Department of Transportation, the Department of Agriculture, and any other department to take a look at what is going on in speculation in futures in the commodity market. Second, what is available storage, and what do we need? Third, what can we do to alleviate the transportation problem?

It will be too late for us if we come back in September and October, because then it will be all over. Farmers will get their crop loans and the Government will have a big investment in crops that have spoiled. Farmers will get less under pending or existing legislation, and it will be a bad thing for the Government, the farmers, the country, and the world.

Mr. President, my interest in this is triggered by what I believe is somewhat a similarity with conditions in my State and the areas of the Nation where I have been privileged to live. I know we will have Members of this body who will try to cooperate in every way. But this is a time when we do not need to argue with the Secretary of Agriculture, but to call upon him to use every facility at his disposal to solve the problems. I think he has been told what the problems are and we must see what we can do to respond promptly to any request that is made.

Mr. President, I ask unanimous consent to have printed in the RECORD an article from the Washington Post of May 30, 1973, entitled "Grain Prices Soar as Market Orders Big Rise in Margin," an article from the Evening Star and Daily News of May 30, 1973, entitled "Surging Grain Prices Alarm Government," and certain articles from the ticker relating to this matter.

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

[From the Evening Star and Daily News, May 30, 1973]

SURGING GRAIN PRICES ALARM GOVERNMENT

The government, which promised an end to soaring food costs for the second half of the year, has become alarmed over the unabated surge in prices of soybeans, corn and wheat.

Prices of these key ingredients for tomorrow's meals have been setting highs day after day on the nation's commodities exchanges despite the prospect for record harvests this year.

During the last four weeks, soybean prices have risen more than 45 percent, wheat 22 percent and corn about 30 percent.

Indeed, the alarm in Washington is such that the Commodity Exchange Authority, a little-known regulatory arm of the Agriculture Department, has been holding unusual talks with leaders of the commodity industry to seek ways to cool the markets.

Alex C. Caldwell, the authority's administrator, said yesterday that he and his aides had spent the weekend conferring with officials of the Chicago Board of Trade, the nation's biggest market for grains and soybeans.

"Actually, we can take action only if price manipulation is suspected, which is not the case," Caldwell said. "What we see today is strong cash markets pulling up future prices on the exchanges."

One result of the talks was that the Chicago Board of Trade's directorate met in emergency session before trading started yesterday and raised initial margin requirements for futures trading, effective this morning.

(At another meeting this morning the directors altered the margin requirements relating to spreads which involve the buying of one contract against the sale of another. They were to meet again later this afternoon to see the effect of the latest changes on the market, the Dow Jones News Service reported.)

The huge exchange has raised initial margins—the cash down payment required on futures contract—several times this year on the grains and soybeans without any effect on volume or prices.

Board of Trade officials have also sharply increased the daily permissible price movement in soybeans—the most volatile commodity because of its scarcity—in stages from 10 cents to the present 40 cents a bushel thus far this year. The limits on the quieter wheat and corn futures remain at 10 cents above or below the preceding session's closing price.

Prices of most soybean, soybean meal, wheat and corn futures rose the limits again yesterday.

The talks between the Commodity Exchange Authority and the Chicago Board of Trade over the holiday weekend gave rise to rumors throughout the industry that the government was discussing a suspension of trading. A report to that effect by the Reuters news agency was denied by Caldwell and officials of the Chicago Board of Trade.

Lee B. Stern, a director of the Board of Trade, said: "There is absolutely no truth in the rumors about suspending trading. Such action, except in a national emergency, is unthinkable and could lead to unprecedented turmoil."

One possibility for cooling the frenzied markets, Caldwell hinted, would be to "do something about the hedgers who find themselves locked in as prices sweep ahead."

The plight of those who were or are in a short position in grains and soybeans has become of deep concern to the industry. The capital of several Wall Street brokerage houses has been undermined because they had gone short in the belief that basic foodstuffs would decline in price.

Many grain elevator companies, flour millers and other elements in the commodity industry that are traditionally short as a hedge are also in difficulties.

These hedgers, holding the actual grain, traditionally use the futures markets to protect themselves against the possibility of price drops. But prices have been soaring since the massive grain sale to the Soviet Union last summer.

Since then, wheat has gone from about $1.50 a bushel of 60 pounds to as high as yesterday's close of $3.01 for delivery this July. Corn, which sold last summer at $1.30 a bushel of 56 pounds, closed yesterday at $2.12 for July delivery.

July soybeans closed at $9.78 a bushel of 60 pounds; that contract had sold for $3.27 last summer. Soybean meal has shot up from $102 a hundred tons to $350.

For the consumer, these prices will mean higher prices for food. Soybean meal, for example, is the key feedstuff for cattle, just as corn is for poultry. In fact there is hardly any manufactured food that does not contain soybeans, corn or wheat.

According to commodity brokers, who earn their commissions whether prices go up or down, the government's alarm over soaring prices of grains and soybeans is justified.

True, the winter wheat harvest now under way promises to be a record one, and it normally constitutes two-thirds of the annual crop. But a critical shortage of transport since last summer has all but strangled the movement of grain from farm to elevator to railheads or maritime terminals.

The heavy harvest of winter wheat is aggravating the transport problem. It is also true, the brokers say, that the government has encouraged vastly expanded acreage given over to spring crops—soybeans and corn, for example.

But severe flooding in the Midwest has delayed planting, and every day lost raises the odds that an early autumn frost may reduce yields. Farmers are aware that the last three winters have been relatively mild and that the odds are against another one.

[From the Washington Post, May 30, 1973]

HIGHER GROCERY PRICES SEEN: GRAIN PRICES SOAR AS MARKET ORDERS BIG RISE IN MARGIN

(By Jack Egan)

In an extraordinary session on the Chicago Board of Trade yesterday, almost all major grain futures contracts advanced the daily price limit. Buying demand was heavy but sellers were scarce or non-existent.

As a result of the near-paralysis in the trading of many grain contracts, the directors of the Board of Trade, the nation's largest commodity futures market, yesterday announced the second substantial boost in trading margin requirements in less than a week.

The increase in the amount of cash that is needed to cover a futures position goes into effect today. It is meant to loosen trading and bring some order to the surging commodity markets.

Meanwhile, Richard Schnittker, a Washington agriculture consultant, yesterday predicted that retail food prices would increase 15 to 20 per cent this year unless the recent steep climb in grain prices was soon reversed.

The Agriculture Department recently boosted its own 1973 forecast for grocery price increases from 6 to 10 per cent.

The feed grain prices resumed their upward path as soon as the opening bell rang for trading in Chicago.

Yesterday was the first day in which the daily price increase limit was increased on all soybean contracts from 20 to 40 cents a bushel and on soybean meal from $10 a ton to $15, in an effort to let the market find a comfortable price.

On the opening bell all seven future month options increased 40 cents a bushel and the eight meal options went up $15 a ton. Trading virtually halted for a lack of sellers.

At the end of the day, July soybeans were $9.78 a bushel and July meal was $350 a ton. By contrast, only two months ago on March 29, July soybean contracts sold for $5.19 a bushel, and soybean meal for July was $162.20 a ton.

Yesterday was the seventh straight session in which soybeans and meal prices advanced the limit. However corn, wheat and oat futures also moved to their daily limit increase on the opening bell. Although there was some trading in each of these commodities, mainly in new contracts for next December and beyond, they all closed at or very near their high price for the day.

Reasons given for the continuing and unprecedented upward price movements included strong foreign demand and a fear of some export controls being slapped on grains, depleted stocks of old crop grains, bad weather conditions in the Midwest, which have hampered plowing and planting of new crops, and an excess of speculation.

Concern was expressed by commodity brokers that individuals holding short positions, or commitments to sell contracts, were unable either to come up with the commodity or to buy the contract because the limit price prevented trades from taking place. The situation was particularly severe in soybeans and soybean meal.

Alex Caldwell, head of the Agriculture Department's Commodities Exchange Authority, which regulates commodities futures trading, said that he was concerned about both the rising prices and the inability of traders to get in and out of the market.

He said that he had been in telephone contact with directors of the Chicago Board of Trade over the weekend and had suggested that margins should be raised substantially.

He said that he had received suggestions from traders that the futures markets be temporarily closed in order to provide a breathing spell. But he said this would be a very drastic move which "at this point in time I'm not ready to recommend," because it would keep out "legitimate hedgers," such as farmers and grain operators, "who want to get into the market."

Caldwell added that the present situation was "more a supply and demand problem than anything else," reflecting high prices in the cash market, and not just the product of speculation.

The board yesterday raised the initial margin or cash deposit on July, August and September soybeans from 75 cents to $1.50 a bushel, up from only 50 cents last Thursday. The new margin on November and forward contracts is $1.00, up from 60 cents yesterday and 30 cents last week.

The July through October soybean margin is up to $5,000 a ton today from $2,500 yesterday and $1,500 last week. December and forward meal contract margins are raised to $3,000 a ton from $2,500 yesterday.

Corn margins are raised to 25 cents a bushel from 15 cents, and the initial margin for wheat is 35 cents a bushel, up from 25 cents.

Schnittker, who was Undersecretary of Agriculture under President Johnson, saw speculation in old or already harvested crops as a major factor in the current upsurge in prices.

Schnittker said unless grain prices soon get back to the March-April levels, which were ½ to ⅓ lower than at present, the consumer was "in for another round of increases in food prices," with a three to six month lag before they were fully felt.

Indian Food Situation

New Delhi, May 23.—Food production in India this year is inadequate for domestic needs in the face of that country's ever growing population, according to agricultural observers.

Although about three quarters of the spring wheat crop in northern India has already been secured, despite recent erratic weather conditions in that part of the nation, it is felt that imports of two million tons of food grains or more will be necessary to close the looming supply-demand gap, a situation that applies to edible oils as well as to food grains.

Near East Wheat Output Lower in 1973–74

(By Janet Porter)

London, May 23.—Wheat production in some Near East Countries is likely to be only half the level of output 1972–73, as wheat producing areas are still awaiting rains, according to the International Wheat Council (IWC).

Jordan, Israel and Lebanon are still experiencing droughts, although conditions have improved to a certain extent in Syria and Iraq, even so, crops in these countries are still likely to be below average, the IWC says in its latest report on market conditions. Iran has not been affected by droughts, however, and yields close to last season's levels are expected in the 1973–74 season.

Elsewhere, in the world, the USSR had considerable rainfall during the second half of April in the Ukraine and northern Caucasus, but not so much in the Urals and Volga area. Warm weather and sufficient moisture reserves, in most of the European areas of the USSR contributed to crop growth and conditions for field work were generally satisfactory. The long range weather forecast currently indicates that the summer is likely to be somewhat warmer than usual in the USSR, with rainfall about or slightly below normal in some areas.

In western Europe prospects for all grain crops are generally good and crops suffered relatively little damage during the mild winter. In eastern Europe, Bulgaria is planning to harvest some 3m tons of wheat this season, about 0.5m tons less than last year, while Romania is hoping to harvest some 17.3m tons of grain this year, about 4 per cent up on last year.

Impact of Fuel Shortages on Farmers

Eugene Shannon, president of Paramount Citrus in Los Angeles, said despite the Government directives he has received letters from fuel suppliers advising his citrus association that it would be subject to cutbacks in fuel supplies this summer.

Shannon said there is no problem now, but the "worst is yet to come in California because the summer and fall brings the heaviest activity."

Dick Mount, former vice president of the Los Angeles Produce Association, agrees with Shannon that the hardest hit would be the purveyors, those who deliver to the retailer, if they don't have the fuel the goods will sit at the warehouse.

Some farmers had to scramble this spring to get enough fuel. So far there have been no reported shutdowns and cutbacks in production.

Some Illinois farmers solved the problem this spring only by using political clout.

Sen. Adlai Stevenson talked Citgo into supplying C. W. Hicks of Roberts, Ill., with enough fuel for the 15,000 farmers he supplies. Hicks and other agri. suppliers testified Tuesday at Stevenson's Senate Consumer Subcommittee in Chicago that most of their gasoline had been cut off April 1, and that the big oil companies were not complying with the guidelines.

Lisle Reed, Deputy Director of the Office of Oil and Gas in the Interior Department said at the hearing that the Government would hold hearings June 11–13 to determine whether the guidelines should be made mandatory.

Agri. Sec. Earl L. Butz opens still another hearing on the matter today in Des Moines, Iowa. He will meet with leaders of farm groups to discuss the impact of fuel shortages on 1973 crops.

Butz said he and his aides plan to "solicit the advice of the Nation's Agri. industry to meet food production needs with foreseeable supplies.

David Handrigan, president of Handrigan Seafoods, Inc., in Judith, R.I., said the "gas shortage has not hurt us so far but it certainly will soon." He said his company uses 588,888 gallons of gas a year, most of it from now to October. This year, he said, the fuel has been alloted over a 12-month period, and he has to use it up one month before getting the full allotment for the next month.

"This represents a cut of about one-half," he said. He said the gas driven lobster boats will be the first to feel the effect, and it likely will affect the price of shellfish. Most other fishing boats use diesel fuel, he said, and other fish prices would not be affected unless there is also a shortage of diesel fuel.

On the Maine coast, 12 of the State's 17 fishing co-ops report they have been promised enough fuel to operate through the summer—but it's costing them three cents a gallon more than it did last year.

ORDER FOR TRANSACTION OF ROUTINE BUSINESS TOMORROW AND FOR UNFINISHED BUSINESS TO BE LAID BEFORE THE SENATE

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on tomorrow, after the two leaders or their designees have been recognized under the standing order, there be a period for the transaction of routine morning business of not to exceed 15 minutes, with statements limited therein to 3 minutes, at the conclusion of which the Senate resume its consideration of the unfinished business, S. 1570.

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

LEAVE OF ABSENCE

Mr. GRIFFIN. Mr. President, the distinguished Senator from New Mexico (Mr. Domenici) and the distinguished Senator from New York (Mr. Buckley) will be absent tomorrow in connection with a hearing to be held outside the city of Washington. I ask that they may be excused.

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

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, tomorrow, the Senate will convene at 11 o'clock a.m. After the two leaders or their designees have been recognized under the standing order, there will be a period for the transaction of routine morning business of not to exceed 15 minutes, with statements limited therein to 3 minutes. At the conclusion of morning business, the Chair will lay before the Senate the unfinished business, S. 1570, the fuel and energy allocation bill. There is a time limitation thereon. There will be one or two yea-and-nay votes tomorrow—one for sure on an amendment by the able Senator from Utah (Mr. Moss) on which he has already requested the yeas and nays.

The distinguished majority leader does not anticipate that there will be more than two yea-and-nay votes tomorrow. However, the distinguished manager of the bill, the Senator from Washington (Mr. Jackson), has expressed the hope that Senators will discuss with him tomorrow any amendments they propose to offer, and perhaps some of those amendments can be adopted tomorrow by voice vote.

Then, the Senate will go over until Monday, with a final vote on the bill to occur at 4 p.m. on Tuesday next.

ADJOURNMENT UNTIL 11 A.M.

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in adjournment until 11 o'clock a.m. tomorrow.

The motion was agreed to; and at 5:29 p.m. the Senate adjourned until tomorrow, Friday, June 1, 1973, at 11 a.m.

CONFIRMATION

Executive nomination confirmed by the Senate May 31, 1973:

Atomic Energy Commission

William E. Kriegsman, of Maryland, to be a member of the Atomic Energy Commission for the remainder of the term expiring June 30, 1975.

(The above nomination was approved subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)